



REGULAR MEETING 8:00 A.M. OPERATIONS CENTER - 1200 SOUTH GENE AUTRY TRAIL – PALM SPRINGS – CALIFORNIA

About Desert Water Agency:

Desert Water Agency operates independently of any other local government. Its autonomous elected board members are directly accountable to the people they serve. The Agency is one of the desert's two State Water Contractors and provides water and resource management, including recycling, for a 325-square-mile area of Western Riverside County, encompassing parts of Cathedral City, Desert Hot Springs, outlying Riverside County and Palm Springs.

1. **PLEDGE OF ALLEGIANCE**
2. **APPROVAL OF MINUTES – March 1, 2016** **CIOFFI**
3. **GENERAL MANAGER'S REPORT** **KRAUSE**
4. **COMMITTEE REPORTS – A. Executive – March 10, 2016** **CIOFFI**
5. **PUBLIC INPUT:**
Members of the public may comment on any item not listed on the agenda, but within the jurisdiction of the Agency. In addition, members of the public may speak on any item listed on the agenda as that item comes up for consideration. Speakers are requested to keep their comments to no more than three (3) minutes. As provided in the Brown Act, the Board is prohibited from acting on items not listed on the agenda.
6. **SECRETARY-TREASURER'S REPORT - February 2016** **BLOOMER**
7. **ITEM FOR ACTION**
A. Request Authorization to Execute Informed Written Consent **RIDDELL**
8. **ITEMS FOR DISCUSSION**
A. February Water Production Comparison **KRAUSE**
B. Lake Perris Seismic Remediation Update **KRAUSE**
C. Legislative Report **REEB**
9. **DIRECTORS COMMENTS AND REQUESTS**
10. **CLOSED SESSION**
 - A. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9 (d) (1)
Name of Case: Agua Caliente Band of Cahuilla Indians vs. Coachella Valley Water District, et al
 - B. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9 (d) (1)
Name of Case: Agua Caliente Band of Cahuilla Indians vs. County of Riverside, et al
 - C. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9 (d) (1)
Name of Case: Desert Water Agency vs. U.S. Department of Interior
 - D. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9 (d) (1)
Name of Case: Mission Springs Water District vs. Desert Water Agency
 - E. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code Section 54956.8
Property: 1.17 acre lot North of the Northeast corner of Sunrise Way and Mesquite Avenue,
APN No. 502-560-038
Agency Negotiators: Mark S. Krause, General Manager and Steven L. Johnson, Asst. General Manager
Negotiating Parties: Chris Thomsen, New Mesquite HOA
Under Negotiation: Price and terms of possible acquisition

11. RECONVENE INTO OPEN SESSION – REPORT FROM CLOSED SESSION

12. ADJOURN

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting is asked to contact Desert Water Agency's Executive Secretary, at (760) 323-4971, at least 48 working hours prior to the meeting to enable the Agency to make reasonable arrangements. Copies of records provided to Board members which relate to any agenda item to be discussed in open session may be obtained from the Agency at the address indicated on the agenda.

**MINUTES
OF THE REGULAR MEETING
OF THE
DESERT WATER AGENCY
BOARD OF DIRECTORS**

March 1, 2016

DWA Board: James Cioffi, President) **Attendance**
Joseph K. Stuart, Vice President)
Kristin Bloomer, Secretary-Treasurer)
Patricia G. Oygar, Director)

Absent: Craig A. Ewing, Director)

DWA Staff: Mark S. Krause General Manager)
Steve L. Johnson, Asst. General Manager)
Martin S. Krieger, Finance Director)
Sylvia Baca, Asst. Secretary of the Board)
Ashley Hudgens, Public Information Officer)
Irene Gaudinez, Human Resources Manager)

Consultant: Michael T. Riddell, Best Best & Krieger)

Public: David Freedman, Palm Springs resident)

17419. President Cioffi opened the meeting at 8:00 a.m. and asked everyone to join Director Oygar in the Pledge of Allegiance. **Pledge of Allegiance**

17420. President Cioffi called for approval of the February 16, 2016 Regular Board meeting minutes. **Approval of 02/16/16 Regular Board Mtg. Minutes**

Director Oygar moved for approval. After a second by Vice President Stuart, the minutes were approved as written (Director Ewing absent).

17421. President Cioffi called upon General Manager Krause to provide an update on Agency operations. **General Manager's Report**

Mr. Krause stated that DWA, CVWD and MSWD's General Managers met last week to discuss management of water resources in the Mission Creek Subbasin. **GM's Mtg/MC Subbasin**

Mr. Krause announced that the Department of Water Resources (DWR) is increasing the allocation of 2016 State Water Project (SWP) water for contractors from 15% to 30%. The allocation increase is made consistent with the current and projected hydrological conditions. This increased allocation percentage will result in 16,725-acre-feet for DWA and 41,505-acre-feet for CVWD for a combined total of 58,230 acre-feet.

General Manager's Report
(Cont.)
SWP Increased Allocation

Concluding his report, Mr. Krause stated that the Colorado River Aqueduct has been shut down for its annual maintenance and repair. The desert and eastern regions have been out of service since February 2nd and are expected to be back in service on February 26th.

CRA Shut Down

17422. President Cioffi noted the minutes for the February 19, 2016 Conservation and Public Affairs Committee were provided in the Board's packet.

Committee Reports –
Conservation & Public Affairs 02/19/16

17423. President Cioffi noted the minutes for the February 24, 2016 Executive Committee were provided in the Board's packet.

Executive 02/24/16

17424. President Cioffi opened the meeting for public input.

Public Input

There being no one from the public wishing to address the Board, President Cioffi closed the public comment period.

17425. President Cioffi called upon General Manager Krause to present staff's request for adoption of Ordinance No. 65.

Public Hearing Item:

Request Adoption of Ord. No. 65 Revising the Enforcement of Water Use Restrictions

Mr. Krause stated at the last meeting, an update on conservation enhancement measures was given in light of two comparably low conservation months. In order to increase conservation, avoid costly fines from the state and streamline staff time, it is recommended that the Board adopt Ordinance No. 65, replacing Ordinance No. 53. The proposed Ordinance removes language requiring violators being allowed three days, without penalty, to resolve the issue. It also allows the Agency to enforce restrictions imposed by the SWRCB in the event there is a future restriction not enumerated in the Ordinance. He noted that the fines have not changed.

At 8:17 a.m., President Cioffi opened the public hearing to take public testimony.

Open Public Hearing

Mr. Freedman expressed his support of Ordinance No. 65.

David Freedman

There being no one else from the public wishing to speak on this matter, President Cioffi closed the public hearing at 8:20 a.m.

Close Public Hearing

Director Oygar moved to approve and adopt Ordinance No. 65. The motion was seconded by Vice President Stuart. The motion carried by the following roll call vote:

Public Hearing
(Cont.)
Adoption of Ord. No.
65

AYES: OYGAR, BLOOMER, STUART, CIOFFI
NOES: NONE
ABSENT: EWING
ABSTAIN: NONE

ORDINANCE NO. 65
AN ORDINANCE OF DESERT WATER AGENCY
ESTABLISHING A WATER CONSERVATION PLAN
AND RESTRICTING THE USE OF WATER DURING
THREATENED OR EXISTING WATER SHORTAGE CONDITIONS

Ordinance No. 65
Adopted

17426. President Cioffi called upon Finance Director Krieger to present staff's request for adoption of Resolution No. 1128.

Request Adoption of
Reso. 1128 Statutory
Pass-Through Payments

Mr. Krieger stated that staff received correspondence from Riverside County regarding a proposed refunding bond issue of the Successor Agency to the Redevelopment Agency for the County. AB1484 allows successor agencies to refund the bonds of their former redevelopment agencies to provide debt service savings. The County is planning to issue bonds in Fiscal Year 2015-16.

Continuing his report, Mr. Krieger explained in order for the County to proceed with the refunding bond issue, the County needs a subordination acknowledgement from DWA. Additionally, the refunding bonds will not be issued unless the new debt service is lower than the debt service on the existing bonds. If DWA does not respond with a resolution, the subordination will be automatically deemed approved by DWA. Legal Counsel has prepared the resolution for the Board's consideration. Staff recommends adoption of Resolution No. 1128.

Agency Counsel Riddell noted a correction to the last paragraph on Page 1.

Vice President Stuart made a motion to adopt Resolution No. 1128 with the correction noted. After a second by Director Oygar, the motion carried unanimously (Director Ewing absent).

RESOLUTION NO. 1128
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE DESERT WATER AGENCY APPROVING THE
SUBORDINATION OF STATUTORY PASS-THROUGH
PAYMENTS TO DEBT SERVICE PAYMENTS ON
REFUNDING BONDS TO BE ISSUED BY THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY FOR THE COUNTY OF RIVERSIDE FOR
THE MID-COUNTY REDEVELOPMENT PROJECT AREA
AND FOR THE DESERT COMMUNITIES
REDEVELOPMENT PROJECT AREA

Action Item:
 (Cont.)
 Resolution No. 1128
 Adopted

17427. President Cioffi asked Agency Counsel Riddell to provide a report on the February 18, 2016 meeting of the Board of Directors of the State Water Contractors, Inc.

Item for Discussion:
 State Water Contractors
 Meeting 02/18/16

Mr. Riddell provided a report on the following items: 1) Board Action Items, 2) Water Supply Report, 3) Energy Report, and 4) Infrastructure Objectives Update.

17428. President Cioffi noted that Board packets included media and public information reports for February 2016.

Public Information –
February 2016

17429. At 8:40 a.m., President Cioffi convened into Closed Session for the purpose of Conference with Legal Counsel, (A) Existing Litigation, pursuant to Government Code Section 54956.9 (d) (1), Agua Caliente Band of Cahuilla Indians vs. Coachella Valley Water District, et al; (B) Existing Litigation, pursuant to Government Code Section 54956.9 (d) (1), Agua Caliente Band of Cahuilla Indians vs. County of Riverside, et al; (C) Existing Litigation, pursuant to Government Code Section 54956.9 (d) (1), Desert Water Agency vs. U.S. Department of Interior; (D) Existing Litigation, pursuant to Government Code Section 54956.9(d)(1), Mission Springs Water District vs. Desert Water Agency; and (E) Conference with Real Property Negotiators, pursuant to Government Code Section 54956.8, Property-APN 502-560-038, Agency Negotiators: Mark S. Krause, General Manager and Steven L. Johnson, Assistant General Manager, Negotiating Parties: Chris Thomsen, New Mesquite HOA, Under Negotiation: Price and terms of possible acquisition;

Closed Session:
 A. Existing Litigation –
 ACBCI vs. CVWD, et
 al
 B. Existing Litigation –
 ACBCI vs. Riverside
 County
 C. Existing Litigation –
 DWA vs. U.S. Dept. of
 Interior
 D. Existing Litigation –
 MSWD vs. DWA
 E. Conference with Real
 Property Negotiators –
 New Mesquite HOA

17430. At 10:09 a.m., President Cioffi reconvened the meeting into open session and announced there was no reportable action.

Reconvene – No
Reportable Action

17431. In the absence of any further business, President Cioffi adjourned the meeting at 10:10 a.m.

James Cioffi, President

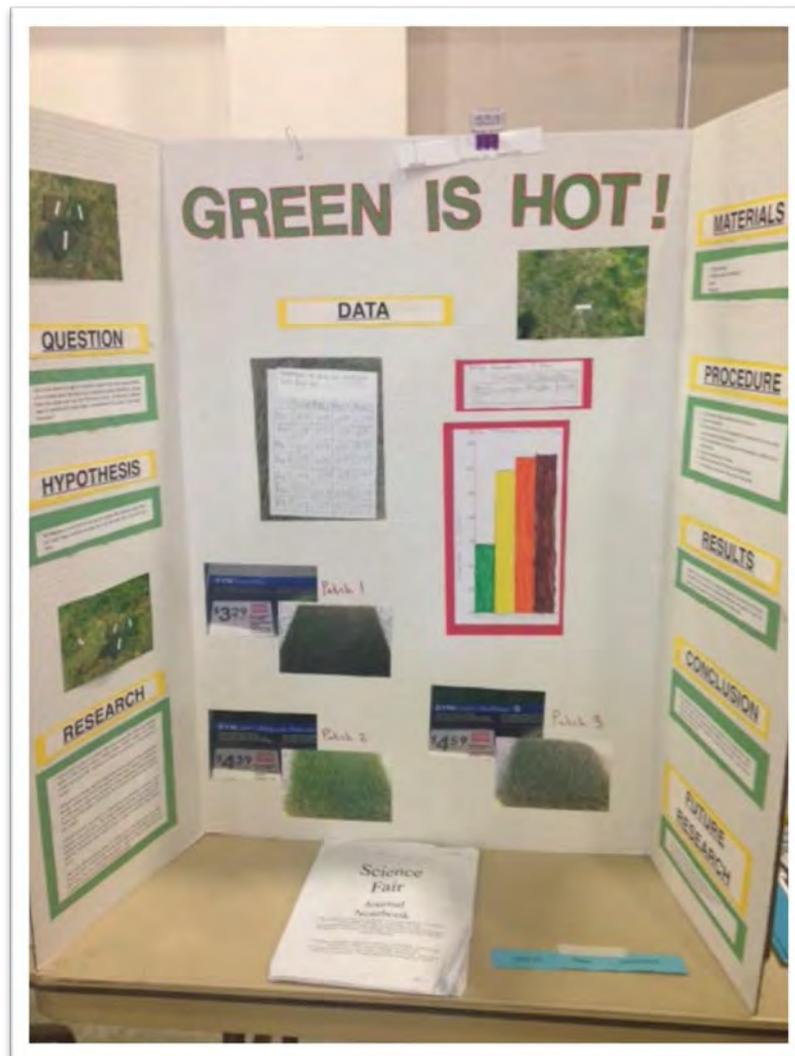
ATTEST:

Kristin Bloomer, Secretary-Treasurer

GENERAL MANAGER'S REPORT MARCH 15, 2016

Once again, DWA sponsored a special award at the 32nd Annual Palm Springs Unified School District's Science Fair. Public Information Associate Vicki Petek helped judge the event this year. Judging was held on February 24th.

The award ceremony was held on February 25th at Desert Hot Springs High School. This year's winner was Jamsheed Nasr, a 5th grader from Katherine Finchy Elementary. His project was called "Green Is Hot", which was based on comparing different kinds of artificial turf and real turf to determine which may reach a higher temperature.



Upcoming community events:

PS Hospitality Association – Thursday, March 17, 11:30 a.m. at the Ace Hotel

One PS Picnic – Saturday, March 19, 11:00 a.m. – 2:00 p.m. at Ruth Hardy Park

Family Fun Fest – Wednesday, March 23, 10:30 a.m. – 12:30 p.m. at Palm Springs Stadium

Four Seasons NORG – Wednesday, April 13, 5:00 p.m. – 6:00 p.m. at the Four Seasons Lodge

Increased **conservation enforcement** has led to about 25 civil penalties observed by DWA representatives.

Recent notifications

Since the new conservation ordinance was adopted: DWA has published the new ordinance in The Public Record and on the Desert Water Agency website. Public Information put the information on the Agency's social media outlets and was interviewed on KMIR, KESQ, KPCC and Joey English radio show. The information was placed in The Desert Sun (article & Valley Voice) and also the Palm Desert Patch. Emails were also sent to the Palm Springs and Cathedral City Chambers of Commerce and to homeowners association contacts on file. Public Information has started reaching out to high volume customers and informing them of the new ordinance and enforcement policy. Public information is also planning a bill insert to customers for March – April.

Comprehensive notifications

Since the restrictions went into effect in June of 2015 the agency has publicized these restrictions through a number of media including: direct mailer to customers; bill inserts; bill on-envelop messaging; billboards (four in place for 9 months); online advertising (KESQ Green Living); television advertising (Time Warner Cable, KESQ/CBS); radio advertising (Joey English); dozens of social media posts; several public presentations; many television, print and radio interviews; DWA and CV Water Counts websites; and more.

Well 24 – New interior and exterior electrical panels were installed by DWA Operations Department. Once panels were installed, interior walls, floor and ceiling were painted by painting contractor.

Exterior electrical panel



Interior electrical panel



Interior piping



Well 26 – New interior and exterior electrical panels were installed by DWA Operations Department. Once panels were installed, interior walls, floor and ceiling were painted by painting contractor.

Exterior electrical panel



Interior electrical panel



Interior piping



Exterior



Well 29 – New interior electrical panels were installed by DWA Operations Department. Once panels were installed, interior walls, floor and ceiling were painted by painting contractor.

Interior electrical panel



Interior piping



Well 38 – Site exterior and interior painting by painting contractor.

Exterior



Interior



Well 41 - Site exterior and interior painting by painting contractor.

Exterior gate



Exterior



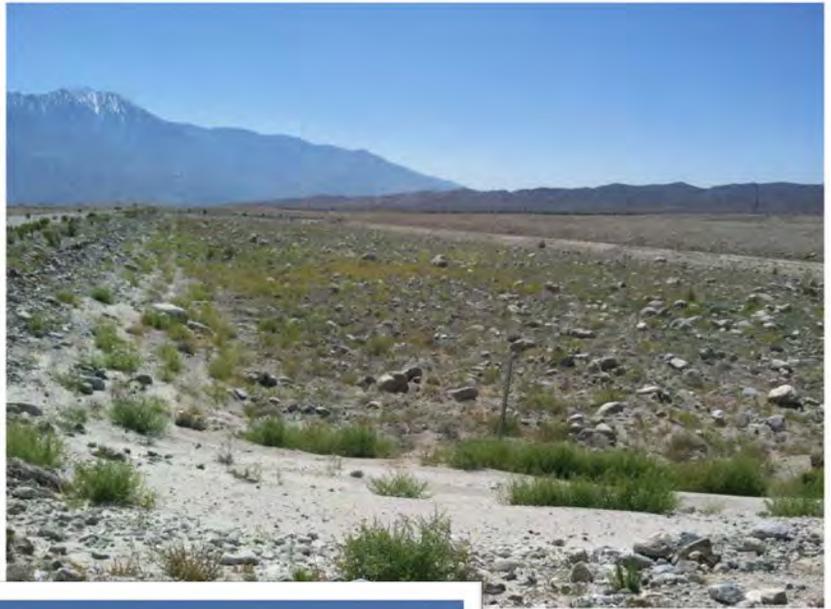
Interior



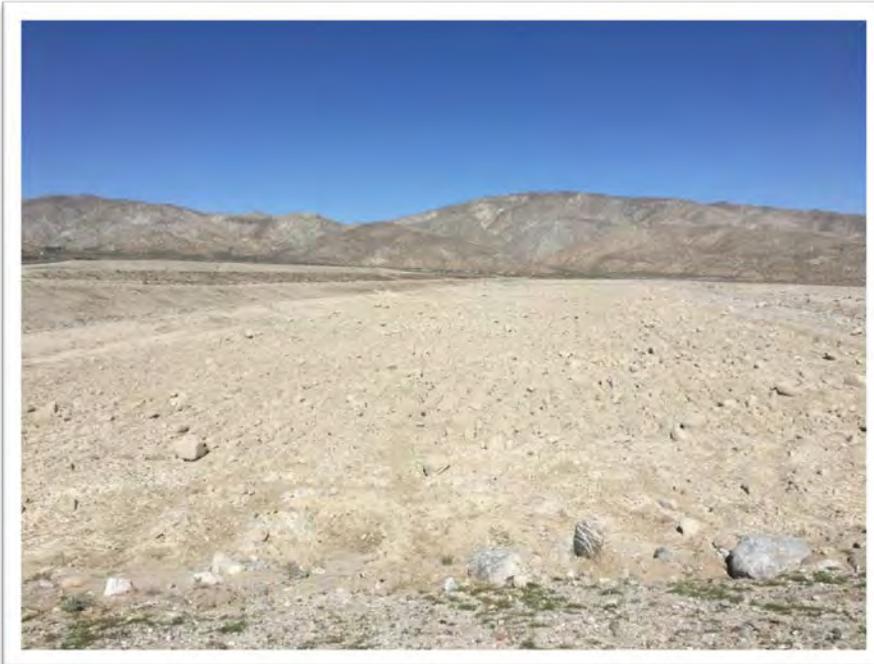
Spreading Basins Clean Up 2016

In April of 2015 the Down to Earth Landscaping crew informed us that the weed growth in the spreading basins was beginning to flourish. We began to monitor it closely and noticed that by June of 2015 small trees were beginning to grow in the spreading basins alongside the weeds and other thirsty shrubbery. In the Fall of 2015 we contracted with Hort Tech Landscaping to take on the task of clearing out all trees, weeds, and other plant life that was growing wildly in, and on the banks of the basins, as they had done for the Agency in 2013. They began on January 18, 2016 and have projected a completion date of approximately 60 days.

Attached are "Before" photos taken of the spreading basins in April and June of 2015 showing the rapid and widespread growth of weeds and trees. Attached are photos of the recent progress made by Hort Tech Landscaping over the last 5 weeks. The "After" photos show what a difference their work has made in helping us prepare the basins to receive water in the near future. The cost of this project is \$39,000.



After photos:



General Manager's Meetings and Activities

Meetings:

- Meeting with Krieger & Stewart, Inc. to discuss this year's Engineer's Report on Groundwater Replenishment.
- Meeting with RWQCB and Meader's Cleaners Insurance Carriers to discuss remediation of hazardous contamination at DWA Well 6.
- Meeting with ACBCI staff to discuss water demands in Section 14 and waterline relocations for parking structure.
- Attended Delta Committee Meeting, Policy Dinner and Monthly SWC meeting in Sacramento.
- Conference Call with DWR regarding SGMA.
- Conference Call with ACBCI staff regarding irrigation water service agreement for northwest property off the 10 FWY and HWY 111.
- Meeting with Parties involved with SGMA in the San Gorgonio Pass Sub-basin.

Activities:

- E-Billing
- Customer Use Report
- Recycled Water Reservoir Coating Failure
- Recycled Water Filter Rehabilitation
- Waterline Relocations for storm drain facilities.
- Whitewater Mutual Easement Developer Conflicts

Minutes
Executive Committee Meeting
March 10, 2016

Directors Present: Jim Cioffi, Joe Stuart

Staff Present: Mark Krause, Martin Krieger, Steve Johnson

1. Discussion Items

A. Review Agenda for March 15, 2016 Regular Board Meeting

The proposed agenda for the March 15, 2016 Regular Board meeting was reviewed.

B. LAFCO Election

Staff notified the Committee about the upcoming election for LAFCO. President Cioffi, who serves as an alternate is not interested in re-election, will seek interest from the Board and place consideration for a candidate on a future Board agenda.

2. Other

A. Sewer Hookups

There was discussion on the Elks Club and Travel Lodge sewer hookups.

