DATE:      May 11, 2020

TO:        Honorable Board of Supervisors  
            Jeffrey V. Smith, County Executive

FROM:      Danielle Christian, Legislative Manager

SUBJECT:   Supplemental Information for May 12, 2020 Board of Supervisors meeting  
            (Item No. 41)

Assembly Bill 3005 (AB 3005) by Assemblymember Robert Rivas is the subject of Item  
No. 41. The bill was amended on May 4, 2020 and this supplemental information is to  
provide an overview of the amendments to the bill.

The May 4, 2020 amendments delete provisions related to expedited judicial review of  
California Environmental Quality Act (CEQA) challenges. An analysis of the bill by the  
Assembly Water, Parks, and Wildlife Committee states that the author should continue  
to discuss these provisions with the Assembly’s Natural Resources and Judiciary  
Committees for potential future inclusion in the bill.

The amendments also extend the deadlines for permit issuance to 180 days from date of  
application submittal for California Department of Fish and Wildlife (CDFW) and State  
Water Resources Control Board (SWRCB) permitting, if certain prerequisites are met by  
Valley Water. For CDFW permits, the prerequisites are: a) submittal of a complete  
notification (application), and b) completion of required CEQA documentation. For  
SWRCB permits the prerequisites are a) submittal of a complete application for federal  
Clean Water Act Section 401 certification, b) submittal of a complete water rights  
change petition needed for environmental flows, and c) completion of required CEQA  
documentation.

The text of AB 3005 as amended is attached for reference.
Introduce by Assembly Member Robert Rivas
(Coauthors: Assembly Members Berman, Chu, and Gallagher
Gallagher, and Kalra)
(Coauthors: Senators Beall, Caballero, Hill, Monning, and Nielsen)

February 21, 2020

An act to add Section 1602.5 to the Fish and Game Code, to add Section 21163 to the Public Contract Code, to add Chapter 6.8 (commencing with Section 21189.60) to Division 13 of the Public Resources Code, and to add Section 13260.1 to, and to add Part 4 (commencing with Section 6700) to Division 3 of, the Water Code, relating to the Leroy Anderson Dam and Reservoir, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 3005, as amended, Robert Rivas. Leroy Anderson Dam and Reservoir: environmental review, permitting, and public contracting.

Existing law prohibits an entity from diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or banks of, a river, stream, or lake, or depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake, unless the Department of Fish and Wildlife receives written notification regarding the activity and the department either determines that the activity will not substantially adversely affect an existing fish and wildlife resource or, if the department determines that the activity may substantially adversely affect an existing fish and wildlife resource, the
department issues a final agreement to the entity that includes reasonable measures necessary to protect the affected resource.

This bill would require the department, within 15 days of receipt of the notification from the Santa Clara Valley Water District, to inform the department whether the Anderson Dam project, as defined, will not substantially adversely affect an existing fish and wildlife resource. If the department determines that the Anderson Dam project, as defined, will substantially adversely affect an existing fish and wildlife resource, the bill would specify the process by which the department is to complete certain actions for the project, require the department within 180 days of receipt of a notification, as defined, from the district to issue a final agreement with the district that includes reasonable measures necessary to protect the affected resource.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes administrative procedures for the review and certification of the EIR for a project and judicial review procedures for any action or proceeding brought to challenge the lead agency’s decision to certify the EIR or to grant project approvals.

This bill would establish specified procedures for the administrative and judicial review of the environmental review and approvals granted for the Anderson Dam project, as defined, located in the County of Santa Clara. The bill would apply certain rules of court establishing procedures requiring actions or proceedings seeking judicial review pursuant to CEQA or the granting of project approvals, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court to an action or proceeding seeking judicial review of the lead agency’s action related to the Anderson Dam project under CEQA.

Existing law requires specified persons to file with the appropriate regional water quality control board a report of waste discharge relative to
to any material change or propose change in the character, location, or volume of discharge into the waters of the state. Existing law requires the regional board to prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, as specified.

This bill would require the State Water Resources Control Board, within 120 days of receipt of a report of waste discharge from the district with respect to the Anderson Dam project, to prescribe requirements as to the nature of the proposed discharge, as provided.

