



Santa Clara Valley Water District

File No.: 17-0272

Agenda Date: 4/25/2017

Item No.: *7.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommended Position on State Legislation: AB 574 (Quirk) Potable Reuse, AB 791 (Frazier) SWP & CVP: New Conveyance Facility, AB 792 (Frazier) Delta Plan: Certification of Consistency, AB 793 (Frazier) Delta: financing, *AB 968 (Rubio) Urban Retail Water Use: Water Efficiency Targets, AB 1489 (Brough) Architects Practice Act, AB 1654 (Rubio) Urban Water Shortage: Contingency Plans, *AB 979 (Lackey) LAFCO: special district representation, *AB 1427 (Eggman) Water: underground storage, *Governor's budget trailer bill language: Making Water Conservation a California Way of Life, *Governor's budget trailer bill language: Enhancing Dam Safety, and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support" on: AB 574 (Quirk) Potable Reuse;
- B. Adopt a position of "Oppose" on: AB 1489 (Brough) Architects Practice;
- C. Adopt a position of "Oppose" on: AB 791 (Frazier) SWP & CVP: new conveyance facility;
- D. Adopt a position of "Oppose" on: AB 792 (Frazier) Delta Plan: certification of consistency;
- E. Adopt a position of "Oppose" on: AB 793 (Frazier) Delta: financing;
- F. *Adopt a position of "Support" on: AB 968 (Rubio) Urban Retail Water Use: water efficiency targets;
- G. *Adopt a position of "Support" on: AB 979 (Lackey) LAFCO: special district representation;
- H. Adopt a position of "Support" on: AB 1654 (Rubio) Urban Water Shortage: contingency plans;
- I. *Adopt a position of "Oppose" on: AB 1427 (Eggman) Water: underground storage;
- J. *Adopt a Position of "Support if Amended" on Governor's budget trailer bill language: Making Water Conservation a California Way of Life; and
- K. *Adopt a Position of "Support" on: Governor's budget trailer bill language: Enhancing Dam Safety.

SUMMARY:

AB 574 (Quirk) Potable Reuse. (A-03/23/17)

Position Recommendation: Support

Priority Recommendation: 2

AB 574 would amend California law regarding the potable reuse of recycled water by changing regulatory definitions to clarify where in the process the recycled water is being added to the water sources used. Specifically, this legislation removes the existing statutory terms of “direct potable reuse,” “indirect potable reuse for groundwater recharge,” and “surface water augmentation,” replacing them with the following:

- 1) Groundwater augmentation;
- 2) Reservoir augmentation;
- 3) Raw water augmentation; and
- 4) Treated water augmentation.

The bill would require the State Water Resources Control Board (State Water Board) to establish a framework for the regulation of potable reuse projects by June 1, 2018. The State Water Board would be required to take into consideration the recommendations made in the report provided to the legislature on December 30, 2016, “Investigation on the Feasibility of Developing Uniform Water Recycling Criteria for Direct Potable Reuse,” which found that the creation of direct potable reuse regulations is feasible.

Finally, the bill would require the adoption of uniform water recycling criteria for potable reuse through raw water augmentation, by December 31, 2021, and would allow the State Water Board to extend this date if the research recommended in the feasibility report has not been completed.

Importance to the District

The District has set a goal of increasing recycled water production to 10 percent of total water use in Santa Clara County by the year 2025, equal to almost 40,000 acre feet per year. However, prompted by the recent drought conditions, the District Board directed staff to explore development of up to 45,000 acre feet per year of purified water on an expedited schedule. The target of 40,000 acre feet per year includes both recycled and purified water.

The District’s 2017 draft Water Supply Master Plan incorporates 24,000 acre-feet per year of potable reuse water and 32,000 acre-feet per year of non-potable reuse water as part of the baseline water supply system.

The District is partnering with Palo Alto, Mountain View, and San Francisco Public Utilities Commission and Bay Area Water Supply and Conservation Agencies to explore non-potable and potable reuse opportunities.

The District is also currently developing a countywide recycled and purified water master plan

to identify additional opportunities and prioritize opportunities on a countywide basis.

AB 574 provides an opportunity to clarify the definitions for several distinct types of potable reuse projects and advances the regulatory process by requiring the State Water Board to develop a plan to regulate potable reuse projects.

As the District moves forward with the Expedited Recycled and Purified Water Program, there may be an opportunity to develop some of the projects for potable reuse. The expedient creation of regulations to cover all types of potable reuse projects is in the best interest of the District and the residents of Santa Clara County that depend on a clean, affordable, and secure source of water.

Staff recommends the District Board adopt a position of “Support” on AB 574.

Pros

- Clarifies various terminology used to define potable reuse projects.
- Advances planning for potable reuse regulations by the State Water Board.

Cons

- Requires the State Water Board to expend considerable resources.
- The bill allows the State Water Board until 2021 to complete the regulations which is a considerable amount of time.

AB 1489 (Brough) Architects Practice Act. (I-02/17/17)

Position Recommendation: Oppose

Priority Recommendation: 3

Currently under California Business and Professions Code § 5536.25, a licensed architect who signs and stamps plans, specifications, reports, or documents, and other materials is responsible for damage caused by subsequent changes to or uses of permitted plans, specifications, reports, or documents, except when the subsequent changes or uses are not authorized or approved in writing by the licensed architect who originally signed the plans, specifications, reports, or documents.

AB 1489 is applicable to state and local government agencies and would make changes to the law such that a licensed architect would not be responsible for damage caused by construction deviating from a permitted set of plans, specifications, reports, or documents.

Additionally, when an architect and a client enter into a contract for the provision of construction observation services related to the signing and stamping of plans, specifications, reports, or documents, the Business and Professions Code currently defines “construction observation services” as “periodic observation of completed work to determine general compliance” and further limits

construction observation services to “not mean the superintendence of construction processes, site condition, operations, equipment, or personnel, or the maintenance of a safe place to work or any safety in, on, or about the site.”

This bill also would specify that “construction observation services” does not mean the inspection of a site, nor determining nor defining the means or methods of construction processes.

The practical effect is such that if plans or the other listed materials contain an error that is caught and addressed during construction, architects are immune from liability.