3. Adjourn

DESERT WATER AGENCY
STATEMENT OF CASH RECEIPTS AND EXPENDITURES

OPERATING ACCOUNT

FEBRUARY 2016

INVESTED
RESERVE FUNDS
\$13,315,813.03

BALANCE	FEBRUARY 1, 2016	(\$372,336.47)	
WATER SALES		\$1,288,245.26	
RECLAMATION SALES		64,478.72	
WASTEWATER RECEIPTS		71,900.71	
POWER SALES		0.00	
METERS, SERVICES, ETC.		10,016.00	
REIMBURSEMENT – GENERAL FUND		135,634.84	
REIMBURSEMENT – WASTEWATER FUND		3,488.90	
ACCOUNTS RECEIVABLE – OTHER		16,981.88	
CUSTOMER DEPOSITS – SURETY		5,995.00	
CUSTOMER DEPOSITS – CONST.		0.00	
LEASE REVENUE		3,368.43	
INTEREST RECEIVED ON INV. FDS.		0.00	
FRONT FOOTAGE FEES		0.00	
BOND SERVICE & RESERVE FUND INT		0.00	
MISCELLANEOUS		<u>16,006.37</u>	
TOTAL RECEIPTS		\$1,616,116.11	
PAYMENTS			
PAYROLL CHECKS		\$313,416.08	
PAYROLL TAXES		159,103.33	
ELECTRONIC TRANSFERS		109,699.16	
CHECKS UNDER \$10,000.00		443,409.86	
CHECKS OVER \$10,000.00 – SCH. #1		1,289,301.84	
CANCELLED CHECKS AND FEES		<u>11,116.18</u>	
TOTAL PAYMENTS		<u>\$2,326,046.45</u>	
NET INCOME		(\$709,930.34)	
BOND SERVICE ACCOUNT			
MONTHLY WATER SALES		\$0.00	
EXCESS RETURNED BY B/A		<u>\$0.00</u>	
BOND SERVICE FUND		\$0.00	
INVESTED RESERVE FUNDS			
FUNDS MATURED		\$800,000.00	
FUNDS INVESTED – SCH. #3		<u>758,000.00</u>	
NET TRANSFER		\$42,000.00	(\$42,000.00)
BALANCE	FEBRUARY 29, 2016	(\$1,040,266.81)	\$13,273,813.03

OPERATING ACCOUNT

SCHEDULE #1-CHECKS OVER \$10,000

CHECK #	NAME	DESCRIPTION	AMOUNT
110670	Z&L PAVING, INC	PAVING	\$25,358.80
110690	BEST BEST & KRIEGER LLP	LEGAL FEES	\$23,061.71
110720	JONES BROS CONSTRUCTION CO.	CONTRACT PAYMENT - ZONE 1040 16" MAIN (W/O 05-570--16)	\$66,772.42
110732	PROFORMA SOCIAL INC	WATER BILLS/ENVELOPES	\$13,803.80
110812	DESERT WATER AGENCY - WASTEWATER	WASTEWATER REVENUE BILLING FOR JANUARY 2016	\$80,550.27
110851	BADGER METER INC	WATER SERVICE SUPPLIES	\$56,613.60
110853	BANK OF SACRAMENTO	RETENTION PAYMENT - ZONE 1040 RESERVOIR (W/O # 05-582-R-33)	\$12,430.00
110855	BEST BEST & KRIEGER LLP	LEGAL FEES	\$35,874.49
110857	BORDEN EXCAVATING INC	CONTRACT PAYMENT - 2015/2016 PIPELINE REPLACEMENT - (W/O #15-111 SERIES)	\$212,825.72
110858	BRITHINEE ELECTRIC INC	WELL MAINTENANCE - WELL # 23	\$10,623.31
110864	CANYON SPRINGS ENTERPRISES DBA	CONTRACT PAYMENT - ZONE 1040 RESERVOIR (W/O # 05-582-R-33)	\$236,170.00
110872	CORIX WATER PRODUCTS (US) INC	WATER SERVICE SUPPLIES	\$11,000.96
110878	DOWN TO EARTH LANDSCAPING	LANDSCAPE MAINTENANCE	\$28,492.08
110879	ECOWISE LANDCARE	SMART CONTROLLER INSTALLATIONS	\$18,225.96
110885	FM THOMAS AIR CONDITIONING INC	AIR CONDITIONING MAINTENANCE - OPERATIONS CENTER	\$12,295.00
110891	FIONA HUTTON & ASSOCIATES	PUBLIC INFORMATION - CONSULTING SERVICES	\$10,342.07
110905	INLAND WATER WORKS SUPPLY CO	WATER SERVICE SUPPLIES	\$49,315.45
110906	J COLON COATINGS INC	CONTRACT PAYMENT - RESERVOIR MAINTENANCE	\$50,996.00
110915	KRIEGER & STEWART INC	ENGINEERING	\$80,647.87
110920	MCKEEVER WATERWELL & PUMP INC	MAINTENANCE - WELL #20	\$78,104.00
110941	SOUTHERN CALIFORNIA EDISON CO	POWER	\$148,337.75
110948	THATCHER COMPANY OF CALIFORNIA	WATER SERVICE SUPPLIES	\$14,056.26
110961	Z&L PAVING, INC	PAVING	\$13,404.32

== TOTAL

\$1,289,301.84

**DESERT WATER AGENCY
OPERATING FUND - LISTING OF INVESTMENTS
FEBRUARY 29, 2016**

PURCH DATE	NAME	DESCRIPTION	MATURITY DATE	COST	PAR VALUE	MARKET VALUE	YIELD TO MATURITY	CALLABLE STATUS
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Local Agency Investment Fund

06-30-83	State of California	LAIF	Open	\$ 9,019,113.03	\$ 9,019,113.03	\$ 9,019,113.03	0.490%	-
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Certificates of Deposit

09-28-15	Union Bank	Capital Bank CD	09-28-17	\$ 250,000.00	\$ 250,000.00	\$ 250,490.00	1.050%	Bullet
01-15-16	Union Bank	Union Bank CD	01-13-17	\$ 500,000.00	\$ 500,000.00	\$ 499,985.00	0.830%	Bullet

Total Certificates of Deposit				\$ 750,000.00	\$ 750,000.00	\$ 750,475.00		
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Commercial Paper

04-30-12	Union Bank	General Electric	04-27-17	\$ 1,004,700.00	\$ 1,000,000.00	\$ 1,017,930.00	2.300%	Bullet
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Total Commerical Paper				\$ 1,004,700.00	\$ 1,000,000.00	\$ 1,017,930.00		
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Government Agency

05-21-15	Union Bank	FHLMC (Callable 5-21-16)	05-21-18	\$ 500,000.00	\$ 500,000.00	\$ 498,795.00	1.200%	Qtrly
10-15-15	Union Bank	FHLMC STEP (Callable 4-15-16)	10-15-18	\$ 500,000.00	\$ 500,000.00	\$ 500,170.00	0.750%	Qtrly
11-25-15	Union Bank	FHLMC (Callable 5-25-16)	11-25-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,740.00	1.500%	Qtrly
12-29-15	Union Bank	FHLB (Callable 6-29-16)	06-29-18	\$ 500,000.00	\$ 500,000.00	\$ 500,485.00	1.250%	1 Time

Total Government Agency				\$ 2,500,000.00	\$ 2,500,000.00	\$ 2,500,190.00		
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Weighted Mean YTM 0.791%

TOTAL INVESTED @ 02/29/16	\$ 13,273,813.03	\$ 13,269,113.03	\$ 13,287,708.03
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BALANCE @ 06/30/15	\$ 15,055,930.48
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INCREASE (DECREASE)	(\$1,782,117.45)
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DESERT WATER AGENCY
STATEMENT OF CASH RECEIPTS AND EXPENDITURES

GENERAL ACCOUNT

FEBRUARY 2016

INVESTED
RESERVE FUNDS
\$103,660,451.90

BALANCE	FEBRUARY 1, 2016	(\$2,114,569.72)	
			\$103,660,451.90
* TAXES - RIVERSIDE COUNTY		310,967.25	
* INTEREST EARNED - INV. FUNDS		53,799.67	
GROUNDWATER REPLEN. ASSESSMENT		20,654.77	
REIMBURSEMENT - OPERATING FUND		0.00	
REIMBURSEMENT - CVWD MGMT AGRMT		0.00	
STATE WATER PROJECT REFUNDS		0.00	
REIMB - CVWD - WHITEWATER HYDRO		2,370.68	
POWER SALES - WHITEWATER		0.00	
MISCELLANEOUS		0.00	
		<hr/>	
	TOTAL RECEIPTS	\$387,792.37	
PAYMENTS			
CHECKS UNDER \$10,000.00		13,687.40	
CHECKS OVER \$10,000.00 - SCH. #1		829,812.41	
CANCELLED CHECKS AND FEES		0.00	
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	TOTAL PAYMENTS	\$843,499.81	
NET INCOME		(\$455,707.44)	
INVESTED RESERVE FUNDS			
FUNDS MATURED		11,711,110.00	
FUNDS INVESTED - SCH. #2		9,110,950.00	
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	NET TRANSFER	\$2,600,160.00	(\$2,600,160.00)
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BALANCE	FEBRUARY 29, 2016	\$29,882.84	\$101,060,291.90
* INCLUSIVE TO DATE			
		TAXES	INTEREST
RECEIPTS IN FISCAL YEAR		\$12,643,179.09	\$562,327.47
RECEIPTS IN CALENDAR YEAR		\$6,770,050.47	\$105,838.96

DESERT WATER AGENCY
GENERAL ACCOUNT

SCHEDULE #1 - CHECKS OVER \$10,000

CHECK #	NAME	DESCRIPTION	AMOUNT
8723	DESERT WATER AGENCY-OPERATING	P/R & EXP REIMBURSEMENT FOR JANUARY 2016	\$134,000.16
8726	US GEOLOGICAL SURVEY	JOINT FUNDING AGREEMENT QUARTERLY BILLING - (08/01/2015 - 10/31/2015)	\$13,606.25
8727	STATE OF CA. DEPT. OF WATER RESOURCES	STATE WATER PROJECT - FEBRUARY 2016	\$682,206.00

** TOTAL

\$829,812.41

**DESERT WATER AGENCY
GENERAL FUND - LISTING OF INVESTMENTS
FEBRUARY 29, 2016**

PURCHASE DATE	NAME	DESCRIPTION	MATURITY DATE	COST	PAR VALUE	MARKET VALUE	YIELD TO MATURITY	CALLABLE STATUS
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Local Agency Investment Fund

06-30-83	State of California	LAIF	Open	\$ 36,589,870.23	\$ 36,589,870.23	\$ 36,589,870.23	0.490%	
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Certificates of Deposit

01-25-13	Union Bank	General Electric Capital Bank CD	01-25-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 998,660.00	1.100%	Bullet
12-04-14	Ladenburg Thalmann	AEX Centurion Bank CD	12-05-16	\$ 245,000.00	\$ 245,000.00	\$ 245,878.08	1.050%	Bullet
09-28-15	Union Bank	Capital Bank CD	09-28-17	\$ 250,000.00	\$ 250,000.00	\$ 250,490.00	1.050%	Bullet
10-07-15	Ladenburg Thalmann	Goldman Sachs CD	04-07-18	\$ 245,000.00	\$ 245,000.00	\$ 246,687.31	1.350%	Bullet
10-29-15	Ladenburg Thalmann	Ally Bank CD	10-30-17	\$ 245,000.00	\$ 245,000.00	\$ 246,348.97	1.150%	Bullet
11-04-15	Ladenburg Thalmann	Capital One NA CD	11-06-17	\$ 245,000.00	\$ 245,000.00	\$ 246,158.85	1.100%	Bullet
11-04-15	Ladenburg Thalmann	Discover CD	11-06-17	\$ 245,000.00	\$ 245,000.00	\$ 246,361.71	1.150%	Bullet
01-15-16	Union Bank	Union Bank CD	01-13-17	\$ 1,000,000.00	\$ 1,000,000.00	\$ 999,970.00	0.830%	Bullet

Total Certificates of Deposit \$ 3,475,000.00 \$ 3,475,000.00 \$ 3,480,554.92

Commercial Paper

05-09-11	Stifel (D.A.D)	General Electric	05-09-16	\$ 1,000,900.00	\$ 1,000,000.00	\$ 1,004,110.00	2.950%	Bullet
06-07-11	Union Bank	UB Bank Note	06-06-16	\$ 2,000,000.00	\$ 2,000,000.00	\$ 2,010,680.00	3.000%	Bullet
10-18-11	Union Bank	General Electric	05-09-16	\$ 999,810.00	\$ 1,000,000.00	\$ 1,004,110.00	2.950%	Bullet
12-16-13	Stifel	General Electric	05-15-18	\$ 587,600.00	\$ 500,000.00	\$ 548,710.00	6.300%	Bullet
04-27-15	Ladenburg Thalmann	Apple Inc.	05-03-18	\$ 997,920.00	\$ 1,000,000.00	\$ 997,446.00	1.000%	Bullet
02-01-16	Union Bank	US Bank Note (Callable 12-29-17)	01-29-18	\$ 1,000,950.00	\$ 1,000,000.00	\$ 1,001,090.00	1.450%	1 Time

Total Commercial Paper \$ 6,587,180.00 \$ 6,500,000.00 \$ 6,566,146.00

Government Agency

09-19-12	Stifel (D.A.D)	FNMA	09-19-17	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,430.00	0.950%	1 Time
10-03-12	Stifel (D.A.D)	FNMA	10-03-16	\$ 1,000,000.00	\$ 1,000,000.00	\$ 999,650.00	0.650%	1 Time
10-10-12	Ladenburg Thalmann	FFCB (Callable Continuous)	10-10-17	\$ 1,000,000.00	\$ 1,000,000.00	\$ 999,670.00	0.900%	Continuous
10-11-12	Stifel (D.A.D)	FFCB (Callable Continuous)	07-11-17	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	0.820%	Continuous
10-17-12	Ladenburg Thalmann	FHLB (Callable 4-17-16)	04-17-17	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	0.800%	Qtrly
12-05-12	Ladenburg Thalmann	FFCB (Callable Continuous)	06-05-17	\$ 999,250.00	\$ 1,000,000.00	\$ 1,000,070.00	0.770%	Continuous
12-20-12	Ladenburg Thalmann	FFCB (Callable Continuous)	03-20-17	\$ 998,700.00	\$ 1,000,000.00	\$ 1,000,040.00	0.670%	Continuous
12-28-12	Stifel (D.A.D)	FHLB (Callable Continuous)	12-28-17	\$ 1,000,000.00	\$ 1,000,000.00	\$ 997,230.00	0.840%	Continuous
02-05-13	Ladenburg Thalmann	FHLB (Callable Continuous)	02-05-18	\$ 666,666.67	\$ 666,666.67	\$ 666,726.65	1.000%	Continuous
02-14-13	Stifel (D.A.D)	FHLMC (Callable 5-14-16)	02-14-18	\$ 999,750.00	\$ 1,000,000.00	\$ 1,001,620.00	1.000%	Qtrly
02-28-13	Ladenburg Thalmann	FNMA (Callable 5-28-16)	02-28-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,250.00	1.150%	Qtrly
03-12-13	Stifel (D.A.D)	FFCB (Callable Continuous)	03-12-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 996,730.00	1.030%	Continuous
03-27-13	Stifel (D.A.D)	FHLB (Callable 3-27-16)	03-27-18	\$ 749,625.00	\$ 750,000.00	\$ 750,067.50	1.130%	Qtrly
03-27-13	Ladenburg Thalmann	FNMA (Callable 3-27-16)	03-27-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 997,730.00	1.050%	Qtrly
05-07-13	Ladenburg Thalmann	FFCB (Callable Continuous)	11-07-16	\$ 999,850.00	\$ 1,000,000.00	\$ 998,090.00	0.540%	Continuous
06-13-13	Ladenburg Thalmann	FHLB (Callable 3-13-16)	06-13-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,050.00	1.100%	Qtrly
07-29-14	Stifel (D.A.D)	FNMA (Callable 7-29-16)	10-29-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,004,840.00	1.500%	1 Time
09-29-14	Union Bank	FHLMC	09-29-16	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,498,260.00	0.650%	1 Time
04-13-15	Ladenburg Thalmann	FHLB (Callable 4-13-16)	07-13-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,250.00	1.200%	1 Time

**DESERT WATER AGENCY
GENERAL FUND - LISTING OF INVESTMENTS
FEBRUARY 29, 2016**

PURCHASE DATE	NAME	DESCRIPTION	MATURITY DATE	COST	PAR VALUE	MARKET VALUE	YIELD TO MATURITY	CALLABLE STATUS
Government Agency								
05-14-15	Stifel	FHLMC (Callable 5-14-16)	02-14-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 998,280.00	1.050%	Qtrly
06-10-15	Union Bank	FHLMC (Callable 3-10-16)	06-10-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,300.00	1.600%	Qtrly
06-23-15	Ladenburg Thalmann	FHLMC	06-23-17	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,176.00	0.900%	1 Time
06-30-15	Stifel	FHLB (Callable 6-24-16)	12-24-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,540.00	1.400%	1 Time
09-15-15	Ladenburg Thalmann	FHLMC (Callable 3-15-16)	06-15-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,234.00	1.250%	Qtrly
09-28-15	Ladenburg Thalmann	FHLMC (Callable 3-28-16)	06-28-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,518.00	1.550%	Qtrly
09-30-15	Stifel	FHLB STEP (Callable 3-30-16)	09-30-20	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,480.00	1.000%	Qtrly
09-30-15	Union Bank	FFCB (Callable Continuous)	09-30-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,020.00	1.530%	Continuous
10-02-15	Stifel	FHLB (Callable 10-2-17)	10-02-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,005,230.00	1.450%	Continuous
10-15-15	Union Bank	FHLMC STEP (Callable 4-15-16)	10-15-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,340.00	0.750%	Qtrly
10-15-15	Ladenburg Thalmann	FHLMC (Callable 4-15-16)	07-15-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,230.00	1.500%	Qtrly
10-29-15	Stifel	FHLB (Callable 4-29-16)	10-29-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,010.00	1.120%	Qtrly
10-29-15	Union Bank	FHLMC (Callable 4-29-16)	10-29-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,050.00	1.300%	Qtrly
10-29-15	Stifel	FHLMC STEP (Callable 4-29-16)	10-29-20	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,060.00	1.650%	Qtrly
11-23-15	Ladenburg Thalmann	FHLMC (Callable 5-23-16)	05-23-18	\$ 996,000.00	\$ 1,000,000.00	\$ 998,864.00	1.000%	Qtrly
11-23-15	Ladenburg Thalmann	FHLMC (Callable 5-23-16)	02-23-18	\$ 999,500.00	\$ 1,000,000.00	\$ 1,000,096.00	1.000%	Qtrly
11-24-15	Ladenburg Thalmann	FHLMC (Callable 5-24-16)	05-24-19	\$ 998,900.00	\$ 1,000,000.00	\$ 999,027.00	1.350%	Qtrly
11-25-15	Union Bank	FHLMC (Callable 5-25-16)	11-25-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,740.00	1.500%	Qtrly
11-25-15	Stifel	FNMA (Callable 11-25-16)	11-25-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,002,340.00	1.500%	Qtrly
11-30-15	Stifel	FHLMC (Callable 5-23-16)	11-23-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,480.00	1.200%	Qtrly
12-16-15	Stifel	FHLB STEP (Callable 3-16-16)	12-16-20	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,170.00	1.250%	Qtrly
12-28-15	Ladenburg Thalmann	FHLB (Callable 6-28-16)	09-28-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,050.00	1.350%	Qtrly
12-28-15	Stifel	FHLB (Callable 6-28-16)	12-28-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,020.00	1.450%	Qtrly
12-28-15	Ladenburg Thalmann	FHLMC (Callable 3-28-16)	12-28-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,518.00	1.450%	Qtrly
12-29-15	Union Bank	FHLB (Callable 6-29-16)	06-29-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,970.00	1.250%	1 Time
12-30-15	Ladenburg Thalmann	FHLMC STEP (Callable 3-30-16)	12-30-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,303.00	1.000%	Qtrly
01-15-16	Ladenburg Thalmann	FHLB (Callable 4-15-16)	01-15-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,240.00	1.500%	Qtrly
01-27-16	Stifel	FHLB (Callable 7-27-16)	07-27-18	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,530.00	1.300%	1 Time
01-29-16	Ladenburg Thalmann	FHLB (Callable 7-29-16)	07-29-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,690.00	1.650%	Qtrly
01-29-16	Ladenburg Thalmann	FHLB (Callable 7-29-16)	04-29-20	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,330.00	1.750%	Qtrly
01-29-16	Stifel	FHLMC STEP (Callable 4-19-16)	01-29-21	\$ 1,000,000.00	\$ 1,000,000.00	\$ 999,120.00	1.000%	Qtrly
02-26-16	Ladenburg Thalmann	FHLMC (Callable 5-26-16)	02-26-20	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,001,993.00	1.625%	Qtrly
02-26-16	Ladenburg Thalmann	FNMA STEP (Callable 8-26-16)	02-26-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,330.00	1.000%	Qtrly
02-26-16	Stifel	FNMA STEP (Callable 8-26-16)	02-26-19	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,499,595.00	0.600%	1 Time
02-26-16	Ladenburg Thalmann	FNMA (Callable 8-26-16)	02-26-19	\$ 1,000,000.00	\$ 1,000,000.00	\$ 998,890.00	1.250%	Qtrly
Total Government Agency				\$ 54,408,241.67	\$ 54,416,666.67	\$ 54,431,468.15		
							Weighted Mean YTM	1.008%
TOTAL INVESTED @ 02/29/16				\$ 101,060,291.90	\$ 100,981,536.90	\$ 101,068,039.30		
BALANCE @ 06/30/15				\$ 100,021,864.49				
INCREASE OR (DECREASE)				\$ 1,038,427.41				

DESERT WATER AGENCY
STATEMENT OF CASH RECEIPTS AND EXPENDITURES

WASTEWATER ACCOUNT

FEBRUARY 2016

INVESTED
RESERVE FUNDS
\$960,901.12

BALANCE	FEBRUARY 1, 2016	\$8,794.55	
			\$960,901.12
	ACCOUNTS RECEIVABLE - OTHER	\$0.00	
	CUSTOMER DEPOSITS - CONSTRUCTION	0.00	
	INTEREST EARNED - INVESTED FUNDS	40.09	
	WASTEWATER REVENUE	80,550.27	
	SEWER CAPACITY CHARGES	6,017.21	
	MISCELLANEOUS	0.00	
	TOTAL RECEIPTS	\$86,607.57	
	PAYMENTS		
	CHECKS UNDER \$10,000.00	\$11,390.74	
	CHECKS OVER \$10,000.00 - SCH. #1	48,964.98	
	CANCELLED CHECKS AND FEES	0.00	
	TOTAL PAYMENTS	<u>\$60,355.72</u>	
	NET INCOME	\$26,251.85	
	INVESTED RESERVE FUNDS		
	FUNDS MATURED	\$0.00	
	FUNDS INVESTED - SCH. #2	34,000.00	
	NET TRANSFER	(\$34,000.00)	\$34,000.00
BALANCE	FEBRUARY 29, 2016	\$1,046.40	\$994,901.12

DESERT WATER AGENCY
WASTEWATER ACCOUNT
SCHEDULE #1 - CHECKS OVER \$10,000

CHECK #	NAME	DESCRIPTION	AMOUNT
2424	COACHELLA VALLEY WATER DISTRICT	WASTEWATER REVENUE BILLING FOR JANUARY 2016	\$48,964.98
		** TOTAL	\$48,964.98

**DESERT WATER AGENCY
WASTEWATER FUND - LISTING OF INVESTMENTS
FEBRUARY 29, 2016**

PURCH DATE	NAME	DESCRIPTION	MATURITY DATE	COST	PAR VALUE	MARKET VALUE	YIELD TO MATURITY
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Local Agency Investment Fund

06-30-83	State of California	LAIF	Open	\$	994,901.12	\$	994,901.12	\$	994,901.12	0.490%
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TOTAL INVESTED @ 02/29/16	\$	994,901.12	\$	994,901.12	\$	994,901.12
BALANCE @ 06/30/15	\$	862,257.70				
INCREASE OR (DECREASE)	\$	132,643.42				

DESERT WATER AGENCY - OPERATING FUND
COMPARATIVE EARNINGS STATEMENT

	THIS MONTH		FISCAL YEAR TO DATE		VARIANCE		
	THIS YEAR	LAST YEAR	THIS YEAR	LAST YEAR	BUDGET	YTD	PCT
OPERATING REVENUES							
WATER SALES	1,264,611.62	1,587,835.26	14,627,292.39	17,261,280.93	13,178,025.00	1,449,267.39	11
RECLAMATION SALES	43,751.24	59,050.06	923,419.99	974,998.32	967,700.00	44,280.01	5-
POWER SALES	.00	325.36	6,102.52	19,703.25	20,000.00	13,897.48	69-
OTHER OPER REVENUE	36,123.22	170,629.52	946,651.74	936,407.38	814,000.00	132,651.74	16
TOTAL OPER REVENUES	1,344,486.08	1,817,840.20	16,503,466.64	19,192,389.88	14,979,725.00	1,523,741.64	10
OPERATING EXPENSES							
SOURCE OF SUPPLY EXP	18,223.51	15,103.32	1,676,519.50	2,036,115.56	2,051,000.00	374,480.50	19-
PUMPING EXPENSE	260,485.07	179,538.70	2,107,765.17	2,328,122.71	2,125,200.00	17,434.83	1-
REGULATORY WATER TREAT	36,997.73	35,977.30	318,701.12	340,523.56	345,800.00	27,098.88	8-
TRANS & DIST EXPENSE	258,523.71	128,633.13	1,942,618.12	1,278,042.13	2,175,736.00	233,117.88	11-
CUSTOMER ACT EXPENSE	81,959.67	68,670.91	586,809.83	604,959.96	563,050.00	23,759.83	4
ADMIN & GEN EXPENSE	935,591.48	614,699.73	6,151,030.31	5,326,535.36	5,843,900.00	307,130.31	5
REGULATORY EXPENSE	3,122.01	8,382.78	92,939.41	129,569.41	140,200.00	47,260.59	34-
SNOW CREEK HYDRO EXP	2,375.04	1,718.56	27,586.65	19,485.34	26,800.00	786.65	3
RECLAMATION PLNT EXP	101,648.43	21,819.35	552,551.45	408,694.72	581,664.00	29,112.55	5-
SUB-TOTAL	1,692,682.63	1,074,543.78	13,456,521.56	12,482,048.75	13,853,350.00	396,828.44	3-
OTHER OPER EXPENSES							
DEPRECIATION	442,457.06	438,186.50	3,634,633.79	3,574,212.47	3,784,000.00	149,366.21	4-
SERVICES RENDERED	12,312.77	9,516.61	145,682.55	99,016.64	92,000.00	53,682.55	58
DIR & INDIR CST FOR WO	207,911.44	140,564.65	1,358,743.99	1,245,743.08	575,200.00	783,543.99	136
TOTAL OPER EXPENSES	1,939,541.02	1,381,682.24	15,878,093.91	14,909,534.78	17,154,150.00	1,276,056.09	7-
NET INCOME FROM OPERATIONS	595,054.94	436,157.96	625,372.73	4,282,855.10	2,174,425.00	2,799,797.73	129-
NON-OPERATING INCOME (NET)							
RENTS	3,368.43	3,348.44	58,614.47	58,459.52	58,600.00	14.47	0
INTEREST REVENUES	8,096.88	6,065.84	60,148.13	55,015.17	57,000.00	3,148.13	6
OTHER REVENUES	120.00	500.00	132,617.52	32,042.08	9,000.00	123,617.52	0
GAINS ON RETIREMENT	.00	473.35	.00	473.35	600.00	600.00	100-
DISCOUNTS	.00	461.03	375.00	2,560.08	2,400.00	2,025.00	84-
PR. YEAR EXPENSES	.00	.00	522.10	33,469.52	.00	522.10	0
LOSS ON RETIREMENTS	28,044.92	4,848.63	47,861.35	8,104.17	11,000.00	36,861.35	335
TOTAL NON-OPER INCOME	16,459.61	6,000.03	204,415.87	172,035.55	116,600.00	87,815.87	75
TOTAL NET INCOME	611,514.55	442,157.99	829,788.60	4,454,890.65	2,057,825.00	2,887,613.60	140-

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS**

MARCH 15, 2016

**RE: AUTHORIZATION TO EXECUTE AN INFORMED WRITTEN CONSENT
TO ALLOW AGENCY ATTORNEYS TO ASSIST DEPARTMENT OF
WATER RESOURCES IN PROCEEDINGS BEFORE THE STATE
WATER RESOURCES CONTROL BOARD**

The California Department of Water Resources has filed a petition with the State Water Resources Control Board to approve an additional point of diversion on the Sacramento River, north of the Delta, to allow SWP water to be delivered through facilities that DWR hopes to construct for the transportation of water under the Delta pursuant to the Bay Delta Conversation Plan. The petition was prepared by DWR legal staff in-house. However, DWR now would like to engage an outside firm to assist DWR in the proceedings before the State Board on that petition. DWR has asked Best Best & Krieger if it can assist DWR in those proceedings before the State Board.

