

Date of Hearing: March 24, 2025

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Isaac G. Bryan, Chair

AB 43 (Schultz) – As Introduced December 2, 2024

SUBJECT: Wild and scenic rivers

SUMMARY: Permanently extends the authority of the secretary of the Natural Resources Agency (NRA) to take the specified actions relating to the addition of rivers or segments of rivers to the state's wild and scenic rivers system by eliminating a sunset date.

EXISTING LAW:

- 1) Prohibits water resources projects from having a negative impact on the values of designated rivers. This includes the river's water quality, free-flow, and other notable values. (Title 16 United States Code 1278)
- 2) Pursuant to the California Wild and Scenic Rivers Act (Public Resources Code 5093.50 *et seq.*)
 - a) Defines "wild rivers" as those rivers or segments of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.
 - b) Defines "scenic rivers" as those rivers or segments of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads."
 - c) Requires the secretary, if the federal government enacts a statute that would require the removal or delisting of any river or segment of a river in California that is included in the national wild and scenic rivers system and not in the state wild and scenic rivers system, or the secretary determines that the federal government has exempted a river or segment of a river in California that protect rivers, segments of rivers, or values for which those rivers were established as part of the national system, to take both of the following actions:
 - i) Hold a public hearing to provide information and an opportunity for public comment on any proposed addition to the state wild and scenic rivers system resulting from federal action to remove, delist, or exempt that river or segment of a river from those protective provisions of the national wild and scenic rivers system.
 - ii) Determine whether the provision of state protection for the river or segments of the river removed, delisted, or exempted from the national wild and scenic rivers system is in the best interest of the state and, if so, add the river or segment of the river that is removed, delisted, or exempted from those federal protective provisions to the state wild and scenic rivers system, and classify the river or segment of the river as wild, scenic, or recreational.

- d) Requires the secretary, if the secretary makes a determination to add a river or segment of a river to the state wild and scenic rivers system, to take all actions necessary to ensure the addition of the river or segment of the river to the state wild and scenic rivers system, and to classify the river or segment of the river to be added as wild, scenic, or recreational.
- e) Provides that wild and scenic river designation by the secretary does not do any of the following:
 - i) Provide protective provisions that exceed the scope of the prior federal designation as wild, scenic, or recreational of that river or segment of the river.
 - ii) Conflict with any provisions of the prior federal designation of that river or segment of the river as wild, scenic, or recreational.
 - iii) Conflict with a Comprehensive River Management Plan prepared for that river or segment of the river.
- f) Sunsets the secretary's authority on December 31, 2025.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement:**

There are about 819 miles of *federally* protected wild and scenic rivers in California that are preserved in their free-flowing condition for the benefit and enjoyment of present and future generations. Current law applies to federally protected rivers (as of January 1, 2018) if Congress or the federal Administration were to pass legislation or enact an Executive Order to degrade or eliminate federal protection from all or a portion of a federal river, or take actions that negatively affect provisions in the federal act that prohibits new dams and major diversions from designated river segments.

Current law directs the California Natural Resources Agency Secretary to hold a public hearing on the federal action, determine whether to add the river or river segment threatened by the federal action to the state wild and scenic rivers system, and if the river is added to the state system, classify as wild, scenic, and recreational the appropriate river segments. However, this public process that allows the state to protect wild and scenic rivers sunsets at the end of the year. It is important for California to allow this process to be in place given threats to our natural resources from the federal government.

- 2) **Wild and Scenic River System.** The National Wild and Scenic Rivers System was created by Congress in 1968 to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. Rivers may be designated by Congress or, if certain requirements are met, the Secretary of the Interior. Each river is administered by either a federal or state agency.

Under federal law, the Federal Energy Regulatory Commission is prohibited from licensing the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act on or directly affecting any river which is designated as a component of the national wild and scenic rivers system, and prohibits all federal departments and agencies from financially supporting construction of any water resources project that would have a direct and adverse effect on the values for such river.

In 1972, California enacted its own Wild and Scenic Rivers Act to establish the policy of the state that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. With its initial passage, the California system protected the Smith River and all of its tributaries; the Klamath River and its major tributaries, including the Scott, Salmon, and Trinity Rivers; the Eel River and its major tributaries, including its tributary the Van Duzen River; and, segments of the American River. The Legislature declared that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water. Legislative actions since have expanded the bodies of water designated in the system.

California has 2,072 miles of federally- *and* state-designated wild and scenic rivers – only 1.1% of the state’s approximate 189,454 miles of river. Those river include:

National Designated Rivers in California	California Wild and Scenic Rivers System
<ul style="list-style-type: none">• American River (Lower)• American River, North Fork• Big Sur River• Black Butte River• Eel River System• Feather River, Middle Fork and Kern River• Kings River• Klamath River System• Merced River• Sespe Creek• Sisquoc River• Smith River System• Trinity River System• Tuolumne River	<ul style="list-style-type: none">• Albion River• American River• Cache Creek• Carson River• Eel River• Gualala River• Klamath River• McCloud River• Salmon River• Scott River• Smith River• South Yuba River• Trinity River• Van Duzen River• West Walker Rive

The state statute prohibits activities that could damage soil, water, timber, and habitat close to the river. It also bars the State Water Resources Board and other state agencies from assisting or licensing facilities that could harm the wild and scenic values of a protected river. In general, no dam, reservoir, diversion, or other water impoundment facility may be constructed on any river segment included in the system. No water diversion facility may be constructed on any river segment included in the system unless the secretary of NRA determines that the facility is needed to supply domestic water to local residents of the

county or counties in which the river flows and that the facility will not adversely affect the river's free-flowing condition and natural character.

