

Date of Hearing: September 14, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES  
Luz Rivas, Chair  
AB 876 (Robert Rivas) – As Amended September 7, 2023

**SUBJECT:** Pajaro River Flood Risk Management Project: environmental laws: exemptions

**SUMMARY:** Exempts state and local approvals of the Pajaro River Project from specified waste discharge permit and lake and streambed alteration agreement (LSAA) requirements. Declares that the environmental assessment previously prepared for the project by the U.S. Army Corps of Engineers (Army Corps) satisfies the requirements of the California Environmental Quality Act (CEQA).

**EXISTING LAW:**

- 1) Regulates, pursuant to the federal Clean Water Act, the discharge of pollutants into the waters of the United States and regulates water quality standards for surface waters.
- 2) Requires, pursuant to the National Environmental Policy Act (NEPA), federal agencies to assess the environmental effects of their proposed actions before making decisions.
- 3) Requires, pursuant to the LSAA program any person, state or local governmental agency, or public utility that substantially alters a river, stream, or lake and whose activity may substantially adversely affect fish and wildlife resources to obtain an LSAA, including necessary mitigation measures, from the Department of Fish and Wildlife (DFW). (Fish and Game Code 1602 et seq.)
- 4) Requires, pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne), the State Water Resources Control Board (SWRCB) and the regional water quality control boards to administer the federal Clean Water Act in the state. Under Porter-Cologne, a person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, is required to file a report of the discharge with the appropriate regional water quality control board. (Water Code 13000 et seq.)
- 5) Requires, pursuant to CEQA, lead agencies with principal responsibility for carrying out or approving a proposed discretionary project to prepare various environmental review documents, unless the project is exempt from CEQA. (Public Resources Code 21000 et seq.)

**THIS BILL:**

- 1) Defines the “Pajaro River Project” as the project for flood control on the Pajaro River and its tributaries in the Counties of Monterey and Santa Cruz, as specified.
- 2) Provides, for purposes of this bill, the project does not include ongoing or post-construction operations and maintenance.
- 3) Provides the Pajaro River Project and the issuance of any permit, funding, or other approval by a state or local agency for the Pajaro River Project is exempt from all of the following:

- a) The statute and regulations governing LSAAs issued by DFW.
  - b) Waste discharge requirements and any related mitigation requirements pursuant to Porter-Cologne, with the exception of specified federal Clean Water Act requirements delegated to the state.
- 4) Requires the environmental assessment previously prepared for the project by the Army Corps pursuant to NEPA to be conclusively presumed to satisfy the requirements of CEQA.
- 5) Requires the following criteria apply to all components of the project to which they are applicable:
- a) The project will increase the level of flood protection for disadvantaged communities, as specified, including achieving 100-year flood protection in the City of Watsonville and the community of Pajaro.
  - b) The project has received an Engineering With Nature designation based on the habitat benefits created, enhanced, and restored by the design and configuration of improvements, through which an intentional alignment of natural and engineering processes efficiently and sustainably deliver economic, environmental, and social benefits, including the setback of some or all Pajaro River Project levees from their original locations to enhance habitat for fish and wildlife.
  - c) The state has partnered with the Pajaro Regional Flood Management Agency (PRFMA) or any federal project sponsor, including the Army Corps, to incorporate habitat and groundwater recharge enhancements through Ecological Floodplain Inundation Potential (EcoFIP) analysis and implementation.
  - d) The project incorporates best management practices to control erosion and runoff from construction activities.
  - e) The project incorporates visual surface water monitoring to detect and correct accidental discharge of construction-related pollutants.
  - f) The project does not involve disposal or placement of flood-delivered sediments into waters of the state or at locations or in a manner where sediments may be washed into waters of the state by rainfall or runoff.
  - g) The project is undertaken to avoid causing a violation of applicable water quality standards, including impairment of designated beneficial uses, for receiving waters as adopted in any applicable state or regional water quality control plan.
- 6) Requires the PRFMA, on or before March 1, 2024, to:
- a) Consult with DFW on feasible avoidance, minimization, or mitigation of project impacts to fish and wildlife.