Best Best & Krieger serves as general counsel to Desert Water Agency and to several other State Water Contractors. BB&K believes that all of them support DWR in its petition filed with the State Board. However, because DWA is either adverse or potentially adverse to DWR on other unrelated matters, such as disputed invoice items and upcoming negotiations over proposed amendments to the Water Supply Contract, BB&K would need informed written consents from DWR and from the State Water Contractor clients that BB&K already represents in order to assist DWR in the proceedings before the State Board. DWR has informed BB&K that it is willing to sign any conflict waiver letter that may be requested to allow BB&K to continue representing its other clients as to matters in which DWR has an interest.

Staff requests that the Board authorize the General Manager to sign an informed consent letter to allow BB&K to assist DWR in the upcoming proceedings before the State Board on its petition seeking approval of an additional point of diversion to accommodate the proposed Delta improvements, conditional on DWR also signing a comprehensive informed written consent that allows BB&K to represent the Agency as to any other matter in which DWR may be an adverse or interested party.

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS**

MARCH 15, 2016

RE: FEBRUARY 2016 WATER USE REDUCTION FIGURES

Desert Water Agency and its customers achieved a 24.6 percent reduction in total water production during February 2016 compared to the same month in 2013 – the baseline year used by the State Water Resources Control Board (State Water Board) to measure statewide conservation achievements. Desert Water Agency’s cumulative water savings June through February is 27.2 percent.

To comply with Governor Brown’s November 13, 2016 Executive Order to continue reducing statewide water use, the State Water Board extended mandatory restrictions and updated mandatory conservation goals for some urban areas based on factors like climate, growth and sustainable supply. The adopted regulations require DWA to achieve a mandatory 32 percent reduction. For reports submitted to the state for consumption February through October 2016, the mandatory reduction will be lowered to 32 percent pursuant to the extension of the emergency regulation. These targets will be discussed by the State Water Board again before the end of May.

Below is additional information reported to the State Board for February 2016.

Water Production for February 2016	1,430.8 AF
Water Production for February 2013	1,897.8 AF
Quantity of potable water delivered for all commercial, industrial, and institutional users for the reporting month	467.6 AF
The percentage of the Total Monthly Potable Water Production going to residential use only for the reporting month	63%
Population (inclusive of seasonal residents)	105,133
Estimated R-GPCD	96
How many public complaints of water waste or violation of conservation rules were received during the reporting month?	74
How many contacts (written/ verbal) were made with customers for actual/ alleged water waste or for a violation of conservation rules?	57

How many formal warning actions (e.g.: written notifications, warning letters, door hangers) were issued for water waste or for a violation of conservation rules?	56
How many penalties were issued for water waste or for a violation of conservation rules?	0
<p>Comments: Desert Water Agency streamlined its water use violation policy starting March 1, 2015.</p> <p>The Agency's service area is highly seasonal making population analysis a complex task. The State Water Resources Control Board (State Board) analyzes data on a per capita basis. Historically, DWA has submitted data based on the permanent population of the service area; however that data does not accurately reflect water use in DWA's service area which has a highly seasonal population. Based on local data, the correct population is higher than previously reported. The Residential Gallons Per Capita Per Day (R-GPCD) is being submitted using the corrected population.</p> <p>Additionally, reporting data to the state on a monthly basis is a challenge due to the corrections in meter reads that occur in the following month(s). Desert Water Agency is revising its previous production numbers to account for this issue. This is one reason January's production number did not show a comparable level of conservation to other local agencies.</p> <p>DWA would like it noted that the amount of fresh water outflow to the ocean during the month of February was 1,526,138.2 acre feet.</p> <p>Additionally, since it began recycling water Desert Water Agency has reclaimed 86,674 acre feet. If our recycled water production for February was taken into consideration against our potable production, the conservation achieved would have been several percentage points higher.</p>	

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS**

MARCH 15, 2016

RE: LAKE PERRIS SEISMIC REMEDIATION UPDATE

The Department of Water Resources (DWR), Operations Maintenance and Engineering Committee have issued their Perris Dam, Seismic remediation of embankment, contract update for February 2016. The highlights of the attached report are 44.8% of the work has been completed with 46.4% of the time elapsed. The contractor has resumed work on the left abutment haul road; however a change order is expected regarding the delays and revised milestones. The quarry rock processing plant continues to produce high percentages of unsuitable materials. This too is expected to result in a change order resulting from a change of conditions claim.

To date there have been \$761,192 in change orders submitted. This amounts to 1% of the original contract. This amount does not include anticipated change orders resulting from work being performed on the left abutment haul road nor the quarry rock processing plant.



State Water Contractors - OME Committee Meeting

March 3, 2016

Perris Dam – Seismic Remediation of Embankment – Contract Update
Specification 14-03 Contract No. C51484



Contract Summary

Notice To Begin Work:	August 20, 2014
Contract Completion:	November 20, 2017
Pulice Construction:	\$75,538,626
Engineers Estimate:	\$83,000,000
February Update:	44.8% of Work Completed, 46.4% Time Elapsed

Completed Work

- Lake Bed Haul Road Cleared
- Lake Borrow Site Cleared
- Left Abutment Road Widened
- Left Abutment Slope Stabilized

Safety

DWR and Contractor continue to review left abutment safety hazard concerns. Contractor has successfully completed over 68 work days without a lost-time incident. 1 lost-time incident on project.

On-Going Work

Placement of Compacted Berm (R&R area), Left Abutment Road Blasting, Rock Processing, CDSM – Mixing, Curing, Core Sampling, Trimming

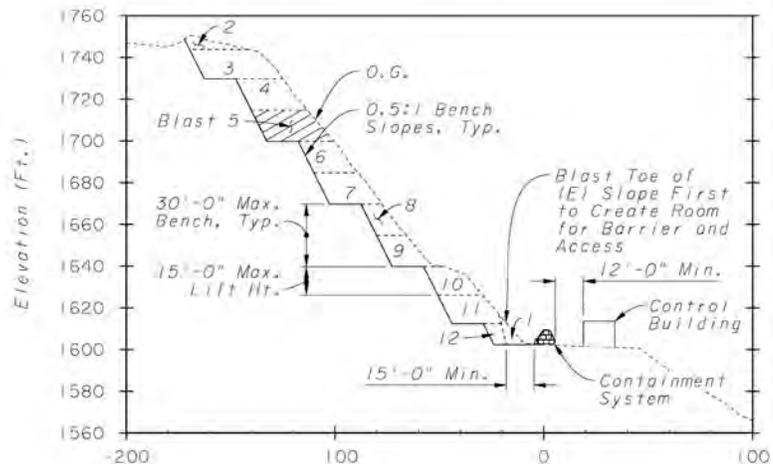
Schedule

Construction sequencing has been modified to allow CDSM construction before construction of the toe drain. Toe drain requires filter and drain material from quarry/processing via the left abutment road (both of which are behind schedule).

Construction Contract Challenges and Potential Impacts

Left Abutment Road Blasting

Contractor has resumed work on blasting and excavation of the road near the tower after placement of berm/ramp. DWR and the contractor are working on a revised plan and schedule to complete the left abutment blasting and excavation, which will likely require a change order and revised milestones.





State Water Contractors - OME Committee Meeting

March 3, 2016

Perris Dam – Seismic Remediation of Embankment – Contract Update
Specification 14-03 Contract No. C51484



Quarry Rock Processing

Contractor has reconfigured plant and may make more changes. Plant is still producing high percentage of unusable materials. The filter and drain material is required for the completion of the new toe drain. The new toe drain was specified to be complete by July 1, 2015. Contractor presented to DWR the differing site conditions justification and preferred solutions, but no costs indicated.

Other Challenges

Construction during El-Nino winter poses potential risk due to storm water run-off from dam crest and face. Normal drainage from dam site flows across work area, which is currently excavated for CDSM construction.

CDSM construction proceeding with 2 ten-hour shifts and six days a week schedule for both rigs. Estimated to be completed by end of May.

Contractor Pay Request

Month	Pay Request	Total Contract Paid to Date	Estimated Days/Cost Ahead/Behind Schedule
October	\$3,026,114	\$16,799,901	90 days/\$12M behind.
November	\$2,696,968	\$19,496,869	120 days/\$10M behind
December	\$4,189,249	\$23,686,119	150 days/\$8M behind
January	\$4,287,782	\$27,973,901	150 days/\$5M behind
February	\$5,863,713	\$33,837,614	180 days/\$1M behind

Contractor Executed Change Orders

Change Order	Description	Date	Amount	Additional Time (Days)
1-9	See January Update	-	\$176,372	0
10	Observation wells, Office and Lab Modifications, Row 3 Collection Pipe Cleanout, and Sediment Removal	1/21/2016	\$40,376	0
Adjustments	Differing Site, Working Limits, Fiber Cable Relocation, Shim Plates, Locate upper limit of Zone 4 material, and Modifying CDSM Cells	Pending	\$544,444	0
Total Adjustments and CCO			\$761,192	0

8-C

Desert Water Agency
2015-16 Regular Session, Second Year - Wednesday, March 02, 2016

AB 647 (Eggman D) **Beneficial use: storing of water underground.**

Current Text: Amended: 6/30/2015 [pdf](#) [html](#)

Introduced: 2/24/2015

Last Amend: 6/30/2015

Status: 7/17/2015-Failed Deadline pursuant to Rule 61(a)(10). (Last location was N.R. & W. on 6/30/2015)

Is Urgency: N

Is Fiscal: Y

Location: 7/17/2015-S. 2 YEAR

Summary: Under existing law, the right to water or to the use of water is limited to that amount of water that may be reasonably required for the beneficial use to be served. Existing law provides for the reversion of water rights to which a person is entitled when the person fails to beneficially use the water for a period of 5 years. Existing law declares that the storing of water underground, and related diversions for that purpose, constitute a beneficial use of water if the stored water is thereafter applied to the beneficial purposes for which the appropriation for storage was made. This bill would repeal that declaration and instead declare that the diversion of water to underground storage constitutes a beneficial use of water if the water so stored is thereafter applied to the beneficial purposes for which the appropriation for storage was made, or if the water is so stored consistent with a sustainable groundwater management plan, statutory authority to conduct groundwater recharge, or a judicial decree and is for specified purposes. This bill would require any person seeking to store water underground to first apply to the State Water Resources Control Board for a permit to appropriate water or petition the board for a change, as specified. This bill would require the board to include specified conditions in an approved permit or petition. This bill would provide that the period for the reversion of a water right does not include any period when the water is being used in the aquifer or storage area, as prescribed.

Laws: An act to repeal and add Section 1242 of the Water Code, relating to water.

Notes 1: Section 1242 of the Water Code provides that the storing of water underground, including the diversion of streams and the flowing of water on lands necessary to the accomplishment of such storage, constitutes a beneficial use of water if the water so stored is thereafter applied to the beneficial purposes for which the appropriation for storage was made. The State Water Resources Control Board recognizes groundwater recharge as a beneficial use, including uses of water for natural or artificial recharge of groundwater for purposes of future extraction, maintenance of water quality, or halting saltwater intrusion into freshwater aquifers. The requirements for groundwater recharge operations generally reflect the future use to be made of the water stored underground.

This legislation would declare that the diversion of water underground constitutes a beneficial use of water for which an appropriation may be made if the diverted water is stored and thereafter applied to beneficial use or if beneficial use of the water, including, but not limited to, protection of water quality or recovery of groundwater levels, is made while the water is underground. This bill would provide that the period for the reversion of a water right does not apply to water being beneficially used in the aquifer or being held in storage for later beneficial use.

The question as to whether the use of the waters of the state to recharge groundwater is a beneficial use has been raised in various legal circles for over a decade. Initially, the question arose from State Water Board staff inquiries into CEQA-related notices for projects to develop recharge basins. The State Water Board staff expressed its belief that since the attendant water right permit or license did not specify groundwater recharge as a purpose of use, that the permit or license holder would have to petition the State Water Board for a change. The State Water Board asked for such information, including the identification of every groundwater extraction facility and the amount that each facility would extract based on the amount of groundwater recharged. This, of course, raised tremendous concerns on the part of permit and license holders, who were loathe to reopen permits and licenses-- some many decades old, based on new science and environmental laws and regulations. In the end, a memorandum of understanding was reached between largely San Joaquin Valley water districts and the State Water Board that provided a path forward for a limited period of time. Recharge projects could proceed without reopening water right permits and licenses. Regrettably, the MOU has long since expired.

The mere fact that the Legislature might declare that groundwater recharge is a beneficial use will not resolve the water rights issue. In fact, this legislation would provide that an appropriation must be made for the purpose of the diversion of water underground if the diverted water is stored and thereafter applied to beneficial use or if beneficial use of the water, including, but not limited to, protection of water quality or recovery of groundwater levels, is made while the water is underground.

The legislation attracted opposition from downstream and junior water rights permit holders including Federal and State water contractors Westlands Water District and Metropolitan Water District of Southern California. Negotiations between supporters and opponents took place last summer, but a compromise was not reached.

This is a 2-year bill that remains eligible for consideration this year. The bill is in the Senate Natural Resources & Water Committee and it is unclear whether the author will set the bill for hearing.

Current Position: Watch

Recommended Position: Watch

[AB 935](#)

(Salas D) Water projects.

Current Text: Amended: 9/4/2015 [pdf](#) [html](#)

Introduced: 2/26/2015

Last Amend: 9/4/2015

Status: 9/11/2015-Failed Deadline pursuant to Rule 61(a)(14). (Last location was INACTIVE FILE on 9/10/2015)

Is Urgency: N

Is Fiscal: Y

Location: 9/11/2015-S. 2 YEAR

Summary: Existing law establishes in the Natural Resources Agency the Department of Water Resources, which manages and undertakes planning with regard to water resources in the state. This bill would require, upon appropriation by the Legislature, the department to provide funding for certain projects, provided that certain conditions are met.

Laws: An act to add Section 140 to the Water Code, relating to water.

Notes 1: This is a 2-year bill that remains eligible for consideration this year. The bill is on the Senate Inactive File, having cleared Senate policy and fiscal committee review. The Brown Administration opposes AB 935.

DWR indicates this bill would result in \$250,000 to \$300,000 one-time Proposition 1 costs to develop regulations and the program for these projects as a separate stand-alone category of funding under the Integrated Regional Water Management (IRWM) program. In addition, the Proposition 1 costs for the projects themselves may be in the tens of millions of dollars. The Department of Finance is opposed to this bill because the IRWM program is based on competitive grants and specifically carving out regional conveyance programs compromises the integrity of the competitiveness that the IRWM program grants are based upon and would decrease funding available for other water management activities. The existing IRWM program allows for the funding of conveyance projects.

The projects funded must substantially conform to the description set forth by the draft investment strategy released by the San Joaquin River Restoration Program in December 2014 for the following two projects: The Reverse Flow Pump-back Facilities on the Friant-Kern Canal Restoration Project, and The San Joaquin River Recapture at Patterson Irrigation District Conveyed through Delta-Mendota Canal to San Luis Reservoir Project.

AB 935 generated concerns from downstream water right holders that feared the projects would result in a reduction of flows to the South Delta and therefore could redirect impacts to the Federal Central Valley Project and the State Water Project. In addition, a reduction in South Delta flows might open upstream diverters to State Water Board action requiring the release additional fresh water from storage in order to maintain water quality and fish flows.

Current Position: Watch

Recommended Position: Watch

[AB 937](#)

(Salas D) Groundwater planning: technical assistance: disadvantaged communities.

Current Text: Amended: 7/16/2015 [pdf](#) [html](#)

Introduced: 2/26/2015

Last Amend: 7/16/2015

Status: 8/28/2015-Failed Deadline pursuant to Rule 61(a)(11). (Last location was APPR. on 8/27/2015)

Is Urgency: N

Is Fiscal: Y

Location: 8/28/2015-S. 2 YEAR

Summary: Under existing law, the right to water or to the use of water is limited to that amount of water that may be reasonably required for the beneficial use to be served. Existing law declares that

the storing of water underground, and related diversions for that purpose, constitute a beneficial use of water if the stored water is thereafter applied to the beneficial purposes for which the appropriation for storage was made. This bill would require the Department of Water Resources to provide technical assistance to disadvantaged communities so that they may participate in groundwater planning, including, but not limited to, plans for regional groundwater banking, with any county or other local agency.

Laws: An act to add Section 239 to the Water Code, relating to water.

Notes 1: This bill is a 2-year bill and remains eligible for consideration this year, although the bill was held under submission (Suspense File) by the Senate Appropriations Committee. Given that action, it is unlikely to move to the Senate Floor.

The Department of Water Resources estimates this bill would result in \$54 to \$78 million one-time General Fund and \$18 to \$24 million ongoing General Fund costs for development of new plans and ongoing involvement with disadvantaged communities. This estimate is based on low-end costs for only the 127 high and medium priority groundwater basins and high-end costs for all 515 groundwater basins.

The Department of Finance is opposed to this bill because it would result in significant additional General Fund costs that are not included in the Administration's current fiscal plan. DOF notes that the 2015-16 Budget includes \$6 million General Fund to implement the Sustainable Groundwater Management Act and to develop and implement strategic actions to achieve sustainable groundwater management through various activities including financial and regional planning assistance to ensure local agencies have the tools needed to meet their responsibilities under the legislation.

Current Position: Watch

Recommended Position: Watch

AB 1588 **(Mathis R) Water and Wastewater Loan and Grant Program.**

Current Text: Amended: 2/29/2016 [pdf](#) [html](#)

Introduced: 1/6/2016

Last Amend: 2/29/2016

Status: 3/1/2016-Re-referred to Com. on W., P., & W.

Is Urgency: Y

Is Fiscal: Y

Location: 3/1/2016-A. W.,P. & W.

Summary: Existing law, the Safe Drinking Water State Revolving Fund Law of 1997, establishes the Safe Drinking Water State Revolving Fund to provide grants or revolving fund loans for the design and construction of projects for public water systems that will enable those systems to meet safe drinking water standards. This bill would require the State Water Resources Control Board to establish a program to provide funding to counties to award low-interest loans and grants to eligible applicants for specified purposes relating to drinking water and wastewater treatment. This bill would authorize a county to apply to the board for a grant to award loans or grants, or both, to residents of the county, as prescribed. This bill would create the Water and Wastewater Loan and Grant Fund and provide that the moneys in this fund are available, upon appropriation by the Legislature, to the board to administer and implement the program. This bill would transfer to the Water and Wastewater Loan and Grant Fund \$20,000,000 from the General Fund. This bill contains other related provisions.

Laws: An act to add Chapter 6.6 (commencing with Section 13486) to Division 7 of the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

Notes 1: This legislation is similar to the author's AB 954 from 2015 that was held under submission in the Senate Appropriations Committee. AB 954 would have allocated \$20 million for loans and grants to residents whose private wells have gone dry to allow them to dig deeper wells or connect to municipal water systems.

Governor Brown proposed funding in his 2016-17 budget similar to that proposed by Mathis' bill last year. The budget would appropriate \$54 million from the state's General Fund to the Department of Water Resources. Of that, \$5 million would be used to provide emergency drinking water support for small communities, including those with private wells.

Current Position: Not Yet Considered

Recommended Position: Watch

AB 1713 **(Eggman D) Sacramento-San Joaquin Delta: peripheral canal.**

Current Text: Introduced: 1/26/2016 [pdf](#) [html](#)

Introduced: 1/26/2016

Status: 2/18/2016- Referred to Com. on W., P., & W.

Is Urgency: N

Is Fiscal: Y

Location: 2/18/2016-A. W.,P. & W.

Summary: Existing law requires various state agencies to administer programs relating to water supply, water quality, and flood management in the Sacramento-San Joaquin Delta. The bill would prohibit the construction of a peripheral canal, as defined, unless expressly authorized by an initiative voted on by the voters of California on or after January 1, 2017, and would require the Legislative Analyst's Office to complete a prescribed economic feasibility analysis prior to a vote authorizing the construction of a peripheral canal.

Laws: An act to add Chapter 1.5 (commencing with Section 115) to Division 1 of the Water Code, relating to the Sacramento-San Joaquin Delta.

Notes 1: This legislation is sponsored by the author. It would require statewide voter approval of California WaterFix, the proposal to construct twin tunnels with appurtenant structures to transfer water from the Sacramento River to the Federal and State water project pumping facilities located in the South Delta. Project costs are now planned to be funded through the issuance of revenue bonds that will be repaid by water contractors. A statewide vote is not now required for projects funded through the issuance of revenue bonds.

Current Position: Oppose

Recommended Position: Oppose (Ratify Staff Authorization)

AB 1755 (Dodd D) The Open and Transparent Water Data Act.

Current Text: Amended: 3/1/2016 [pdf](#) [html](#)

Introduced: 2/2/2016

Last Amend: 3/1/2016

Status: 3/1/2016-From committee chair, with author's amendments: Amend, and re-refer to Com. on W., P., & W. Read second time and amended.

Is Urgency: N

Is Fiscal: Y

Location: 3/1/2016-A. W.,P. & W.

Summary: Existing law imposes on the Department of Water Resources various duties with respect to water in the state. Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water. Existing law regulates water transfers and authorizes a permittee or licensee to change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if certain conditions are met. This bill would enact the Open and Transparent Water Data Act. The act would require the department to establish a public benefit corporation that would create and manage (1) a statewide water information system to improve the ability of the state to meet the growing demand for water supply reliability and healthy ecosystems, that, among things, would integrate existing water data information from multiple databases and (2) an online water transfer information clearinghouse for water transfer information that would include, among other things, a database of historic water transfers and transfers pending responsible agency approval and a public forum to exchange information on water market issues. This bill contains other existing laws.

Laws: An act to add Part 4.9 (commencing with Section 12400) to Division 6 of the Water Code, relating to water data.

Notes 1: This legislation would enact the Open and Transparent Water Data Act. The act would require the Department of Water Resources to establish a public benefit corporation that would create and manage (1) a statewide water information accounting system to improve the ability of the state to meet the growing demand for water supply reliability and healthy ecosystems, that, among things, would integrate existing water data information from multiple databases and (2) an online water transfer information clearinghouse for water transfer information that would include, among other things, a database of historic water transfers and transfers pending responsible agency approval and a public forum to exchange information on water market issues.

The bill would require the State Water Board to complete a number of tasks that are troubling in their scope and lack of statutory clarity. For example, the board would be required to develop an approach for estimating wet, average, and dry year water availability based on existing water use data. The board would be required to establish water allocation priorities and quantities for wet, average and dry periods for the environment. The latter includes consideration of Section 5937 of the Fish and

Game Code, which requires fish flows downstream of dams. Taken together, these tasks could provide another forum for limiting the exercise of water rights above and beyond terms and conditions in permits and licenses. And, set aside additional water flows for the environment over and above those set forth in water rights permits and licenses without due process or legal recourse.

Similarly, the legislation would require the department, the state board, and the Department of Fish and Wildlife to prepare and submit to the Legislature a report that identifies priority basins and subbasins that need additional surface water or groundwater monitoring sites, evaluates the feasibility of creating a better surface water and groundwater monitoring network, and estimates the cost of and provides options for funding the water information system. The legislation requires DWR to develop a consistent method for estimating groundwater budgets, and a system for forecasting water supply availability and subbasin flows during wet, average, and dry periods. Many of these tasks have been assigned to groundwater sustainability agencies under SGMA.

The legislation would require the department, the State Water Board, and the Department of Fish and Wildlife to develop protocols for data sharing, documentation, quality control, public access, and promotion of open source platforms and decision support tools related to water data. The act would specify that a recipient of state funds for research or projects relating to the improvement of water data shall adhere to those protocols or be ineligible for state funding. The act would impose various other duties on the department, state board, and Department of Fish and Wildlife related to the improvement of water data, including submitting reports to the Legislature on the protocols the agencies develop and on the feasibility of creating a better surface water and groundwater monitoring network.