Existing law designates the State Water Resources Control Board as that state water pollution control agency for purposes of the Federal Water Pollution Control Act and authorizes the state board to issue a certificate or statement under the federal act that there is reasonable assurance that an activity of a person subject to the jurisdiction of the state board will not reduce water quality below applicable standards.

The bill would prescribe procedures by which the state board is to issue the certification for the Anderson Dam project.

This bill would authorize state agencies with permitting authority over the Anderson Dam project to take certain actions to expedite the permitting process for the project, including entering into an agreement for the recovery of certain costs.

Existing law authorizes certain local entities to select a bidder for a contract on the basis of “best value,” as defined. Existing law governs various types of contract procedures applicable to the Santa Clara Valley Water District and prescribes competitive bidding procedures for any improvement or unit of work over $50,000.

This bill would authorize the district, upon approval by the board of directors of the district, to award contracts on a best value basis for any work of construction to retrofit, repair, or replace the Leroy Anderson Dam and Reservoir, owned by the district and located in the County of Santa Clara. The bill would require the district, if the board elects to award contracts on a best value basis, to comply with specified requirements governing the documents prepared setting forth the scope and estimated price of the project and the request for qualifications. The bill would prohibit a best value contractor from being prequalified or shortlisted unless the contractor provides an enforceable commitment to the district that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project, in accordance with certain criteria. By requiring certain information of
bidders to be certified under penalty of perjury, the bill would expand an existing crime, thereby imposing a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Santa Clara Valley Water District.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:
(a) The Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District and located in the County of Santa Clara, is the largest reservoir in the county with a capacity of 89,278 acre-feet, and is a critical part of the region’s water supply system, and provides incidental flood protection, as well as environmental and recreational benefits.
(b) A breach of the Leroy Anderson Dam at full capacity could have catastrophic consequences, including inundation of a land area extending more than 30 miles northwest to San Francisco Bay, including the Cities of Milpitas, San Jose, Santa Clara, and Sunnyvale, and more than 40 miles southeast to Monterey Bay, including the Cities of Gilroy, Morgan Hill, and Watsonville. This area includes a significant part of region known as Silicon Valley and is home to thousands of job-creating businesses that drive the regional, state, and national economies.
(c) The dam has been determined by the Santa Clara Valley Water District, the Department of Water Resources Division of Safety of Dams, and the Federal Energy Regulatory Commission to be at risk of an uncontrolled release of water due to a seismic event. The district has adopted a restriction that is equivalent to 58 percent of the reservoir’s capacity. On February 20, 2020, the Federal Energy Regulatory Commission directed the Santa Clara
Valley Water District to maintain the reservoir at a level that is equivalent to 35 percent of the reservoir’s capacity, begin draining the reservoir to deadpool by October 1, 2020, and expedite reconstruction and improvement of the dam outlet structure to begin as soon as feasible to allow the deadpool to be maintained. To further protect public safety, the Santa Clara Valley Water District also reduces the reservoir’s storage before the rainy season to decrease the chance that the restricted capacity is exceeded.

(d) Built in 1950 to the seismic and dam safety standards of the day, the dam would not withstand the largest likely earthquake, known as the maximum credible earthquake, on the nearby Calaveras and Coyote Creek faults. A 2008 seismic stability evaluation identified potential embankment instability as a result of seismic shaking and liquefaction. In 2012, voters in the County of Santa Clara approved a parcel tax that paid for the initiation of the Anderson Dam Seismic Retrofit Project, and will pay for a portion of the overall project costs. By 2016, findings from the geotechnical and geologic investigations performed during the project’s design phase led to the conclusion that a more extensive dam retrofit than had originally been envisioned would have to be performed, causing a necessary delay and redesign of the project.

