

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1906 (Stone)  
Version: February 9, 2022  
Hearing Date: June 8, 2022  
Fiscal: Yes  
Urgency: Yes  
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**SUBJECT**

Voluntary stream restoration: property owner liability: indemnification: claims

**DIGEST**

This bill authorizes the Department of General Services to adopt any regulations necessary to establish a process for paying claims arising from liability attached to specified fish and wildlife habitat restoration projects.

**EXECUTIVE SUMMARY**

Streams and rivers serve many purposes, including water supply, wildlife habitat, energy generation, transportation, and recreation. For the overall health of streams and rivers, and to counteract any destabilization, significant efforts at the state and federal level have been made to restore these systems. Stream restoration is the re-establishment of the general structure, function, and self-sustaining behavior of the stream system that existed prior to any destabilization.

AB 315 (Stone, Ch. 580, Stats. 2021) sought to address identified barriers to effective habitat and streambed restoration in California, creating Section 1660 of the Fish and Game Code (§ 1660). Prompted by concerns that private landowners were hesitant to allow for such restoration on their property, the bill required the state to indemnify and hold harmless property owners who allow their property to be used for specified fish and wildlife habitat restoration projects where certain requirements are met. This bill is a technical cleanup of that newly enacted statute. It addresses a late amendment that was taken to the bill placing an erroneous cross-reference that laid out the process for handling relevant claims. This bill authorizes the Department of General Services (DGS) to adopt regulations as necessary to establish a process for paying those claims.

This bill is author sponsored. It is supported by various organizations, including the Defenders of Wildlife and the California Native Plant Society. There is no known

opposition. This bill passed out of the Senate Natural Resources and Water Committee on an 8 to 0 vote.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires any person, state or local governmental agency, or public utility to submit written notification to the California Department of Fish and Wildlife (CDFW) and to receive approval from the department if they wish to divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. (Fish & G. Code § 1602.)
- 2) Defines “habitat restoration or enhancement project” as a project with the primary purpose of improving fish and wildlife habitat. (Fish & G. Code § 1651(b).)
- 3) Requires a habitat restoration or enhancement project to meet the eligibility requirements for the State Water Resources Control Board’s Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its current equivalent at the time the project proponent submits a written request pursuant to Section 1652 or 1653. (Fish & G. Code § 1651(b).)
- 4) Provides that a person, public agency, or nonprofit organization seeking to implement a habitat restoration or enhancement project may submit a written request to approve a habitat restoration or enhancement project to the director of CDFW if the project has not received certification pursuant to the State Water Resources Control Board’s Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects, or its current equivalent at the time the project proponent submits the written request. If the project has received certification pursuant to that order, or its current equivalent, the project proponent may submit a request for approval of the project pursuant to Section 1653. (Fish & G. Code § 1652.)
- 5) Provides the CDFW may enter into an agreement to accept funds from any public agency, person, business entity, or organization to achieve the purposes of habitat restoration and enhancement. (Fish & G. Code § 1655.)
- 6) Requires the department to deposit any funds received in the account and the funds received shall supplement existing resources for department

administration and permitting of projects and programs included in the Habitat Restoration and Enhancement Act. (Fish & G. Code § 1655.)

- 7) Requires a qualifying state agency that funds a project to restore fish and wildlife habitats to indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for the project from civil liability for property damage or personal injury resulting from the project if certain conditions are met. The liability must arise from the construction, design specifications, surveying, planning, supervision, testing, or observation of construction related to the project. (Fish & G. Code § 1660(a).)
- 8) Authorizes the state agency to develop any guidelines, forms, or contracts necessary to implement these provisions and allows it to seek to enter into an agreement with the United States government, or any subdivision thereof, to share the cost of any civil liability incurred. (Fish & G. Code § 1660(c) & (d).)
- 9) Requires the costs of any civil liability incurred by a qualifying state agency to be promptly paid from the General Fund, and those costs shall be submitted as a claim by the real property owner to DGS pursuant to Section 905.2 of the Government Code. (Fish & G. Code § 1660(e).)

This bill authorizes DGS to adopt any regulations necessary to establish a process for paying claims arising pursuant to Section 1660. The bill includes an urgency clause.

### COMMENTS

#### 1. Stated intent of the bill

According to the author:

In 2021, AB 315 (Stone) was enacted to encourage landowners to voluntarily permit government-funded habitat and streambed restoration work to take place on their property by providing landowners limited liability protection for any harm that may occur due to the design, construction, or planned operation of a restoration project. This bill, AB 1906, is a technical clean-up to that measure designed to clarify the process for filing legal claims with the Department of General Services.

#### 2. Cleaning up the claim submission process

The deteriorating quality of the state's streams and rivers have real world consequences. "More than 80% of California's native freshwater fishes are in decline, an indication of the degrading quality and quantity of freshwater habitats throughout the state. Thirty-three of the state's freshwater fish species are formally listed as threatened

or endangered, and seven native fish species have gone extinct.”<sup>1</sup> The issue is not necessarily a lack of public support or resources.

“Since 2000, California voters have approved eight water bonds dedicating \$27 billion to various water projects. So far, \$17 billion has been spent, including roughly \$4 billion each for ecosystem restoration and the management of floods and stormwater.”<sup>2</sup> In 2014, California voters overwhelmingly approved Proposition 1, which approved general obligation bonds for various state water supply infrastructure projects.<sup>3</sup> These projects include public water system improvements, surface and groundwater storage, drinking water protection, water recycling and advanced water treatment technology, water supply management and conveyance, wastewater treatment, drought relief, emergency water supplies, and ecosystem and watershed protection and restoration. Almost \$1.5 billion of the approved bonds are required to be spent on competitive grants for multi-benefit ecosystem and watershed protection and restoration projects. Recognizing that California has some of the most diverse ecosystems and habitats, California voters followed Proposition 1 by passing Proposition 68 in 2018, allocating millions more in additional support for waterway and habitat work.