The act would create the Water Information System Administration Fund. The act would specify that moneys in the fund would be available, upon appropriation, to the department for the improvement of water data and for the purposes of the act. The source of revenue for the fund is not specified.

The Association of California Water Agencies (ACWA) has been working on a framework document and recommendations on water transfers. ACWA believes that a more-transparent, more efficient and more-accessible water market can play a vital role in reducing impacts on the state's economy, now and in the future. ACWA believes that making improvements to the water market process and mechanisms for approval of water transfers should be a top priority for the Brown Administration and state leaders — not only for immediate drought response, but also as part of a comprehensive, long-term water management policy, as outlined in the California Water Action Plan and as directed by the Administration's executive orders and drought proclamations.

ACWA believes that a more-transparent, more-effective and more-accessible water market should be seen as a primary tool to leverage significant local and regional investments made over the past two decades to increase water supply reliability. ACWA has produced a final review draft titled "Recommendations to Improve the Water Transfers Process and Enhance the Role of a Voluntary Water Market in California." The document incorporates into the text the ACWA Board-adopted policy principles and reorganizes the "Recommended Implementation Actions" under only two recommendations:

1. "Enhance the Management and Accessibility of Water Market Information"
 2. "Improve Existing Water Transfer Approvals Process and Enable Emerging Water Market"
- A joint meeting of the ACWA Water Market TAC and Water Transfers Task Force was held on March 4. The purpose of that meeting was to discuss the "final review draft" and make final edits as necessary.

ACWA has taken a "Watch" position on this legislation, pending further review by the State Legislative Committee after ACWA Board of Directors action on the recommendations of the Water Transfer Task Force.

Current Position: Not Yet Considered

Recommended Position: Watch

AB 1928 (Campos D) Water efficiency: landscape irrigation equipment.

Current Text: Introduced: 2/12/2016 [pdf](#) [html](#)

Introduced: 2/12/2016

Status: 2/25/2016- Referred to Com. on W., P., & W.

Is Urgency: N

Is Fiscal: Y

Location: 2/25/2016-A. W., P. & W.

Summary: Existing law requires, to the extent that funds are available, the State Energy Resources Conservation and Development Commission, in consultation with the Department of Water Resources, to adopt, by January 1, 2010, performance standards and labeling requirements for landscape irrigation controllers and moisture sensors and, on or after January 1, 2012, prohibits that equipment

from being sold unless it meets the performance standards and labeling requirements. This bill would postpone the date by which the commission is to adopt the performance standards and labeling requirements to January 1, 2018, and would prohibit, on and after January 1, 2020, the sale of that equipment unless it meets the performance standards and labeling requirements. The bill would additionally require the commission, in adopting those standards and requirements, to consider developments in landscape irrigation efficiency occurring on or after January 1, 2010.

Laws: An act to amend Section 25401.9 of the Public Resources Code, relating to water.

Notes 1: An August 2009 Pacific Gas and Electric Company (PG&E) Codes and Standards Enhancement (CASE) Initiative Project examined the potential savings from equipment standards in California that address landscape irrigation controllers. The Department of Water Resources (DWR) reported in its 2005 California Water Plan Update that in 2000, cities and suburbs used about 8.7 million acre feet (MAF) of water and that about one-third of water used by urban areas – 3 million acre-feet (MAF) – was applied to residential and commercial, institutional, and industrial (CII) landscapes. In California, the water used to water lawns and gardens generally accounts for anywhere from 30-60% of household's potable water use. A 2003 Pacific Institute study found that significant improvements in landscape irrigation efficiency (25 -40%) could be achieved in California, cost-effectively, through a combination of better management practices, landscape design and improved hardware (Gleik et al. 2003).

Desert Water Agency has demonstrated through its Smart Irrigation Controller Program that the installation of smart irrigation controllers reduces potable water use, which in turn, can also reduce energy consumption by the Agency. This is because a significant amount of energy is used for the extraction of groundwater. PG&E notes in its report: "In addition to this embedded-energy component, most irrigation controllers either plug-in or are hardwired to the electricity grid, and consequently, consume electricity at their point-of-use. It is important that any potential appliance standard in California be evaluated from a perspective that considers the potential water savings and associated embedded-energy savings, as well as any potential direct energy savings. This report evaluates the potential savings from, and cost-effectiveness of, an appliance standard that would require all new irrigation controllers sold and installed in California to be "smart" irrigation controllers. Based on the analysis presented in this report, which assumes homes on average can achieve a relatively modest 7.3% reduction in irrigation from replacing an existing conventional controller with a smart controller, we find that at this time, such as standard is generally not cost-effective. However, additional water-savings from the status quo can be achieved cost-effectively with rain shut-off devices. We recommend the CEC require that all new landscape irrigation controllers, effective January 1, 2011, be sold with a rain shut off device. This requirement would be cost-effective even in the drier areas of California and will result in significant water and energy savings. Preliminary estimate over the total water and associated embedded-energy savings are also significant: upon full stock turnover, we estimate water savings would be on the order of 45,000 million gallons, along with annual (embedded) energy savings of 135 GWh and a 13 MW reduction in peak demand."

AB 1881 (Laird, Chapter 559, Statutes of 2006) required the California Energy Commission to develop and adopt efficiency performance standards and labeling requirements for irrigation controllers and sensors by January 1, 2010, and prohibited the sale or installation of non-compliant equipment by January 1, 2012.

On July 29, 2009, the California Energy Commission committee created to pursue implementation of AB 1881 suspended its work. It found that:

"After reviewing the available information and submittals by the parties, the Committee has determined that there is insufficient technical data and analyses necessary to substantiate specific standards or labeling requirements for the landscape irrigation equipment defined in the Scoping Order.

"Public Resources Code section 25402, subdivision (c), requires the Energy Commission to set standards for appliances that use a significant amount of energy or water; that are feasible, and reduce energy or water demand growth; and do not result in any added total costs for consumers over the designed life of the appliances.

"As a result of the information gained through the staff's technical workshops and review of available studies, it is clear that initial expectations that adequate information would be available on which to base a proposed standard that met the above requirements and criteria were incorrect.

"Sufficient information on costs, actual performance, and methods to verify savings is lacking. In addition, recent studies have shown that the use of industry-preferred controllers, or "Smart Controllers", frequently increases water use as well as energy consumption. The only industry accepted test methods available for controllers do not test for water conservation, but rather measure the efficiency of applying adequate amounts of water supplies to landscapes. Industry accepted test

methods, albeit under development, are not finalized for other landscape irrigation equipment, such as rain or soil moisture sensors.

"In order to develop the needed information and evidence, the Committee recognizes that significant additional time and resources are necessary to conduct the needed studies and to complete the analyses. Due to increasing Energy Commission workload and priorities and increased staff furloughs, it will be necessary to retain paid consultants to provide the Committee and staff with the necessary studies and analyses to properly conduct this proceeding. The funds to retain such consultants have not been identified, and are not provided for in the authorizing legislation, and thus such funds are not "available" as required in the Water Conservation in Landscaping Act.

"As a result, the Committee is suspending the proceeding until such time as sufficient funding resources become available to pursue and complete the evidence-gathering, studies, and analyses necessary to re-initiate the proceeding. In the interim, staff is directed, as resources are available, to work with the Department of Water Resources and other interested parties on further data gathering, studies, analyses and issue resolution."

This legislation would change the deadlines included under AB 1881. It is unclear as to whether sufficient funding sources have been identified for the CEC work; however, the Greenhouse Gas Reduction Fund might be a possibility as it was not available in 2009.

Agency support for this legislation is consistent with its existing smart irrigation controller program and the development of state standards might lead to even greater water and energy savings than that which occurs today.

Current Position: Not Yet Considered

Recommended Position: Favor

AB 1979 (Bigelow R) Urban water management plans.

Current Text: Introduced: 2/16/2016 [pdf](#) [html](#)

Introduced: 2/16/2016

Status: 2/17/2016-From printer. May be heard in committee March 18.

Is Urgency: N

Is Fiscal: N

Location: 2/16/2016-A. PRINT

Summary: Existing law, the Urban Water Management Planning Act, requires every public and private urban water supplier that directly or indirectly provides water for municipal purposes to prepare and adopt an urban water management plan. This bill would make nonsubstantive changes to that act.

Laws: An act to amend Section 10610 of the Water Code, relating to water management.

Notes 1: This legislation does not propose any substantive changes to existing law and, therefore, cannot be referred for a policy committee hearing. The Agency should closely monitor the legislation, however, given its subject matter--Urban Water Management Plans.

Current Position: Not Yet Considered

Recommended Position: Watch

AB 1989 (Jones R) Drought: water supply.

Current Text: Introduced: 2/16/2016 [pdf](#) [html](#)

Introduced: 2/16/2016

Status: 2/25/2016-Referred to Com. on W., P., & W.

Is Urgency: N

Is Fiscal: Y

Location: 2/25/2016-A. W.,P. & W.

Summary: The California Constitution requires the reasonable and beneficial use of water. Existing law requires the Department of Water Resources and the State Water Resources Control Board to take all appropriate proceedings or actions to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state. Existing law authorizes any public entity, as defined, that supplies water at retail or wholesale for the benefit of persons within the service area or area of jurisdiction of the public entity to, by ordinance or resolution, adopt and enforce a water conservation program to reduce the quantity of water used for the purpose of conserving the water supplies of the public entity. This bill would require the department and the board, by _____, to prepare and submit to the Legislature a report that includes recommendations relating to drought preparedness. The bill would require the department and the board to conduct an annual survey of

public and private water suppliers relating to water supply reliability in the event of a drought.

Laws: An act to add Section 1061 to the Water Code, relating to water.

Notes 1: This legislation would require the Department of Water Resources and the State Water Resources Control Board to prepare and submit to the Legislature a report that includes recommendations relating to drought preparedness. The legislation also would require the department and the board to conduct an annual survey of public and private water suppliers relating to water supply reliability in the event of a drought.

The Urban Water Management Planning Act currently requires every urban water supplier, which includes the Agency, to include, as part of its urban water management plan, an assessment of the reliability of its water service to its customers during normal, dry, and multiple dry water years (Section 10635, Water Code). This water supply and demand assessment shall compare the total water supply sources available to the water supplier with the total projected water use over the next 20 years, in five-year increments, for a normal water year, a single dry water year, and multiple dry water years. The Act also requires an urban water supplier to provide an urban water shortage contingency analysis that includes each of the following elements that are within the authority of the urban water supplier:

- (1) Stages of action to be undertaken by the urban water supplier in response to water supply shortages, including up to a 50 percent reduction in water supply, and an outline of specific water supply conditions that are applicable to each stage.
- (2) An estimate of the minimum water supply available during each of the next three water years based on the driest three-year historic sequence for the agency's water supply.
- (3) Actions to be undertaken by the urban water supplier to prepare for, and implement during, a catastrophic interruption of water supplies including, but not limited to, a regional power outage, an earthquake, or other disaster.
- (4) Additional, mandatory prohibitions against specific water use practices during water shortages, including, but not limited to, prohibiting the use of potable water for street cleaning.
- (5) Consumption reduction methods in the most restrictive stages. Each urban water supplier may use any type of consumption reduction methods in its water shortage contingency analysis that would reduce water use, are appropriate for its area, and have the ability to achieve a water use reduction consistent with up to a 50 percent reduction in water supply.
- (6) Penalties or charges for excessive use, where applicable.
- (7) An analysis of the impacts of each of the actions and conditions described in paragraphs (1) to (6), inclusive, on the revenues and expenditures of the urban water supplier, and proposed measures to overcome those impacts, such as the development of reserves and rate adjustments.
- (8) A draft water shortage contingency resolution or ordinance.
- (9) A mechanism for determining actual reductions in water use pursuant to the urban water shortage contingency analysis (Section 10632, Water Code).

The Urban Water Management Plans, once adopted by the urban water supplier, must be provided to the Department of Water Resources. The department is required to prepare and submit to the Legislature a report summarizing the status of the plans adopted pursuant to this part. The report prepared by the department shall identify the exemplary elements of the individual plans (Section 10644, Water Code).

The report to the Legislature proposed by this legislation would potentially provide more specific information to the Legislature as compared to the current status report for urban water management plans. That said, drought preparedness and water supply availability or reliability are assessed in the California Water Plan Update every five years. While the preparation and submission of a report regarding drought preparedness would not impact the Agency, such a report is unlikely to produce any meaningful benefits. The annual survey required by this legislation would have a minor impact on Agency staff and resources. Requiring an annual survey is not likely to provide meaningful information above and beyond that which is required to be provided in the urban water management plan every five years.

Current Position: Not Yet Considered

Recommended Position: Not Favor

[AB 2040](#) (Melendez R) Outdoor Water Efficiency Act of 2016: personal income tax credits: outdoor water efficiency.

Current Text: Introduced: 2/17/2016 [pdf](#) [html](#)

Introduced: 2/17/2016

Status: 2/29/2016-Referred to Com. on REV. & TAX.

Is Urgency: N

Is Fiscal: Y

Location: 2/29/2016-A. REV. & TAX

Summary: The Personal Income Tax Law allows various credits against the taxes imposed by that law. This bill, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, would allow a credit equal to 25% of the amount paid or incurred by a qualified taxpayer for water-efficiency improvements, as defined, on qualified real property in this state, as specified. The bill would limit the cumulative amount of the credit to \$2,500 for each qualified real property for all taxable years. The bill would require a qualified taxpayer to obtain and retain a certification of the water-efficiency improvements from the appropriate regional or local water agency after completion of the improvements and to provide a copy of this certification to the Franchise Tax Board upon request. This bill contains other related provisions.

Laws: An act to add and repeal Section 17053.37 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

Notes 1: This legislation is similar to a bill authored by Assembly Member Melendez last year (AB 585) which was held in the Assembly Appropriations Committee. The consultant to that committee wrote that the legislation would result in potentially significant General Fund costs to the Franchise Tax Board (FTB) to administer changes to forms and systems; and, estimated General Fund revenue decreases of \$21 million, \$44 million, and \$55 million in FY 2015-16, FY 2016-17, and FY 2017-18, respectively.

The Appropriations consultant noted that tax credits are often used "to encourage or influence socially beneficial behavior, and provide relief to taxpayers who incur expenses from desired behavior. Tax credits are often more appealing than tax deductions as the taxpayer may take the same credit regardless of income." And, noted that the legislation "expressly ignores Section 41 of the Revenue and Taxation Code...which requires tax credits to articulate specific goals, purposes, and objectives for the credit, as well as establish performance indicators to measure the credit's success in achieving those goals. While the policy goals of this bill may be laudable, there is no indication that 25% or \$2,500 is the appropriate credit amount to achieve the desired increase in water-efficient landscape improvements, and there are no metrics proposed with which to evaluate whether the credit is achieving its aims."

The Agency undertook a turf buy-back program in FY 2015-16, accepting applications for grant funds September 1 - October 1, 2015. The application period is now closed. Due to the overwhelming response, the Agency was unable to fund projects for all that applied. Given that the Agency program has been very successful without a state tax credit, and given that similar legislation was held under submission in the Assembly Appropriations Committee last year, the Agency should closely monitor this legislation rather than support the bill (ACWA held a "favor" position on AB 585, along with a handful of retail water suppliers.

Current Position: Not Yet Considered

Recommended Position: Watch

AB 2257 (Maienschein R) Local agency meetings: agenda: online posting.

Current Text: Introduced: 2/18/2016 [pdf](#) [html](#)

Introduced: 2/18/2016

Status: 2/19/2016-From printer. May be heard in committee March 20.

Is Urgency: N

Is Fiscal: Y

Location: 2/18/2016-A. PRINT

Summary: The Ralph M. Brown Act enables the legislative body of a local agency to call both regular and special meetings. The act requires the legislative body of a local agency to post, at least 72 hours before the meeting, an agenda containing a brief general description of each item of business to be transacted or discussed at a regular meeting, in a location that is freely accessible to members of the public and to provide a notice containing similar information with respect to a special meeting at least 24 hours prior to the special meeting. The act requires that the agenda or notice be freely accessible to members of the public and be posted on the local agency's Internet Web site, if the local agency has one. This bill would require an online posting of an agenda by a local agency to have a prominent direct link to the current agenda itself. The bill would require the link to be on the local agency's Internet Web site homepage, not in a contextual menu on the homepage, and would require the agenda to be posted in compliance with a specified section of law. This bill contains other related provisions and other existing laws.

Laws: An act to amend Section 54954.2 of the Government Code, relating to local government.

Notes 1: Current law requires the agenda for a local agency meeting to specify the time and location of the regular meeting and to be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one.

This legislation would require an online posting of an agenda to have a prominent, direct link to the current agenda itself from the local agency's homepage. The link must be included on the local agency's homepage, not in a contextual menu on the homepage.

The Agency currently maintains an Internet Web site that includes a contextual menu on its homepage through which a visitor may access the agenda for a meeting of the board of directors. Accessing an agenda requires three "clicks" and is accessed through the "Board of Directors" item in the contextual menu. This legislation, should it be enacted into law, would require the Agency's Internet Web site to be modified to satisfy its requirements. This would result in a minor, absorbable cost to the Agency.

Current Position: Not Yet Considered

Recommended Position: Watch

AB 2304 (Levine D) California Water Market Exchange.

Current Text: Introduced: 2/18/2016 [pdf](#) [html](#)

Introduced: 2/18/2016

Status: 2/19/2016-From printer. May be heard in committee March 20.

Is Urgency: N

Is Fiscal: Y

Location: 2/18/2016-A. PRINT

Summary: Existing law, the Costa-Isenberg Water Transfer Act of 1986, requires the Department of Water Resources to establish an ongoing program to facilitate the voluntary exchange or transfer of water and implement the various laws that pertain to water transfers. The act requires the department to create and maintain a list of entities seeking to enter into water supply transfers, leases, exchanges, or other similar arrangements and to maintain a list of the physical facilities that may be available to carry out water supply transfers. The act requires the department to prepare a water transfer guide with prescribed components. This bill would establish the California Water Market Exchange, governed by a 5-member board, in the Natural Resources Agency. This bill would require the market exchange, on or before December 31, 2017, to create a centralized water market platform on its Internet Web site that provides ready access to information about water available for transfer or exchange. This bill, for all transfers and exchanges of water occurring on or after January 1, 2018, would require the submission of certain data and information to the market exchange and the payment of an administrative fee to the market exchange, as specified. This bill would require the market exchange to develop specified procedures in consultation with federal, state, and local agencies.

Laws: An act to add Chapter 7.5 (commencing with Section 485) to Division 1 of the Water Code, relating to water.

Notes 1: This legislation would establish the California Water Market Exchange, governed by a 5-member board, in the Natural Resources Agency. The board would consist of the Secretary of Natural Resources and four appointees by the Governor. The bill does not provide any professional or educational requirements for the four appointees and does not require Senate confirmation for the gubernatorial appointments. It is unclear as to why a new entity is necessary.

This bill would require the market exchange, on or before December 31, 2017, to create a centralized water market platform on its Internet Web site that provides ready access to information about water available for transfer or exchange. This bill, for all transfers and exchanges of water occurring on or after January 1, 2018, would require the submission of certain data and information to the market exchange and the payment of an administrative fee to the market exchange, as specified. This bill would require the market exchange to develop specified procedures in consultation with federal, state, and local agencies.

The legislation appears to confuse the purpose of a water transfer through a market exchange by expressing legislative intent that water transfers and exchanges protect and enhance environmental and community benefits that include the following: (1) Instream flows and ecosystem water supply; (2) Improved water monitoring and data networks; (3) Ecosystem restoration projects benefitting aquatic and riparian species; (4) Improved drinking water supply and quality projects; (5) Development of needed technical, managerial, and financial capacity for disadvantaged communities; and (6) Acquisition through the market exchange of needed water supplies for small community water systems. The goal of this effort would be to prioritize projects that provide environmental and community benefits. The effect of such a priority is unclear. Would this provide a priority to the use of pumping and conveyance capacity or capability over an agriculture to agriculture or urban to agriculture water transfer? Would this preclude these types of transfers if there was a willing buyer for an environmental or small community purpose?

The Association of California Water Agencies (ACWA) has been working on a framework document and recommendations on water transfers. ACWA believes that a more-transparent, more efficient and more-accessible water market can play a vital role in reducing impacts on the state's economy, now and in the future. ACWA believes that making improvements to the water market process and mechanisms for approval of water transfers should be a top priority for the Brown Administration and state leaders — not only for immediate drought response, but also as part of a comprehensive, long-term water management policy, as outlined in the California Water Action Plan and as directed by the Administration's executive orders and drought proclamations.

ACWA believes that a more-transparent, more-effective and more-accessible water market should be seen as a primary tool to leverage significant local and regional investments made over the past two decades to increase water supply reliability. ACWA has produced a final review draft titled "Recommendations to Improve the Water Transfers Process and Enhance the Role of a Voluntary Water Market in California." The document incorporates into the text the ACWA Board-adopted policy principles and reorganizes the "Recommended Implementation Actions" under only two recommendations:

1. "Enhance the Management and Accessibility of Water Market Information"
2. "Improve Existing Water Transfer Approvals Process and Enable Emerging Water Market"

A joint meeting of the ACWA Water Market TAC and Water Transfers Task Force was held on March 4 to discuss a "final review draft" and make final edits as necessary. The ACWA Board of Directors is expected to act on the recommendations at its March meeting. The recommendations would guide the ACWA State Legislative Committee review of this legislation.

Current Position: Not Yet Considered

Recommended Position: Oppose unless amended

[AB 2389](#) (Ridley-Thomas D) Special districts: district-based elections: reapportionment.

Current Text: Introduced: 2/18/2016 [pdf](#) [html](#)

Introduced: 2/18/2016

Status: 2/19/2016-From printer. May be heard in committee March 20.

Is Urgency: N

Is Fiscal: N

Location: 2/18/2016-A. PRINT

Summary: Existing law provides for political subdivisions, including special districts, that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or by or from districts formed within the political subdivision (district-based). Under existing law, the manner of election of a governing body of a special district is generally specified in the statutes creating the district. If a political subdivision changes from an at-large method of election to a district-based election, existing law generally requires the political subdivision to submit to the voter an ordinance or resolution providing for the election of members of the governing body by district. This bill would authorize a governing body of a special district, as defined, to require, by resolution, that the election of the members of its governing body be elected using district-based elections without being required to submit the resolution to the voters for approval.

Laws: An act to add Part 5.5 (commencing with Section 10650) to Division 10 of the Elections Code, relating to elections.

Notes 1: Existing law generally requires a political subdivision of the state to submit to the voters an ordinance or resolution providing for the election of members of the governing body by district, if a political subdivision changes from an at-large method of election to a district-based election.

This bill would authorize a governing body of a special district, as defined, to require, by resolution, that the election of the members of its governing body be elected using district-based elections without being required to submit the resolution to the voters for approval. The Agency would be a "special district" based on the definition provided by this bill.

Current Position: Not Yet Considered

Recommended Position: Watch

[AB 2438](#) (Waldron R) California Environmental Quality Act: exemption: recycled water pipelines.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-Read first time.

Is Urgency: N

Is Fiscal: Y

Location: 2/19/2016-A. PRINT

Summary: 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 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 exempts specified pipeline projects from the above requirements. This bill would, until January 1, 2020, additionally exempt from CEQA a project for the construction and installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline, not exceeding 8 miles in length, for the distribution of recycled water within a public street, highway, or right-of-way and would require the lead agency to undertake specified activities, including the filing of a notice of exemption for the project with the Office of Planning and Research and the office of the county clerk of each county in which the project is located. The bill would require the lead agency, before determining the applicability of the exemption, to hold a noticed public hearing to consider and adopt mitigation measures for potential traffic impacts of the project. Because the lead agency would be required to determine whether a project qualifies for that exemption, and undertake specified activities, this bill would impose a state-mandated local program. The bill would require the county clerk to post the notice of exemption within 24 hours of receipt, thereby imposing a state-mandated local program. This bill contains other related provisions and other existing laws.

Laws: An act to add and repeal Section 21080.21.5 of the Public Resources Code, relating to environmental quality.

Notes 1: The California Environmental Quality Act requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines.

Exemptions relating to pipelines include a project of less than one mile in length within a public street or highway, or another public right-of-way for the installation of a new pipeline or maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline. "Pipeline" means "subsurface pipelines and subsurface or surface accessories or appurtenances to a pipeline, such as mains, traps, vents, cables, conduits, vaults, valves, flanges, manholes and meters."

Also exempt from CEQA is a project for the inspection, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline less than eight miles in length, or any valve, flange, meter, or other equipment directly attached to the pipeline if certain conditions are met, including that the project is not less than eight miles from any section of pipeline that has been subject to this exemption in the past 12 months, certain notice is provided, project is located within an existing right-of-way and restored to its condition prior to the project.

CEQA Guidelines provide a categorical exemption for the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity, including replacement or reconstruction of existing utility systems or facilities involving negligible or no expansion of capacity (CEQA Guidelines §15301(c)).

This legislation would exempt from review under CEQA a project of less than eight miles in length within a public street, highway, or right-of-way for the construction and installation of a new, recycled water pipeline, or maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing recycled water pipeline. The legislation would define "pipeline" to include subsurface pipelines and subsurface or surface accessories or appurtenances to a pipeline, such as mains, traps, vents, cables, conduits, vaults, valves, flanges, manholes, and meters.