Importance to the District

The District’s reliance on architects is well established, and that relationship is grounded upon the District not bearing liability for when certain damages result during construction. Shifting an architect’s portion of liability for their work away from the architect onto the client and onto other parties engaged in the work, would increase the District’s exposure to liability for any prospective damage caused during construction.

Staff recommends that the Board adopt a position of “Oppose” on AB 1489.

Pros

- None.

Cons

- Prospectively increases the District’s liability for harm caused during construction by an architect’s plans, specifications, reports, or documents.
- Eliminates an architect’s liability for damages before litigating whether the damages were attributable to the architect.

AB 791 (Frazier) Sacramento-San Joaquin Delta: State Water Project and federal Central Valley Project: new conveyance facility. (A-3/21/17)

Position Recommendation: Oppose

Priority Recommendation: 3

AB 791 (Frazier) would amend the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) to impose prerequisites on the state and on water contractors before beginning the construction a new Delta water conveyance facility, commonly known as the “California WaterFix.” The Delta Reform Act requires the entities that contract to receive water from the State Water Project (SWP) and the federal Central Valley Project (CVP) to make arrangements or to enter contracts to pay certain costs related to the construction, operation, and maintenance of a new Delta conveyance facility, and to pay the costs of the full mitigation of the loss of property tax or assessments levied for land used in the construction, location, mitigation, or operation of the facility. AB 791 would require

the lead agency under the California Environmental Quality Act (CEQA), likely the California Department of Water Resources, to provide a “breakdown of costs for each water contractor entering into a contract” and to provide what “benefits each contractor will receive based on the proportion the contractor has financed of the new Delta conveyance facility.” This water-contractor-specific information would have to be provided to numerous agencies before a water contractor could enter any contracts to meet the Delta Reform Act requirements described above.

These additional requirements would have the effect of delaying the construction of a new Delta conveyance facility, perhaps by several years, for purposes already addressed under current law. California Water Code Section 85089 already requires that contracts or other arrangements to pay for a new Delta conveyance must be in place before the start of construction. Under current law, each water contractor, such as the District, would determine the costs and benefits to its ratepayers or members based on its own analyses of the financial risks and benefits for the agency’s particular circumstances. Each participating agency’s governing board has numerous incentives to take a careful and studied approach to assessing the costs and benefits of a new Delta conveyance. The Department of Water Resources, the state entity most likely to be the lead agency and therefore charged with the responsibility to assess each water contractor’s costs and benefits, currently does not have the expertise needed to forecast agency-specific risks for the numerous water contractors that might possibly participate in the project.

In December 2016, the Department of Water Resources and the U.S. Bureau of Reclamation released the final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the WaterFix. After more than a decade of rigorous scientific analysis and public discussion, the document supports the construction of improvements to the existing water delivery system in the Delta to improve the water supply reliability of the State Water Project and Central Valley Project. The State is addressing numerous comments on the document that have been submitted by various stakeholders, and is working to satisfy other requirements, including both the federal Endangered Species Act and California Endangered Species Act, as well as a permit from the State Water Resources Control Board. State and federal agencies, the water contractors, and environmental advocates have sought to balance the co-equal goals set forth in the Delta Reform Act of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.

Importance to the District

AB 791 would delay the public decision making process regarding a new Delta conveyance, without adding any measurable public benefit. Santa Clara County relies on imported water to meet, on average, 55 percent of its water needs, with 40 percent conveyed through the Delta by the State Water Project and the federal Central Valley Project, and 15 percent diverted upstream of the Delta by the San Francisco Public Utilities Commission’s Hetch Hetchy Water and Power System.

The District’s imported water supplies are at risk from several factors including increased salinity intrusion due to climate change and sea level rise, and seismic threats to the fragile

Delta levee system. In addition, the Delta ecosystem no longer supports healthy populations of several native fish species which has resulted in increased regulatory restrictions on SWP and CVP operations to protect fish and water quality.

The District has not yet decided on whether or not to participate in the California WaterFix. In the coming months, staff anticipates that agreements will be negotiated between state and federal agencies and potential participating water agencies. At its March 14, 2017 meeting, the Board reviewed principles to guide the District's participation in these upcoming discussions and negotiations. The CEO is executing an agreement with a consultant who has expertise negotiating agreements involving multiple public agencies participating in multi-billion dollar projects. The District's goal is to achieve the best possible terms for the Board's consideration as to whether the District should participate in the WaterFix.

The delays proposed by AB 791 are not prudent given requirements in existing law and the extensive analyses of costs and benefits underway by water agencies that would potentially participate in the WaterFix.

Staff recommends that the Board adopt a position of "Oppose" on AB 791.

Pros

- None.

Cons

- Additional requirements on the Department of Water Resources could cause a years-long delay of a decision on whether or not to move forward with a new Delta conveyance.
- A delayed decision on a new Delta conveyance could increase the costs of any future project, be it the WaterFix or some other alternative, and could delay delivery of the environmental and operational benefits of any future project.
- The Department of Water Resources lacks the expertise necessary to evaluate the costs and benefits particular to each water contractor that may potentially participate in a new Delta conveyance.

AB 792 (Frazier) Sacramento-San Joaquin Delta: Delta Plan: certification of consistency. (A-3/28/17)

Position Recommendation: Oppose

Priority Recommendation: 3

AB 792 (Frazier) would amend the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) to prohibit the Delta Stewardship Council from issuing a certification of consistency with the Delta Plan for a covered action under the Act until the State Water Resources Control Board (State

Water Board) has completed its update of the 2006 Bay-Delta Water Quality Control Plan. The Delta Reform Act created the Delta Stewardship Council to adopt and implement a comprehensive management plan for the Delta, known as the Delta Plan. The Act requires a state or local public agency that proposes to undertake a covered action, such as the construction of a new Delta conveyance, to prepare and submit to the Council a written certification of consistency with the Delta Plan before undertaking that action. AB 792 would require the Council to affirmatively issue a certification of consistency with the Delta Plan before construction of a new Delta conveyance or any covered action in the Delta or the Suisun Marsh could begin and further prohibits the Council from issuing the certification until the State Water Board adopts an update to the 2006 Bay-Delta Water Quality Control Plan (WQCP).

