



Santa Clara Valley Water District

File No.: 22-0097

Agenda Date: 5/24/2022

Item No.: 3.8.

BOARD AGENDA MEMORANDUM

SUBJECT:

Adopt Recommended Positions on State Legislation: AB 2895 (Arambula) Water Rights Process for Temporary Water Transfers, and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

Adopt a position of "Oppose Unless Amended" on: AB 2895 (Arambula) Water Rights Process for Temporary Water Transfers.

SUMMARY:

AB 2895 (Arambula) Water Rights Process for Temporary Water Transfers (A-04/27/22)

Position Recommendation: Oppose Unless Amended

Priority Recommendation: 2

As amended April 27, 2022, AB 2895 aims to facilitate the State Water Resources Control Board's (State Water Board) processing of temporary change petitions for short-term water transfers of one year or less. The bill would make changes to the current transfer petition process for post-1914 water rights under Water Code Section 1726, including: 1) requiring documentation of "consultation" with the California Department of Fish and Wildlife (CDFW); 2) eliminating the requirement that notice of the transfer petition be published in a newspaper; and 3) extending several deadlines by a few days and potentially slowing down the review of transfer petitions, i.e., extending deadlines from 10 days to 15 days, as well as extending the State Water Board decision deadline from 35 days to 55 days.

AB 2895 also creates a new voluntary expedited petition process by adding Water Code Section 1727. Under this section, a petitioner may provide "pre-notice" of its intent to do a water transfer that year by January 31, specifying how the transfer water will be provided, e.g., groundwater substitution, crop idling, reservoir reoperation, etc., but not any buyer information. The State Water Board then will conduct an expedited review of the transfer petition later filed by the petitioner. The State Water Board also would provide notice to others about the proposed transfer through its website and an email subscriber list. Once the petition is filed, it must be decided within 35 days, albeit allowing for a 20-day extension if public comments are received or for other good cause.

Importance to Valley Water

Valley Water routinely engages in post-1914 short-term water transfers that would be subject to the provisions of this bill. During the current drought, Valley Water has relied on transfers to make up for its lack of local and imported water supplies, including reductions in federal Central Valley Project and the State Water Project allocations. The latest snow survey from April 1 indicated that this year's snowpack is the fifth smallest on record. Long-term forecasts of climate change impacts predict the frequent disappearance of Sierra snowpack by 2045 and beyond. Climate change is expected to bring longer and more frequent droughts, which could increase Valley Water's need for water transfers that are executed in a timely manner.

While the intent of the bill appears to be to streamline and modernize the water transfer review process, some of the changes to the existing process would likely achieve the opposite. Extending the dates for State Water Board review of regular (not pre-noticed) petitions from 35 to 55 days could jeopardize Valley Water's ability to receive transfers in a timely manner. These temporary transfers often require quick decisions for the timely execution of the transfer.

The bill's new requirement for the petitioner to consult with CDFW, and to document such, creates uncertainties as to what documentation would be required and what would happen if CDFW didn't timely respond with that documentation. Consultation could mean a protracted decision-making process or a simple check-in. Current regulations require simple proof of service that a copy of the petition has been served to the CDFW. This is the most problematic provision in AB 2895, and this language should be amended to align with current regulations.

Staff recommends a position of "Oppose Unless Amended" on AB 2895 to remove unnecessary changes or processing timeline extensions to the water transfer process.

Pros

- Modernizes some aspects of the water transfer process.

Cons

- Could delay or have other adverse, unintended consequences on critical water transfers.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item. The Board's position does not enact the legislation discussed above. If the enactment of legislation necessitates an action by the Board with associated Environmental Justice impacts, those impacts will be assessed when the Board takes the action.

FINANCIAL IMPACT:

There is no negative 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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