

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Damon Connolly, Chair

AB 1373 (Soria) – As Amended April 8, 2025

SUBJECT: Water quality: state certification

SUMMARY: Requires the State Water Resources Control Board (State Water Board), before acting on an application for certification under the federal Clean Water Act (CWA) for a license to operate a hydroelectric facility, to hold a public hearing at least 21 days before taking action. Prohibits the State Water Board from delegating the authority to issue a certification under the CWA for a license to operate a hydroelectric facility to the Executive Officer of the State Water Board. Specifically, **this bill**:

EXISTING LAW:

- 1) Establishes the CWA to regulate discharges of pollutants into the waters of the United States and to regulate quality standards for surface waters. (33 United States Code (U.S.C.) §1251 et seq.)
- 3) Establishes the Porter-Cologne Water Quality Control Act (Porter-Cologne), which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code ((WC)) § 13000 et seq.)
- 3) Designates the State Water Board as the water pollution control agency for all purposes stated in the federal CWA. Authorizes the State Water Board to give any certificate or statement required by any federal agency pursuant to the CWA. (WC § 13160)
- 4) Authorizes the State Water Board to establish a reasonable fee schedule to cover the costs incurred by the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) in connection with any certificate that is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to Section 401 of the Federal Water Pollution Control Act. (WC § 13160.1.)
- 5) Requires draft waste discharge requirements (WDR) be made available to the public for a 30-day comment and review period before the draft WDR is considered for adoption by the State Water Board. (WC § 13167.5)
- 6) Requires public notice of an application for a 401 water quality certification, under the CWA, for at least 21 days before taking action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. (California Code of Regulations, title 23, § 3858)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "The [State Water Board] has the responsibility to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. These certifications, which commonly last decades, contain mandatory conditions for their associated federal license or permit, meaning facility operators must accept whatever is approved by the [State Water Board] without modification or risk forfeiting their license to operate. The conditions included in 401 Water Quality Certificates have the potential to significantly impact the social, economic, and environmental conditions of the communities served by these projects and should not be made behind closed-doors and without the opportunity for the [State Water Board] to weigh-in. AB 1373 would require a more public process and give all those involved the opportunity to be heard."

Federal Clean Water Act (CWA): The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. The law was amended in 1972, and became commonly known as the Clean Water Act (CWA). The federal CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, the US EPA has implemented pollution control programs, including setting wastewater standards for industrial facilities, as well as setting water quality standards for all contaminants in surface waters. The CWA made it unlawful to discharge any pollutant from a point source into navigable waters without a permit. Industrial, municipal, and other facilities must obtain a permit under the National Pollutant Discharge Elimination System in order to discharge into surface water.

According to Section 401 of the CWA, any entity applying for a federal license or permit to conduct any activity that may result in a discharge of pollutants into federal waters must obtain a water quality certification from the state in which the activity is to occur. For example, performing an activity that requires the dredging or filling of rivers, streams, or wetlands (dredge and fill projects) requires a water quality certification. Typical dredge and fill projects include building bridges, widening roadways, and stabilizing roadway slopes and embankments. When the State issues a water quality certification for a project, it is certifying that the project will comply with state and federal water quality laws and regulations. Once the State issues its certification, it is up to the applicable federal entity to decide whether to issue a federal license or permit allowing the project to proceed. The federal government cannot, however, issue a license or permit that requires a water quality certification until the state where the activity will occur has done so or the state has waived its right to certify.

401 water quality certification and waste discharge requirements: The 401 water quality certification program is responsible for regulating discharges of dredged or fill material to waters of the state. The State Water Board and the Regional Water Boards regulate these discharges under section 401 of the CWA and under Porter-Cologne. CWA section 401 water quality certifications are issued to applicants for a federal license or permit for activities that may result in a discharge into waters of the United States (U.S.), including but not limited to, the discharge of dredged or fill material. Waste discharge requirements under Porter-Cologne are issued for discharges of dredged or fill material to waters of the state.

Procedures for discharges of dredged or fill material to waters of the state: In 2019 the State Water Board adopted the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures). These procedures cover the 401 certification process by the State Water Board. The State Water Board adopted the Procedures, which became effective May 28, 2020, to address several important issues. First, there was a need to

strengthen protection of waters of the state that were no longer protected under the Clean Water Act due to U.S. Supreme Court decisions, since the Water Boards historically relied on Clean Water Act protections during dredged or fill discharge permitting practices. Second, there was inconsistency across the Water Boards in requirements for discharges of dredged or fill material into waters of the state, including wetlands. Third, there was no single accepted definition of wetlands at the state level, and the Water Boards historically had different requirements and levels of analysis regarding issuance of dredge or fill permits. Finally, regulations have historically not been adequate to prevent losses in the quantity and quality of wetlands in California, where there have been especially profound historical losses of wetlands. As part of the Procedures, the Executive Director or Executive Officer, or their designee, has the authority to issue the 401 certification.