According to the Senate Environmental Quality Committee analysis of a similar bill, a CEQA exemption "does not alleviate a project proponent from its obligation to obtain mandatory permit or adhere to specified regulatory programs. CEQA assists in moving a project through the multi-disciplinary, regulatory process because responsible agencies rely on the lead agency's environmental documentation in acting on the aspect of the project that requires its approval and must prepare its own findings regarding the project. A variety of issues, many of which involve permitting and/or regulatory program requirements, should be coordinated and analyzed together as a whole. CEQA provides a comprehensive analysis of a project's impacts in those subject areas.

CEQA provides that if an initial study shows that there would not be a significant effect on the environment, then the lead agency must prepare a negative declaration or a mitigated negative declaration (ND/MND). The lead agency then prepares a draft ND/MND and publishes the document for public review for at least 21 days. After comments are considered, the lead agency can either recirculate the ND/MND if public comments required the project scope to change, or the lead agency can adopt the document. The lead agency must file a Notice of Determination after adopting the document and there is a 30-day statute of limitations for legal challenge.

This legislation is similar to AB 83 (Jeffries)(2011), which provided an exemption from CEQA for installation of a new recycled water pipeline less than eight miles in length within a paved public street highway, or right-of-way. AB 83 failed passage in the Assembly Natural Resources Committee. AB 2417(Nazarian)(2014) would have exempted from review under CEQA a project of less than eight miles in length within a public street, highway, or right-of-way for the construction and installation of a new, recycled water pipeline. AB 2417 was held under submission in the Senate Environmental Quality Committee.

The provisions of this legislation, while laudatory regarding the intent of the author, would not likely provide a direct benefit to the Agency as the construction of a new pipeline of up to eight miles in length is not likely to be undertaken.

Current Position: Not Yet Considered

Recommended Position: Watch

AB 2525 (Holden D) Water-efficient landscaping.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-Read first time.

Is Urgency: N

Is Fiscal: Y

Location: 2/19/2016-A. PRINT

Summary: The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented. Existing law, the Water Conservation in Landscaping Act, requires the Department of Water Resources to update its model water-efficient landscape ordinance by regulation and prescribes various requirements for the updated model ordinance. Existing law requires each local agency to adopt either the updated model water-efficient landscape ordinance or an ordinance that is at least as effective in conserving water as the updated model ordinance. If the local agency does not make a selection, the model ordinance shall apply within the jurisdiction of the local agency. This bill would require the department to create the California Water Efficient Landscaping Program for the purpose of encouraging local agencies and water purveyors to use economic incentives that promote the efficient use of water, promote the benefits of consistent landscape ordinances, and support and enhance turf replacement. This bill would create the Water Efficient Landscaping Fund and provide that moneys in the fund are available, upon appropriation by the Legislature, to the department for certain purposes.

Laws: An act to add Part 2.13 (commencing with Section 10960) to Division 6 of the Water Code, relating to water.

Notes 1: This legislation would build upon existing law regarding the development of a model landscaping ordinance by the Department of Water Resources. It would require the department to create the California Water Efficient Landscaping Program for the purpose of encouraging local agencies and water purveyors to use economic incentives that promote the efficient use of water, promote the benefits of consistent landscape ordinances, and support and enhance turf replacement.

Desert Water Agency offers large water users comprehensive irrigation system water audits at no charge to its customers. These audits are made available to large water users such as condominium projects, public parks and businesses. In addition, DWA customers in good standing can have a new Smart Irrigation Controller installed on their property at no cost to the customer. The Agency maintains demonstration xeriscape gardens and landscape and more recently offers a turf buy back program to its customers.

The program created by this legislation would contain the following three elements: (1) A residential turf rebate program; (2) A jobs program; and (3) Public education for ecolandscaping practices in collaboration with local agencies.

This legislation would create a fund in the State Treasury to enable DWR to provide grants to local agencies for purposes of implementing the proposed new program locally. The bill does not specify a

source of revenue for the fund. State funds for local assistance have typically been provided from the proceeds of general obligation bonds; e.g., Proposition 1 presently. Desert Water Agency has typically relied on operating revenues to provide landscape programs, in addition to public private partnerships with the Building Industry Association Desert Chapter and CPV Sentinel.

The only concern presented by this legislation is that the program it proposes also could be funded through the proceeds of a public goods charge imposed by the State of California of local water customer accounts. This option would not be in the best interests of the Agency. Therefore, the Agency should closely monitor the legislation.

Current Position: Not Yet Considered

Recommended Position: Watch

[AB 2583](#) ([Frazier D](#)) Sacramento-San Joaquin Delta Reform Act of 2009.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-Read first time.

Is Urgency: N

Is Fiscal: Y

Location: 2/19/2016-A. PRINT

Summary: Existing law, the Sacramento-San Joaquin Delta Reform Act of 2009, establishes the Delta Stewardship Council and requires the council to develop, adopt, and commence implementation of a comprehensive management plan for the Delta, known as the Delta Plan. This bill would add a definition of the California Water Fix to the act. This bill contains other related provisions and other existing laws.

Laws: An act to amend Section 85057.5 of, to add Section 85053.5 to, and to repeal Section 85085 of, the Water Code, relating to the Sacramento-San Joaquin Delta.

Notes 1: The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council and requires the council to develop, adopt, and commence implementation of a comprehensive management plan for the Delta, known as the Delta Plan.

This legislation would add a definition of "California Water Fix" or "Water Fix" to the Delta Reform Act to mean a project, within the meaning of Section 21065 of the Public Resources Code (CEQA) and subdivision (a) of Section 85057.5, to construct new State Water Project conveyance facilities in the Delta.

This legislation is unnecessary as Section 85057.5 of the Water Code defines "covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions: (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh; (2) Will be carried out, approved, or funded by the state or a local public agency; (3) Is covered by one or more provisions of the Delta Plan; and (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta. All of these match the components of California Water Fix.

The author represents the 11th Assembly District, which includes portions of the Delta lying within Contra Costa, Sacramento and Solano counties. He opposed the Bay Delta Conservation Plan and now opposes California Water Fix, writing last year "...when I first spoke out against Governor Brown's Bay Delta Conservation Plan (BDCP), the Administration has continued to push forward this flawed, fiscally irresponsible proposal, now rebranded as California WaterFix and California EcoRestore. Under any name, this plan further threatens the Delta's fragile ecosystem and does not deliver one ounce of new water."

Current Position: Not Yet Considered

Recommended Position: Oppose

[AB 2601](#) ([Eggman D](#)) Building standards: residential property: graywater.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-Read first time.

Is Urgency: N

Is Fiscal: Y

Location: 2/19/2016-A. PRINT

Summary: The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval and adoption. This bill would require the department, on or after January 1, 2017, to adopt and submit to the commission for approval amendments to the building standards adopted pursuant to these provisions that require that all new single-family and duplex residential dwelling units include specified components to allow the separate discharge of graywater for direct irrigation and that all new single-family residential dwelling units include a segregated building drain for lavatories, showers, and bathtubs to allow for future installation of a distributed graywater system. This bill contains other existing laws.

Laws: An act to amend Section 17922.12 of the Health and Safety Code, relating to building standards.

Notes 1: This legislation would require that all new single-family and duplex residential dwelling units include plumbing to allow the separate discharge of graywater for direct irrigation.

Desert Water Agency began its recycled water program with the opening of a reclamation plant in 1988. Through that plant, the agency is able to take wastewater and treat it to provide irrigation water to golf courses, parks, medians and Palm Springs High School. The use of recycled water in landscaping saves millions of gallons of potable drinking water. In addition, water recycling also saves energy—only using a quarter of the energy required to pump groundwater from deep wells. And, the use of recycled water reduces the amount of nitrates which could reach the groundwater basin due to the discharge of wastewater to percolation basins or natural watercourses.

The effect of this legislation would be to reduce the amount of wastewater and lower the quality of wastewater that would otherwise flow to the Palm Springs Wastewater Treatment Plant and then into the Agency's water recycling facility. This would have a negative affect on the ability of the Agency to increase the use of recycled water based on future residential growth.

At a minimum, the legislation should be amended to waive the proposed new requirement in political subdivisions where a recycled water program is in effect.

Current Position: Not Yet Considered

Recommended Position: Oppose unless amended

AB 2617

(Mayes R) Water efficiency measures.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-Read first time.

Is Urgency: N

Is Fiscal: Y

Location: 2/19/2016-A. PRINT

Summary: The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented. Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), on a biennial basis, to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery, and distribution. Existing law requires the Energy Commission, beginning November 1, 2003, and biennially thereafter, to adopt an integrated energy policy report containing an overview of major energy trends and issues facing the state. This bill would require the Energy Commission to develop and solicit comments on a proposed report, in consultation with certain subject matter experts, by December 1, 2017, and, by July 1, 2018, to issue a final report that contains, among other things, the projected benefits of recommended voluntary water efficiency measures and an analysis of any unintended adverse environmental impacts that would result from various water efficiency measures.

Laws: An act to add Chapter 7.8 (commencing with Section 25685) to Division 15 of the Public Resources Code, relating to water.

Notes 1: This legislation would require the California Energy Commission to prepare a report that contains an analysis of the relative costs and benefits of incentives for various water efficiency measures, including, but not limited to, turfgrass removal and replacement with either drought-resistant turfgrass or artificial turf, investments in graywater infrastructure to supply water to outdoor landscapes, and rebates for highly efficient consumer appliances and landscape systems. The report would have to include an analysis of any unintended adverse environmental impacts that would result from the water efficiency measures. The bill defines "unintended adverse environmental impacts" to

include, but not be limited to, impacts on climate change, net effect on carbon sequestration, increased erosion, and impacts to stormwater runoff.

By July 1, 2018, the legislation would require the commission to issue a final report that contains all of the following: (a) An identification of the most cost-effective incentives for water efficiency measures in terms of water use reduction per dollar spent; (b) Recommendations to public entities to help them prioritize the most cost-effective solutions for granting incentives or rebates for water efficiency measures; (c) An analysis of any unintended adverse environmental impacts that would result from the water efficiency measures; and (d) The projected benefits of recommended voluntary water efficiency measures.

The Urban Water Management Planning Act now requires an urban water supplier like the Agency to provide a description of the supplier's water demand management measures. This description shall include descriptions of the following water demand management measures: (i) Water waste prevention ordinances; (ii) Metering; (iii) Conservation pricing; (iv) Public education and outreach; (v) Programs to assess and manage distribution system real loss; (vi) Water conservation program coordination and staffing support; and (vii) Other demand management measures that have a significant impact on water use as measured in gallons per capita per day, including innovative measures, if implemented. There is a presumption that the supplier assesses demand management measures and determine those measures that are most cost-effective and produce the greatest reductions in water demand for the supplier's service area.

It is unclear whether the provisions of this legislation, including the preparation of the CEC report, would provide meaningful benefits to the Agency.

Current Position: Not Yet Considered

Recommended Position: Watch

[AB 2639](#) ([Garcia, Eduardo D](#)) **Water quality: Porter-Cologne Water Quality Control Act.**

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-Read first time.

Is Urgency: N

Is Fiscal: N

Location: 2/19/2016-A. PRINT

Summary: Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act defines various terms for its purposes. This bill would make nonsubstantive changes to these definitions.

Laws: An act to amend Section 13050 of the Water Code, relating to water quality.

Notes 1: This legislation does not propose any substantive changes to existing law and, therefore, cannot be referred for a policy committee hearing. The Agency should closely monitor the legislation, however, given that the author has identified this legislation as the vehicle to propose amendments to the Sustainable Groundwater Management Act relating to groundwater sustainability agencies.

Current Position: Not Yet Considered

Recommended Position: Watch

[SB 20](#) ([Pavley D](#)) **California Water Resiliency Investment Act.**

Current Text: Amended: 8/26/2015 [pdf](#) [html](#)

Introduced: 12/1/2014

Last Amend: 8/26/2015

Status: 8/28/2015-Failed Deadline pursuant to Rule 61(a)(11). (Last location was W.,P. & W. on 8/26/2015)

Is Urgency: N

Is Fiscal: Y

Location: 8/28/2015-A. 2 YEAR

Summary: Under existing law, various measures provide funding for water resources projects, facilities, and programs. This bill would create the California Water Resiliency Investment Fund in the State Treasury and provide that moneys in the fund are available, upon appropriation by the Legislature, for the purpose of providing a more dependable water supply for California. This bill would create various accounts within the fund for prescribed purposes.

Laws: An act to add Division 36 (commencing with Section 86000) to the Water Code, relating to water.

Notes 1: This legislation previously had been another in a series of proposed legislative enactments by the author that would make well completion reports subject to public disclosure. Last year, the provisions of the bill were included in a budget trailer bill that did not come under review by the appropriate policy committees. That trailer bill was voted on as part of the annual budget bill and become law.

As amended, this legislation would create the California Water Resiliency Investment Fund in the State Treasury. Moneys in the fund would be available, upon appropriation by the Legislature, "for the purpose of, and in held in trust for, providing a more dependable water supply for California." The legislation does not identify a source of revenue for the fund, but it is widely known that the author is interested in enactment of a public goods charge and that organizations like California Water Foundation, a part of the Resources Legacy Fund, is supportive of the legislative enactment of such a charge.

The legislation would create the following accounts within the California Water Resiliency Investment Fund: (1) The Emergency Drought Response and Recovery Account to support emergency actions to protect vulnerable populations from the severe impacts of droughts, including providing emergency drinking water and other residential water supplies, food assistance, employment training and placement, and other economic relief; (2) The Integrated Regional Water Resiliency and Management Account to provide matching grants to local and regional agencies to increase regional self-reliance and result in integrated, multibenefit solutions for ensuring sustainable water resources; (3) The Safe Drinking Water for Disadvantaged Communities Account to support planning, construction, operation, and maintenance of drinking water systems for disadvantaged communities; (4) The Environmental Resiliency and Recovery Account to provide funding to restore and protect fish and wildlife habitats and populations to avoid or reduce conflicts with water management systems. Funding from the account shall only be used for projects that will provide fisheries, wildlife, or ecosystems with benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations and shall not be used to pay for the mitigation or environmental review costs of any current or proposed water supply project; and 5) The Smart Water Data Program Account to support improved data and information systems that enable better management of water resources and to further facilitate expansion of water markets.

A public goods charge would result in the State of California imposing a tax on each urban water retailer customer account, initially projected to be between \$2 and \$12 per account per month. The retail water supplier would collect the money and transmit the proceeds to the State of California. The Legislature would appropriate the money in the fund for the purposes outlined in the legislation. I recently prepared a comprehensive analysis of the public goods charge, which I transmitted to my retail water supplier managers. A copy of that analysis accompanied the transmission of this legislative report.

Current Position: Oppose

Recommended Position: Oppose

SB 995

(Pavley D) Well standards.

Current Text: Introduced: 2/10/2016 [pdf](#) [html](#)

Introduced: 2/10/2016

Status: 2/18/2016-Referred to Coms. on N.R. & W. and E.Q.

Is Urgency: N

Is Fiscal: Y

Location: 2/18/2016-S. N.R. & W.

Summary: Existing law requires the Department of Water Resources to investigate and survey conditions of damage to quality of underground waters that are, or may be, caused by improperly constructed, abandoned, or defective wells. Existing law requires the department to report to the appropriate California regional water quality control board its recommendations for minimum standards for well construction in any particular locality in which it deems regulation necessary to protection of quality of underground water. This bill, on or before January 1, 2019, would require the department to update well standards for certain types of wells based on existing knowledge. This bill would require the department to establish an advisory panel to identify critical gaps in existing knowledge about the best practices for well construction, alteration, maintenance, and destruction for these wells. This bill would, on or before January 1, 2022, require the advisory panel to make recommendations for improvements in well regulations and the department to submit the recommendations to the State Water Resources Control Board. This bill contains other related provisions and other existing laws.

Laws: An act to add Sections 232 and 13801.5 to the Water Code, relating to water quality.

Notes 1: This legislation, on or before January 1, 2019, would require the Department of Water Resources to update well standards for certain types of wells based on existing knowledge. This bill would require the department to establish an advisory panel to identify critical gaps in existing knowledge about the best practices for well construction, alteration, maintenance, and destruction for these wells. This bill would, on or before January 1, 2022, require the advisory panel to make recommendations for improvements in well regulations and the department to submit the recommendations to the State Water Resources Control Board. The state board would be required to revise the model ordinance upon the receipt of the recommendations for improvements in well regulations from the department.

It has been 26 years since the last revision of the state's water well standards. DWR Bulletins 74-81 (1981) and 74 (1968) provided the Department's standards for water wells and cathodic protection wells just prior to the last supplement, which was revised in 1990 (Bulletin 74-90). DWR standards for monitoring wells were generally the same as for water wells prior to 1990 and were included in Bulletin 74-81. The 1990 supplement is used together with Bulletin 74-81 for a complete description of DWR Water Well Standards.

Standards in the 1990 supplement are presented in three parts: (1) Revisions of some water well standards in Bulletin 74-81; (2) Standards for monitoring wells; and (3) Updated standards for cathodic protection wells that were originally published in Bulletin 74-1.

The state's well standards are recommended minimum statewide standards for the protection of groundwater quality. The standards are not necessarily sufficient for local conditions. Local enforcing agencies may need to adopt more stringent standards for local conditions to ensure groundwater quality protection, according to DWR.

The Agency should support this legislation, particularly given the requirement that the department consult with experts in the subject matter. The Agency's dependence on groundwater and its role in protecting the quality of the groundwater subbasins the Agency overlies, in addition to the Agency becoming a groundwater sustainability agency under the Sustainable Groundwater Management Act, all argue for support of updating the state's water well standards.

Current Position: Not Yet Considered

Recommended Position: Support

SB 1262 (Pavley D) Water supply planning.

Current Text: Introduced: 2/18/2016 [pdf](#) [html](#)

Introduced: 2/18/2016

Status: 2/19/2016-From printer. May be acted upon on or after March 20.

Is Urgency: N

Is Fiscal: Y

Location: 2/18/2016-S. PRINT

Summary: Existing law requires a city or county that determines a project, as defined, is subject to the California Environmental Quality Act to identify certain water systems that may supply water for the project and to request those public water systems to prepare and approve a specified water supply assessment. Under existing law, if no public water system is identified, the city or county is required to prepare and approve the water supply assessment. Existing law provides that if, as a result of its assessment, the public water system or city or county concludes that its water supplies are, or will be, insufficient, the public water system or city or county is required to provide its plans for acquiring additional water supplies, as prescribed. This bill would require a city or county that determines a project is subject to the California Environmental Quality Act to identify any water system whose service area includes the project site and any water system adjacent to the project site. This bill would require, if a water source for a proposed project includes water of a quality not sufficient to meet certain drinking water standards, that prescribed additional information be included in a water supply assessment. This bill, if no water system is identified, would require a city or county to prepare a technical report containing prescribed information. This bill would require a city or county to submit the technical report to the local agency formation commission with jurisdiction if the city or county concludes based on the technical report that it is feasible for a water system to provide water to the project. This bill, if the local agency formation commission declines to approve an annexation or extensive of service, would require the city or county to develop a water supply assessment for the project, as specified. By imposing new duties on cities and counties, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

Laws: An act to amend Section 66473.7 of the Government Code, and to amend Sections 10910 and 10911 of the Water Code, and relating to land use.

Notes 1: This legislation contains three basic provisions.

First, it would require a city or county that determines a development project is subject to the California Environmental Quality Act to identify any water system whose service area includes the project site and any water system adjacent to the project site. This bill would require, if a water source for a proposed project includes water of a quality not sufficient to meet certain drinking water standards, that prescribed additional information be included in a water supply assessment. This bill, if no water system is identified, would require a city or county to prepare a technical report containing prescribed information. This bill would require a city or county to submit the technical report to the local agency formation commission with jurisdiction if the city or county concludes based on the technical report that it is feasible for a water system to provide water to the project. This bill, if the local agency formation commission declines to approve an annexation or extension of service, would require the city or county to develop a water supply assessment for the project. This portion of the legislation would not likely have an impact on Desert Water Agency.

Second, the legislation would provide that hauled water or groundwater from a probationary basin are not sources of water for the purposes of a water supply assessment relating to a proposed development project. This bill would, if a water supply for a proposed project includes groundwater, require certain additional information to be included in the water supply assessment. For a basin designated as high- or medium-priority pursuant to the Sustainable Groundwater Management Act (SGMA), the most recently adopted or revised adopted groundwater sustainability plan would have to be considered. Although the Agency will be developing and adopting a groundwater sustainability plan or an alternative pursuant to SGMA, this portion of the legislation would not likely have an impact on Desert Water Agency. It would potentially benefit the Agency by ensuring that its groundwater sustainability plan or alternative will be properly considered by a city or county.

Existing law provides that if a city or county is required to conduct a water supply assessment for a proposed development project, the water supply assessment for the project shall include a discussion with regard to whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

The third portion of this legislation would repeal that provision of law, and instead provide that if a water system is not identified by the city or county, or none of the water systems identified are willing to supply the water, the city or county shall prepare a technical report that includes all of the following:

(A) The name of each public water system that has a service area boundary within five miles of any boundary of the development project applicant's proposed service area.

(B) An analysis of the feasibility of a water system identified by the city or county annexing, connecting, or otherwise supplying domestic water to the project.

(C) An analysis of the long-term feasibility of creating a new water system to serve the project, including, but not limited to, projecting the capacity of anticipated ratepayers to sustain a water system if there is the potential that water treatment will be required in the foreseeable future.

(D) A description of all actions taken by the city or county to secure a supply of domestic water from an existing public water system for the project.

(E) A description of all actions taken by the project proponent to pursue a contract for managerial or operational oversight from an existing public water system.

If the city or county concludes based on the technical report that it is feasible for a water system to provide water to the project, the city or county shall submit their technical report to the local agency formation commission with jurisdiction over the project. If the local agency formation commission declines to approve

an annexation or extension of service by the water system, the city or county must develop a water supply assessment for the project that includes a discussion on whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, or multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

Finally, this legislation would revise the definition of "sufficient water supply" under existing law to include additional factors relating to a proposed subdivision that relies in whole or in part on groundwater. This bill would provide that groundwater from a probationary basin is not a water supply for these purposes. The legislation would provide that if a water supply for a proposed project includes water of a quality not sufficient to meet all primary and secondary drinking water standards

(MCLs), the following additional information shall be included in the water supply assessment: (1) A detailed description of the concentration of contaminants; (2) The proposed method for treating, blending, or otherwise ensuring that the water will meet drinking water quality standards; (3) The project cost to achieve drinking water quality; and (4) An analysis of the affordability of water for the project's anticipated residents.

The intent of this legislation is to strengthen existing laws relating to the preparation and provision of written verifications and water supply assessments relating to proposed development projects that include 500 dwelling units or the equivalent water use for other beneficial purposes; e.g., commercial, industrial and institutional. The author seeks to update provisions of SB 221/SB 610 given the enactment of SGMA. As such, it is appropriate for the Legislature to consider this bill. Several provisions of SB 1262 present concerns for a public water system like Desert Water Agency. First, while current law authorizes a city or county to prepare a water supply assessment in certain circumstances, it does not authorize a city or county to make determinations regarding the feasibility of a public water system to provide water service to a proposed development project. If the city or county concludes based on its technical report that it is feasible for a water system to provide water to the project, the city or county must submit their technical report to the local agency formation commission (LAFCO) with jurisdiction over the project. LAFCO could approve an annexation or extension of service based on the technical report, even when the public water system had previously determined that it would not (or could not) serve the proposed project. This would not be a welcome outcome for the public water system.

Finally, drinking water quality standards in California are established by the Federal government under the Environmental Protection Agency (USEPA) and the State Water Resources Control Board Division of Drinking Water. Any compounds found in water may be considered a contaminant for possible regulation. However, most contaminants do not present any health concern. Primary MCLs are health based drinking water standards and must be met to ensure protection of public health. Secondary MCLs are set not for public health concerns but for the esthetics of drinking water, and should also be met. However, exceedances may be allowed under certain conditions. This legislation presumes that all secondary standards will be met and that an analysis of the manner in which the standards will be met and the cost of which will be analyzed. The affordability of water for the proposed project's residents might be unnecessarily hampered. This legislation should be amended to reflect any exceedances of secondary MCLs established by the State Water Board.

Current Position: Not Yet Considered

Recommended Position: Support if amended

SB 1317

(Wolk D) Conditional use permit: groundwater extraction facility.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-From printer. May be acted upon on or after March 23. Read first time.

Is Urgency: N

Is Fiscal: Y

Location: 2/19/2016-S. PRINT

Summary: The California Constitution requires the reasonable and beneficial use of water and that the conservation of the water resources of the state is to be exercised with a view to the reasonable and beneficial use of the water in the interest of the people and for the public welfare. Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified. This bill, by July 1, 2017, would require a city or county overlying a basin designated as a high- or medium-priority basin to establish a process for the issuance of conditional use permits for the development of a groundwater extraction facility in order to prevent a new groundwater extraction facility from contributing to or creating an undesirable result, as prescribed. By increasing the duties of cities and counties, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

Laws: An act to add Article 2.10 (commencing with Section 65891) to Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

Notes 1: This legislation would require a city or county overlying a basin designated as a high- or medium-priority basin to do both of the following: (1) By July 1, 2017, establish a process for the issuance of a conditional use permit for the development of a groundwater extraction facility that imposes conditions on the development of a new groundwater extraction facility in order to prevent the new groundwater extraction facility from contributing to or creating an undesirable result; and (2)

Prohibit the issuance of a conditional use permit for a new groundwater extraction facility in either of the following: (A) A probationary basin, or (B) A basin designated in Bulletin 118 as a basin subject to critical conditions of overdraft.

