



LAFCO - San Luis Obispo - Local Agency Formation Commission
SLO LAFCO - Serving the Area of San Luis Obispo County

TO: MEMBERS, FORMATION COMMISSION
FROM: DAVID CHURCH, AICP, EXECUTIVE OFFICER
DATE: JUNE 18, 2015
**SUBJECT: LEGISLATIVE UPDATE: GROUNDWATER
RESOURCE BILLS - CALAFCO LEGISLATIVE
UPDATE**

Recommendation. It is respectfully recommended that the Commission receive and file this report.

GROUNDWATER RESOURCE BILLS

The following bills are related to Groundwater Resource Management. Also attached for your information is a Staff analysis from the Assembly Committee on Apportions for Assembly Bill 617 which is summarized below. On page three of the analysis a section entitled Related Legislation lists the bills (14) that are being considered by the legislature with regard to groundwater.

AB 617 (Perea) This bill makes a number of changes to SGMA including allowing a private mutual water company to: a) Join GSAs formed by one or more public agencies pursuant to a Joint Powers Agreement (JPA); b) Exercise the GSA power to include or exclude a water corporation regulated by the Public Utilities Commission; c) Hold in common the GSA powers provided by SGMA in order for the GSA to exercise those powers. Allows Groundwater Sustainability Agencies (GSAs) to enter into public/private partnerships to facilitate the implementation of GSPs or elements of GSPs. Specifies that the California Environmental Quality Act (CEQA) does not apply to the formation of a GSA. **Status:** Passed the Assembly (77-1) and is on to the Senate for consideration.

AB 1390 (Alejo) Adjudication- This bill hopes to make the Adjudication process more efficient by, among other things, changing notice requirements, requiring preliminary hearings, making greater and earlier use of case management conferences, limiting motions to change venue or disqualify a judge, maximizing the use of electronic service, and appointing special masters.

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As currently drafted, a new adjudication would be subject to SGMA. The bill allows the court to expedite resolution, including encouraging the parties to use a Groundwater Sustainability Plan (GSP) developed pursuant to the Sustainable Groundwater Management Act (SGMA) as the basis of a stipulated judgment setting forth a physical solution for basin management. **Status:** Passed by the Assembly and is onto the Senate Natural Resources and Water Committee for consideration.

SB 13 (Pavley) Groundwater. This bill would specify that the State Water Resources Control Board is authorized to designate a high-or-medium priority basin as a probationary basin. It would authorize mutual water companies to be part of a GSA through a Memorandum of Agreement or JPA. This bill would also provide a local agency or groundwater sustainability agency 90 or 180 days, as prescribed, to remedy certain deficiencies that caused the board to designate the basin as a probationary basin. This bill would authorize the SWRCB to develop an interim plan for certain probationary basins one year after the designation of the basin as a probationary basin. The bill also clarifies that a local agency can “opt” in or out as a GSA for a portion a basin. This bill contains other related provisions and other existing laws. **Status:** Passed out of the Senate and is now in the Assembly Water, Parks, and Wildlife Committee.

SB 226 (Pavley) Sustainable Groundwater Management Act. This is another bill that would streamline the adjudication process. It would provide, under the Sustainable Groundwater Management Act, that a groundwater sustainability plan or coordinated groundwater sustainability plans establishes a timely method for determining rights to groundwater in furtherance of the objectives of the Act. This bill would require the process to be available to any court of competent jurisdiction. This bill would require the boundaries of a basin to be as identified in Bulletin 118, unless other basin boundaries are established, as specified. **Status:** Passed the Senate and is onto the Assembly.

CALAFCO Legislative Update

AB 851 (Mayes) Disincorporation’s – CALAFCO SPONSOR

This bill would, in the case of a disincorporation or reorganization that includes a disincorporation, require the plan for services to include specific provisions, including, among other things, an enumeration and description of the services currently provided by the city proposed for disincorporation. The bill clarifies the disincorporation process. CALAFCO has been working diligently with the stakeholders and came to agreement on the one outstanding amendment needed to get full support. The Rural County Representatives of California (RCRC), CSAC, and the League of Cities are now all in Support. **Status:** This bill unanimously passed the Assembly and is in the Senate Governance & Finance Committee.