(e) In February 2017, an atmospheric river event, which conveyed a series of wet storms to the region, triggered the use of the dam’s spillway, increasing the flow in Coyote Creek beyond capacity, flooding homes and businesses in the City of San Jose, and causing resulted in flows over the dam’s spillway that, together with heavy flows from surrounding waterways, eventually exceeded the capacity of Coyote Creek. The creek flooded homes and businesses in economically diverse neighborhoods in San Jose, including disadvantaged communities and communities of color, requiring the evacuation of 14,000 people. The dam’s outlet, used to draw down the reservoir in an emergency, is too small by modern standards, and in advance of the 2017 storms, the outlet had been releasing as much water as possible for more than a month.

(f) The Santa Clara Valley Water District’s Anderson Dam Seismic Retrofit Project will remove and replace the dam. It will be constructed to modern seismic and dam safety standards, including increased capacities for the dam’s spillway and outlet to allow a rapid, controlled draw down in an emergency and to
enhance incidental flood protection. The project design is now 75 percent complete.

(g) The project is complex and must be evaluated under both state and federal environmental laws. To help protect public safety, the environment, and a significant portion of the San Francisco Bay area economy, state permitting agencies should ensure that permit review and approval is completed expeditiously.

(h) The independent Board of Consultants, convened pursuant to the Federal Energy Regulatory Commission process, has recommended the “best value” procurement method for the Anderson Dam Seismic Retrofit Project due to its complex design, delivery, and installation. Authorizing this project for an alternative method of contract award, similar to other major surface storage projects, is in keeping with construction industry practices and is prudent for a project of this scale and importance.

(i) Timely completion of the Anderson Dam Seismic Retrofit Project will reduce the risks to public safety and the California economy stemming from the outdated design of the existing dam.

(j) The replacement of the Leroy Anderson Dam is of statewide importance and—(that) the project warrants expedited permit processing, as well as other actions by the state that will further support the timely delivery of a well-constructed dam replacement to protect public safety.

SEC. 2. Section 1602.5 is added to the Fish and Game Code, to read:

1602.5. (a) For purposes of this section, the following definitions apply:

(1) “Anderson Dam project” or “project” has the same meaning as set forth in Section 6700 of the Water Code.

(2) “District” means the Santa Clara Valley Water District.

(3) “Notification” means the documents described in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a) of Section 1602.

(b) Notwithstanding any other law, the department shall comply with both of the following:

(1) Within 15 days of receipt of a notification from the district pursuant to Section 1602, the department shall inform the district, in writing, whether the project will not substantially adversely affect an existing fish or wildlife resource.

(2) If
(b) Notwithstanding any other law, if the department determines that the project Anderson Dam project will substantially adversely affect an existing fish and wildlife resource, within 45 days of the determination, the department shall issue a draft agreement to the district that includes reasonable measures necessary to protect the fish and wildlife resources adversely affected by the project. Within 15 days of receipt of the draft agreement, the district shall notify the department whether the measure is acceptable. If the draft agreement is not acceptable, the district shall notify the department in writing and specify measures that are not acceptable. Within 15 days of receipt of the district's notification that the draft agreement is not acceptable, the department and the district shall meet for purposes of resolving their disagreement. Within 15 days of the meeting, the department shall issue a final agreement that includes reasonable measures agreed upon by the department and district that are necessary to protect fish and wildlife resources adversely affected by the project. Resource and the district completes the actions described in subdivision (c), the department shall, within 180 days of receipt of a notification from the district, issue the final agreement that includes any reasonable measures mutually agreed by the district and the department pursuant to subdivision (a) of Section 1603, as well as any reasonable measures that may be determined by an arbitration panel pursuant to subdivision (b) of Section 1603, necessary to protect the existing fish and wildlife resources substantially adversely affected by the Anderson Dam project.

(c) Subdivision (b) applies after the district does both of the following:

(1) Files a complete notification for the project.

(2) Completes and certifies the adequacy of environmental documentation for the activity in the notification, required under Division 13 (commencing with Section 21000 of the Public Resources Code).

SEC. 3. Section 21163 is added to the Public Contract Code, to read:

21163. (a) As used in this section:

(1) “Anderson Dam project” or “project” has the same meaning as set forth in Section 6700 of the Water Code.
(2) “Best value” means a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications.

(3) “Best value contract” means a competitively bid contract entered into pursuant to this section.

