
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 267
Author: Valladares, et al.
Version: 6/2/2021
Urgency: No
Consultant: Genevieve M. Wong

Hearing Date: 6/29/2022
Fiscal: Yes

SUBJECT: California Environmental Quality Act: exemption: prescribed fire, thinning, and fuel reduction projects

DIGEST: Extends, for an additional 3 years, until 2026, a California Environmental Quality Act (CEQA) exemption for prescribed fire, thinning, or fuel reduction projects on federal lands.

ANALYSIS:

Existing law,

- 1) Under the National Environmental Protection Act (NEPA), requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. Actions include making decisions on permit applications, adopting federal land management actions, and constructing highways and other publicly-owned facilities. (42 United States Code (U.S.C.) §4321 et seq.)
 - a) Establishes the Good Neighbor Authority, which authorizes the federal government to enter into good neighbor agreements with state, tribal, and county governments to carry out forest, rangeland, and watershed restoration services, including to reduce hazardous fuels and improve fish and wildlife habitat, among others. (16 U.S.C. §2113a)
- 2) Under CEQA, requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code (PRC) §21000 et seq.). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1))

- 3) Exempts from CEQA, until January 1, 2023, prescribed fire, thinning, or fuel reduction projects undertaken on federal lands that have been reviewed under the NEPA if either of the following apply:
 - a) The primary role of a state or local agency is providing funding or staffing those projects; or
 - b) A state or local agency is undertaking those projects pursuant to the federal Good Neighbor Authority or a stewardship agreement with the federal government. (PRC §4799.05(d)(1)).
- 4) Makes the operation of the exemption contingent on the Secretary of the California Natural Resources Agency (CNRA) certifying by January 1 of each year that NEPA or other federal laws that affect the management of federal forest lands in California have not been substantially amended on or after August 31, 2018.
- 5) Requires the Department of Forestry and Fire Protection (CAL FIRE) to annually report to the Legislature the number of times the exemption is used.

This bill:

- 1) Extends the above-described CEQA exemption and the CAL FIRE requirement to annually report on the usage of the exemption for an additional three years, until January 1, 2026.

Background

- 1) *How it started.* In 2018, the Legislature passed SB 901 to address wildfire issues. The bill, which was developed by a conference committee, sought to establish a comprehensive framework to address and prevent catastrophic wildfires, management of the state's forests, chaparral, and other lands to prevent and defend against wildfires, and standards to stabilize electric utilities in the event of extensive liability resulting from claims under inverse condemnation. As a part of that comprehensive wildfire package, the CEQA exemption which this bill seeks to extend was enacted.
- 2) *Use of the exemption.* According to CAL FIRE, during 2019, it used the exemption 49 times in 29 counties for fuels reduction, pest management, prescribed fire, fuel break, and thinning and reforestation projects. The exemption was utilized in 18 counties in northern California and 11 counties in southern California. In 2020, CAL FIRE used the exemption 19 times, in 17 counties. Fourteen counties were located in northern California and three in

southern California.

Only CAL FIRE is required to report the number of times it used the exemption and that other state or local agencies may be using the exemption without notifying the Legislature. Thus, the number of times this exemption is used is likely higher. For example, according to information provided by Rural County Representatives of California, Sierra Nevada Conservancy (SNC) which has voluntarily tracked its usage of the exemption, reports using the exemption for 32 projects from 2020 to 2021, covering 37,000 acres of forestland.

Some examples of projects carried out by SNC include:

- Black Springs Restoration Project: Fuel treatments, including plantation thinning, mastication, and hand treatments, in the Eastern Calaveras County between Arnold and Bear Valley and within the Stanislaus National Forest; covered 1,253 acres.
- French Meadows Forest Restoration Project: Thinning and prescribed fire in the French Meadows area of the project; total project covered 25,000 acres, with 736 acres of prep and 131 acres of prescribed fire.

Other than the information provided on SNC projects, little else is known about the projects this exemption has been used for. It is unknown whether prescribed fire, thinning, or fuel reduction was used, project size, project location and what types of regions were impacted, or environmental impacts that resulted from the prescribed fire, thinning, or fuel reduction. The State has diverse topography, each with unique ecosystems and vegetation, which may require different fire prevention treatments. It is unknown which treatments are being used, where the treatments were applied, and how often.