This legislation seems unnecessary in that a city or county may already rely on its constitutional police powers to regulate the extraction of groundwater, including placing a moratorium on new groundwater extraction facilities. Beyond this, it is the responsibility of groundwater sustainability agencies to manage local groundwater resources pursuant to provisions of the Sustainable Groundwater Management Act. These new agencies are required to develop and adopt groundwater sustainability plans or alternatives that, when implemented, will ensure the sustainable management of the groundwater basin. Generally speaking, neither a city nor a county will have the data available to determine whether a new groundwater extraction facility would contribute to or creating an undesirable result. SGMA establishes a timeline for compliance with its requirements. This legislation appears to jump ahead of the SGMA process--well before a GSA would have the information or the ability or desire to take action in regard to limited the drilling of new groundwater extraction facilities, for which they are authorized under SGMA.

Current Position: Not Yet Considered

Recommended Position: Oppose

SB 1318 (Wolk D) Local government: drinking water infrastructure or services: wastewater infrastructure or services.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-From printer. May be acted upon on or after March 23. Read first time.

Is Urgency: N

Is Fiscal: Y

Location: 2/19/2016-S. PRINT

Summary: The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 governs the procedures for the formation and change of organization of cities and special districts. This bill would prohibit the commission from authorizing a city or a district to extend drinking water infrastructure or services or wastewater infrastructure or services until it has extended those services to all disadvantaged communities within or adjacent to its sphere of influence, as specified, or has entered into an agreement to extend those services to those disadvantaged communities, unless specified conditions are met. The bill would prohibit the commission from approving a sphere of influence update where there exists a disadvantaged unincorporated community within or adjacent to the city or special district's sphere of influence that lacks safe drinking water infrastructure or services or adequate wastewater infrastructure or services unless specified conditions are met. This bill contains other related provisions and other existing laws.

Laws: An act to amend Sections 56133, 56133.5, 56375, 56425, and 56430 of the Government Code, relating to local government.

Notes 1: Existing law authorizes a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundaries only if the city or district requests and receives permission to do so from the local agency formation commission in the affected county. Under existing law, the commission may authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence under specified circumstances.

This legislation would prohibit the commission from authorizing a city or a district to extend drinking water infrastructure or services or wastewater infrastructure or services until it has extended those services to all disadvantaged communities within or adjacent to its sphere of influence, or has entered into an agreement to extend those services to those disadvantaged communities. The bill would prohibit the commission from approving a sphere of influence update where there exists a disadvantaged unincorporated community within or adjacent to the city or special district's sphere of influence that lacks safe drinking water infrastructure or services or adequate wastewater infrastructure or services unless the commission finds, based upon written evidence, that a majority of the residents of the affected disadvantaged community or communities are opposed to receiving the identified service or services.

This legislation does not provide a definition of "disadvantaged community," so it is difficult to assess the potential impact of the legislation on the Agency. Is a mobile home park a disadvantaged community? Is there a minimum number of service connections? What median household income would qualify an area to be considered a disadvantaged community?

Further, the legislation seems to "extort" service from a public water system by prohibiting annexations or extensions of service that might otherwise be feasible until all disadvantaged

communities are served by the water system. Finally, the legislation is unnecessary as a budget trailer bill enacted by the Legislature last year authorizes the State Water Resources Control Board to mandate the consolidation of water systems. That law is supported by emergency regulations adopted by the State Water Board that provide a process and standards for determining when a consolidation is appropriate.

Current Position: Not Yet Considered

Recommended Position: Oppose

SB 1340 (Wolk D) Water Conservation in Landscaping Act

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-From printer. May be acted upon on or after March 23. Read first time.

Is Urgency: N

Is Fiscal: N

Location: 2/19/2016-S. PRINT

Summary: Existing law, the Water Conservation in Landscaping Act, requires the Department of Water Resources to update a specified model water efficient landscape ordinance by regulation and prescribes various requirements for the updated model ordinance. Existing law requires each local agency to adopt either the updated model water efficient landscape ordinance or an ordinance that is at least as effective in conserving water as the updated model ordinance. If the local agency does not make a selection, the model ordinance shall apply within the jurisdiction of the local agency. The bill would add to the model water efficient landscape ordinance a permit requirement for the installation, expansion, or replacement of specified automatic irrigation systems for a landscape project on or after July 1, 2017. The bill would allow the governing body of a local agency to adopt an ordinance prescribing fees for filing an application for the permit, subject to the restrictions that the fees not exceed the amount reasonably required to review applications and issue the permits and that the fees not be levied for general revenue purposes.

Laws: An act to amend Section 65596 of the Government Code, relating to water conservation.

Notes 1: This legislation would require the Department of Water Resources to update the model water efficient landscape ordinance to include a provision requiring, on or after July 1, 2017, a written permit for the installation, expansion, or replacement of any automatic irrigation system for a landscape project not otherwise within the scope of a local agency permit, if the irrigation system is to serve either of the following: (1) A nonresidential landscape, except a cemetery; or (2) A residential landscape of 10,000 square feet or greater. The legislation authorizes a local agency, before issuing a permit, to adopt an ordinance prescribing fees for filing an application for that permit. The fees cannot exceed the amount reasonably required by the local agency to review applications and issue those permits, and shall not be levied for general revenue purposes.

Local agencies have authority under existing law to establish regulations for water efficient landscape projects. This bill would require a permit for specified projects, presumably to ensure compliance with the state model ordinance or a local ordinance that is at least as stringent.

Current Position: Not Yet Considered

Recommended Position: Watch

SB 1469 (Stone R) Groundwater sustainability agencies.

Current Text: Introduced: 2/19/2016 [pdf](#) [html](#)

Introduced: 2/19/2016

Status: 2/22/2016-From printer. May be acted upon on or after March 23. Read first time.

Is Urgency: N

Is Fiscal: N

Location: 2/19/2016-S. PRINT

Summary: Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified. The act authorizes any local agency or combination of local agencies overlying a groundwater basin to decide to become a groundwater sustainability agency for that basin, as prescribed. This bill would make a nonsubstantive change to those provisions.

Laws: An act to amend Section 10723 of the Water Code, relating to groundwater.

Notes 1: This legislation does not propose any substantive changes to existing law and, therefore, cannot be referred for a policy committee hearing. The Agency should closely monitor the legislation, however, given its subject matter--Sustainable Groundwater Management Act (SGMA).

Current Position: Not Yet Considered

Recommended Position: Watch

Total Measures: 26

Total Tracking Forms: 26

MEMORANDUM

MARCH 10, 2016

TO: Client General Managers

FROM: Bob Reeb
Reeb Government Relations, LLC

SUBJECT: Proposed Amendment to Article X, California Constitution

Introduction

The purpose of this paper is to provide a critical analysis of a proposed amendment to the California Constitution that would establish an alternative to Proposition 218 (California Constitution, article XIII D) on which a local agency could choose to rely to impose fees and charges.

Background

The Association of California Water Agencies (ACWA), League of California Cities and California State Association of Counties joined in 2015 to identify potential amendments to Proposition 218 in order to accomplish three goals:

Enhance the ability of local agencies to finance stormwater and flood control infrastructure.

Provide more flexibility for the establishment of conservation-based tiered water rate structures; and

Allow public agencies, at their discretion, to implement lifeline water rates for low-income households.

Rather than seeking to amend Proposition 218, however, the coalition is pursuing approval of a new constitutional amendment that would provide local agencies an alternative to Proposition 218 in terms of imposing fees and charges to pay for water, sewer, stormwater and flood control services. The constitutional amendment would:

Authorize local agencies to impose fees and charges on water and sewer service ratepayers to pay for stormwater and flood control infrastructure.

Provide more flexibility for the establishment of conservation-based tiered water rate structures by authorizing a local agency to set rates for customers to encourage water conservation, prevent waste, and discourage excessive use of water; and

Allow public agencies to use fees and charges for water and sewer service to reduce water and sewer rates for low-income households.

The measure is titled “The California Water Conservation, Flood Control and Stormwater Management Act of 2016.” The coalition has not yet determined whether it will sponsor a constitutional amendment in the Legislature in 2016 or pursue a signature-gathering petition drive to place a proposal directly on the November 2016 ballot. It has submitted the proposed initiative to the Office of the Attorney General to obtain a ballot title and summary. The ballot title and summary was issued by the Attorney General on February 18, 2016 and may be used to conduct polling in order to inform the coalition as to which path to pursue in seeking enactment of the proposed constitutional amendment. The Attorney General has prepared the following title and summary of the chief purpose of the proposed measure:

LOCAL GOVERNMENT. WATER, SEWER, STORMWATER, AND FLOOD CONTROL SERVICES. FEE STRUCTURES. INITIATIVE CONSTITUTIONAL AMENDMENT. Establishes alternative process for local government to impose fees for water, sewer, stormwater, and flood control services, as defined, without voter approval. Authorizes fee structures that recover reasonable costs of providing service, encourage water conservation and resource management, and provide fee reductions for low-income households. Requires notice of and public hearing on proposed fees. Allows fee payers to prevent proposed fee by majority filing written protests. Prohibits use of fee revenues for other purposes. Requires independent audit of revenues and expenditures. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Increased local government revenues and spending for flood control services and stormwater management in the range of low hundreds of millions of dollars up to more than \$1 billion annually, depending on future actions by local governing boards and voters.

Analysis of the Proposed initiative

Findings and Declarations

The Findings and Declarations in Section 2 are alarmist and misleading. In contrast to the findings and declarations -- which focus on water supply, drought, flooding, toxic chemicals and trash -- the substantive provisions of the proposed initiative provide an "alternative" to multiple fiscal measures and limitations passed by the voters. The mere existence of, or threat of droughts or floods do not deprive water agencies of any “tools to capture, clean and increase water supplies.” Recurring droughts and floods have been common throughout California’s history; in fact, they are a way of life in California.

While the current drought may be extraordinary when compared to others in recent decades, the public's response to this drought has been equally extraordinary. A key proof-point: since the State Water Resources Control Board's Emergency Regulation took effect on June 1, water use statewide has declined when compared to use in the same months in 2013.

The findings and declarations reference the need to prevent waste or unreasonable use of water; however, existing statutory and constitutional limitations already prohibit the waste or unreasonable use of water.

The findings and declarations state that "existing laws governing the financing of water supply, clean water, conservation and floodwater protection are outdated," without identifying the problem -- or, what California's "current water realities" are perceived to be. Water agencies throughout California have successfully financed billions of dollars in water supply improvements over the past many years and there does not appear to be any evidence that the existing state laws governing the financing of water supply improvements are "outdated" or insufficient to meet the needs of California taxpayers and ratepayers. The proposed initiative does not distinguish between retail and wholesale water suppliers, or how the "outdated" laws impact each.

Finding "J" clearly implies that agencies currently lack the tools to "invest in water supply, water quality, flood protection and water conservation programs we need." This is not a credible statement, and is simply not true.

Alternative Funding Method

The proposed initiative would add Section 8 to Article X of the California Constitution, describing an "alternative funding method" which may be used "independent" of any other procedures and requirements contained in the state Constitution for funding the cost of providing water, flood control, stormwater or sewer service. The proposed initiative does not identify other procedures and requirements of the constitution that need not be observed when the newly proposed alternative funding method is employed. No express reference is made to Propositions 13, 218 or 26. Rather, the proposed initiative states generally that, "existing state laws governing the financing of water supply, clean water, conservation and floodwater protection are outdated and were not developed with California's current water realities in mind."

By not addressing any of the constitutional measures for which it is intended to provide an "alternative," and for other reasons, the proposed initiative is unclear whether it intends to eliminate cost-causation requirements for the consumption and income-related charges of Section 8(f). Section 8(c)(3) seems to indicate that it does, but Section 8(g) at the same time appears to give the agency the burden of proving that it meets cost-causation requirements, including with respect to 8(f). If the proposed initiative intends to take these charges out of the cost-causation regime, then it should say so - and be clear exactly what other constitutional provisions are being supplanted

by the proposed initiative. Absent this clarification and specificity, the proposed initiative will undoubtedly and inevitably generate litigation.

If the objective is simply what's in Section 8(f) - as it would seem to be - then there is certainly a more straightforward and less litigation-prone path—for example, providing that the state or its agencies may impose monetary penalties for wasting water (a power we believe the State Board already possesses), and use the money collected to provide subsidies to lower-income households (we also believe there are other cost-of-service based approaches to addressing the needs of low income households).

Definitions

Although not specifically referring to existing constitutional requirements pertaining to the imposition of fees and charges, the language in the proposed initiative borrows heavily from ambiguous language currently contained in the California Constitution through Propositions 218 and 26 and the implementing legislation for Proposition 218. The ambiguity of many of these existing constitutional provisions has caused extensive litigation, with some litigation still pending in the California Supreme Court. The proposed initiative mixes several of these existing terms, creating further ambiguity and unnecessarily inviting further litigation.

A “fee” or “charge” [Section 8 (b) (1)] is defined as a levy imposed on a parcel or upon a person as an incident of property ownership, including a user fee or charge for flood control service or stormwater service. This definition mimics the definition of a fee under Proposition 218 [Art. XIII D, Section 2(e)]

The measure does not provide for the imposition of an “assessment” on a parcel, which pursuant to Proposition 218, must confer a special benefit upon the real property. The measure contemplates that a local agency could only impose a fee or charge on a parcel pursuant to its provisions. A local agency would not have to demonstrate that a special benefit is conferred on a parcel. The user fee or charge imposed under the measure must have a direct relationship to property ownership; however, a parcel could be charged for a service for which it does not benefit. Proposition 218 defines “special benefit” to mean a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute “special benefit.” Under commentary written by HJTA, “What constitutes a special benefit will depend on the nature of the capital improvement or service being provided. It must be more than a mere increase in the value of the property because, arguably, the availability of any public service could provide additional value. It must a direct and special benefit conferred on the property that exceeds the benefit conferred on the public or large or even to other similar properties.”

“Flood control service” [Section 8 (b) (2)] includes a system of public improvements, facilities, projects or services related thereto, which could include dams, levees, interior drainage facilities, pump stations and other facilities. Flood control service is distinct

from sewer, stormwater or water service. The proposed initiative, again, does not provide for the imposition of an assessment on a parcel, thus avoiding the preparation of an engineering report...A fee or charge could be uniform or based on the assessed value of the property or could be determined through some other calculation. The absence of a requirement to conduct an engineering report raises a question as to the manner in which a fee or charge could be calculated other than on a uniform basis.

“Water service” [Section 8 (b)(7)] is broadly and ambiguously defined as any system of public improvements intended to provide for...*from any source*. This definition mimics the existing ambiguous language in Government Code Section 53750(m), the Proposition 218 Omnibus Implementation Act. The proposed initiative, by including the imposition of fees and charges upon a parcel or upon a person as an incident of property ownership, would directly insert itself into with litigation pending in the Supreme Court concerning whether groundwater extraction charges are subject to Proposition 218, i.e. whether they are property-related fees or charges. The Supreme Court is currently considering conflicting appellate opinions on this issue, although the court has yet to rule on the petition for grant of review in the *Santa Clara* opinion.

In *City of San Buenaventura*, the appellate court held that “in charging property owners for pumping groundwater, a district was not providing a service to property owners in the same way that a service is provided by delivering water through pipes to residences. Thus...groundwater extraction charges are not property-related fees or charges.” The principal services provided by many water agencies include diversion of surface waters for replenishment and long-term augmentation, management and protection of groundwater basins, which arguably are not, and should not be included within the vague definition offered by the proposed initiative.

Requirements for new, increased or extended fees and charges

Requirements for new, increased or extended fees and charges are contained in Section 8(c). Paragraph (3) specifies that the “costs of the water service, flood control service, stormwater service, or sewer service are allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor’s burdens or benefits received...”

Proposition 218 distinguishes between an “assessment” and a “property-related fee and charge.” The proposed constitutional amendment, however, does not authorize the imposition of an assessment, only a fee or charge for purposes of raising revenue. Under the definition of “fee” or “charge” in Section 8 (b)(1), the proposed constitutional amendment references a “user fee or charge” for flood control or stormwater service. The proposed constitutional amendment, however, is silent as to the manner in which a local agency would determine whether a fee or charge for flood control, for example, bears a fair or reasonable relationship to the parcel based on the burdens on or benefits received.

The substantive requirements for fees are modeled after Proposition 218 [Art. XIII D, Section 6(b)(1) and (2)], and then conversely with the non-numbered final paragraph of

Art. XIII C, Section 1(e) within Proposition 26. In the aggregate, the requirements for fees under the proposed initiative represent a mishmash of existing constitutional provisions, which will continue to generate confusion and unnecessary litigation.

Fee or charge for conservation; subsidized water rates

Section 8(d) sets forth requirements relating to imposition of a conservation fee or charge.

There is a genuine question as to whether this proposal is necessary to address tiered water rates. Tiered water rates remain permissible under *San Juan Capistrano*. The Court stated that, “[n]either the voters nor the Constitution say anything we can find that would prohibit tiered pricing.”

Higher water rates for heavy users of water also remain permissible under *San Juan Capistrano*. The Court stated that, “we emphasize, there is nothing at all in subdivision (b)(3) or elsewhere in Proposition 218 that prevents water agencies from passing on the incrementally higher costs of expensive water to incrementally higher users. That would seem like a good idea.”

The proposed initiative fails to define "conservation." It fails to take into account that increased "consumption" is a volumetric annual rate concept that has no relevance to the costs a wholesale agency incurs, for example, to meet dry-year demands. To the extent that the purpose of the proposed initiative is to address Proposition 218 limitations on conservation-based rates and low-income consumers at the retail level, the measure should be crafted to apply only to retail agencies selling water directly to consumers.

Water agencies already have authority to adopt conservation-based tiered water rates. Their only limitation in adopting those rates is that they must show that the tiered rates comply with Constitutional cost of service requirements. Cost of service is fundamentally a factual determination based on “cost causation” – an analysis of why each agency’s costs are being incurred and whether those costs are being allocated to the appropriate rates and charges.

Ample statutory and legal authority already exists for water agencies to impose penalties for unauthorized water use during a declared water emergency, such as the current drought. There is no need for additional statutory authority. Under Senate Bill 88 (2015), an agency can already impose penalties for the use of water that is in excess of amounts authorized under a water conservation program adopted under Water Code Section 376. In addition to civil fines in the thousands of dollars, violation of such a water conservation program is a misdemeanor, punishable by imprisonment in county jail.

The proposed constitutional amendment does not provide a definition of “lower income household.” Therefore, there is no limitation on a local agency in terms of establishing a lifeline rate.

Most important, while the proposed constitutional amendment establishes requirements for fees and charges under Section 8 (c); i.e., revenues shall not exceed the reasonable cost to provide the service; revenues shall not be used for any other purpose for which the fee or charge was imposed; and, costs allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor’s burdens for benefits received, none of these ratepayer protections apply to a fee or charge related to conservation or providing reduced rates for lower income households.

There is no limitation on the amount of a fee or charge imposed for any service as part of a rate structure designed to encourage water conservation and resource management. There is no limitation on the amount of a fee or charge; e.g., above the reasonable cost of providing service, that is imposed to raise revenue so that fees or charges imposed on lower income households may be reduced (subsidized). In fact, the proposed constitutional amendment contemplates that a rate structure designed to encourage water conservation would be designed to be punitive in nature—designed to discourage or prevent water use above an agency-established water budget for a particular parcel. Thus, among those certain freedoms that accompany property ownership, water usage would be subject to regulation by the local agency by means of imposition of usurious water service rates. Clearly, households that are not considered “lower income households” will be charged higher rates for water service, (and possibly flood control service, stormwater service or sewer service) than otherwise would be necessary to pay for the reasonable cost of providing service.

Notice, public hearing and majority protest provisions

Paragraph (2) of Section 8 (e) requires the local agency to include the amount of the fee or charge to be imposed “on the recipient of the notice.” This requirement would appear to require the local agency to have previously identified whether the recipient is a lower income household, for example. Also, the paragraph requires the local agency to include—one presumes an explanation—as to the basis upon which the amount of the fee or charge is calculated. This will present a challenge to a local agency seeking to impose a fee or charge through a rate structure designed to encourage water conservation. Further, there is no reasonable or fair relationship standard or reasonable cost standard, a local agency will have to determine other means of establishing a basis for its calculations.

Paragraph (5) requires a local agency at the public hearing to consider all oral and written protests against the fee or charge, yet specifies that if “written protests against the fee or charge are presented by a majority of the persons to whom the local agency sent the notice,” then the local agency shall not impose, increase or extend the fee or charge. One presumes that oral protests also will be considered.

Burden of proof

The burden of proof has no bearing on the imposition of a fee or charge designed to encourage water conservation or to enable the local agency to establish a subsidized rate for lower income households. The assertion that this provides protection for ratepayers is incorrect and misleading.

Conclusion

The Legislature, following voter approval of Proposition 218 in November 1996, enacted the Proposition 218 Omnibus Implementation Act in order to assist local agencies in the proper implementation of the provisions of the constitutional amendment. All local agency stakeholders and the Howard Jarvis Taxpayers Association took part in deliberations relating to drafting the legislative enactment. It is instruction here, to note the language of subdivision (c) of Section 53758 of the Government Code:

(c) The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction imposed for a specific benefit or specific government service is not a tax, that the amount is no more than necessary to cover the reasonable costs to the local government in providing the specific benefit or specific government service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor.

The task of providing greater clarity to the provisions of Proposition 218 was a common driver among all participants. Even with that intent and with the level of cooperation among the stakeholders, it is clear in hindsight given the number and breadth and conflicting interpretations by members of the judiciary, that achieving clarity of purpose and meaning remains a challenge today. It is all the more important, therefore, than additions to the California Constitution regarding local agency authority to impose fees and charges achieve greater clarity in purpose and meaning. It is the conclusion of the analysis set forth herein that the proposed amendment to Article X of the California Constitution fails this test.

The Court of Appeal has already determined that there is no conflict between Proposition 218 and Article X, Section 2 of the Constitution. An agency can create rates and charges that both satisfy cost of service requirements and take steps to address the unreasonable use of water. Nothing in the *San Juan Capistrano* opinion suggests the contrary. The Court ruled only that the existence tiered rate structures, like all other rate structures, must impose rates and charges based on cost of service. In addition to the express statutory authority to impose penalties during declared water supply emergencies, an agency is also able to set rates that recover more than the cost of the services it provides by seeking voter approval under Propositions 218 and 26.

The reaction of the proponents of the proposed initiative to the *San Juan Capistrano* decision is creating the impression that tiered rates are the only tool available to water

to achieve conservation savings by their customers, and that somehow the court decision has removed that tool from their conservation actions portfolio; as noted above, this is not the case. Under existing law, the existence of a drought emergency already gives water agencies more tools to prevent waste or unreasonable use of water, including Water Code Section 376.

The premise of the proposed initiative seems to be that the beneficial use of water that exceeds a water budget imposed by a local agency is a waste or unreasonable use of water. It would appear that proposed initiative is using the cloak of Article X, section 2 to justify the imposition of a punitive tiered water rate—one that does not reflect the reasonable cost of providing service, but rather one that is imposed to punish users of water for beneficial use.

San Juan Capistrano references the origins of Article X, Section 2, wherein the court notes that “(T)he emphasis in the actual language of *article x, section 2* is thus on a policy that favors the beneficial use of water as against the waste of water for nonbeneficial uses.” Harrison C. Dunning (See *Article X, Section 2: From Maximum Water Development to Instream Flow Protection*, 17 Hastings Const. L.Q. at p. 279) concludes in his article that “Our only Article X, section 2 concern for today should be with “reasonableness,” elusive as that concept may remain.” Rather than encourage more efficient water use through the installation of smart irrigation technology, turf buy-back rebate programs, the use of native plants or consumer education, the proponents are invested in the imposition of financially-punitive water rate structures that seek to compel rather than encourage conservation in domestic use.

In addition, for the reasons provided above, the language in the draft initiative is in several respects unclear and ambiguous, particularly with respect to groundwater extraction charges levied by water conservation districts and similar water agencies. . This ambiguity will lead to unnecessary further litigation.

It is also unclear how, if at all, the proposed language would impact the terms and implementation of the newly-enacted Sustainable Groundwater Management Act.

MEMORANDUM

FEBRUARY 2, 2016

TO: Public Water System Clients

FROM: Bob Reeb
Reeb Government Relations, LLC

SUBJECT: Public Goods Charge

The purpose of this memorandum is to assist our public water system clients in their understanding of the so-called 'public goods charge,' authorization of which is presently being considered for inclusion in Senate Bill No. 20 by Senator Fran Pavley (as amended August 26, 2015).