(4) “Best value contractor” means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(5) “District” means the Santa Clara Valley Water District.

(6) “Project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

(b) Upon the approval of the board, the district may award contracts on a best value basis for any work of construction to retrofit, repair, or replace the Leroy Anderson Dam and Reservoir, owned by the district and located in the County of Santa Clara, including any upstream or downstream construction or operational improvements for flood protection, environmental restoration, or fish passage that may be required to implement that work for the Anderson Dam project.

(c) If the board elects to award a contract on a best value basis pursuant to the authorization in subdivision (b), the district shall comply with the following:

(1) The district shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or layouts, or any other information deemed necessary to adequately describe the district’s needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) The district shall prepare and issue a request for qualifications in order to prequalify or short-list the entities, including subcontractors and suppliers, whose bids shall be
evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

(A) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the district to evaluate bids, the procedure for final selection of the bidder, and any other information deemed necessary by the district to inform interested parties of the contracting opportunity.

(B) Significant factors that the district reasonably expects to consider in evaluating qualifications, including technical design-related expertise, construction expertise, acceptable safety records, and all other non-price-related factors.

(C) A standard template request for statements of qualifications prepared by the district. In preparing the standard template, the district may consult with the construction industry, the building trades and surety industry, and other local agencies with experience awarding a contract on a best value basis. The template shall require all of the following information:

(i) If the bidder is a privately held corporation, limited liability company, partnership, or joint venture, composed of privately held entities, a listing of all of the shareholders, partners, or members known at the time of statement of qualification submission who will perform work on the project.

(ii) Evidence that the members of the contracting team have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity and that proposed key personnel have sufficient experience and training to competently manage and complete the project, and a financial statement that ensures that the bidder has the capacity to complete the project.

(iii) The licenses, registration, and credentials required for the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the bidder has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Information concerning workers’ compensation experience history and a worker safety program.

(vi) An acceptable safety record. “Safety record” means the prior history concerning the safe performance of construction
contracts. The criteria used to evaluate a bidder’s safety record shall include, at a minimum, its experience modification rate for the most recent three-year period, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period.

(vii) The information required under this paragraph shall be certified under penalty of perjury by the bidder and its general partners or joint venture members.

(d) (1) A best value contractor shall not be prequalified or shortlisted unless the contractor provides an enforceable commitment to the district that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the contractor agrees to be bound by that project labor agreement.

(B) The contractor has entered into a project labor agreement that will bind the contractor and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

SEC. 4. Chapter 6.8 (commencing with Section 21189.60) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 6.8. ANDERSON DAM SEISMIC RETROFIT PROJECT

21189.60. For purposes of this chapter, the following definitions apply:

(a) “Anderson Dam project” or “project” means any activity or work of construction to retrofit, repair, or replace the Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District and located in the County of Santa Clara, including any upstream or downstream construction or operational improvements for flood protection, environmental restoration, or
fish passage that may be required to implement that activity or
work.  
(b) "District" means the Santa Clara Valley Water District.  
(c) "Permit" means a permit, agreement, certification, approval;
authorization, permission, notice to proceed, or directive, or
issuance of this document, from a state agency that is necessary
for the project to proceed.  
(d) "State agency" means a state agency, board, commission,
or department with the authority to issue permits that would
authorize the project or project-related work.  
21189.61. (a) Rules 3.2220 to 3.2237, inclusive, of the
California Rules of Court, as may be amended by the Judicial
Council, shall apply to any action or proceeding brought to attack,
review, set aside, void, or annul the certification of any
environmental impact report for the project or granting of any
project approvals to require the actions or proceeding, including
any potential appeals therefrom, to be resolved, to the extent
feasible, within 270 days of the filing of the certified record of
proceedings with the court. On or before April 1, 2021, the Judicial
Council shall amend the California Rules of Court, as necessary,
to implement this subdivision.  
(b) Notwithstanding any other law, the procedures set forth in
this chapter shall apply to an action or proceeding brought pursuant
to this division to attack, review, set aside, void, or annul the
certification of the environmental impact report for the Anderson
Dam project or the granting of any project approvals.  
21189.62. (a) The lead agency shall prepare and certify the
record of proceedings in accordance with this section and in
accordance with Rule 3.1365 of the California Rules of Court.  
(b) No later than three business days following the date of the
release of the draft environmental impact report, the lead agency
shall make available to the public in a readily-accessible electronic
format the draft environmental impact report and all other
documents submitted to or relied on by the lead agency in the
preparation of the draft environmental impact report. A document
prepared by the lead agency after the date of the release of the
draft environmental impact report that is a part of the record of
proceedings shall be made available to the public in a readily
accessible electronic format within five business days after the
document is prepared or received by the lead agency.
(c) Notwithstanding subdivision (b), documents submitted to or relied on by the lead agency that cannot lawfully be released to the public pursuant to law or that were not prepared specifically for the Anderson Dam project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hard copies of the copyrighted materials are available for public review.