The State Water Board update of the WQCP is now underway and includes flow objectives for priority tributaries to the Delta to protect beneficial uses in the Bay-Delta watershed. The process is divided into 4 phases. Phase 1 involves updating San Joaquin River flow and south Delta water quality requirements included in the 2006 WQCP. Phase 2 involves numerous changes to the WQCP to protect beneficial uses not addressed in Phase 1 (Delta outflows, Sacramento River inflows, Suisun Marsh salinity, Delta Cross Channel Gate closure, export limits, and reverse flows). Phase 3 involves changes to water rights and other measures to implement Phases 1 and 2. Phase 4 involves developing and implementing flow objectives for priority Delta tributaries outside of the WQCP updates. AB 792 proposes that the State Water Board complete all 4 phases of the WQCP before the Delta Stewardship Council may issue a certification of consistency, a de facto permit, for the proposed new Delta conveyance, commonly known as the California WaterFix, and other covered actions.

Under existing law, the coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP) are subject to the State Water Board's permitting authority through the WaterFix's change in the point of diversion of water from the south Delta to points north of the Delta. Current law already prohibits construction of the WaterFix until the Water Board approves of the change in the point of diversion. The Water Board also has authority to require the SWP, CVP, and others in the Bay-Delta watershed to meet any revised WQCP objectives. Opponents to AB 792 have argued that waiting for the State Water Board to complete the WQCP is not necessary considering the Water Board's broad authority under existing law.

Importance to the District

The District has not yet decided on whether or not to participate in the California WaterFix. In the coming months, staff anticipates that agreements will be negotiated between state and federal agencies and potential participating water agencies. At its March 14, 2017 meeting, the Board reviewed principles to guide the District's participation in these upcoming discussions and negotiations. The CEO is executing an agreement with a consultant who has expertise negotiating agreements involving multiple public agencies participating in multi-billion dollar projects. The District's goal is to achieve the best possible terms for the Board's consideration as to whether the District should participate in the WaterFix.

The delays proposed by AB 792 are not prudent given requirements in existing law prohibiting

the commencement of construction of the WaterFix until the State Water Board approves of changes in the point of diversion of water. The extensive authority of the State Water Board to implement the Bay-Delta WQCP makes unnecessary the bill's delay of construction until the WQCP is completed.

Staff recommends that the Board adopt a position of "Oppose" on AB 792.

Pros

- None.

Cons

- Transforms the Delta Stewardship Council into an additional permitting agency for the California Water Fix and every covered action in the Delta or the Suisun Marsh.
- Delays a decision on the construction of a new Delta conveyance until the State Water Board completes the Bay-Delta WQCP, a process that could take years.
- A delayed decision on a new Delta conveyance could increase the costs of any future project, be it the WaterFix or some other alternative, and could delay delivery of the environmental and operational benefits of any future project.

AB 793 (Frazier) Sacramento-San Joaquin Delta: financing. (A-3/27/17)

Position Recommendation: Oppose

Priority Recommendation: 3

AB 793 (Frazier) seeks to establish a state policy that "the existing state of the Sacramento-San Joaquin Delta is recognized and defined as an integral component of California's water infrastructure." It would state that "the maintenance and repair of the Delta are eligible for the same forms of financing as other water collection and treatment infrastructure" and would limit the maintenance and repair activities eligible for this financing to specified cleanup and abatement-related restoration and conservation activities.

The existing state of the Delta is largely defined by the current configuration of levees, originally constructed 80 to 100 years ago, to reclaim swamp and flood plains for farming and other uses. The Delta is vital to the State Water Project (SWP) and the federal Central Valley Project (CVP), and together these systems supply water for tens of millions of Californians and for the state's agriculture sector. However, declaring the Delta an integral component of water infrastructure for financing purposes as AB 793 proposes, suggests the author intends to access funding from water contractors for Delta projects that may not have a direct nexus to the water supply systems.

In December 2016, the Delta Protection Commission released a draft report titled, "Delta Flood Risk

Management Assessment District Feasibility Study,” in which a “Delta user fee” was proposed to pay for Delta flood control improvements. While the author has not identified what financing is available to water collection or water treatment infrastructure that is not available for the maintenance and repair of the Delta, the bill may be intended to implement the proposals of the Commission’s draft report. While the report underscores the “beneficiary pays” principle, the language in AB 793 is open to interpretation on that point and could lead to water contractors’ ratepayers and members unfairly paying for the maintenance and repair of Delta levees with no corresponding benefits for water customers.

Importance to the District

Santa Clara County relies on imported water to meet, on average, 55 percent of its water needs, with 40 percent conveyed through the Delta by the State Water Project and the federal Central Valley Project, and 15 percent diverted upstream of the Delta by the San Francisco Public Utilities Commission’s Hetch Hetchy Water and Power System. AB 793 could impact the cost of the 40 percent of the county’s water supply that is conveyed through the Delta.

Most favorable for District ratepayers would be discretionary allocations of cost based on incremental benefits received. Vague statutory language in AB 793 could result in costs assigned to the District that do not benefit District ratepayers. The Legislature has incorporated into numerous state water programs and projects the principle that the costs of projects should be paid by those who benefit from them. This “beneficiary pays” funding principle would require a clearly defined subset of the state’s population to pay project costs (for example, individual water users receiving deliveries from a water project), instead of the public as a whole. In the case of the maintenance and repair of Delta levees, some projects provide direct benefit to water ratepayers, while others provide benefits to a different subset of the state’s population, (for example agriculture interests whose fields are protected by a flood control project).

The Delta Stewardship Council estimated in 2015 that the cost to provide necessary improvements to Delta levees range from \$1 billion to \$3 billion. Given the significant costs that could in some portion be allocated to the District, taking a firm position in support of maintaining the “beneficiary pays” principle and guarding against vague definitions of benefits that erode that principle, is in the interests of District ratepayers.

Staff recommends that the Board adopt a position of “Oppose” on AB 793.

Pros

- Seeks to fund the maintenance and repair of Delta levees, some of which may provide benefit to the State Water Project and federal Central Valley Project.

Cons

- Vague statutory language in AB 793 could result in costs assigned to the District that do

not benefit District ratepayers.

- Overly broad definitions of “benefits” assigned to water contractor ratepayers and members erodes the “beneficiary pays” principle that has been the foundation of state water infrastructure financing.
- May result in a requirement for water contractors to fund maintenance of private levees that do not benefit the state and federal water supply systems.