A Historical Perspective

The imposition of a state charge on local water consumers to pay for water resources-related infrastructure was briefly evaluated by some in the Legislature in the late 1980s, but not formally considered.

The concept of a fee on local water consumers was more formally raised by Lester Snow, Director of the California Department of Water Resources, in the introduction to the California Water Plan Update 2005. Snow wrote:

"This is not just another update of the California Water Plan. Update 2005 represents a fundamental transition in how we look at water resource management in California. It also represents a fundamental transition in the way state government needs to be involved with local entities and interest groups to deal with water issues in the state."

California Water Plan Update 2005 provided 14 recommendations directed at decision-makers in the executive and legislative branches of state government.

Recommendation No. 7 stated: "California must define and articulate the respective roles, authorities, and responsibilities of State, federal, and local agencies and governments responsible for water." Recommendation No. 8 stated: "California must develop broad, realistic, and stable funding strategies that define the role of public investments for water and other water-related resource needs of the next quarter century."

In presenting the need for long-term, reliable and stable funding sources for California water management, Update 2005 established that "... (T)wo widely agreed upon

components of a realistic funding strategy...” include local and private funding for water projects and programs that provide directly assignable water supply benefits to specific water users, and statewide public funding including general obligation bonds, revenue bonds, State General Fund, and federal appropriations. Yet, in the very next paragraph, Update 2005 argued that the establishment of a new investment fund sustained primarily through “a modest fee on each retail water bill” was needed to provide a base level funding source. The new fee was discussed in Box 2-9 (Chapter 2, A Framework for Action) in Update 2005:

“The fee will provide a stable base level of funding to supplement and leverage other State and local funding. The fee will generate annual funds towards implementation of integrated regional water management plans throughout the state and in advancing statewide water management initiatives... The new investment fund, periodic general obligations, federal appropriations and local financing together could provide reliable and stable water management funding in a range of \$2 to \$3 billion per year, making a 25-year investment of about \$50 to \$75 billion achievable.”

The water fee financing option presented Update 2005 intersected with another water resources management effort that had begun about 10 years earlier, but had been a principal focus of the state’s water management planning and budgeting considerations. Pursuant to a federal-state accord signed in 1994, CALFED (or the CALFED Bay-Delta Program) was administratively created as a consortium of state and federal agencies that have regulatory authority over water and resource management responsibilities in the Bay-Delta region. The CALFED program eventually encompassed 12 state and 13 federal agencies, overseen by a new state agency—CALFED Bay Delta Authority—created by statute in 2002. The objectives of the program were to:

- Provide good water quality for all uses.
- Improve fish and wildlife habitat.
- Reduce the gap between water supplies and projected demand.
- Reduce the risks from deteriorating levees.

After five years of planning, CALFED began to implement programs and construct projects in 2000. The program's implementation was to be guided by the "Record of Decision" (ROD) adopted in August 2000. The ROD represented the approval of the lead CALFED agencies of the final environmental review documents for the CALFED "plan." Among other things, the ROD set forth the roles and responsibilities of each participating agency, sets goals for the program and types of projects to be pursued, and included an estimate of the program's costs—\$8.5 billion—for its first seven years (2000-01 through 2006-07). However, the program's actual funding for its first five years was significantly lower than envisioned by the ROD. Further, the relative contribution of the various funding sources differed significantly from that which was envisioned by the ROD.

The Office of the Legislative Analyst issued a report in February 2005 as part of its analysis of the proposed 2005-06 State Budget titled "Water Policy Issues Facing the State." The report focused on a "crisis" in flood management and the CALFED Bay-Delta Program. In addressing the latter, the LAO wrote:

"The plan assumes substantial new federal revenues, new water user fees, and a large amount of unidentified new state funds. However, the finance plan's revenue assumptions may be unrealistic. As a result, the Legislature will need to establish its expenditure priorities so that the program can be "right sized" consistent with those priorities."

According to the LAO:

"The ROD states that "a fundamental philosophy of the CALFED Program is that costs should, to the extent possible, be paid by the beneficiaries of the program actions." The ROD, however, provides few details as to how this principle would be implemented. One exception where specific guidance was provided is the ROD's direction that a user fee be developed—to raise \$35 million annually—to support ecosystem restoration activities that benefit Bay-Delta water users."

"While neither the CALFED governance legislation (Chapter 812, Statutes of 2002 [SB 1653, Costa]) nor any other legislation lays out a comprehensive framework for how CALFED should be financed over the long term, the Legislature on a number of occasions has stated its intent regarding CALFED financing. These include budget control language in the 1999-00 and 2000-01 Budget Acts stating that beneficiaries of surface water storage projects that proceed to construction should reimburse all prior planning expenditures made from the General Fund. Similarly, in the Supplemental Report of the 2002-03 Budget Act, the Legislature directed CALFED to draft a financing plan for potential surface storage facilities consistent with the beneficiary pays principle. Finally, the 2003-04 Budget Act includes a statement of legislative intent that CBDA submit a broad-based user fee proposal for inclusion in the 2004-05 Governor's Budget, consistent with the beneficiary pays principle specified in the ROD. However, such a fee proposal was not submitted to the Legislature."

CALFED's finance plan included new fee revenues from water users to account for benefits to these users in four program elements: ecosystem restoration, Environmental Water Account, levees, and science. Water users, according to CALFED, benefit from these four programs since each of these programs serves in part to make the supply of water to these users more reliable. The finance plan did not include specific proposals for these new fees. The ROD established that the CALFED program would be developed and implemented consistent with the "beneficiaries pay principle." However, the ROD did not provide any specific guidance as to what the concept meant.

The LAO noted in its February 2005 analysis that "...CBDA staff is currently developing fee options. It is anticipated that the structure for a water user fee that would raise

\$25 million annually (in addition to the \$20 million paid currently by Central Valley Project water users) for the ecosystem restoration program will be ready for legislative evaluation at the May Revision. The authority's staff is considering a number of fee structures, including fees based on the amount of Bay-Delta water diverted by the water user from the system, the storage capacity in Bay-Delta system reservoirs, or some combination of these two options.”

The LAO had earlier recommended in its “Analysis of the 2004-05 Budget Bill” the enactment of legislation that adopts the beneficiary pays principle for funding CALFED and provided guidance regarding its application. The LAO reasoned:

“Since adjustments to CALFED's funding targets are likely to be made over time, as the targets are brought in line with realistic revenue assumptions, legislative direction is needed to guide the resulting reallocation of costs among beneficiaries. Specifically, we think that there should be a statutory definition of "public benefit" and "user benefit," so as to provide objective guidance when public funding and fee-based water user funding, respectively, are appropriate.”

It was not the intent of the CALFED Bay-Delta Program to address all of the water supply challenges in California. The Program, being focused on the Bay-Delta, was directly or indirectly tied to a number of specific project proposals. The ROD reflected the selection of a long-term plan that included specific actions to fix the Bay-Delta.

The Legislature’s response to the beneficiary pays principle discussion came in the form of SB 113, which was introduced on January 24, 2005 by Senator Mike Machado. The bill proposed to apply a beneficiary pays principle to the California Bay-Delta Program. SB 113 included definitions for a number of key terms, including:

- "Benefit" means either a public benefit, private benefit, or shared benefit.
- "Public benefit" means an enhancement to public trust values beyond those defined as a private benefit. Enhancements for which an individual or group of individuals cannot be identified as beneficiaries shall be deemed a public benefit.
- "Private benefit" means either (1) An improvement required as a means of meeting mitigation requirements associated with a project, or (2) An enhancement or improvement where an individual or group of individuals can be identified as beneficiaries.
- "Shared benefit" means an improvement where there are public benefits and private benefits.
- "Project costs" includes costs associated with financing, interest, operations and maintenance, planning, study, permits, and capital expenditures.
- "Local entity" means any private or public entity or association of private or public entities.

East Bay Municipal Utility District, writing in support of SB 113, penned a cautionary note:

"CALFED has recently acknowledged in its public meetings that "water users" may very well be required to cover as much as 80 percent of the total program costs. CALFED continues to identify water "user fees" as a necessary financing tool. Until CALFED identifies which water users are expected to pay and for what, this proposal of a "user fee" looks more like a de facto water tax (a "majority vote" water tax, at that) which would be used to collect funds from all utilities to subsidize the infrastructure projects of certain utilities. This "one size fits all" approach of CALFED's would penalize those water agency customers where water agencies have done solid infrastructure planning for their customers, and are already paying for the facilities that will ensure reliable drinking water supplies.

"Consistent with the objectives of your SB 113, CALFED must immediately initiate an open, evidentiary, public hearing process to determine who benefits from each major CALFED program and project, and allow all stakeholders to present testimony. An impartial process must be established for making the final decisions on cost allocations, based on evidence in the record. Only through an open and fair public process for allocating costs can CALFED hope to achieve support and buy-in on the cost allocation for CALFED programs and projects.

"Once this cost allocation has been undertaken, it is entirely appropriate for the Administration and Legislature, working with the stakeholders, to determine the mechanisms for financing the costs associated with CALFED projects that provide widely dispersed public benefits. Any mechanisms for financing public benefits that emerge from these discussions must include extraordinary protections to ensure that the end result is not a tax on water consumption to supplement General Fund revenues."

The analysis of SB 113 by the Senate Natural Resources & Water Committee included the following two comments:

"This bill is attempting to craft definitions that have eluded CalFed since its inception. Part of the reason the definitions have been so elusive is because the subject is intellectually difficult to grapple with in the abstract. Some have argued that this simply means the CBDA and interested parties need to work harder at arriving at the definitions. Others assert that it is futile to try to reach agreement on such definitions, and that it would be a better use of time for all affected parties to simply negotiate cost shares for CalFed programs and projects on a case-by-case basis. One challenge with the case-by-case negotiation approach is that it is not precisely clear who would be negotiating from the perspective of the state and federal taxpayers.

"On April 18, 2005, this committee received a letter from Lester Snow, Director of DWR, as background for our next day's discussion of the CalFed Finance Plan. This letter included a discussion of DWR's concept for a Water Resources Investment Fund. This fund, according to Mr. Snow, "would support key

investments in water management. Most of the investments would be made in regions around the State, with a smaller portion reserved to support statewide programs." Key to the success of such an investment fund would be some method to distinguish projects of statewide importance from projects of local or regional importance. The concepts addressed in this bill might be useful in resolving that distinction."

SB 113 narrowly passed the Senate in May on a 22-17 vote, but was not pursued in the Assembly.

Six years later, Senator Joseph Simitian authored SB 34. This bill would enact the California Water Resources Investment Act of 2011 to finance a water resources investment program. To finance the program, the bill would impose on each retail water supplier in the state an annual charge based on the volume of water provided in its service area that is provided for nonagricultural uses and an annual charge based on each acre of land within its service area that is irrigated for agricultural purposes. The bill would require the State Board of Equalization to collect the charges from retail water suppliers in accordance with the Fee Collection Procedures Law, and would authorize the State Board of Equalization and the Department of Water Resources to adopt and enforce regulations for the administration and enforcement of the charges and related requirements as emergency regulations.

The bill would require the revenues of the charges collected for purposes of the water resources investment program to be deposited in the California Water Resources Investment Fund, which would be established by the bill. The bill would establish a State Investment Account and an unspecified number of regional investment accounts within the fund, and would require 50% of the moneys deposited in the fund to be transferred to the State Investment Account and 50% of the moneys deposited in the fund to be transferred to the regional investment accounts based on the amount of charges collected within each unspecified funding region established by the bill. The bill would require the moneys in each of the regional investment accounts to be available, upon appropriation by the Legislature, for purposes of providing funding for public benefits of water-related projects and programs, consistent with prescribed requirements.

SB 34 would require the moneys in the State Investment Account to be expended, upon appropriation by the Legislature, for administration of the water resources investment program and to public benefits of specified water-related projects and programs, including statewide water resources projects, the operating expenses of the Delta Stewardship Council and the Delta Plan adopted by the council, projects that reduce the impacts of mercury contamination in the Sacramento-San Joaquin Delta, specified scientific studies and assessments, debt service on general obligation bonds for projects and programs that provide statewide and interregional public benefits, and other unspecified purposes.

The provisions of SB 34 specified that "... (P)ublic benefits are the advantages or outcomes from an undertaking that accrue to the general public. Public benefits are such that no one person or group of people can be effectively excluded from receiving the benefits. While some public benefits of water-related projects and programs may accrue to all Californians, others accrue on a more limited regional basis, such as within a specific watershed or hydrologic region."

The bill provided that public benefits of water-related projects and programs could include enhancement of public trust resources beyond the regulatory baseline, protection of public health and safety, efficient administration of water-related institutions or information, research and development of new technologies, or other unnamed benefits.

According to the author:

"Significant funding is needed to ensure that state and local water resources can continue to meet the demands of a growing population and support endangered ecosystems. The California Research Bureau estimates that unmet water infrastructure, planning, and science needs over the next 30 years total in the \$100 billion range. Over the past 10 years, voter-approved bonds have made significant contributions to address state and local water resource needs, and provided considerable incentives for local investment on behalf of those needs. Although the issuance of voter-approved bonds has provided for important improvements in the state's water management system, the levels of available funding have fluctuated throughout the life of each bond, while the types of projects and programs eligible for funding have varied for each bond. This lack of stability in incentive funding has inhibited local, regional, and state agencies from developing and implementing long-term plans and investment strategies. A new stable source of funding that can work in conjunction with, or independently of, voter approved bonds can provide the financial foundation for resource planning and management, construction of new facilities, managing the demand for water, and maintenance of the water management system. The purpose of this bill is to establish a fund that will provide a stable source of revenue for integrated regional water management to achieve clean, reliable, and sustainable water supplies, in conjunction with local expenditures and other state and federal funds."

The analysis of the bill in the Natural Resources & Water Committee noted the following:

What Is A Region? It is not clear what the most appropriate definition of a region for purposes of funding the public benefits of water related projects and programs should be. For example, there are 10 major hydrologic regions, 9 regional water quality control boards, and the 2012 water bond has 12 different funding regions. The LAO did not have a specific recommendation on this. However, the PPIC has recently suggested that the state establish 9 "regional stewardship

authorities” coinciding with the jurisdiction of the 9 regional water quality control boards.

What Should Be The Rate? Perhaps the better questions are how much revenue is desirable, what should be the basis for the assessment, and what does that translate into as a rate structure? This bill follows the LAO recommendation for what should be the basis for the assessment, but it is not clear what the desired annual revenue requirements are.

What Should Be The Urban/Ag Differential, if any? The 3/23 version of this bill suggested that not only should there be a different effective rate for urban and agricultural uses, but that the difference should be substantial. The proposed rate was \$110 per acre-foot for urban uses, and the default agricultural rate was \$20 per acre of irrigated land. Assuming the 2008 Farm and Ranch Irrigation Survey by the USDA estimate of 3.1 feet of average water used per acre of irrigated agricultural lands that would make the average effective rate for agriculture about \$6.45 per acre-foot of water.

SB 34 would have required a 2/3 vote in both houses to pass; it was not moved beyond the Senate Appropriations Committee after it narrowly cleared the Senate Natural Resources & Water and Governance and Finance committees.

The 2015-16 Regular Session of the Legislature

In an April 2015 publication titled “California’s Water” by Public Policy Institute of California, authors Ellen Hanak, Jay Lund, Jeffrey Mount, et al., write:

“California’s urban water and sewer systems face challenges, but overall they are in reasonably good fiscal health. In contrast, other areas face critical gaps totaling \$2-3 billion annually—a result of legal constraints on local funding, a shrinking federal contribution, and unreliable state support. In California’s \$2 trillion economy, this problem is manageable. But dealing with it requires a focused effort. Looking beyond (general obligation) bonds to fill current and potential funding gaps should be a top priority.”

PPIC argues that California is “failing to adequately fund five services that protect public health and safety and the environment: safe drinking water in small, disadvantaged communities; flood protection; control of stormwater and other polluted runoff; management of aquatic ecosystems; and integrated water management.” PPIC argues that California needs a broader, more reliable mix of state and local funding sources for these underfunded areas. Along with consideration for amending Proposition 218, which PPIC believes to be a barrier to securing increased local revenues, the Institute recommends that it be a priority to enact new state fees and taxes to boost funding for “fiscal orphans.”

Lester Snow, following jobs in state government and the private sector, now leads the California Water Foundation (CWF) as its executive director. CWF is an initiative of Resources Legacy Fund, with primary funding from the S. D. Bechtel, Jr. Foundation, and the David and Lucile Packard Foundation, with additional support from the Walton Family Foundation and William and Flora Hewlett Foundation. Last year, CWF began advocating for the state to “ensure reliable funding for new generation of water projects, advocating for effective use of bond funding, and encouraging the state to develop long-term funding for water policy and systems.”

Near the end of the legislative session last year, Senator Fran Pavley amended her SB 20 on August 26, 2015 to create the California Water Resiliency Investment Fund in the State Treasury and provide that moneys in the fund are available, upon appropriation by the Legislature, for the purpose of providing a more dependable water supply for California. SB 20 would create the California Water Resiliency Investment Fund in the State Treasury. Moneys in the fund would be available, upon appropriation by the Legislature, for the purpose of, and in held in trust for, providing a more dependable water supply for California.

SB 20 would create the following accounts within the California Water Resiliency Investment Fund:

- The Emergency Drought Response and Recovery Account to support emergency actions to protect vulnerable populations from the severe impacts of droughts, including providing emergency drinking water and other residential water supplies, food assistance, employment training and placement, and other economic relief.
- The Integrated Regional Water Resiliency and Management Account to provide matching grants to local and regional agencies to increase regional self-reliance and result in integrated, multibenefit solutions for ensuring sustainable water resources. Eligible projects may include groundwater storage, wastewater recycling, stormwater capture, water conservation, flood management, and other water supply and quality projects.
- The Safe Drinking Water for Disadvantaged Communities Account to support planning, construction, operation, and maintenance of drinking water systems for disadvantaged communities.
- The Environmental Resilience and Recovery Account to provide funding to restore and protect fish and wildlife habitats and populations to avoid or reduce conflicts with water management systems. Funding from the account shall only be used for projects that will provide fisheries, wildlife, or ecosystems with benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations and shall not be used to pay for the mitigation or environmental review costs of any current or proposed water supply project.
- The Smart Water Data Program Account to support improved data and information systems that enable better management of water resources and to further facilitate expansion of water markets.

The current version of SB 20 does not authorize imposition of a public goods charge, but it is widely anticipated that amendments to the bill are forthcoming to do so.

The Brown Administration has not issued any official pronouncements regarding SB 20. However, Governor Brown's proposed FY 2016-17 State Budget includes an increase of \$1.2 million in General Fund appropriations for the Department of Water Resources to strengthen coordination and performance evaluation across state and regional agencies and develop a long-term investment and financing strategy for the California Water Action Plan.

Nearly one week after Governor Brown released his proposed state budget, the Natural Resources Agency, Department of Food and Agriculture and the California Environmental Protection Agency announced an updated California Water Action Plan on January 14, 2016 that incorporates two years of significant progress toward sustainable water management and an implementation report that tracks and details that progress. The Brown Administration's water policy goals and priorities remain unchanged and the California Water Action Plan continues to focus on sustaining supplies of water for people and the environment and resolving the state's most critical water resource problems, according to a press release issued by the three state entities.

The California Water Action Plan sets forth 10 actions that "guide the efforts to create more resilient, reliable water systems and to restore damaged and destroyed ecosystems." The final item on the list addresses action to identify sustainable and integrated financing opportunities. Although the Plan presents little detail, one of the action items refers to the development of a water financing strategy where user or polluter fees are indicated as being appropriate for consideration. The Plan notes that the three agencies will assess areas "where users may not be fully funding the costs or impacts associated with their use..."

The California Water Foundation issued the following statement from Executive Director Lester Snow regarding Gov. Brown's 2016-17 Budget Proposal:

"Governor Brown's proposed budget increases funding to continue emergency drought response, an appropriate action considering our state's persistent drought conditions. A few months of El Niño rain storms won't fix California's water crisis.

"However, much more must be done to address California's antiquated and dysfunctional water management system. Ironically – tragically – while some of our communities are battling floods, others are struggling with the effects of parched landscapes and lack of clean water.

California needs stable and permanent funding mechanisms to improve how water is managed in this state, particularly programs to help capture and reuse

stormwater, and strategies to help the hundreds of thousands of Californians who have no access to safe drinking water.”

A Range of Costs

Former Governor Arnold Schwarzenegger’s Strategic Growth Plan included activities and initiatives to improve water management in California from a financing standpoint as well as through CALFED. The Water Resources Investment Fund of 2005 was part of the investment plan that totaled \$35 billion over 10 years that was designed to respond to population growth and the need for a sustained investment strategy. The key sources of funding included \$9 billion in state general obligation bonds, \$21 billion in local and federal sources, and \$5 billion in Water Resources Investment Funds. The latter, then, would require about \$500 million annually to be generated from the imposition of a fee on local water users.

PPIC last year pegged the amount that needed to be generated through a public goods charge at \$2 to \$3 billion per year. At the 2015 fall conference of the Association of California Water Agencies, Lester Snow indicated that a \$2 per month per customer account charge would raise about \$500 million a year. This would translate into a monthly charge of between \$8 and \$12 per urban retail customer account to raise the amounts identified in the PPIC report.

Vote Threshold for Legislative Approval

California voters approved Proposition 26 in November 2010 to refine the definition of what constitutes a “tax” and to ensure that the Legislature or a local agency cannot circumvent voter approval requirements for tax increases simply by calling an exaction a fee or charge.

Pursuant to Proposition 26, a government activity funded by a charge should benefit only the individuals and entities that pay the charge. Governmental activity benefiting entire communities or populations, and charges that exclude or exempt certain segments of the population, are not evenly distributed. Therefore, such charges require a two-thirds vote of the Legislature and/or a two-thirds approval of voters at the local level. In addition, state and local governments must be able to demonstrate through a preponderance of the evidence that a charge is reasonable. A charge is reasonable if it does not exceed the necessary cost of the governmental activity and if the cost allocated to the payer bears a fair or reasonable relationship to the payer’s burden and/or benefits.

An analysis of the public goods charge indicates that legislation to impose such a charge would require a two-thirds vote of both houses of the Legislature. A quick look at SB 34 in 2011, for example, confirms this to be the case as the Office of the Legislative Counsel keyed the vote requirement for that legislation at a 2/3 vote.

Analysis of the Public Goods Charge

Conducting an analysis of the public goods charge requires addressing a number of questions. First and foremost, are the programs identified to receive public goods charge revenues the responsibility of the state or of local agencies? Second, are these programs that require funding (are they necessary or desirable or neither)? Third, what is the most appropriate means of paying for the programs?

There are similarities between the proposed spending targets suggested by PPIC and SB 20. The PPIC list includes: safe drinking water in small, disadvantaged communities; flood protection; control of stormwater and other polluted runoff; management of aquatic ecosystems; and integrated water management. SB 20, by comparison, includes:

- Emergency actions to protect vulnerable populations from the severe impacts of droughts, including providing emergency drinking water and other residential water supplies, food assistance, employment training and placement, and other economic relief.
- Grants to local and regional agencies to increase regional self-reliance and result in integrated, multibenefit solutions for ensuring sustainable water resources.
- Actions to support planning, construction, operation, and maintenance of drinking water systems for disadvantaged communities.
- Funding to restore and protect fish and wildlife habitats and populations to avoid or reduce conflicts with water management systems.
- Support for improved data and information systems that enable better management of water resources and to further facilitate expansion of water markets.

While PPIC specifically singles out flood protection and stormwater management, these were included in a greater sense due to limitations imposed on local agencies under the provisions of Proposition 218. The latter constitutional provision is viewed as a barrier to securing local funding. Funding formulas for flood protection projects, whether they involve Delta levee maintenance and improvement, facilities of the State Plan of Flood Control, or state flood project subventions, are all specified in statute and reflect agreed upon state-local cost sharing (and in certain instances, reflect federal cost sharing as well). The control of stormwater and other polluter runoff clearly falls under the polluter pays principle, although bearing the cost of federal and state regulatory compliance will be quite burdensome on local agencies.

A quick assessment of the remaining spending categories reveals priorities that are the responsibility of the State as sovereign. Funding to restore and protect fish and wildlife habitats, for example, is a public trust resource responsibility. Water management system impacts are only one of a number of human activities that have impacted fish and wildlife resources in California. Support for improved data and information systems that better enable management of water resources as well as the facilitation of water markets are either the responsibility of the State. Therefore, the State General Fund is an appropriate funding source; or, to the extent either category of expenditure relates to a regulatory function of the State Water Resources Control Board, fees imposed on

water right holders or participants in a water market are more appropriate and consistent with the provisions of Proposition 26.

Looking more closely at SB 20, it is difficult to argue that local water customers should be taxed to pay for food assistance, employment training and placement, or other economic relief. These are all responsibilities of the Federal and state government (and perhaps counties as 'arms' of the state for the delivery of health and human services). Actions to support drinking water systems for disadvantaged communities are also a state responsibility given the restrictions of Proposition 218 and the Human Right to Water policy enacted by the State of California [NOTE: The author of AB 685, which added Section 106.3 to the California Water Code (Human Right to Water), explained in a letter to the Assembly Daily Journal dated August 30, 2012 (see Daily Journal for September 1, 2012), that "the declaration of state policy in subdivision (a) and the implementation provision in subdivision (b) do not impose a new obligation on the state to provide water service or to pay for water for those unable to afford it." Also, AB 685 clearly states that the implementation of Section 106.3 "shall not infringe on the rights and responsibilities of any public water system."]