However, one issue that has impeded efficient use of these resources for stream restoration is the reluctance of property owners. Many of these waterways cut their paths through private land. Although restoration projects generally pose little risk of causing damages or injuries, property owners are hesitant to allow restoration projects on their land for fear of civil liability.

To respond to this hesitance, AB 315 (Stone, Ch. 580, Stats. 2021) required a qualifying state agency that funds a project to restore fish and wildlife habitats to indemnify and hold harmless a real property owner who voluntarily allows their real property to be used for the project from civil liability for property damage or personal injury resulting from the project if certain conditions are met. (Fish & G. Code § 1660(a).) This includes a requirement that the liability must arise from the construction, design specifications, surveying, planning, supervision, testing, or observation of construction related to the project. The projects also need to be authorized pursuant to specified sections of the Fish and Game Code and have received all approvals required pursuant to relevant sections of the Water Code. Section 1660 makes clear that liability protections do not apply where the property owner performs, or retains another to perform, any

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<sup>1</sup> *Southern California Fish Moves Closer to Endangered Species Act Protection Santa Ana Speckled Dace Imperiled by Dams, Drought, Climate Chaos* (June 16, 2021) Center for Biological Diversity, <https://biologicaldiversity.org/w/news/press-releases/southern-california-fish-moves-closer-to-endangered-species-act-protection-2021-06-16/#:~:text=More%20than%2080%25%20of%20California's,fish%20species%20have%20gone%20extinct.>

All internet citations are current as of May 23, 2022.

<sup>2</sup> Annabelle Rosser & Caitrin Chappelle, *How Water Bonds Plug Spending Holes* (June 7, 2021) Public Policy Institute of California, <https://www.ppic.org/blog/how-water-bonds-plug-spending-holes/>.

<sup>3</sup> *Ibid.*

construction, design specifications, surveying, planning, supervising, testing, or observation of construction related to the project. Thus, this is not an immunity from suit where a property owner is negligent and causes harm or damages through the project. Rather, it ensures that the state takes on any liability that results from a government-funded project that meets applicable qualifications. An injured party still has the ability to seek redress.

Section 1660 authorizes the qualifying state agency to develop any guidelines, forms, or contracts necessary to implement these provisions and allows it to seek to enter into an agreement with the United States government, or any subdivision thereof, to share the cost of any civil liability incurred. (Fish & G. Code § 1660(c) & (d).)

Relevant here, Section 1660 lays out a specific process for paying out these claims. It requires the costs of any civil liability incurred by a qualifying state agency to be promptly paid from the General Fund, and those costs shall be submitted as a claim by the real property owner to DGS pursuant to Section 905.2 of the Government Code. (Fish & G. Code § 1660(e).)

However, the process laid out in Section 905.2 is incompatible with the nature of the claims created by Section 1660, which are not precisely known and arise from both paying out claims and financing the costs of defending these actions. This bill fixes the issue by deleting the cross-reference and instead authorizing DGS to adopt any regulations necessary to establish a process for paying these claims.

### 3. Stakeholder positions

The Sonoma Land Trust writes in support:

AB 1906 is a technical clean-up bill following the enactment of AB 315 to clarify the process for filing legal claims with the Department of General Services. AB 315 required the state to indemnify landowners who allow voluntary stream restoration projects funded by the state on their property for liability from damages caused by them. This bill addressed an obstacle that many groups face in convincing private landowners to permit important stream and habitat projects on their property.

AB 315 was amended to slightly narrow the bill and to provide clarity for how claims from landowners would be processed by the state. The amendments contained an erroneous cross-reference to a code section regarding the processing of claims against the state by the Department of General Services. The code section in question refers to claims with known costs, whereas the claims envisioned by AB 315 require the state to defend a landowner in court and thus costs are unknown when a claim is initially made. Accordingly, the cross-reference contained in AB 315 is not

appropriate within the statutory scheme for indemnifying landowners enacted by that bill.

AB 1906 deletes the erroneous cross-reference contained in AB 315 and provides the Department of General Service the authority and flexibility to adopt any regulations necessary to process claims arising under the indemnity provisions of AB 315. Recognizing that the flaw in the existing statutory scheme is likely further delaying critical habitat restoration work across the state, this bill adopts an urgency clause to remedy the law as quickly as possible.

Writing in support, the Regional Water Authority asserts that the bill will “enhance the ability to move forward with certain stream restoration work in the Sacramento Region and the state as a whole.”

### **SUPPORT**

Association of California Water Agencies  
California Native Plant Society  
Defenders of Wildlife  
Midpeninsula Regional Open Space District  
Regional Water Authority  
Sonoma Land Trust

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 315 (Stone, Ch. 580, Stats. 2021) *See* Executive Summary & Comment 2.

AB 2518 (Wood, 2020) would have provided that a landowner who voluntarily allows land to be used for a project to restore fish and wildlife habitat shall not be held civilly liable for property damage or personal injury resulting from the project if the project meets specified criteria. This bill died in the Assembly Water, Parks, and Wildlife Committee.

**PRIOR VOTES:**

Senate Natural Resources and Water Committee (Ayes 8, Noes 0)

Assembly Floor (Ayes 61, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

Assembly Water, Parks and Wildlife Committee (Ayes 15, Noes 0)

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