AB 968 (Rubio) Urban retail water use: water efficiency targets. (A-03/28/17)**Position Recommendation: Support****Priority Recommendation: 2**

AB 968 (Rubio) would require the California Department of Water Resources (DWR) to submit to the Legislature by December 31, 2018, a report that states preliminary water efficiency targets for 2025 for each of the state's hydrologic regions with per capita daily water use targets based on specified factors. This report would be compiled from consultations with urban retail water suppliers representing each of the state's hydrologic regions, as well as industrial water users, institutional water users, and business community representatives, amongst others.

On May 9, 2016, Governor Brown issued Executive Order B-37-16 entitled, “Making Water Conservation a California Way of Life.” The Order includes a range of actions directed to state agencies to address various water management topics. One of these directives requires DWR to work with the State Water Resources Control Board (State Water Board) to develop new water use targets that build on existing state law requirements that the state achieve a 20% reduction in urban water use by 2020 (SB x7-7 of 2009.) The Governor's order specifies that these water use targets are to be customized to the unique conditions of each water agency, shall generate more statewide water conservation than existing requirements, and shall be based on strengthened standards for indoor use, outdoor irrigation, commercial, industrial and institutional water use, as well as water lost through leaks.

Existing law requires the state to achieve a 20% reduction in urban per capita water use on or before December 31, 2020, and to make incremental progress toward that state target by reducing urban per capita water use by at least 10% on or before December 31, 2015.

Importance to the District

The District already has made water conservation a way of life through its daily operations. Although the District is a wholesale water supplier and is not legally required to meet the 20% by 2020 conservation requirements established in 2009 by SB1 X7, the District is well on its way to exceed the goal. The District's 2012 Water Supply and Infrastructure Master Plan “Ensure Sustainability” strategy calls for an increase in conservation, from 63,000 acre-feet per year to 99,000 acre-feet.

AB 968 would require the DWR to write a report that would recommend regional water efficiency targets for 2025. These targets would provide the District and the water retailers in

Santa Clara County a realistic goal that is based on climate, population density, and outdoor water use, among other considerations. A regional target that considers those aspects provides a more appropriate and achievable goal than a statewide water efficiency goal that doesn't account for local circumstances.

Staff recommends the Board adopt a position of "Support" on AB 968.

Pros

- Strengthens water use efficiency, water supply reliability, and the sustainable management of the state's water resources.
- Creates a local and regional based approach to achieving water use efficiency, instead of setting a statewide mandatory water conservation target.

Cons

- Creates state budgetary impacts, as DWR likely would need increased funding to complete the report.

***AB 968 (Rubio) Urban retail water use: water efficiency targets. (A- 04-17-17)**

Position Recommendation: Support

Priority Recommendation: 2

AB 968 (Rubio) would require urban retail water suppliers to determine their water use efficiency targets for 2025, based on one of three possible methodologies, and to include those targets in the water supplier's Urban Water Management Plan, due in 2020.

The bill would allow urban retail water suppliers to develop water efficiency targets for 2025 based on one of the following methodologies:

- Seventy-five percent of the urban retail water supplier's base daily per capita water use calculated using a methodology to be developed by the Department of Water Resources (DWR).
- A water efficiency target that is the sum of fifty-five gallons of water use per person per day, plus an estimate of total irrigation demands within the supplier's service area, and a volume of water to account for variances taken by the water supplier due to unique situations in their service area.
- Ninety percent of the applicable hydrologic region target, as set forth in the state's 20x2020 water conservation plan, dated February 2010. If the service area of an urban retail water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

Compliance with water use efficiency targets would be calculated by parameters provided for each methodology of target setting. The bill provides urban water suppliers relief from meeting water use efficiency targets in the event of a disaster, or if DWR fails to complete the Irrigable Area Database.

The bill would require DWR, in consultation with the State Water Resources Control Board (State Water Board), to convene a commercial, industrial and institutional water use efficiency task force with the objective to make water efficiency recommendations to the legislature in a report by December 2019.

The DWR would be required to reconvene the Urban Stakeholder Committee by April 2, 2018, to develop standardized variance and irrigable area methodologies that would inform the water use efficiency target setting process. Starting on January 1, 2020 and every five years after, the committee would be required to submit a report to the legislature with recommendations for new demand management measures, technologies and approaches. By December 31, 2025, the committee would be required to submit a report with potential adjustments to the 2030 water use efficiency targets. The committee report would take into consideration potential unintended consequences of the proposed changes to the state economy, wastewater infrastructure, or local investments in water infrastructure and supplies.

By July 1, 2019, DWR would be required to create the Irrigable Area Database to provide urban retail water suppliers an electronic database with validated aerial imagery and measured irrigable area for all residential and commercial, industrial and institutional areas. The database would be required to provide the information suitable to determine the appropriate amount of irrigation for a variety of vegetation, including large trees and the area below the canopy. Urban retail water suppliers would be allowed to use their own database if it is verified that the database is comparable, or of better quality, than the DWR database.

Importance to the District

On May 9, 2016, Governor Brown issued Executive Order B-37-16 entitled, “Making Water Conservation a California Way of Life.” The Order includes a range of actions directed to state agencies to address various water management topics. One of these directives requires DWR to work with the State Water Board to develop new water use targets that build on existing state law requirements that the state achieve a 20% reduction in urban water use by 2020 (SB x7-7 of 2009.) The Governor’s order specifies that these water use targets are to be customized to the unique conditions of each water agency, shall generate more statewide water conservation than existing requirements, and shall be based on strengthened standards for indoor use, outdoor irrigation, commercial, industrial and institutional water use, as well as water lost through leaks. The Governor’s order directed the DWR and the State Water Board to consult with water agencies, local governments, environmental agencies and other interested stakeholders to develop a framework providing the water use targets by January 10, 2017.

The final framework “Making Conservation a California Way of Life” was released by the Brown Administration on April 7, 2017. The framework makes several recommendations which can be pursued through current rulemaking authority or administrative action. Those actions include, new regulations, expanded technical assistance, and, evaluations and certification of new water efficient technologies. Several of the framework recommendations require legislative action to provide DWR and the State Water Board new authority to implement

expanded new water use efficiency requirements.