AB 1532 (ALGC – Omnibus) – CALAFCO SPONSOR

As statutes go into effect, local officials and others often discover problems or inconsistencies in the language of the law and approach the Legislature to correct them. These minor problems do not warrant separate bills, so the Assembly Local Government Committee (Committee) has found that it is expeditious and relatively inexpensive to respond to multiple minor, non-controversial requests on related issues by combining them into an annual "omnibus bill." The bill would make various non-substantive technical changes to the CKH Act. This bill would update obsolete references to a "hospital" district and replace outdated references to the State Department of Health Services with references to the State Department of Public Health and the State Department of Health Care Services. **Status:** Passed unanimously out of the Assembly and is now in the Senate awaiting assignment to the Senate Governance & Finance Committee.

AB 402 (Dodd) Service Extensions – CALAFCO NO POSITION

Establishes a pilot program, until January 1, 2021, for the Napa, Sonoma, and San Bernardino Local Agency Formation Commissions (LAFCOs) to authorize a city or district to extend services outside of boundaries for additional purposes beyond responding to a threat to public health or safety. Specifically, this bill: 1) Allows the Napa, Sonoma, and San Bernardino LAFCOs, until January 1, 2021, to authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence, if consistent with adopted policy.

The purpose would be to support existing or planned uses involving public or private properties, subject to approval at a noticed public hearing where LAFCO makes all of the following determinations: a) The extension of service or services deficiency was identified and evaluated in a review of municipal services (MSR) prepared, pursuant to existing law; b) The extension of service will not result in adverse impacts on open space or agricultural lands, or have growth-inducing impacts; and, c) A later change of organization involving the subject territory and its affected agency is not feasible under existing law or desirable based on the adopted policies of LAFCO.

Status: The bill passed the Assembly floor on a party line vote and is now in the Senate awaiting assignment to the Senate Governance & Finance Committee. Only 1 of the 3 LAFCOs that are impacted by this bill have a current position. Napa and Sonoma will take the bill up this coming week.

Budget Trailer Bill 825 – CALAFCO OPPOSE

CALAFCO has been tracking and providing comments regarding Budget Trailer Bill (TB) 825, which would grant the State unprecedented unilateral power to mandate "consolidations" of water systems. CALAFCO appreciates the ultimate goal of finding solutions (short and long term) to the serious consequences of the drought and has continued to work constructively with stakeholders and the Administration to create solutions. CALAFCO has indicated that TB 825 is not the proper vehicle

to address substantial changes in governance structure policy, and has opposed this bill. Position letters are attached. **Status:** The bill and changes are being considered by the Administration.

SB 239 (Hertzberg) Service Extensions for Fire Service – CALAFCO NO POSITION

SB 239 would require written approval from a LAFCO before a public agency can contract for fire protection services outside its current service area. The bill would prescribe a public process for approving a fire protection reorganization contract, and conduct a public hearing. Existing law prescribes generally the powers and duties of the LAFCO in each county with respect to the review approval or disapproval of proposals for changes of organization or reorganization of cities and special districts within that county. Existing law permits a city or district to provide extended services, as defined, outside its jurisdictional boundaries only if it first requests and receives written approval from the local agency formation commission in the affected county. Under existing law, LAFCO may authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence under emergency/urgent circumstances.

The bill did have a provision for allowing the Firefighters Unions to have approval authority over this process; this provision has been deleted. CALAFCO is now taking No Position instead of an Oppose position on this bill. This bill would, with certain exceptions, permit a public agency to exercise new or extended services outside the public agency's current service area pursuant to a fire protection reorganization contract, as defined, only if the public agency receives written approval from the LAFCO in the affected county. The bill would require that the legislative body of a public agency that is not a state agency adopt a resolution of application and submit the resolution along with a plan for services, as provided, and that a proposal by a state agency be initiated by the director of the agency with the approval of the Governor. **Status:** The bill passed the Senate 26-12 and is now in the Assembly.