- 3) *Annual CNRA certification required.* The exemption is only operative if the Secretary of CNRA annually certifies that NEPA or other federal laws that affect the management of federal forest lands in California have not been substantially amended on or after August 31, 2018. According to information provided by the author, Secretary Crowfoot made such certifications on February 7, 2020, April 12, 2021, and January 13, 2022, for NEPA regulation amendments in 2019, 2020, and 2021, respectively.

Comments

- 1) *Purpose of Bill.* According to the author, “California’s wildfires continue to wreak havoc on communities throughout the state. AB 267 will allow

California to continue streamlining wildfire prevention projects in federally managed forests. It is essential that the state continue carrying out prescribed fire, thinning, and fuel reduction projects that are on federal lands and have already been thoroughly reviewed under the National Environmental Policy Act (NEPA).”

- 2) *One size does not fit all.* There are 58 counties in California, all with different ecological considerations. Due to differing ecological environments, different regions will respond differently to different wildfire prevention measures. While some forests may be primarily composed of conifers, the state’s forestlands include a broad range of vegetation types. In some instances, there may be few trees. While a natural fire return rate in a mixed conifer forest may be on the order of 10 years, fire that frequent in a chaparral system could result in damage to the ecological health of the chaparral and the spread of more flammable non-native vegetation types. This type of conversion process can ultimately lead to the complete replacement of native chaparral with nonnative grasses.

The author may wish to consider requiring CAL FIRE, in consultation with the Board of Forestry and Fire Protection to develop best management practices to be used for projects involving prescribed fire, thinning, or fuel reduction. The best management practices could reflect the unique ecosystems and conditions, including climates and topographies located throughout the state.

- 3) *A lower standard than CEQA.* In lieu of CEQA, this bill’s exemption requires compliance with NEPA. Similar to CEQA, NEPA requires environmental review and opportunities for public review and comment. However, unlike CEQA, NEPA does not require mitigation measures to avoid or reduce significant environmental impacts. Under NEPA, even if environmental impacts are identified during the environmental review, a project could still proceed without any mitigation measures, potentially causing known and permanent harm to the environment.
- 4) *Proposed Budget Trailer Bill Language.* On May 31, 2022, the Newsom Administration released language that would also amend the same area of law covered by this bill. That language proposed to:
- To make the exemption permanent.
 - Expand the list of projects eligible for the exemption beyond prescribed fire, thinning, and fuel reduction to include reforestation, habitat restoration, and ancillary activities necessary to undertake those activities.

- Expand eligible lands for which the CEQA exemption would apply to include state lands, not just federal lands, where NEPA has been completed for an eligible proposed project. This would apply to any eligible projects on state, local, tribal, or private lands for which the federal government provides funding (funding triggers the application of NEPA).
- Eliminate the requirement that CalFire report the use of the exemption to the Legislature and instead require lead agencies to file notices of exemption with the Office of Planning and Research and relevant county clerk.
- Eliminate the requirement that the CNRA Secretary annually certify that NEPA and other relevant federal forest management laws have not been substantially changed in the last year and instead authorize the Secretary to report those changes to the Legislature.
- Create an additional CEQA exemption for tribal programs that are subject to the Tribal Natural Resources Council or tribal cultural burn and tribal wildfire funding.

5) *Committee amendments. Given all of the above considerations, the committee may wish to amend the bill to do the following:*

- *Require that significant impacts identified in an environmental impact statement prepared pursuant to NEPA either be mitigated or avoided.*
- *Require if the lead agency determines that the project is exempt from CEQA pursuant to this bill, to file an NOE with OPR and the county clerk in the county in which the project is located.*
- *Require the lead agency to file with CAL FIRE all of the following:*
 - *Environmental impacts identified by NEPA, if any, and any measures, if any, that will be taken to reduce or avoid those impacts.*
 - *Location of project.*
 - *Whether prescribed fire, thinning, or fuel reduction will be used.*
 - *Number of acres to be treated.*
 - *Long term impacts anticipated on wildfire behavior after project completion.*
 - *Comments that were submitted during public review process of NEPA.*
- *Require CAL FIRE, if CAL FIRE is the lead agency, to maintain the above-described records.*
- *Require CAL FIRE to compile the above information into a report for the Legislature, to be submitted to the Legislature by January 1, 2025.*

DOUBLE REFERRAL

This measure was heard in Senate Natural Resources and Water Committee on June 1, 2022, and passed out of committee with a vote of 7-0.

