



Santa Clara Valley Water District

File No.: 17-0819

Agenda Date: 5/22/2018

Item No.: 7.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommended Position on State Legislation: AB 1923 (Limón) Residential Property Insurance: Wildfire Consolidated Debris Removal; AB 2050 (Caballero) Small System Water Authority Act of 2018; AB 3045 (Gallagher) Natural Resources Agency: State Water Project Commission; and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support" on: AB 1923 (Limón) Residential Property Insurance: Wildfire Consolidated Debris Removal;
- B. Adopt a position of "Support" on: AB 2050 (Caballero) Small System Water Authority Act of 2018; and
- C. Adopt a position of "Oppose" on: AB 3045 (Gallagher) Natural Resources Agency: State Water Project Commission.

SUMMARY:

AB 1923 (Limón) Residential Property Insurance Wildfires Consolidated Debris Removal (A-04-19-2018)

Position Recommendation: Support

Priority: 3

After the historical fires that ravaged California in 2017, burning over 1.2 million acres of land and over 10,000 structures, local, state, and federal agencies responded to clean up the debris in a coordinated effort to speed up recovery. In some areas, the county conducted the cleanup and then attempted to bill the individual homeowners for their apportioned cost of the debris removal. It was found that many of the homeowner's insurance policies lacked the coverage necessary to pay the \$115,000 bill. Furthermore, the insurance policies lacked clear language on who was responsible for the debris cleanup, leaving both the homeowners and the local agency to figure it out.

AB 1923 would create the Debris Removal Program to coordinate cleanup activities after a fire that has been classified as a "state of emergency" by the Governor. The bill clarifies the responsibilities and liability of homeowners and insurance companies when participating in a government agency debris removal program. The bill would require that homeowners be provided the choice to agree participate in the program and expressly give permission to enter the premises of their property. The bill would protect homeowners by requiring that invoices for services provided are itemized and

include only those charges for activities related to the cleanup of their property.

Importance to the District

After large fires of the magnitude experienced in California in 2017, there is a massive amount of toxic debris left from burned homes and businesses. Some of the toxic materials include heavy metals, dioxin created when fire retardants in furniture and building materials burn, and other harmful substances, many of which have been linked to endocrine disruption, reproductive problems, developmental delays, and cancer in humans, mammals, and aquatic species.

One of the biggest concerns after a fire is the potential chance of rain, which can cause mudslides, but also can transit toxic materials to nearby watersheds. For example, the Tubbs fire in Sonoma and Napa counties burned both forests and urbanized areas, and created an enormous amount of hazardous debris. The fire occurred in October, right before the winter rains. As such, there was a massive effort by the county to clean up the sites to prepare for winter.

The District has also experienced several fires in the Santa Cruz Mountains which mainly burned forested areas, but there is always the potential of fire in more populated areas. Therefore, it is in the best interest of the District that fire debris is removed as expeditiously as possible to protect water quality, the environment, and wildlife.

District staff investigated the possibility of including in AB 1923 the cleanup of debris after a flood event, and worked on the issue with Assemblymember Limón's office and the bill sponsor, the California Department of Insurance (DOI). After discussions with the National Flood Insurance Program (NFIP) and the Federal Emergency Management Agency (FEMA), DOI found that the federal Stafford Disaster Relief and Emergency Assistance Act would prohibit NFIP from paying for debris removal in cases where FEMA would reimburse for 75 percent of the costs of flood debris clean up, or in events where the U.S. Army Corps of Engineers provides debris removal. In addition, DOI attorneys found that the State of California does not have the authority to require NFIP to participate in a consolidated debris removal program. However, even without flood events included, a consolidated debris removal program after widespread destruction by wildfire is vital to the District's mission of protecting water quality and watershed stewardship.

Staff recommends that the Board adopt a position of "Support" on AB 1923.

Pros

- Allows for improved procedures for debris removal, which could prevent post-fire toxins from entering waterways and polluting them.
- Permits individual property owners to refuse to participate in the debris program.
- Allocates costs based on direct benefits to the individual properties.

Cons

- None

AB 2050 (Caballero) Small System Water Authority Act of 2018 (A-04-17-2018)

Position Recommendation: Support

Priority: 3

AB 2050 would enact the Small System Water Authority Act of 2018 (Act) which seeks to create a mechanism to address the lack of safe drinking water in communities that lack the resources necessary to remedy the problem. The bill would allow the State Water Resources Control Board (State Water Board) to require the consolidation of five, or more, failing water systems, to improve and competently provide water to these communities.

The bill would require the State Water Board to notify water systems that have been in violation of drinking water regulations for four consecutive quarters by May 1, 2019, and inform them that a Small System Authority (Authority) may be formed in their region to remedy the situation. The failing water system would have 180 days to respond to the State Water Board and provide a plan to remedy the lack of safe drinking water within a reasonable time, but not later than January 1, 2027.

If an agency does not remedy the violation of safe drinking water regulations within the time provided in the plan, or the plan is inadequate, the State Water Board may decide to move forward with the creation of an Authority. The State Water Board would be required to send a notice to each county, city, water district, private water company, or mutual water company informing them of the authority creation and inviting them to consider joining voluntarily.

