

The California legislature recently passed [SB 1](#), which would translate into state law a range of federal environmental and worker safety standards that were in place before the inauguration of President Trump to protect against federal roll backs in those areas. However, Governor Newsom has indicated he will veto SB 1, [on the grounds that the bill](#) “does not . . . provide the state with any new authority to push back against the Trump administration’s environmental policies and it limits the state’s ability to rely upon the best available science to protect our environment.” How well does the Governor’s reasoning for vetoing the bill actually match up with the legislation he will be vetoing?

SB 1 has three main elements. First, the bill would either authorize or (in a few cases) mandate that state environmental and worker safety agencies enact regulations to codify prior federal standards if they determine that the Trump Administration has weakened those standards. In particular, the bill gives the state agencies the option to protect species under the California Endangered Species Act (CESA) that have lost protections under the federal Endangered Species Act (ESA); it requires the California Air Resources Board (CARB) to backfill changes in federal air quality regulations if they are weakened by the Trump Administration, although it gives CARB the option to use a “nonregulatory option” instead of regulation; it authorizes (but does not require) the California Occupational Safety and Health Standards Board to backfill federal rollbacks through the adoption of state regulations; it requires the State Water Resources Control Board to adopt federal drinking water standards as state standards if they have been reduced; and it requires the California Environmental Protection Agency to adopt as state standards any federal water quality standards and water discharge standards that have been weakened, although it gives the ability for the CalEPA to change those state standards if it needs to. In general, state agency regulatory action under these provisions can proceed under streamlined procedures under state law using the emergency regulations provisions of the California Administrative Procedure Act.

It is true that these provisions generally do not give state agencies additional substantive authority – most of these actions could be taken by the state agencies anyway. But the provisions do require state agencies to keep track of federal rollbacks, and facilitate state agency efforts to respond to those rollbacks. They also clearly communicate to these agencies that responding to these rollbacks is a priority for the state.

I do want to note one way in which these provisions likely do provide additional authority to state agencies – the provision allowing for the listing of species under CESA if protections are being rolled back under the ESA may expand the universe of species that can be listed for protection under CESA. Currently, there is a (lively) debate over whether CESA applies to terrestrial invertebrates – while there is no question that terrestrial invertebrates are

covered by ESA. The provision allowing CESA listing of ESA species subject to rollbacks may authorize CESA listing of terrestrial invertebrates, at least those subject to ESA rollbacks.

As for whether these provisions “limit[] the state’s ability to rely upon the best available science to protect our environment,” none of these provisions change the underlying substantive standards for the statutes, which in general already require the use of the best available science.

Second, there are a couple of provisions that arguably do expand state environmental law: specifically, a provision that applies CESA to the operation of the federal Central Valley Project, and a provision that applies restrictions under state law against commercial trade on any species that had federal restrictions on commercial trade before the Trump Administration. The first provision is really the big one here, as it would mean that protections under CESA for the delta smelt would apply to water pumping out of the Delta irrespective of how the federal government applies or interprets the ESA. That in turn could prevent the Trump Administration from significantly weakening protections for the smelt and other listed species in the Delta.

Here, the statute is specifically giving state agencies authority they arguably did not have in the past – again, contrary to the Governor’s statement. And again, the provision does not change the underlying requirements to use the best available science in the implementation of CESA.

Third, there are a range of provisions that authorize citizen suits in state court to enforce state and federal environmental law. Some of these provisions are triggered only if existing federal citizen suit provisions are weakened – others are not conditioned on any such changes.

Here, it is true that the changes don’t expand state agency authority to protect the environment, but they do expand the ability of Californians to help protect their environment through citizen suits to enforce federal and state environmental law by providing state court remedies that previously might not have been available. And again, these provisions don’t change the underlying requirements in state law to use the best available science in setting and applying the standards that would be subject to judicial review.

Overall, the Governor’s stated reasons for vetoing SB 1 don’t appear to match up with the text of the legislation.

