



SB 147 – Fully Protected Species

Establishes a robust permitting process for specific projects under CESA

SUMMARY

SB 147, an urgency measure, includes one proposal from the Governor’s Infrastructure Package – Reconciling Fully Protected Species with the California Endangered Species Act.

SB 147 would reconcile the Fully Protected Species lists in the Fish and Game Code with the California Endangered Species Act for specific projects, or specific categories of projects, so that permitting can occur subject to conditions for species conservation.

BACKGROUND

In the 1970s, the California Legislature designated 37 animals as “fully protected species.” Subsequently, in 1984, the California Legislature created the California Endangered Species Act (CESA), which is a comprehensive statutory regime to protect species designated by the California Fish and Game Commission as threatened or endangered. This bill would allow the Department of Fish and Wildlife (Department) to authorize by permit the take of fully protected species for specified categories of projects pursuant to conditions designed to avoid, minimize, and mitigate for the take of, and impacts to, the species.

THE PROBLEM

CESA allows the Department to permit projects pursuant to terms and conditions to avoid, minimize, and mitigate the take of, and impacts to, species. Conversely, the fully protected species statutes prohibit the incidental take of any Legislatively designated, fully protected species, and they also do not facilitate permitting of projects. The fully protected species statutes create an untenable situation that causes significant and unnecessary risks for project proponents, while resulting in no direct mitigation or conservation to aid those species in their recovery.

Because the Department’s ability to authorize incidental take of fully protected species is extremely limited, project proponents operating within the range of one or more fully protected

species must either avoid the species entirely—which is often difficult or impossible—or risk civil and criminal liability. However, because the Department is generally prohibited from permitting take of these species, it is also precluded from obtaining mitigation for impacts of any take of the fully protected species from projects that proceed. This is not the situation under CESA.

Over approximately the last decade, the Legislature has amended CESA to carve out specific projects from the fully protected species lists by authorizing the Department to permit take. SB 147 would allow take of fully protected species and permitting by the Department of critical infrastructure projects pursuant to specified conditions. This approach is like earlier carve outs, but for key categories of projects rather than individual projects.

The rigidity of the fully protected species lists causes risks to important infrastructure such as canal repairs for the State Water Project, renewable energy, and transportation. Reconciling these statutes and modernizing them in 2023 ensures better species conservation and improved permitting for essential infrastructure projects.

THE SOLUTION

SB 147 would authorize the Department to issue a permit using the permitting structure in CESA that would authorize the take of a fully protected species resulting from impacts attributable to the implementation of critical infrastructure projects if certain conditions are satisfied, including:

- Avoidance, minimization, and full mitigation of impacts.
- Measures to conserve the species and ensure take is avoided to the maximum extent possible;
- Monitoring and adaptive management plan(s) to ensure permit condition effectiveness; and,
- Payment of a permit application fee.

The specific projects or categories of eligible projects that may impact fully protected species but can now be permitted under SB 147 include and are limited to:

- A maintenance, repair, or improvement project to the State Water Project, including existing infrastructure, undertaken by the Department of Water Resources;
- A maintenance, repair, or improvement project to critical regional or local water agency infrastructure;
- A transportation project, including any associated habitat connectivity and wildlife crossing project, undertaken by a state, regional, or local agency, that does not increase highway or street capacity for automobile or truck travel;
- A wind project and any appurtenant infrastructure improvement, and any associated electric transmission project carrying electric power from a facility that is located in the state to a point of junction with any California-based balancing authority; and,
- A solar photovoltaic project and any appurtenant infrastructure improvement, and any associated electric transmission project carrying electric power from a facility that is located in the state to a point of junction with any California-based balancing authority.

SB 147 does not apply to the design or construction of through-delta water conveyances in the Sacramento-San Joaquin Delta nor the design or construction of ocean desalination projects.

The bill would also require the department to develop a plan on or before July 1, 2024, to assess the population status of each fully protected species. The bill would require the department, on or before July 1, 2025, and annually thereafter, to prepare and submit a report to certain committees of the Legislature regarding the implementation of the authorization to issue these permits for the take of fully protected species.

The bill would also remove the American peregrine falcon, brown pelican, and thicktail chub as fully protected species – two of these species have been

previously removed from the endangered species list and the last is, unfortunately, now extinct.

The provisions of the bill relating to Reconciling the Fully Protected Species with the California Endangered Species Act sunset at the end of 2033.

FOR MORE INFORMATION

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