To provide new authorities for state agencies, the Administration is pursuing budget trailer language which staff also has included in this agenda item below. The budget trailer bill language proposal is similar the regulatory approach imposed by the State Water Board in 2015 when a 25% mandatory water conservation mandate was imposed on all retail water agencies. Essentially, the Administration's proposal is a top down approach to water conservation in which the state sets the water use efficiency targets, and enforces compliance through fines, and cease and desist orders.

AB 968 and AB 1654 was developed by a workgroup of water agencies through the Association of California Water Agencies (ACWA) in anticipation of the release of the "Making Conservation a California Way of Life" framework.

AB 968, along with AB 1654, would make important changes to state water conservation goals and bolster long-term drought planning efforts through a locally driven process. AB 968 provides a flexible approach to water conservation planning that considers differing water sources, local investments in drought proof supplies and variations in climate.

The District already has made water conservation a way of life through its daily operations. The District and the retailers in Santa Clara County are well on their way to meeting the 20 percent by 2020 conservation requirements established in 2009 by SB1 X7 (Steinberg). The District's 2012 Water Supply and Infrastructure Master Plan's "Ensure Sustainability" strategy calls for an increase in conservation, from 63,000 acre-feet per year to 99,000 acre-feet over the next fifteen years. AB 968 would further water conservation efforts into the future as water efficiency targets are implemented to reflect advancements in technology and the water use habits of residents in the state.

Staff recommends the Board adopt a position of "Support" on AB 968.

Pros

- Strengthens water use efficiency, water supply reliability, and the sustainable management of the state's water resources.
- Creates a local and regional based approach to achieving water use efficiency, instead of setting a statewide mandatory water conservation target.
- Removes the future ambiguity in addressing water conservation during droughts.
- Improves long-term drought planning.

Cons

- Creates state budgetary impacts, as DWR and the State Board would need increased funding to complete the requirements of the bill.

***AB 979 (Lackey) LAFCO: District Representation (A: 4/6/2017)**

Position Recommended: Support
Position Priority: 3

AB 979 streamlines the process for independent special districts to participate on a local agency formation commission (LAFCO) by procedurally combining onto the same ballot the questions of LAFCO commissioner elections, countywide Regional Development Agency oversight board appointments, and special district representation on a LAFCO.

Currently under California Government Code § 56332.5, for special districts to acquire representation on a LAFCO, a majority of all special districts in a county must pass a board resolution supporting such action within a one-year period, which is a time intensive process that requires resources to organize the effort. To that end, special districts have obtained LAFCO representation in only 30 of the 58 counties in California.

AB 979 would update the current process by amending language into California Government Code § 56332.5 that mirrors the existing election process for appointment of LAFCO commissioners through the county's independent special districts selection committee. Thus, AB 979 would allow for special district representation on a LAFCO to be achieved through existing and familiar election processes, concurrently with those elections and appointments, all while allowing for each district to vote on the various items.

Importance to the District

Due to the District's efforts and involvement in 2012, Santa Clara County's LAFCO, which is known as Santa Clara LAFCO, permits special district representation. This representation empowers the 19 independent special districts in Santa Clara County to more effectively consider their participation on the Santa Clara LAFCO, as well as their associated role in the governance and boundaries of special districts and other local agencies.

Moreover, this bill is co-sponsored by the California LAFCO Association and the California Special Districts Association (CSDA). The District is a member of CSDA and has received a request to support the bill. CSDA has requested we support this legislation as a member of the association, and in recognition of the challenges the District faced in attaining special district representation on the Santa Clara LAFCO, staff recommends the Board adopt a position of "support" on AB 979.

Pros

- Simplifies and expedites the process for special districts to acquire representation on a LAFCO.
- Maximizes the time and resources of all stakeholders by addressing multiple important matters by way of a single, local election process.
- Allows for more informed and effective decisions in local communities through a proven and more efficient approach than the current mechanisms.

Cons

- None.

AB 1654 (Rubio) Urban water shortage contingency plans. (A-03/28/17)

Position Recommendation: Support

Priority Recommendation: 2

AB 1654 (Rubio) amends the Urban Water Management Planning Act to require water suppliers to report annually on the status of their water supplies and to implement appropriate responses in the event of a water shortage.

On May 9, 2016, Governor Brown issued Executive Order B-37-16 entitled, "Making Water Conservation a California Way of Life." The Order includes a range of actions directed to state agencies to address various water management topics. One of these directives requires the California Department of Water Resources (DWR) to update the requirements for urban water shortage contingency plans, to include adequate actions to respond to droughts lasting at least five years, as well as more frequent and severe periods of drought. Urban water supply agencies are currently required to prepare and submit plans to address three year droughts to DWR every five years, as part of their Urban Water Management Plan (UWMP).

Under AB 1654, water suppliers would report annually to DWR on the status of their water supplies for that year and whether supplies will be adequate to meet projected customer demand. If supplies are not adequate to meet demand, the water supplier would be required to implement the appropriate responses as described in their water shortage contingency analysis.

AB 1654 also would prohibit a water supplier from being required to reduce its use or reliance on any water supply available beyond the steps specified in its water shortage contingency analysis, protecting water suppliers' and their customers.

This bill would enhance existing urban water management planning requirements and strengthen urban retail water suppliers' ("water suppliers") abilities to plan and prepare for future droughts. The bill also would strengthen existing reporting and drought response requirements related to water shortage contingency analyses.

Importance to the District

The District currently submits an urban water management plan every five years. AB 1654 creates a new requirement to submit a water shortage contingency analysis on an annual basis. The water shortage contingency analysis would provide information on the availability of water sources and the projected demand for that year. If the demands are not higher than the availability of water, no further actions would be needed.

AB 1654 is intended to provide a tool to address droughts in a coherent manner, providing clarity for planning by water providers. The bill would help ensure that the Governor and the

State Water Resources Control Board have a statutory path for drought response that would avoid regulatory water conservation requirements that are unforeseen by water agencies. The experience over the last two years of emergency water conservation regulation has left many water providers with extreme budgetary pressures as their revenues from water sales have dropped. Creating a water shortage analysis tool would require water agencies to plan for droughts while also providing the assurance that the required drought response would be appropriate for their local circumstances.

Staff recommends the Board adopt a position of “Support” on AB 1654.