This bill would prohibit the State Water Board from delegating the authority to issue a certification under the CWA for a license to operate a hydroelectric facility to the Executive Officer of the State Water Board.

Public notice for waste discharges: Water Code section 13167.5 requires draft waste discharge requirements be made available to the public for a 30-day comment and review period before the draft Order is considered for Board adoption. The California Code of Regulations, title 23, section 3858 requires public notice of an application for a 401 water quality certification for at least 21 days before taking action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency.

Hydroelectric facilities: Hydroelectric (hydro) facilities smaller than 30 megawatts (MW) of generation capacity are considered small hydro. Utilities such as Southern California Edison, Pacific Gas and Electric, and the Sacramento Municipal Utility District operate small hydro facilities. Large hydro projects are those larger than 30 MW of generation capacity. The United States Bureau of Reclamation and the state's Department of Water Resources operate large hydro plants in California such as Folsom Dam, Oroville Dam, and Shasta Dam. California's hydro generation plants are mostly in the eastern mountain ranges. The state also imports its hydro-generated electricity from the Pacific Northwest and the Southwest. There are approximately 40 hydroelectric facilities in the state (includes both small and large hydro). In California hydroelectric facilities include:

- 1) Dams (or pondage) facilities raise the water level of a stream or river to an elevation necessary to create a sufficient elevation difference. Dams can be constructed of earth, concrete, steel, or a combination of such materials. Dams may create secondary benefits such as flood control, recreation opportunities, and water storage;
- 2) Run-of-river, or water diversion, facilities divert water from a natural channel to a course with a turbine and usually return the water to the channel downstream of the turbine; and,
- 3) Pumped storage facilities pump water during off-peak demand periods from a reservoir at a lower elevation for storage in a reservoir at a higher elevation. Electricity is generated during peak demand periods by releasing the pumped water from the higher reservoir so it flows downhill through the hydraulic turbine(s) connected to generators. During the off-peak pumping cycle, the pumped storage facility consumes electricity.

This bill: AB 1373 requires the State Water Board to hold a public hearing on a proposed certification under the CWA for a hydroelectric facility. The bill also prohibits the State Water Board from delegating the decision to issue the certification, for a hydroelectric facility, under

the CWA to the Executive Officer. The author and proponents of the bill contend that hydroelectric facilities, including their proposed certifications under the CWA, are very complex, and therefore these certifications should be decided on by the State Water Board at a public hearing. While the State Water Board may receive thousands of certifications under the 401 process, AB 1373 only deals with certifications for hydroelectric facilities.

Arguments in Support: According to the Turlock Irrigation District (TID),

"Over the last few decades, the SWRCB has delegated many of its authorities to staff, removing the option for members of the public to voice their concern on matters of significance to their communities. While we can appreciate the need to expedite certain administrative actions to streamline workload, not every action should be treated the same. One such area of delegated authority is the issuance of water quality certificates under Section 401 of the Clean Water Act. These certificates are essential to the operations of hydroelectric facilities that provide other essential benefits to many disadvantaged communities across the state.

TID is the majority owner and operator of the Don Pedro Project, a 203MW carbon-free resource, on the Tuolumne River. The Don Pedro Project is the economic backbone of our region, providing flood control protection, reliable carbon free energy, municipal drinking water, irrigation water, and environmental flows.

The Don Pedro Project is a Federal Energy Regulatory Commission (FERC) jurisdictional facility. As part of FERC's licensing process to operate a hydroelectric facility (for facilities under its jurisdiction), the SWRCB has the responsibility to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. State certification conditions become mandatory conditions of any federal license or permit for the project, meaning whatever is approved by the SWRCB must be accepted without modification or the final license to operate, or continue to operate, will not be issued by FERC.

Requiring an open forum would allow the communities that rely on these projects to provide meaningful comments to the SWRCB on potential impacts or consequences. Additionally, decisions as significant as these should be made by the SWRCB Board, rather than being delegated to staff."

Arguments in Opposition:

None on file.

Related Legislation:

- 1) AB 2605 (Villapudua, 2022). Would have added requirements on the State Water Board when reviewing an application for water quality certification. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.
- 2) AB 1376 (Gray, 2021). Would have prohibited the State Water Board from issuing a certificate or statement under federal water quality control laws until there is a 60-day public comment and review period for the certificate or statement; and, after that review period a

majority of the members of the State Water Board vote on the certificate or statement. This bill was held in the Assembly Environmental Safety and Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Association of California Water Agencies
California Municipal Utilities Association
Modesto Irrigation District
Turlock Irrigation District
Valley Ag Water Coalition

Opposition

None on file.

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