(d) The lead agency shall encourage written comments on the project, to be submitted in a readily accessible electronic format, and shall make any such comment available to the public in a readily accessible electronic format within five days of its receipt.

(e) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(f) The lead agency shall indicate in the record of proceedings comments received that were not considered by the lead agency pursuant to subdivision (d) of Section 21189.65 and need not include the content of the comments as a part of the record of proceedings:

(g) Within five days after the filing of the notice required by subdivision (a) of Section 21152, the lead agency shall certify the record of proceedings for the approval or determination and shall provide an electronic copy of the record of proceedings to a party that has submitted a written request for a copy. The lead agency may charge and collect a reasonable fee from a party requesting a copy of the record of proceedings for the electronic copy, which shall not exceed the reasonable cost of reproducing that copy.

(h) Within 10 days after being served with a complaint or a petition for a writ of mandate, the lead agency shall lodge a copy of the certified record of proceedings with the superior court.

(i) Any dispute over the content of the record of proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record of
proceedings shall file a motion to augment the record of proceedings at the time it files its initial brief.

(j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6:

21189.63. (a) The draft and final environmental impact report shall include a notice in not less than 12-point type stating the following:

THIS EIR IS SUBJECT TO CHAPTER 6.8 (COMMENCING WITH SECTION 21189.60) OF DIVISION 13 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21189.61 TO 21189.64, INCLUSIVE, OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.8 (COMMENCING WITH SECTION 21189.60) OF DIVISION 13 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

(b) The draft environmental impact report and final environmental impact report shall contain, as an appendix, the full text of this chapter.

21189.64. (a) Within 10 days after the release of the draft environmental impact report, the lead agency shall conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

(b) Within 10 days before the close of the public comment period, the lead agency shall hold a public hearing to receive testimony on the draft environmental impact report. A transcript of the hearing shall be included as an appendix to the final environmental impact report.

(c) (1) Within five days following the close of the public comment period, a commenter on the draft environmental impact report may submit to the lead agency a written request for nonbinding mediation. The lead agency shall participate in nonbinding mediation with all commenters who submitted timely
comments on the draft environmental impact report and who requested the mediation. Mediation conducted pursuant to this paragraph shall end no later than 35 days after the close of the public comment period.

(2) A request for mediation shall identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.

(3) The lead agency shall select one or more mediators who shall be retired judges or recognized experts with at least five years of experience in land use and environmental law or science, or mediation.

(4) A mediation session shall be conducted on each area of dispute with the parties requesting mediation on that area of dispute.

(5) The lead agency shall adopt, as a condition of approval, any measures agreed upon by the lead agency and any commenter who requested mediation. A commenter who agrees to a measure pursuant to this paragraph shall not raise the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency’s decision to certify the environmental impact report or to grant one or more initial project approvals.

(d) The lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

(1) New issues raised in the response to comments by the lead agency.

(2) New information released by the public agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.

(3) Changes made to the project after the close of the public comment period.

(4) Proposed conditions for approval, mitigation measures, or proposed findings required by Section 21081 or a proposed reporting or monitoring program required by paragraph (1) of subdivision (a) of Section 21081.6, where the lead agency releases those documents subsequent to the release of the draft environmental impact report.