Pros

- Ensures that urban water suppliers certify how an emergency water supply has been established to increase supply reliability during times of shortage and certify the status of that supply is during periods without shortage.
- Prohibits, during a drought, the District from being required by the state to take additional actions beyond those specified in its water shortage contingency analysis in the UWMP.

Cons

- Increased District cost for staff time to meet the new UWMP reporting requirements.

***AB 1427 (Eggman) Water: underground storage. (A-3/21/2017)**

Position Recommendation: Oppose

Priority Recommendation: 2

AB 1427 would modify the definition of the beneficial use of water to include water stored in the ground for the protection of water quality or for the recovery of groundwater levels. The bill exempts from forfeiture the rights to water that not used beneficially for a period of five years, by declaring that certain water storage underground constitutes beneficial use under the law.

California's water law and policy, Article X, Section 2 of the California Constitution, requires that all uses of the state's water be both reasonable and beneficial. It places a significant limitation on water rights by prohibiting the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

Currently, an appropriative water right that is not used beneficially during a five-year period may be considered abandoned and available for use by others. AB 1427 would change this requirement by providing that the period for a reversion of a water right does not apply during the period groundwater is used in the ground or held in storage for later application to beneficial use.

Importance to the District

AB 1427 would not provide the District with any greater ability to fully exercise its local

appropriative water right licenses. The District's licenses allow diversions to be used for domestic and irrigation purposes. Some of the District's licenses also state water will be recharged into the basins for subsequent recovery for use on overlaying lands. Since existing law already allows the District to store water underground for future beneficial use (Water Code Section 1242) and the District's recharge operations are aimed at making water available for beneficial use, the language in the bill is superfluous.

However, the bill would potentially impact the District's federal and state imported water supplies. Under area of origin laws, County and watershed areas of the source water have priority over the Central Valley Project (CVP) and State Water Project (SWP) for that water, even if the CVP and SWP have a prior appropriate water right. Essentially, area of origin laws provide those located in a County and watershed of the source water with a preferential right for that water over the CVP and SWP to ensure adequate water supplies for the County and watershed.

Under the proposed bill language, if a person in an Area of Origin County decides to obtain a water right to divert for the sole purpose of raising groundwater levels, that right would be superior to existing rights of the CVP and SWP, even if those in the Area of Origin do not have a foreseeable need to recover the stored water for existing beneficial uses. They can claim that raising groundwater levels is a beneficial use, without having to demonstrate why the stored water is needed for municipal, domestic, irrigation, salinity barrier, wildlife preservation or any other recognized beneficial uses. This bill could severely impact the availability water to the District and other CVP and SWP contractors.

Staff recommends that the Board adopt a position of Oppose on AB 1427.

Pros

- None.

Cons

- The bill could adversely impact the availability of imported water to the District through the CVP and SWP.

***Governor's Budget Trailer Bill Language: Making Water Conservation a California Way of Life (Released - 04/07/17)**

Position Recommendation: Support if Amended

Priority Recommendation: 2

On April 7, 2017, The Administration of Governor Jerry Brown released budget trailer bill language that proposes comprehensive statutory changes to implement the Governor's long-term water conservation program known as "Making Water Conservation a California Way of Life." The Administration has proposed the program as part of a larger package of budget trailer bills, which have an abbreviated legislative path to enactment. The trailer bill language would provide new

authority to the State Water Resources Control Board (State Water Board) and the Department of Water Resources (DWR) to establish long-term standards for efficient urban water use, expand water shortage contingency planning, and increase the number of agricultural water suppliers that are required to submit Agricultural Water Management Plans.

Water Conservation Standards and Use Reporting

The trailer bill language would require the State Water Board to establish long-term water use efficiency standards, by May 20, 2021, for indoor residential water use, outdoor irrigation, and commercial, industrial and institutional (CII) water use. The bill provides the State Water Board the authority to establish interim water use efficiency standards through the emergency regulatory process, as a bridge until the permanent regulations are finalized. The State Water Board would be required to provide a 60-day notice and hold a public hearing before finalizing emergency regulations.

The proposed statutes would allow a court or public entity to hold any person civilly liable for up to \$10,000 for violating the water efficiency regulations. The State Water Board would be authorized to issue a cease and desist order to a person or entity that is found in violation of a State Water Board regulation and to issue fines up to \$500 per day if the violation continues. The trailer bill language also would provide the State Water Board the authority to issue a regulation requiring public water supply distributors to submit water production, water use and conservation information to the State Water Board.

Urban Water Shortage Contingency Plans

The proposed language would require Urban Water Management Plans (UWMP) to include a water shortage contingency plan based on a drought scenario extending five years into the future. Currently UWMPs are required to include a water shortage contingency plan based on a three-year drought. The urban water supplier would need to include information for the water shortage contingency plan that considers various factors such as, annual water budget forecast procedures, standard water shortage level, shortage response actions, and communications protocols and procedures. Water suppliers regulated by the California Public Utilities Commission also would be required to submit an annual water shortage contingency plan and include the plan as a component of their general rate case filings

The proposed statutes would require water shortage contingency plans to include five water shortage levels corresponding to progressive ranges of up to 10, 20, 30, 40, and 50 percent shortages. Urban water suppliers would be required to declare a water shortage emergency upon determining that a 40 percent water shortage exists.

The proposal would require the urban water supplier to conduct a water budget forecast on an annual basis for submittal to DWR by May 10th of each year. The water budget forecast would include information on supplies, anticipated shortages, the triggered shortage response actions, compliance and enforcement actions, and a communications plan for the community.

Under the proposed language, DWR would be required to submit a report, aggregating and summarizing the submitted water shortage contingency plans, to the State Water Board. The report would include information on any water shortages and the actions that were implemented based on a water shortage forecast. The report also would provide the State Water Board information to determine if any enforcement for noncompliance is necessary.

Agricultural Water Management Planning

The bill would expand the requirements of the Agricultural Water Management Planning Act to include agricultural water suppliers that provide water to 10,000 or more irrigable acres. Currently, only agricultural water suppliers providing water to 25,000 or more irrigable acres are required to submit a plan. The bill also would revise the components of the agriculture management plans to include agricultural water use efficiency measures, their water management strategy, and a drought plan that describes the actions for drought preparedness and allocations during drought conditions.