Related/Prior Legislation

AB 697 (Chau, Chapter 232, Statutes of 2021) requires CAL FIRE to establish a Good Neighbor Authority Program for the purposes of conducting ecological restoration and fire resiliency projects on national forest lands.

AB 642 (Friedman, Chapter 375, Statutes of 2021) is an omnibus fire prevention bill that makes various changes to support cultural and prescribed fire, including the creation of a Cultural Burning Liaison at CAL FIRE, and requires a proposal for creating a prescribed fire training center in California.

AB 92 (2020) was the omnibus Resources budget trailer bill. It contained provisions necessary to implement the 2020 Budget Act, including the creation of the Good Neighbor Authority Fund.

SOURCE: Author

SUPPORT:

Allweather Wood
Associated California Loggers
Association of California Water Agencies
Beaumont Chamber of Commerce
Big Bear Chamber of Commerce
Buildstrong Coalition
Calforests
California Cattlemen's Association
California Farm Bureau
California Fire Chiefs Association
California Forest Watershed Alliance
California Forestry Association
California Professional Firefighters
Chino Valley Chamber of Commerce
City of Agoura Hills
City of Moorpark
City of Santa Clarita
City of Santa Monica

City of Simi Valley
Corona Chamber of Commerce
Edison International and Affiliates, Including Southern California Edison
Environmental Defense Fund
Environmental Justice League
Fontana Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Ontario Business Council
Hemet San Jacinto Valley Chamber of Commerce
Highland Area Chamber of Commerce
Humboldt Sawmill Company
Humboldt Redwood Company
Inland Empire Chamber Legislative Alliance
Inland Empire Economic Partnership (IEEP)
Lp Building Solutions
Mendocino Forest Products
Mendocino Redwood Company
Menifee Valley Chamber of Commerce
Moreno Valley Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
Pacific Forest Trust
Perris Valley Chamber of Commerce
Pomona Chamber of Commerce
Rancho Cucamonga Chamber of Commerce
Redlands Chamber of Commerce
Rural County Representatives of California
Save the Redwoods League
Temecula Valley Chamber of Commerce
The Nature Conservancy
The Watershed Research and Training Center
Upland Chamber of Commerce
Western United Dairymen

OPPOSITION:

Center for Biological Diversity
Sierra Club

ARGUMENTS IN SUPPORT: According to The Nature Conservancy, the Pacific Forest Trust, and the Watershed Research & Training Center, “We write to express our support for AB 267 which would extend the sunset date for the current

exemption from the California Environmental Quality Act (CEQA) that applies to state-funded prescribed fire and forest health projects conducted on federal lands. This provision allows the state to rely on the National Environmental Policy Act of 1969 (NEPA) for these projects, and not conduct a separate CEQA analysis that would otherwise be required because the state is providing the project funding.”

“Nearly half of California is federal land, and in 2020 over 1.5 million acres of it burned. It is critically important for the state and federal government to work together to address forest health and reduce wildfire risk in a cohesive fashion across the landscape. The provision proposed for extension helps avoid unnecessary delay and ensure that forest health projects on federal land can move forward quickly and help the shared stewardship of California’s forests...”

“This exemption has been helpful in preventing duplicative analysis and unnecessary delay, and we support its continued use for the efficient implementation of forests restoration actions on federal lands in California.”

ARGUMENTS IN OPPOSITION: According to the Center for Biological Diversity and Sierra Club, “This exemption was jammed through in a last-second, omnibus wildfire and utility bill in 2018, SB 901 (Dodd). Sierra Club California opposed this bill at the time as it included provisions like the one in AB 267 that peel away critical environmental protections and review from intensive tree removal operations.”

.
. .

“NEPA does not require mitigation like CEQA does. This means that large swaths of California’s biodiverse forest and chaparral ecosystems have been impacted by intensive tree and shrub removal operations without a requirement for mitigation.

“The state should pursue and support ecologically beneficial actions like prescribed and managed fire as a means of returning fire to California’s fire-adapted forests. However, thinning operations, and even prescribed fire in some circumstances, can have enormous and counterproductive environmental consequences. Land managers should take more care to evaluate potential negative impacts of an operation and mitigate them when dealing with complex forest and chaparral ecosystems. This exemption allows for less careful forest operations and will therefore continue to degrade California’s unique and fragile landscapes.”