(5) New information that was not reasonably known and could not have been reasonably known during the public comment period.
21189.65. Except as otherwise provided expressly in this chapter, nothing in this chapter affects the duty of any party to comply with this division.

21189.66. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5.

SEC. 4. Part 4 (commencing with Section 6700) is added to Division 3 of the Water Code, to read:

PART 4. ANDERSON DAM

6700. (a) For purposes of this part, the following definitions apply:

(1) (A) “Anderson Dam project” or “project” means any activity or work of construction to retrofit, repair, or replace, or improve the safety of the Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District and located in the County of Santa Clara, including any upstream or downstream construction or operational improvements for flood protection, environmental restoration, or fish passage construction, improvements, changes in operational activities, and flood protection measures that may be required to implement that activity or work.

(B) The “Anderson Dam project” or “project” includes any avoidance, minimization, or mitigation measures, including the Coyote Creek related Phase 1 measures of the Fish and Aquatic Habitat Collaborative Effort determined to be appropriate by the district, in consultation with state and federal agencies identified as “responsible agencies” or “trustee agencies” pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) “District” means the Santa Clara Valley Water District.

(3) “Permit” means a permit, agreement, certification, approval, authorization, permission, notice to proceed, or directive, or issuance of this document, from a state agency that is necessary for the project to proceed.
(4) “State agency” means a state agency, board, commission, or department with the authority to issue permits that would authorize the project or project-related work.

(b) A state agency may do any of the following:

(1) Enter into an agreement with the district to recover costs for actions authorized by this section that are above the usual level of service provided by the state agency to expedite the review of environmental documents prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or permit processing and approval for the Anderson Dam project with the goal of compliance with this division and completing permit review and approval in an expeditious manner.

(2) Hire or compensate staff or contract for services needed to achieve the goals described in paragraph (1).

(3) Work collaboratively with local, state, and federal agencies on an integrated regulatory approach similar to efforts implemented by the state permitting agencies for projects funded by the San Francisco Bay Area Measure AA, the San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Program.

(c) (1) This section does not limit or expand the authority or discretion of a state agency with regards to processing a permit application, the issuance of a permit, or any conditions that may be required in conjunction with the issuance of a permit.

(2) This section does not affect the district’s ability to phase the permitting or construction of the Anderson Dam project.

(d) The Federal Energy Regulatory Commission, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the United States Environmental Protection Agency may, and are encouraged to, participate in any integrated regulatory approach authorized by this section.

SEC. 6.

SEC. 5. Section 13260.1 is added to the Water Code, to read:

13260.1. (a) For purposes of this section, the following definitions apply:

(1) “Anderson Dam project” or “project” has the same meaning as set forth in Section 6700.

(2) “District” means the Santa Clara Valley Water District.
(b) Notwithstanding any other law, within 120 days of receipt of a report of waste discharge from the district with respect to the Anderson Dam project pursuant to Section 13260, the board shall prescribe requirements as to the nature of the proposed discharge. Consistent with Section 13263, the requirements shall implement any relevant water quality control plans that have been adopted and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the requirements of Section 13241.

(3) “Project certification” means water quality certification issued under Section 13160 for any federal permit or license for the Anderson Dam project.

(b) Before filing an application for project certification with the state board, the district shall consult with the state board. The district shall initiate consultation within 60 days after the effective date of the act that added this section and meetings pursuant to the consultation shall occur no less frequently than once every 60 days thereafter until the project is fully certified.

(c) Notwithstanding any other law, the state board shall issue project certification within 180 days after the district does all of the following:

(1) Files a complete application for project certification.

(2) (A) Files a complete application or petition for all water rights approvals necessary to implement the Anderson Dam project.

(B) Subparagraph (A) does not apply to any project certification for the public safety measures ordered by the Federal Energy Regulatory Commission on February 20, 2020.