As for funding relating to integrated regional planning, the development of integrated regional water management plans was and always has been a voluntary, collaborative planning process. The provision of State General Obligation Bond proceeds in various bond measures since Proposition 13, Bonds for Water Infrastructure in 2000 (which funded IRWMP-type projects in the Santa Ana River, San Jacinto and Lake Elsinore watersheds) was intended as an incentive for local agencies to develop regional plans. And, state general obligation bond funding was made available to supplement the estimated \$30 billion annual local agency expenditures on water and wastewater projects in California. PPIC and SB 20, in suggesting that the source of state financial investment in regional water and wastewater infrastructure should be local revenues, turns the original intent of providing state-level investment on its head. If the Brown Administration and the Legislature no longer wish to appropriate state funds for purposes of IRWMP projects after Proposition 1 monies are expended, then that should be the basis for a decision regarding future state funding. Otherwise, the state should remain a cost-sharing partner in order to encourage regional-level planning and infrastructure development. In truth, an analysis of historical state funding for IRWMP projects reveals that most of the projects that secured funding are local projects that were packaged into a regional planning document. Most regional-level projects historically occurred through regional governments; e.g., Metropolitan Water District of Southern California, Los Angeles County Sanitation Districts, et cetera and not due to state investment through IRWMP.

Conclusion and Recommendation

The imposition of a public goods charge on local water customers represents a tax on those customers to raise revenue that will be used to supplant State General Fund expenditures, whether through direct expenditure or through debt service payments to retire state general obligation bonds. And, expenditures of public goods charge revenue

would not be limited to project expenditures (capital expenditures), but to operations and maintenance as well as state administering agency overhead (again, revenue from the public goods charge supplanting or supplementing State General Fund responsibilities).

The imposition of a public goods charge would not reflect the reasonable cost of providing water service to local water customers, and the projects and programs for which revenue generated by the charge would be expended lack a direct nexus to the fee payor. State concerns regarding the affordability of water might, for example, relieve low income household accounts from paying the public goods charge, which would negatively affect proportionality as well. The bulk of the revenues generated by the public goods charge would be expended for projects that have no direct benefit to local water customers. In most cases, there are multiple responsible interests that hold some measure of responsibility for the resource impacts PPIC and SB 20 seek to address; e.g., historic farming and urban growth impacts on wetlands and the terrestrial and aquatic species that rely on them.

Finally, local water districts should be concerned about the potential negative effect on the willingness of customers to approve future local water and wastewater rate increases as a result of the imposition of a public goods charge. Fees and charges, whether imposed at the state or local level, rarely lessen over time.

Recommendation regarding SB 20 (Pavley): Oppose

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

LOCAL GOVERNMENT. WATER, SEWER, STORMWATER, AND FLOOD

CONTROL SERVICES. FEE STRUCTURES. INITIATIVE CONSTITUTIONAL

AMENDMENT. Establishes alternative process for local government to impose fees for water, sewer, stormwater, and flood control services, as defined, without voter approval. Authorizes fee structures that recover reasonable costs of providing service, encourage water conservation and resource management, and provide fee reductions for low-income households. Requires notice of and public hearing on proposed fees. Allows fee payers to prevent proposed fee by majority filing written protests. Prohibits use of fee revenues for other purposes. Requires independent audit of revenues and expenditures. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Increased local government revenues and spending for flood control services and stormwater management in the range of low hundreds of millions of dollars up to more than \$1 billion annually, depending on future actions by local governing boards and voters.** (15-0116.)

*Law Offices of***OLSON****HAGEL &****FISHBURN****LLP**

January 19, 2016

VIA MESSENGER

Office of the Attorney General
 Attention: Ashley Johansson, Initiative Coordinator
 1300 "I" Street
 Sacramento, CA 95814

RECEIVED**JAN 19 2016**

INITIATIVE COORDINATOR
 ATTORNEY GENERAL'S OFFICE

**RE: Submission of Amendment to Statewide Initiative Measure -
 The California Water Conservation, Flood and Stormwater
 Management Act of 2016, No. 15-0116**

Dear Ms. Johansson:

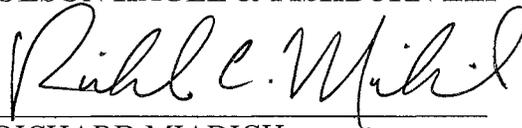
As you know, we serve as counsel for the proponents of the proposed statewide initiative, "The California Water Conservation, Flood Control and Stormwater Management Act of 2016." The proponents of the proposed initiative are Christopher McKenzie, Tim Quinn, and Matthew Cate. On their behalf, we are enclosing the following documents:

- The amended text of "The California Water Conservation, Flood Control and Stormwater Management Act of 2016"
- A red-line version showing the changes made in the amended text
- Signed authorizations from each of the proponents for the submission of the amended text together with their requests that the Attorney General's Office prepare a circulating title and summary using the amended text.

Please continue to direct all inquiries or correspondence relative to this proposed initiative to us at the address listed below:

Lance H. Olson & Richard Miadich
 Olson, Hagel & Fishburn LLP
 555 Capitol Mall, Suite 1425
 Sacramento, CA 95814

Very truly yours,

OLSON HAGEL & FISHBURN LLP


RICHARD MIADICH

RCM:LHO:EAA

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 3605 Long Beach Blvd
 Suite 426
 Long Beach, CA
 90807-6010

Tel: (562) 427-2100
 Fax: (562) 427-2237

VIA MESSENGER

January 15, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: Submission of Amendment to The California Water Conservation, Flood Control and Stormwater Management Act of 2016 (15-0116)

Dear Ms. Johansson:

On December 14, 2015 I submitted a proposed statewide initiative titled "The California Water Conservation, Flood Control and Stormwater Management Act of 2016" ("Initiative") and a request that the Attorney General prepare a circulating title and summary pursuant to section 10(d) of Article II of the California Constitution. Pursuant to Elections Code section 9002(b), I hereby submit timely amendments to the text of the Initiative. As a proponent of the Initiative, I approve the submission of the amended text to the Initiative and I declare that the amendment is reasonably germane to the theme, purpose, and subject of the Initiative. I request that the Attorney General prepare a circulating title and summary using the amended Initiative.

Sincerely,



Matthew Cate

Executive Director, California State Association of Counties

VIA MESSENGER

January 15, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

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Sincerely,

A handwritten signature in black ink, appearing to read "Timothy H. Quinn", with a long horizontal line extending to the right.

Timothy H. Quinn

Executive Director, Association of California Water Agencies

VIA MESSENGER

January 15, 2016

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: Submission of Amendment to The California Water Conservation, Flood Control and Stormwater Management Act of 2016 (15-0116)

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Sincerely,



Christopher McKenzie

Executive Director, League of California Cities

**The California Water Conservation, Flood Control
And Stormwater Management Act of 2016**

SECTION 1. Title

This measure shall be known as the California Water Conservation, Flood Control and Stormwater Management Act 2016

SECTION 2. Findings, Declarations and Purposes

- A. California's historic drought and the extensive heavy floods and property damage that often accompany heavy rains require that California local communities have the tools needed to further encourage conservation and discourage excessive use of water; to effectively manage and increase water supplies; to capture, clean and eliminate pollution from local water sources; and to better protect people and property from the dangers of floods.
- B. Effective local management of water supplies includes authorizing local agencies to design rates to encourage water conservation and discourage excessive use of water.
- C. Local agencies should also invest in infrastructure to capture and clean water polluted by toxic chemicals and trash; recycle and reuse rainwater and stormwater runoff; and to prevent toxic stormwater and urban runoff from contaminating sources of drinking water, including rivers, lakes, streams, and groundwater, and polluting beaches, coastal waters, and wetlands.
- D. California must also improve local flood control by better capturing and managing storm and flood waters and upgrading storm drains, sewer and drainage systems to protect properties from floods and increase local supplies of water available for public use.
- E. Existing state laws governing the funding of local water supplies, clean water, water conservation and flood water protection were not developed with California's current water realities in mind.
- F. Furthermore, local governments face thousands of dollars in fines per day from the state and federal governments if they cannot meet obligations under the federal Clean Water Act and state laws and regulations to adequately capture and treat toxic stormwater and urban runoff.

- G. An alternative method for funding critical local water supplies, water quality, water conservation and flood protection projects is needed.
- H. This measure establishes an alternative funding method that authorizes local agencies to:
 - i. Set rates for customers to encourage water conservation, prevent waste, and discourage excessive use of water.
 - ii. Levy fees or charges, subject to ratepayer protest, for flood control, and for management of stormwater to protect coastal waters, rivers, lakes, streams, groundwater and other sources of drinking water from contamination and to comply with the federal Clean Water Act and state laws and regulations.
 - iii. Use fees or charges to reduce water, and sewer fees or charges for low-income customers.
- I. Any local agency that utilizes this alternative funding method for water, flood control, stormwater, or sewer service should be required to adhere to strict accountability, transparency and ratepayer protections. This includes:
 - i. Providing local ratepayers with a description of the need for the proposed fee or charge and a list of the projects and purposes projected to be funded by any proposed fee or charge in advance of any public hearing or consideration of the fee or charge;
 - ii. Posting the description of the proposal on the agency's Internet website with all applicable exhibits;
 - iii. Providing local ratepayers a notice of the date and time of the public hearing the local agency will hold on the proposed fee or charge;
 - iv. If written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice about the proposal then the local agency shall not impose, increase or extend the fee or charge;
 - v. All money must be spent for the local purpose for which the fee or charge was imposed and cannot be taken by state government;
 - vi. Revenues derived from the fee or charge shall not exceed the reasonable cost to the local agency of providing the water, flood control, stormwater, or sewer service or be used for any purpose other than that for which it was imposed;
 - vii. The manner in which the costs are allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor's burden on or benefits received from the water, flood control, stormwater, or sewer service;
 - viii. The initiative power of voters may be used to repeal or reduce the fee or charge in the future with the filing of a petition calling for an election on the question;
 - ix. Independent annual audits shall be made available to the public showing how all funds are spent.

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- J. This new funding method will allow local agencies to invest in the water supplies, water quality, flood protection and water management and conservation programs we need, while guaranteeing a high level of accountability and ratepayer protections.

SECTION 3. Section 8 is hereby added to Article X of the California Constitution to read as follows:

SEC. 8 Water, Flood Control, Stormwater, and Sewer Service

(a) Alternative funding method. This section provides alternative procedures and requirements for funding water service, flood control service, stormwater service, and sewer service independent of any other procedures and requirements in this Constitution for funding these services.

(1) A local agency that adheres to the procedures and requirements of this section, including the strict accountability requirements to protect local ratepayers, may use at its discretion, the provisions of this section instead of any other procedures or requirements in this Constitution for funding the cost of providing water service, flood control service, stormwater service, and sewer service only if undertaken voluntarily and at the sole discretion of the local agency.

(2) The revenues derived from the fees or charges imposed in accordance with this section may only be used by the local agency that imposed, increased or extended the fee or charge, and like other fees or charges imposed, increased or extended by local agencies, the Legislature is prohibited from reallocating, transferring, borrowing, appropriating, restricting the use of, or otherwise using the proceeds of such fees or charges.

(b) Definitions. As used in this section:

(1) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by a local agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for water service, flood control service, stormwater service, or sewer service having a direct relationship to property ownership.

(2) "Flood control service" means any system of public improvements, facilities, projects, or services for the collection, conveyance, drainage, control, conservation, or management, of flood water to: (A) reduce the risk of flooding of public or private property, or (B) comply with federal or state laws, rules and regulations.

(3) "Local agency" means any city, county, city and county, including a charter city or county, special district, or any other local or regional governmental entity.

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(4) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the fee or charge.

(5) "Sewer service" means any system of public improvements, facilities, projects, or services for the collection, conveyance, conservation, drainage, disposal, recycling or treatment of dry weather runoff, sewage or waste to: (A) conserve and protect sources of drinking water, such as rivers, lakes, streams and groundwater, or the environment, such as beaches, coastal waters, and wetlands, from toxic chemicals, biological contaminants, and other pollutants; (B) protect public health and safety; or (C) comply with federal or state laws, rules, and regulations.

(6) "Stormwater service" means any system of public improvements, facilities, projects or services for the collection, conveyance, conservation, drainage, disposal, recycling or treatment of stormwater and dry weather runoff to: (A) protect sources of drinking water, such as rivers, lakes, streams and groundwater, or the environment, such as beaches, coastal waters, and wetlands from toxic chemicals, biological contaminants, and other pollutants; (B) protect public health and safety; (C) conserve water; or (D) comply with federal or state laws, rules and regulations.

(7) "Water service" means any system of public improvements, facilities, projects or services intended to provide for the production, management, storage, supply, treatment, recycling, conservation or distribution of water from any source.

(c) Requirements for new, increased or extended fees or charges. A fee or charge for water service, flood control service, stormwater service, or sewer service shall not be imposed, increased, or extended by a local agency pursuant to this section unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the reasonable cost to the local agency of providing the water service, flood control service, stormwater service, or sewer service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The manner in which the costs of the water service, flood control service, stormwater service, or sewer service are allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor's burdens on or benefits received from the water service, flood control service, stormwater service, or sewer service.

(d) Conservation fee or charge; low-income households. A local agency that imposes, extends, or increases a fee or charge pursuant to this section may do either or both of the following:

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(1) Allocate the cost of water service, flood control service, stormwater service or sewer service by increasing or decreasing the amount of a fee or charge as part of a rate structure reasonably designed to encourage water conservation and resource management in furtherance of the policy established in section 2;

(2) Increase the amount of a fee or charge to derive revenues that do not exceed the reasonable cost of reducing such fee or charge for lower-income households.

(e) Notice, public hearing and majority protest. A local agency shall comply with the procedures of this subdivision in imposing, increasing, or extending a fee or charge for water service, flood control service, stormwater service, or sewer service pursuant to this section:

(1) The local agency shall provide written notice by mail of the new fee or charge or the proposed increase in or extension of an existing fee or charge to the fee payor listed in the local agency's billing, or customer service records or other appropriate records. If the fee or charge is or will be imposed on a parcel, the local agency shall provide written notice to the record owner as provided in paragraph (4). The local agency may include the notice in the agency's regular billing statement for the fee or charge to the person at the address to which the agency customarily mails the billing statement for water service, flood control service, stormwater service, or sewer service. If the customer is billed only electronically, the agency shall provide notice by mail.

(2) The notice required by paragraph (1) shall include the amount of the fee or charge proposed to be imposed on the recipient of the notice or the basis upon which the amount of the fee or charge will be calculated, together with the date, time and location of the public hearing on the fee or charge. The notice also shall state that if written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice required by paragraph (1), then the local agency shall not impose, increase or extend the fee or charge.

(3) The notice required by paragraph (1) shall include a general description of the services, facilities and improvements projected to be funded with the proceeds derived from the new fee or charge or proposed increase in, or extension of the fee or charge. A more complete description of the projected services, facilities and improvements, including any applicable exhibits, shall be made available at an accessible location and on the local agency's Internet website.

(4) If the local agency desires to preserve any authority it may have to record or enforce a lien on the parcel to which service is provided, the local agency shall also mail notice to the record owner's address shown on the last equalized assessment roll if that address is different than the billing address.

(5) The local agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice required by paragraph (1). At the

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public hearing, the local agency shall consider all oral and written protests against the fee or charge. If written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice required by paragraph (1), then the local agency shall not impose, increase or extend the fee or charge. One written protest per service address shall be counted in calculating a majority protest pursuant to this paragraph.

(f) Burden of proof. The local agency bears the burden of proving by a preponderance of the evidence that the amount of a fee or charge is no more than necessary to cover the reasonable costs of the water service, flood control service, stormwater service, or sewer service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the water service, flood control service, stormwater service, or sewer service. A fee or charge levied pursuant to and in compliance with this section is not a tax

(g) Initiative power for fees or charges. Notwithstanding any other provision of this Constitution, including, but not limited to Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any fee or charge for water service, flood control service, stormwater service, or sewer service adopted, increased or extended pursuant to this section. The power of the initiative to affect such fees or charges shall be applicable to all local agencies and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

(h) Mandatory audit. Any local agency that approves a fee or charge for water service, flood control service, stormwater service, or sewer service in accordance with this section shall cause to be prepared an independent financial audit of the receipt and expenditure of the revenues derived from the fee or charge. Such an audit may be part of a comprehensive audit of the agency's finances, but the audit shall identify the revenues received and expended in accordance with this section with sufficient clarity to help ratepayers compare the use of the funds to the description provided in paragraph (3) of subdivision (e).

SECTION 4. Severability

If the provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this act are severable.

SECTION 5. Conflicting Measures

It is the intent of the people that in the event that this measure and another measure relating to the establishment of an alternative method of imposing, increasing, or extending fees or charges to fund water service, flood control service, stormwater

January 19, 2016

service, or sewer service appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure, and if approved by the voters, this measure shall take effect notwithstanding.

SECTION 6. Liberal Construction

The provisions of this act shall be liberally construed in order to effectuate its purposes and the intent of the voters to provide local agencies alternative procedural and substantive requirements for imposing fees and charges for water service, flood control service, stormwater service, and sewer service from those otherwise found in the Constitution.

LAO

February 2, 2016

RECEIVED

FEB 03 2016

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (A.G. File No. 15-0116, Amendment No. 1) that would amend the state Constitution to create an alternative process for local governments to assess fees for flood control, stormwater management, water, and sewer services.

BACKGROUND

Local Government Agencies Provide Most Water-Related Services. Most spending on water programs in the state is done at the local level by local government agencies such as special districts, cities, and counties. These local government agencies provide four major water-related services:

- **Water Service.** Local agencies utilize infrastructure—such as pipes, reservoirs, and water treatment plants—to provide drinking water to households and businesses, as well as to supply water for agricultural purposes—such as irrigation.
- **Sewer Service.** Local governments are responsible for providing sewer services, which include infrastructure and programs to dispose of and treat dry weather runoff, sewage, or wastewater.
- **Flood Control.** Flood control activities include the construction and maintenance of levies and other structures to manage floodwater in order to reduce the risk of flooding of public or private property.
- **Stormwater Management.** Stormwater runoff is generated by rain and snowmelt that flows over land, paved streets, and parking lots, and does not soak into the ground. This runoff picks up pollutants, such as chemicals and oils, that can harm rivers, streams, lakes, and coastal waters. Stormwater management includes infrastructure, projects, and services designed to treat stormwater in order to protect public health and safety and conserve water.

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Local Governments Rely on Various Funding Options for Water-Related Services. Local governments pay for water-related projects and services using several revenue sources, including state funds; federal funds; and local taxes, fees, and assessments. We discuss a few of these local funding sources below.

- ***Property-Related Fees.*** A fee is a charge imposed on an individual or business for a service provided directly to that individual or business. The amount of the fee may not exceed the cost to government to provide the service. Under Proposition 218 (1996), property-related fees, such as for water and sewer services, are limited and cannot exceed the *proportional* cost of providing the service to the specific parcel being charged. About 80 percent of local costs for water and sewer services is paid for as fees by individuals as ratepayers of water and sewer bills.
- ***Property Assessments.*** Local governments levy assessments in order to fund improvements that benefit property. Under Proposition 218, improvements funded with assessments must provide a direct benefit to property owners, and the amount each property owner pays must (1) reflect the cost incurred by the local government to provide the benefit and (2) be allocated to each property in proportion to the benefit it receives from the improvement. Flood control services are sometimes funded in part through property assessments.
- ***Special Taxes.*** A tax is called a “special” tax if its revenues are used for specific purposes. Special taxes are sometimes used to fund water-related services.

Processes for Approving Local Property-Related Fees, Assessments, and Special Taxes. Property-related fee increases generally must be approved by a majority vote of the property owners subject to the fee or by a two-thirds vote of the electorate living in the affected area. However, fee increases for sewer and water services are not subject to a public vote. Instead, fee increases for sewer and water services are subject to a public hearing, and if a majority of the affected parcel owners protest, then the fee increase is rejected. Fee increases for flood control and stormwater services are subject to the same vote requirement as most property-related fees, as they are not included in the sewer and water service exemption. To impose a new property assessment, a local government must secure the approval of a weighted majority of affected property owners, with each property owner’s vote weighted in proportion to the amount of the assessment he or she would pay. A special tax requires a two-thirds vote of the electorate for approval.

Recent Court Decision Regarding Tiered Rates. There are various rate structures that are used by the roughly 430 local government agencies that provide an estimated 90 percent of the water delivered in California. One of the most common is a tiered rate. Under a tiered rate, the price for a unit of water changes according to the level of use and tiers can be structured to promote water conservation. In a recent court decision, an appellate court ruled that one city’s tiered rate violated the proportionality requirements for property-related fees. In this case, the city failed to demonstrate that its rate tiers corresponded to the actual cost of providing service on a parcel basis at a given level of usage.

Lifeline Programs. Lifeline programs are programs that reduce the water and sewer service rates charged to low-income households in order to provide them with more affordable services. In order to backfill the revenue decreases from the lower lifeline rates, local government agencies generally either charge higher rates to other households or use other sources of funding.

PROPOSAL

This measure makes several changes to the state Constitution related to how local governments can charge for providing water, stormwater, flood control, and sewer services.

Establishes an Alternative Process for Increasing Water-Related Fees. This measure establishes an alternative process to impose, increase, or extend fees (or certain other charges) for water-related services. The measure prohibits this process from being used for an ad valorem tax (based on property value), a special tax, or an assessment. Under the new process, a local government agency would have to mail notices to all fee payers with information on the amount of the fee and how the fee increase would be calculated, as well as a description of the services, facilities, and improvements that would be funded with the increased revenues. Local government agencies would be required to conduct a public hearing on the proposed fee at least 45 days after mailing the notice. If written protests against the fee are given to the agency by a majority of fee payers, then the agency cannot impose the fee. While this process is largely similar to what currently is required for water and sewer fees, the measure would allow stormwater and flood control fees to follow this process as well. Currently local governments must receive voter approval to levy property-related fees for stormwater and flood control.

Requires Use of Fair or Reasonable Relationship to Costs. The measure requires that the manner in which the increased costs to provide a water-related service are allocated to a fee payer must bear a *fair or reasonable* relationship—a change from the *proportional* requirement under existing law—to the fee payer's burden or the benefit the payer receives from these services. The local agency would bear the burden of proof in demonstrating that this standard has been met.

Provides Greater Rate-Setting Flexibility. Under the measure, local government agencies could utilize the new fee-setting process to establish rate structures—such as tiered rates—for allocating the cost of water-related services in ways designed to encourage water conservation and discourage excessive use. (As noted earlier, a recent appellate court decision has created uncertainty about how tiered rates must be structured in order to meet the proportionality requirement under existing law.) Local government agencies could also use the new process to establish lifeline programs to reduce fees for lower-income ratepayers, provided that the fee increases are reasonable.

Establishes Requirements for Fiscal Accountability. Any local government agency that uses the measure's alternative funding method for water-related services would be required to have an independent audit of the receipt and expenditure of the revenues derived from the fee or charge.

FISCAL EFFECTS

Increased Stormwater and Flood Control Revenues and Costs. The measure provides a new process for raising fee revenues to fund flood control and stormwater projects. For these types of projects, the new process would make it easier for local governments to raise revenues, compared to the approval threshold for assessments, special taxes, and property-related fees.

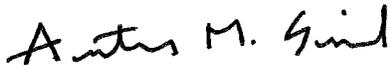
The amount of additional local revenues generated would depend on future actions by local governing boards and voters. Given the estimated statewide need for flood control and stormwater management projects—estimated to be between \$1.3 billion and \$1.8 billion annually—the effect of lower approval threshold for funding for projects could be major. To the extent local agencies utilize the new process, over time, we estimate that it could increase local government revenues and spending by the low hundreds of millions of dollars up to more than \$1 billion annually compared with what otherwise would have occurred. These increased revenues would be used for increased flood control and stormwater services.

Other Potential Fiscal Impacts. The measure changes the requirement for a property-related fee or charge from one where it shall not exceed the *proportional* costs of the service to one where the fee or charge shall bear a *fair or reasonable* relationship to the benefits the fee payer receives. It also allows for the use of greater rate-setting flexibility, including the use of alternative rate structures to promote water conservation. To the extent local government agencies use the flexibility—particularly those providing water and sewer services—it could result in changes in how payers use these services. To the extent this occurs, it would affect local government agencies' costs and revenues.

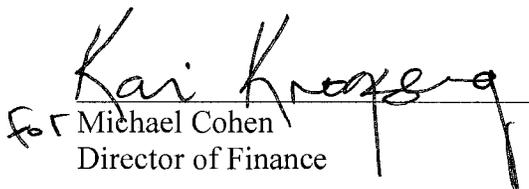
Summary of Fiscal Effect. The measure would have the following fiscal effect:

- Increased local government revenues and spending for flood control services and stormwater management in the range of low hundreds of millions of dollars up to more than \$1 billion annually, depending on future actions by local governing boards and voters.

Sincerely,



for Mac Taylor
Legislative Analyst



for Michael Cohen
Director of Finance