Importance to the District

On May 9, 2016, Governor Brown issued Executive Order B-37-16 entitled, “Making Water Conservation a California Way of Life.” The Order includes a range of actions directed to state agencies to address various water management topics. One of these directives requires DWR to work with the State Water Board to develop new water use targets that build on existing state law requirements that the state achieve a 20 percent reduction in urban water use by 2020 (SB x7-7 of 2009.) The Governor’s order specifies that these water use targets are to be customized to the unique conditions of each water agency, shall generate more statewide water conservation than existing requirements, and shall be based on strengthened standards for indoor use, outdoor irrigation, commercial, industrial and institutional water use, as well as water lost through leaks. The Governor’s order directed the DWR and the State Water Board to consult with water agencies, local governments, environmental agencies and other interested stakeholders to develop a framework providing the water use targets by January 10, 2017.

The final framework “Making Water Conservation a California Way of Life” was released by the Brown Administration on April 7, 2017. The framework makes several recommendations which can be pursued through current rulemaking authority or administrative action. Those actions include, new regulations, expanded technical assistance, and evaluations and certification of new water efficient technologies. Several of the framework recommendations require legislative action to provide DWR and the State Water Board new authority to implement expanded water use efficiency requirements.

To provide the required new authority for the State Water Board and DWR, the Administration is pursuing the proposed budget trailer bill language. The Administration’s proposal is a top-down approach to water conservation in which the state sets the goals for water use efficiency and enforces compliance through cease and desist orders and fines. The proposal follows the regulatory approach imposed by the State Water Board in 2015, when a 25 percent mandatory water conservation mandate was imposed on all retail water agencies. Any agency violating

the emergency regulations was subject to a fine of \$500 per day.

The Governor's budget trailer bill language is an alternative approach to the long-term water conservation program proposed by the water industry in AB 968 (Rubio) Long Term Water Use Efficiency and 1654 (Rubio) Urban Retail Water Use Efficiency Targets. AB 968 and AB 1654 are the preferred water industry approaches as they provide a more flexible, local approach to water use efficiency targets and drought planning.

While the Governor's trailer bill language proposes a robust plan for implementing water use efficiency and drought planning, the language has not been vetted by water industry stakeholders and will need several changes to provisions related to the setting of water efficiency targets, flexible implementation, consistency with the Sustainable Groundwater Management Act and clarification of responsibilities for water wholesalers.

Staff recommends that the Board adopt a position of "Support if Amended" on the Governor's budget trailer bill language released April 7, 2017, to implement the program known as Making Water Conservation a California Way of Life. Because this proposal is not yet incorporated into a budget trailer bill, and now appears in AB 1667, AB 1668, AB 1669, all authored Assembly Member Laura Friedman, staff recommends that the position of "Support if Amended" apply to this language as it may appear in any legislative or budget trailer bill in the current 2017-18 Legislative Session.

Amendments Requested

- Clarify the term "urban water supplier" to differentiate between wholesale and retail water suppliers. While the definition of "urban water supplier" includes wholesalers that supply more than 3,000 acre-feet of water for municipal purposes, there are many requirements in the bill that do not apply to wholesale agencies.
- Proposed Water Code Section 10609 should be clarified to include the responsibilities of a water wholesaler. A water wholesaler should not be held responsible for the water use efficiency achieved by retail water customers.
- Ensure consistency with the Sustainable Groundwater Management Act.
- Seek flexibility in establishing water shortage contingency plans. Currently the proposed bill language requires a declaration of an emergency at a level of 40 percent shortage. This does not consider unique circumstances of the District and whether the shortfall is because of overall water supply or groundwater conditions that may warrant a call for conservation to avoid subsidence. The bill should allow wholesalers to define the water supply conditions that apply to the six standard water shortage levels.
- Remove the authority for the State Water Board to enact water use efficiency targets through the emergency regulatory process before May 20, 2021. If an emergency presents itself, the Governor currently holds the authority to require emergency conservation as he did for the last

two years.

- Proposed Section 10631 requires that urban water suppliers include land use information, but does not include a requirement that land use agencies share the information with urban water suppliers. Also, land use information is often outdated and may not be appropriate for future water demand projections.
- The annual water budget forecast deadlines need to be revisited. Plans are due in May from water agencies and DWR is to provide a report to the State Water Board in June. With over 400 agencies submitting water shortage contingency plans, allowing a 21-day period for review and analysis is unrealistic. The State Water Board will be relying on DWR analyses to take enforcement actions against non-compliant agencies.
- Proposed Sections 10631 and 10631.2 require clarifying amendments that would preserve the Administration's goals while being more workable for water agencies.

Pros

- Provides a statewide process for drought planning and response.
- Establishes water use efficiency goals.
- Expands urban water management planning to include climate change, social and demographic factors and land use information affecting water management planning.
- Requires agricultural water suppliers providing water to more than 10,000 irrigated acres to submit water use data and to create Agricultural Water Management Plans.
- Expands agricultural water management planning.

Cons

- Water Code Section 1831 is amended to allow the State Water Board to issue a cease and desist order for the violation of any regulation adopted by the State Water Board. Under current law, this section is limited to emergency regulations. This change could override water rights law by limiting an agency's ability to use water in excess of the State Water Board's water efficiency targets, even when water is readily available.
- Proposed Section 10609 authorizes the State Water Board to create water use efficiency standards for purposes including, but not limited to, indoor, outdoor and CII. There are no parameters for how the standards would be created. Unlike existing law, there is no specification that these requirements would apply only to retailers.
- Only the State Water Board could propose changes to established water use efficiency standards. This removes the voice of the people as expressed through elected governing bodies at both the state and local level from the determination of water conservation goals.
- The first set of standards would be created through the emergency regulatory process, providing limited public input.

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- Proposed Section 10631(d) would require the District to quantify water use according to specific sectors, which would require changes to the District's water revenue database.
 - Proposed Section 10632 is added to expand requirements for water shortage consistency plans. The District would be required to implement shortage response actions as described in the water shortage contingency plan, tying the Board's hands regarding the level of short-term water use reduction that could be called for at any time.
 - The planning requirements greatly expand information and analysis required in the District's UWMP.