Exhibit A

CALAFCO Letter Opposing Trailer Bill 825

CSDA/CALAFCO/Others Letter Opposing Trailer Bill 825

May 29, 2015

The Honorable Mark Leno
Chair, Conference Committee on the Budget
State Capitol Building
Sacramento, CA 95814

RE: Water System Consolidation Budget Trailer Bill 825 – OPPOSE

Senator Leno:

The California Association of Local Agency Formation Commissions (CALAFCO) has been tracking and providing comments regarding Budget Trailer Bill (TB) 825, which would grant the State unprecedented unilateral power to mandate “consolidations” of water systems. CALAFCO appreciates the ultimate goal of finding solutions (short and long term) to the serious consequences of the drought and we have, and desire to continue working constructively with stakeholders and the Administration to create solutions. However, we believe that TB 825 is not the proper vehicle to address substantial changes in governance structure policy, and respectfully we must oppose.

The Cortese-Knox-Hertzberg Reorganization Act of 2000 (CKH), has been in place for 52 years and is the foundation for the reorganization of local government agencies. Changes to CKH, especially of this magnitude, are done through the deliberate and well-thought legislative policy process. CALAFCO has a number of concerns, including:

- **A process already exists.** CKH currently provides a widely used framework to expediently extend services in the case of an existing or impending threat to the public health and safety such as disruptions in water availability for the residents of the affected territory.
- **Public versus private water systems.** Proposing to consolidate a public agency water provider with a private water provider presents a host of challenges and questions that must be fully evaluated to avoid unintended consequences. Governance structures, oversight authorities, and land use rights must be considered.
- **The use of ambiguous terminology open the door beyond the intent and create liability issues.** The use of undefined terms and standards such as “feasible”, “consult”, “adequate supply” and “effective” can create unintended legal consequences and challenges down the road.
- **One size does not fit all.** Each failing water system identified by the State has its own set of unique circumstances and conditions. There are many possible situations which call for different solutions other than “consolidation”. All of these possibilities should be carefully considered as part of this substantive policy change discussion.

LAFCOs exist for the purpose of determining at the local level how to best organize local agencies. We believe that to completely transfer that responsibility to a state agency without that expertise and through a process that ignores the existing statutory structure for such reorganization would not be the best possible policy. Therefore, we respectfully request you reject TB 825.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pamela Miller".

Pamela Miller
Executive Director

CC: The Honorable Edmund G. Brown Jr., Governor
The Honorable Members, Joint Budget Conference Committee
Martha Guzman-Aceves, Deputy Legislative Secretary, Office of Governor Brown
Liz Haven, Deputy Director Division of Financial Assistance, State Water Resources Control Board
Mark Ibele, Staff Director, Senate Budget and Fiscal Review Committee
Catherine Freeman, Consultant, Senate Budget and Fiscal Review Committee
Rocel Bettencourt, Senate Republican Consultant
Christian Griffith, Chief Consultant, Assembly Budget Committee
Gabrielle Meindl, Consultant, Assembly Budget Committee
Chris Holtz, Consultant, Assembly Republican Consultant

**ASSOCIATION OF CALIFORNIA WATER AGENCIES (ACWA)
CALIFORNIA ASSOC. OF LOCAL AGENCY FORMATION COMMISSIONS (CALAFCO)
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION (CMUA)
CALIFORNIA SPECIAL DISTRICTS ASSOCIATION (CSDA)
CALIFORNIA STATE ASSOCIATION OF COUNTIES (CSAC)
LEAGUE OF CALIFORNIA CITIES (LEAGUE)
RURAL COUNTY REPRESENTATIVES OF CALIFORNIA (RCRC)**

May 29, 2015

Chairman Mark Leno
Joint Budget Conference Committee
State Capitol, Room 5019
Sacramento, CA 95814

RE: Drought Water System Consolidation Budget Trailer Bill Language #825 -- OPPOSE

Dear Chair Leno:

We oppose the Drought Water System Consolidation proposed budget trailer bill language #825.