The secretary can recommend classifications to the Legislature. "Wild" river segments are free of impoundment and generally are inaccessible except by trail, with primitive watersheds or shorelines and unpolluted waters. "Scenic" river segments are free of impoundment, with shorelines or watersheds still largely primitive and shorelines largely undeveloped but accessible in places by roads. "Recreational" river segments are readily accessible by road or railroad, may have some development along their shorelines, and may have been impounded or diverted in the past.

Most recent legislative action, AB 142 (Bigelow), Chapter 661, Statutes of 2015, directed the NRA to evaluate the suitability of five segments of the upper Mokelumne River's main stem and North Fork for inclusion in the state system. NRA released a draft study report in January 2018, held two public meetings, and received extensive public comment. The process marked the first time a river has been assessed for addition to the California Wild and Scenic Rivers System since 1994. Designating the Mokelumne a California Wild and Scenic River preserves those segments in their free-flowing state and prevents construction of new dams or impoundments on the designated segments. Current water and land uses continue.

- 3) **Past state protections from federal action.** In 1995, in response to legislatively mandated studies, dams on portions of Deer and Mill creeks were prohibited (though the creeks were not formally designated).

In 2019, the U.S. Bureau of Reclamation and its cost-sharing partner, Westlands Water District, proposed to raise Shasta Dam to increase storage capacity in the state's largest reservoir. The Trump Administration, under authority of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN), issued a "Secretarial Determination for Commencement of Construction" regarding the Shasta Dam raise and proposed to sign up cost-sharing partners for the Shasta Dam raise (the raise is illegal under provisions of the California Wild and Scenic Rivers Act) and begin construction in 2019.

Opponents of the project—including the State of California, argued that the project would flood prime fish habitat and inundate tribal religious sites on the McCloud River, which is protected under the California Wild and Scenic Rivers Act. California courts ordered Westlands not to study or participate in other efforts to raise Shasta Dam, because the California Wild and Scenic Rivers Act prohibits "agencies of the state" from cooperating on facilities that could impact the free-flowing condition of the McCloud River. Further, on November 15, 2021, the Infrastructure Investment and Jobs Act signed into law by President Biden continues many Western water projects features of the WIIN but prohibits construction funding for the expansion of Shasta Reservoir, a project that would inundate a portion of the McCloud River protected by the California Wild & Scenic Rivers Act.

According to the author, since 2011, the House of Representatives has considered at least four bills to remove federal protection for part of the Merced Wild River to allow for expansion of McClure Reservoir. The proposed expansion would drown a portion of this wild river and wipe out most of the known population of the state-protected Merced Canyon limestone salamander. Reservoir expansion also raises serious dam safety concerns. Those bills would not only have allowed unprecedented reservoir expansion to inundate a segment of the federally-designed Merced River, they would have permitted flooding of a river

segment that provides whitewater boating, hiking, fishing, and other popular outdoor activities, as well as drowns most of the known population of the state protected Merced limestone salamander, while raising serious dam safety concerns by reducing the capacity of Exchequer Dam's emergency spillway.

There are indications that federal interest in the integrity of the national wild and scenic system has waned under the current Administration.

- 4) **Current Trump Administration.** Last November, on the heels of President Trump's election, Governor Newsom issued a proclamation convening a special session of the Legislature to safeguard California policies and values from the incoming Trump Administration. The special session will focus on bolstering California legal protections to protect civil rights, reproductive freedom, climate action, and immigrant families, including \$25 million in state funding for the Department of Justice to strengthen the state's legal defenses against the incoming administration.

Since taking office, President Trump has downsized the federal workforce by more than two million employees, including more than 7,000 employees at the U.S. Forest Service (USFS), and hundreds of positions at the National Park Service, the Environmental Protection Agency (US EPA), and the Bureau of Land Management. Further, the Department of Government Efficiency plans to terminate lease contracts at nearly two dozen California offices including the National Oceanic and Atmospheric Administration, US EPA, USFS, and Geological Survey.

- 5) **This bill.** In step with the Governor's efforts to "future proof" the state, this bill would grant the secretary authority in perpetuity to protect wild and scenic rivers from actions taken by the federal government to derecognize them.

AB 43 eliminates the December 31, 2025, sunset date on the authority provided to the secretary by AB 2975 (Friedman), Chapter 221, Statutes of 2018, to determine whether the state should protect a river or segment of a river that has lost or will lose protection under the federal wild and scenic rivers system.

REGISTERED SUPPORT / OPPOSITION:

Support

All Outdoors	Central Valley Partnership
American River Conservancy	Clean Earth 4 Kids
American Rivers	Clean Water Action
American Whitewater	Coast Action Group
Armargosa Conservancy	Defenders of Wildlife
California Environmental Voters	Endangered Habitats League
California for Western Wilderness	Environmental Protection Information
California Native Plant Society, Alta Peak Chapter	Center
California Sportfishing Protection Alliance	Foothill Conservancy
California Trout	Friends of The Eel River
Calwild	Friends of The Inyo
Center for Biological Diversity	Friends of The Lost Coast
	Friends of The River

Keep It Wild Merced River
Klamath Forest Alliance
Los Angeles Waterkeeper
Los Padres Forest Watch
Mother Lode River Center
Nature for All
Northcoast Environmental Center
Northern California Council of Fly Fishers
International
O.A.R.S.
Planning and Conservation League
Protect American River Canyons
Restore the Delta
Restoring the Stanislaus River
Safe Alternatives for Our Forest

Environment
San Francisco Baykeeper
Save California Salmon
Save the American River Association
Sequoia Riverlands Trust
Sierra Club California
Sierra Consortium
Sierra Nevada Alliance
Sierra State Parks Foundation
The Climate Center
Trust for Public Land
Tuolumne River Trust
Union of Concerned Scientists
Water Climate Trust

Opposition

None on file

Analysis Prepared by: Paige Brokaw / NAT. RES. /