- b) Consult with the Central Coast Regional Water Quality Control Board on feasible avoidance, minimization, and mitigation of project impacts to beneficial uses of waters of the state and water quality.
- 7) Requires the project to comply with all other applicable federal, state, and local laws.
- 8) Provides these provisions remain in effect only until December 31, 2035, or the date the Department of Water Resources or the Army Corps files a public declaration that the Pajaro River Project construction has been completed, and notifies the Secretary of the State of its determination, whichever occurs first, and as of that date is repealed.
- 9) Makes findings and declarations related to the project.
- 10) Includes an urgency clause.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- The SWRCB estimates ongoing costs of \$225,000 annually until the sunset of the bill's provisions (General Fund or Waste Discharge Permit Fund) for additional staff resources to account for more intense and expedited review of the Pajaro River Project over shorter periods of time.
- To the extent that this bill results in expediting the project timeline from what otherwise would occur and therefore avoids inflationary cost increases, potential state cost savings (various funds) due to the avoidance of higher costs on the non-federal share of project costs, for which the state is responsible.

**COMMENTS:**

According to the author:

Communities along the Pajaro River receive some of the most inadequate flood protection in California, including just a five-year level of flood protection along certain stretches of the river. This situation reflects a long history of disinvestment and environmental injustice in the region, where incomes are less than half the state and national averages. Recent catastrophic flooding in the community of Pajaro in Monterey County destroyed hundreds of homes and businesses and left local farmworkers unemployed as agricultural fields were devastated. This tragic event highlighted the need to improve local flood control infrastructure as quickly as possible.

The Pajaro River Project is a \$400 million effort to improve flood protection in the region, including providing 100-year flood protection to the City of Watsonville and the community of Pajaro. By widening the river's floodplain, the Project will also provide significant environmental benefits as habitat is restored for native species and new outdoor recreation opportunities are created. AB 876 will speed up completion of the Pajaro River Project by granting it several key regulatory and permitting exemptions as well as an expedited CEQA process, which is based on a similar process used to speed up dam removal projects along the Klamath River. These provisions are contingent on the project meeting the gold standard of environmental stewardship and delivering significant environmental benefits. Ultimately, AB 876 will help the Pajaro River Project finish

construction and protect human health, safety, and the environment along the Pajaro River four to five years earlier than under the status quo.

According to the PRFMA, the completion of the Pajaro River Project is of the highest priority for the communities devastated by the flood events. As the sponsor of this legislation, PRFMA believes such authority is needed to ensure that our project is completed as quickly as possible to protect the citizens of this disadvantaged region of the state...the project would provide protection from a 100-year storm for communities in which the per-capita income is less than half the state and national average...the project would also provide flood protection for major state highways through the area, including Highways 129, 152, and 1. These transportation routes are critical for emergency evacuation as well as the everyday commercial activities of an important agricultural area that sustains the majority share of a national \$3.1 billion strawberry market.

SB 496 (Laird), Chapter 310, Statutes of 2021, authorized the state to pay up to 100% of specified nonfederal costs for the reconstruction of the Pajaro River Project.

SB 489 (Laird), Chapter 677, Statutes of 2022, authorized the state to advance funds for planning, engineering, designing, and constructing the project.

This bill is intended to expedite permitting and construction of the project by replacing the formal processes of LSAA, waste discharge permits, and CEQA with requirements to meet specified environmental conditions, consult with DFW and the Regional Board, and rely on the prior federal environmental assessment.

Executive Order N-10-23, issued by Governor Newsom following the most recent floods, provides comparable streamlining, but only for short-term work completed before November 1, 2023.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Pajaro Regional Flood Management Agency (sponsor)  
Community Alliance With Family Farmers  
County of Monterey  
Fossil Free California  
Monterey County Water Resources Agency  
Sierra Club Ventana Chapter  
The Nature Conservancy  
Watsonville Wetlands Watch  
Western Growers Association

### **Opposition**

None on file

**Analysis Prepared by:** Lawrence Lingbloom / NAT. RES. /