The State Water Board would appoint an Administrator to plan the creation of the Authority and pay compensation and expenses related to the formation of the Authority. The Administrator would work with the agencies proposed for consolidation to create a plan, that would be submitted to the Local Area Formation Commission (LAFCO) for review and approval. After the original formation of the Authority, the LAFCO would be required to review any applications to join the Authority from interested water providers.

Importance to the District

Many areas around the state, primarily in the Central Valley, lack safe drinking water. This was exacerbated during the last drought, which caused some communities, such as Porterville, to completely run out of water for an extended period. Currently, the State Water Board indicates that there are 329 water systems that are out of compliance with safe drinking water regulations.

In 2015, the Governor signed SB 88 (Committee on Budget and Fiscal Review) which provided the State Water Board with the authority to order the consolidation of failing water

systems. SB 88 was intended to create a mechanism to improve water service in areas where a water provider consistently failed to deliver safe drinking water. While the new process has worked in a limited number of situations, it has proven inadequate in regions where the failing water systems' service areas are non-contiguous.

While the lack of safe drinking water is not an extensive problem in the District's jurisdiction, we do have some areas that have issues with a limited number of contaminants. The District provides free testing of individual groundwater wells for nitrate contamination, and rebates for treatment devices that make the water safe for use through the Nitrate Treatment System Rebate Program.

AB 2050 would take advantage of economies of scale and create an Authority that would have the resources to provide the services necessary to deliver safe drinking water.

Staff recommends that the Board adopt a position of "Support" on AB 2050.

Pros

- Creates an additional option to consolidate failing water providers.
- Does not require consolidations unless an agency fails consistently and their improvement plan is inadequate.
- Decreases costs on individual customers by pooling the resources of a greater number of residents.

Cons

- No steady funding mechanism provided.

AB 3045 (Gallagher) Natural Resources Agency: State Water Project Commission (A-04-25-2018)

Position Recommended: Oppose

Priority: 2

Legislators representing communities below Oroville Dam have raised concerns that the Department of Water Resources (DWR), as the owner and operator of the State Water Project (SWP), and as the regulator of dam safety, faces an inherent conflict of interest because it regulates its own facilities. These issues originated from the emergency evacuation of several communities downstream from Oroville Dam in February of 2017, caused by the failure of the main and emergency spillways during an unusual series of winter rains.

AB 3045 would establish within the Natural Resources Agency the State Water Project Commission, consisting of 9 members appointed by the Governor and subject to confirmation by the Senate, including one member nominated by the Butte County Board of Supervisors. The bill would transfer the governance of the State Water Project from DWR to the newly established State Water Project Commission.

Importance to the District

The SWP, built in 1956, is a billion-dollar water collection and delivery enterprise critical to the quality of life and economic well-being of 23 million Californians in cities and farms from the Bay Area, through the San Joaquin Valley to the Central Coast and Southern California. The District receives over 40 percent of its water via conveyance through the SWP and the Central Valley Project.

The District is one of the SWP's 29 contractors which include urban water agencies, like the District, agricultural irrigation districts, and cities. As a state water contractor, the District pays 2.3 percent of the costs for operation and maintenance of the SWP.

In 2010 the Little Hoover Commission published a report, "Managing for Change: Modernizing California's Water Governance," which recommended that the state create a separate organizational structure to operate the State Water Project as a state-owned entity with an independent board whose members represent the interests of the whole state. The study raised several issues that supported the recommendations, such as the inherent conflict that DWR faces between running a water supply project while spearheading efforts on water conservation and efficiency. The report also found that DWR's hiring of personnel is limited by the state's personnel requirements which limit competitive compensation and retention of employees. Staff agrees that freeing the SWP from such limitations could improve its management and operations.

While the separation of DWR and SWP may be in the interest of the District, there are extensive issues that need further study and analysis before a new governance structure is moved forward. The DWR owns key water rights that make the SWP possible, in addition to owning water storage and conveyance infrastructure. There are maintenance costs, bond debts, and recreational facilities to be considered. Hundreds DWR of employees, many of whom have shared responsibilities for the SWP and other department operations, face significant uncertainty with the possible separation of the SWP from the department.

In addition, there are numerous legal, operational, and financial questions that must be studied, including the possible impacts on water supply, as well as impacts on the water rates of 23 million Californians and more than one million acres of farm land that source water from the SWP.

While the District is open to exploring alternatives to the current system of SWP governance under DWR, we do not believe the Legislature should move forward without fully understanding the impacts to District ratepayers.

Staff recommends that the Board adopt a position of "Oppose" on AB 3045.

Pros

- A properly structured SWP Commission has the potential, if smartly developed and implemented, to benefit District water supply and ratepayers.

Cons

- Does not take into consideration the multiple pitfalls for the SWP that are possible by hastily moving forward with a change in management and oversight.
- Adds an oversight body that does not represent the beneficiaries of the SWP.
- Prematurely establishes a new governance structure without appropriate study of complex issues that could result in negative impacts for the District's water supply and ratepayers.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

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