This proposal is a “drought” budget trailer bill of major public policy significance that is not being heard through the regular policy and fiscal committee process. That process offers more transparency and safeguards over the course of several months. Instead, this proposal is being rapidly moved through the budget trailer bill process that does not provide adequate time for stakeholder comment or public input in the span of just a few short weeks. The organizations listed above want to work with the Administration on safe drinking water solutions in a policy bill.

The budget trailer bill language would authorize the State Water Resources Control Board (SWRCB) to mandate the consolidation of public water systems. The SWRCB houses experts in the field of drinking water, but it does not have expertise in Cortese-Knox-Hertzberg local government law or staff steeped in local agency organization. This is illustrated by the terms in the bill lacking specificity and being based on an over-simplification of the actual consolidation process as practiced on the ground in real time by water agencies and local agency formation commissions (LAFCOs.)

While the title of this language is “Drought Water System Consolidation,” the language goes way beyond emergency relief – it would authorize a state agency to mandate consolidation of two local entities under a broad scope of circumstances. Currently, communities running out of drinking water are being provided with trucked-in potable water in mutual aid-type arrangements. A voluntary, mutual aid cooperative comprised of public and private water agencies called CalWARN (California Water and Wastewater Agency Response Network) could be utilized for drought assistance in impacted communities. Consolidations of water purveyors are complex and take time. The SWRCB-mandated

consolidations proposed in this language are long-term scenarios that would take an extended period of time and are not immediate fixes to an emergency situation like the current drought.

The best example of a recent consolidation bill that successfully passed through the Legislature and was signed into law by Governor Brown, is Senate Bill 1130 (Roth) Chapter 173, Statutes of 2014. This bill provided limited immunity from liability in order to facilitate the consolidation of the County Water District of Riverside, a small private entity serving approximately 100 customers, by Eastern Municipal Water District and Elsinore Valley Municipal Water District.

That intense effort involved not only the retail water districts, but also the wholesale water agencies to hold them harmless against potential claims brought by customers of the system that was subsumed. This budget trailer bill language lifts the concept out of SB 1130 as a one-size-fits-all panacea. The bill was tailored to fit that particular consolidation, and no two consolidations are exactly alike. The proposed language based on that bill would also provide that there would not be liability relief if there were water pressure problems during the interim period, but those are the type of physical problems that can occur when infrastructure is installed to combine systems. Such physical issues should not preclude liability protection during a consolidation. The specter of litigation hangs onto an insufficient immunity from liability.

Another critical issue that is affected by this proposal is the water rights of the subsumed system or domestic well users and the consolidating system. During a consolidation process the subsumed system is examined to see if their water rights would need to be transferred, or could be transferred or if their water rights would be adequate to provide service to a certain service area. Requiring the transfer of any water rights, including individual water rights, would be an extremely complex and potentially controversial issue.

Any subsumed water system that is non-compliant with respect to safe drinking water or water quality laws, could endanger the consolidating system and instead of bringing the subsumed entity into compliance, could potentially bring both into non-compliance.

Finally, this proposed budget trailer bill language fails to acknowledge that there are existing solutions in current law that address consolidation of public water systems. The state has the authority to exercise receivership in Health & Safety Code, Section 116665, and LAFCOs can already remedy threats to health and safety through Government Code Section 56133. These solutions have been working as demonstrated through the rise of voluntary consolidations. This proposal would toss out decades of local government public policy development after less than one month of review and consideration.

As the stakeholders that would ultimately be responsible for implementing this policy, we request the opportunity to work together with the Legislature and the Administration on measures to help reduce the technical, financial, and legal barriers to consolidations where appropriate. Proposing a broad new state authority for mandating consolidations could lead to significant unintended consequences and should not be done through a budget trailer bill. Because these and other complicated and technical policy issues noted above are not solved by the proposed budget trailer bill, we must oppose the proposal.