Governor's Budget Trailer Bill Language: Enhancing Dam Safety (Released - 02/24/17)*Position Recommendation: Support****Priority Recommendation: 2**

On February 24, 2017, the Administration of Governor Jerry Brown released budget trailer bill language that proposes to enhance dam safety by making significant changes to the responsibilities of the Department of Water Resources (DWR) and to the responsibilities of owners of dams across California. The language would require dam owners to have an emergency action plan that is updated every ten years and to update inundation maps every ten years or sooner under certain circumstances. It also would provide DWR with more tools for safety enforcement, including fines and operational restrictions. The Administration has proposed these changes as part of a larger package of budget trailer bills, which have an abbreviated legislative path to enactment.

The State of California's dam safety program is operated by DWR's Division of Safety of Dams (DSOD). In 2016, the Association of State Dam Safety Officials conducted a peer review of dam safety programs and found that California has the "leading dam safety program in the nation." DSOD conducts annual inspections of approximately 1,250 dams that are under the state's jurisdiction. Each of these dams is classified into one of three categories consistent with federal definitions: 678 "high hazard," 271 "significant hazard," and 289 "low hazard."

Currently, the dam inspection process focuses on the dam itself and includes only a visual inspection of appurtenant structures. The February 2017 spillway failure at Oroville Dam has underscored the need for an enhanced inspection regime to evaluate the structural integrity of appurtenant structures. Emergency Action Plans currently are not required for all dams under state jurisdiction; however, most high hazard dams have them. Emergency Action Plans are based on inundation maps that are created at the time when dams are built or enlarged and consider only a sunny day dam failure scenario and do not consider failures of appurtenant structures, such as occurred at the Oroville Dam. Finally, DSOD lacks the enforcement authority to require Emergency Action Plans or inundation maps.

The Governor's trailer bill language seeks to address the issues above by establishing new requirements for preparing and updating Emergency Action Plans and inundation maps, enhancing enforcement authority, improving communication between DWR and the Governor's Office of Emergency Services (OES), and increasing fees on dam owners to pay for enhanced dam safety programs.

The proposed statutes would require anyone who unlawfully constructs or operates a dam without DWR approval to pay a fine. It authorizes DWR to impose reservoir restrictions and levy property liens on an owner of a dam who fails to comply with a DWR approval, order, rule, regulation, or requirement. DWR would be authorized to impose civil penalties up to \$1,000/day, in addition to other applicable penalties. If a dam is owned by one or more persons or entities, the language requires the owners to either delegate or form a single entity that would be responsible for the operation and maintenance of the dam, that would retain legal and financial authority, and that would be responsible for the payment of any fees or other costs of dam ownership.

The trailer bill language would make owners of a dam regulated by the state responsible for emergency preparedness regarding potential loss of life and property due to the failure of the dam or its critical appurtenant structures. It would require DWR, by July 1, 2017, to revise the classification of a dam to reflect changes in downstream population, infrastructure, or land use. It would require the owner of a dam to prepare and submit to DWR for approval an inundation map showing potential flooding under various failure scenarios.

The Governor's proposal would require the owner of a dam to develop and to submit to DWR and OES an Emergency Action Plan with certain components, based on inundation maps, and to update the plan and inundation maps not less than every 10 years. The owner would be required to develop the plan in consultation with local public safety agencies, if the local agencies choose to participate, and would authorize the local public safety agencies to review and update procedures they may adopt. OES would be required to give priority in its review to the highest hazard dams. The language would require dam owners to conduct an Emergency Action Plan notification exercise at least once annually. The Emergency Action Plan would be exempt from disclosure under the CA Public Records Act, based on security concerns.

The proposed statutes would require DWR to adopt, by emergency regulation, a fee schedule based in part on the height of the dam to cover the department's reasonable regulatory costs in the supervision of dam safety. Fees for dams or reservoirs on farm or ranch properties would be capped at a lower rate.

Importance to the District

The District operates ten dams and reservoirs a part of its mission to provide safe, clean water for the people of Santa Clara County. The District recognizes the catastrophic nature of a potential dam failure and operates a comprehensive dam safety program to protect the public. The Dam Safety Program includes four main components: periodic special engineering studies, surveillance and monitoring, routine inspections and maintenance activities, and maintaining emergency response and preparedness plans. The District also works closely with state and federal regulators, and downstream emergency response partners to meet these goals.

The District has a public safety interest in ensuring that all dams in the state are operated safely, thoroughly inspected for possible failures, properly classified as to the degree of

hazard, and that emergency preparedness is maintained not just by this agency, but also by our state and federal regulators, by the State Water Project, and by downstream emergency response partners. Governor Brown's proposed statutes to enhance dam safety would help meet the District's public safety interests and should be enacted promptly.

The trailer bill language would increase fees paid by the District to DWR to support the state's dam safety program. The District's current expense for these fees for all dams operated by the District totals \$220,000 annually. The Administration plans to increase these fees by 28 percent for each of the next three years, for a net increase of 84 percent. Starting in 2021, the fees would go down by 15 percent, followed by a 10 percent decrease in 2022. Under this fee increase scenario, in the year when fees would be at the highest, the District total for DWR fees for dams and reservoirs would increase from the current \$220,000 annually to a total of \$405,000 annually. While these increased costs would need to be incorporated into District budgets going forward, the added public safety benefits, both here and around the state, make these costs a prudent investment for the owners and operators of dams.

Staff recommends that the Board adopt a position of "Support" on the Governor's budget trailer bill language released February 24, 2017, to enhance dam safety. Because this proposal is not yet incorporated into a bill, staff recommends that this position apply to this language as it may appear in a legislative or budget trailer bill in the current 2017-18 Legislative Session.

Pros

- Requires dams to have an Emergency Action Plan that is updated every ten years with limited exceptions for low-risk dams.
- Requires all dams to have updated inundation maps every ten years, or sooner if local development patterns change.
- Requires DWR to identify additional scenarios for emergency preparedness that go beyond a complete dam failure to include other types of possible failures.
- Improves emergency preparedness coordination between and among state and local agencies.

Cons

- Increases fees paid to the state by the District to support the state's dam safety program.

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:

*Original Agenda Memorandum

*Supplemental Agenda Memorandum

UNCLASSIFIED MANAGER:

Rick Callender, 408-630-2017