(3) Completes and certifies the adequacy of environmental documentation for the project certification required under Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) The following procedures and requirements shall govern the determination of whether an application is complete for purposes of subdivision (c):

(1) (A) The state board shall notify the district in writing whether the submittal is complete not later than 30 days after the submittal of an application or petition under paragraph (1) or (2) of subdivision (c). If the submittal is determined to be incomplete,
the state board shall provide the district with a written notification that includes an exhaustive list of specific items that were not complete, and indicates the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application or petition. The list shall be limited to those items actually required by the state board under applicable law. After the list is issued, the state board shall not request or require the district to provide any new or additional information that was not specifically identified in the initial list of items found to be incomplete. No list shall include an extension or waiver of any of the time periods prescribed by this section.

(B) If the state board does not provide the district with a written notification that includes a list of specific items that are incomplete within 30 days after receipt of the initial application or petition, then the application or petition shall be deemed complete.

(2) If the state board provides the written notification required by paragraph (1) determining that the application or petition is incomplete, the district shall act within 45 days to submit supplemental materials in order to complete the application or petition or to appeal the determination, in whole or in part, pursuant to paragraph (4).

(3) (A) Upon receipt of any supplemental materials from the district, the state board shall, within 30 days of receipt, determine the completeness of the application or petition as supplemented with the supplemental material, and whether to issue the notification required by this section. In making this determination, the state board is limited to determining whether the application or petition as supplemented includes the information specified in the state board’s prior notification of incompleteness.

(B) If the supplemented application or petition is again determined not to be complete, the state board shall provide the district with a written notification specifying those parts of the supplemented application or petition that are still incomplete and indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application or petition.

(C) If the state board determines that the application or petition as supplemented is still incomplete and provides the written notification required by this paragraph, the district shall act within
30 days to submit additional supplemental materials in order to
complete the application or petition, or to appeal the
determination, in whole or in part, pursuant to paragraph (4).
(D) If the state board does not, within 30 days, provide the
district with a written notification specifying those parts of the
supplemented application or petition that are still incomplete and
indicating the manner in which they can be made complete, the
application or petition as supplemented shall be deemed complete
for purposes of this section.
(E) If the district elects to supplement a previously supplemented
application or petition, the deadlines and obligations set forth in
this paragraph shall also apply to any supplemented application
or petition.
(4) The district may appeal, in whole or in part, any state board
determination under paragraph (1) or (3) to the state board. If the
district submits an appeal within the timeframes specified in
paragraph (2) or (3) to the state board, an adjudicative hearing
before the members of the state board shall occur within 60 days
of receipt of the appeal. Within 30 days after that hearing, the state
board shall issue a final written determination on the appeal. If
an appeal hearing does not take place within 60 days of receipt
of the appeal, or if the final written determination on the appeal
is not issued within 30 days of the hearing, the application or
petition along with any supplemental materials shall be deemed
complete for purposes of this section. Within 30 days of the timely
issuance by the state board of its final written determination of
appeal, the district may challenge the determination in court.
(5) This section does not supersede or otherwise amend any
deadlines set forth by or in the Federal Water Pollution Control
Act (33 U.S.C. Sec. 1251 et seq.).
SEC. 7.
SEC. 6. The Legislature finds and declares that a special statute
is necessary and that a general statute cannot be made applicable
within the meaning of Section 16 of Article IV of the California
Constitution because of the findings set forth in Section 1 of this
act.
SEC. 8.
SEC. 7. No reimbursement is required by this act pursuant to
Section 6 of Article XIIIIB of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.

SEC. 8. This act is an urgency statute necessary for the
immediate preservation of the public peace, health, or safety within
the meaning of Article IV of the California Constitution and shall
go into immediate effect. The facts constituting the necessity are:
The Leroy Anderson Dam, located in the County of Santa Clara,
has been determined by local, state, and federal officials to be at
risk of an uncontrolled release of water caused by an earthquake.
A breach of the dam at full capacity would have catastrophic
consequences for life and property, inundating an area extending
more than 30 miles northwest to San Francisco Bay, including the
Cities of Milpitas, San Jose, Santa Clara, and Sunnyvale, and more
than 40 miles southeast to Monterey Bay, including the Cities of
Gilroy, Morgan Hill, and Watsonville. Expedited action by state
government is necessary in order to reduce the risk to life and
property and the state and national economies. Therefore, it is
necessary that this act take effect immediately.