

MEMORANDUM

June 27, 2018

To: ACWA State Legislative Committee
From: Richard Filgas, State Legislative Assistant
Re: 2018 State Legislative Committee Meeting Schedule

Below is **bill packet #2** for the State Legislative Committee meeting on **Friday, June 29, 2018**.
The meeting will begin at 10:00 a.m. at the Capitol Event Center, 1020 11th St., Sacramento.

If you have questions or concerns regarding any of the bills in the packet, please contact the advocate assigned to the bill prior to the meeting.

The ACWA State Legislative Committee will meet on the following dates in 2018:

- August 10, 2018
- Annual Planning Meeting: October 26, 2018

All meetings will begin promptly at 10:00 a.m. and will adjourn around 12:00 p.m. If you have any questions please email Richard Filgas, ACWA State Legislative Assistant, at richardf@acwa.com, or call at (916) 441-4545.

Excused Absences and Designation of an Alternate

Active participation by members appointed to the ACWA State Legislative Committee is critical to the success of its mission as described in the ACWA Bylaws and the ACWA Committee Guidelines. Therefore, regular attendance is essential. The ACWA Committee Guidelines state that two unexcused absences from the Committee will constitute a resignation of the Committee Member. The Committee Member should submit a request for an excused absence to the Region Chair, or if unavailable, to the Region Vice-Chair, and copy Wendy Ridderbusch via email at WendyR@acwa.com.

The State Legislative Committee Chair has been asked to provide clarification as to whether a Committee Member not able to attend a meeting is authorized to designate an alternate to act on behalf of the Committee Member. ACWA bylaws and committee guidelines do not provide for designation of alternates for Committee Members. The Committee's long-standing practice, however, has been and will continue to be to allow a Member of the Committee with an excused absence to designate an alternate. The Committee Member will be required to secure the concurrence of the appropriate ACWA Region Chair for the alternate. The Committee Member should provide the name of the approved alternate to Richard Filgas prior to the Committee meeting. The alternate will be authorized to fully participate in all discussions of the Committee and to vote on issues before the Committee. Committee Members, including alternates, act on behalf of the region for which they were appointed to represent.

ACWA State Legislative Committee's Guidelines for Taking Positions on Legislation

Last Revised January 2018

Background

A number of controversial bills are introduced each year in the California Legislature. It is always important to understand how ACWA takes positions on legislation. An explanation of that process follows, including details on ACWA's State Legislative Committee's Annual Planning Meeting.

State Legislative Committee: A Definition

ACWA's State Legislative Committee (the Committee) is a standing and limited committee composed of not more than four representatives from each of ACWA's ten geographically-based regions, for a total of not more than forty members. Representatives are: (1) nominated by an ACWA member agency; (2) recommended from that pool of candidates by the Chair of the respective region (in most cases in consultation with the region's board) to the ACWA President; and (3) appointed by ACWA's President for a two-year term.

The Role of ACWA Members and the Committee's Annual Planning Meeting

To establish priorities for the legislative session, each summer the Committee notifies all ACWA member agencies via announcements in ACWA News, via e-mail and through a direct letter to the agency General Manager that the Committee is accepting proposals for legislation to review and consider for sponsorship or support. ACWA's State Legislative Department compiles the proposals, completes a thorough analysis of each submission, and provides it to Committee Members with a recommendation for action. The Committee then reviews the proposals in the fall at its annual planning meeting and determines legislative priorities for the following year, including which proposals will or will not be sponsored or supported by ACWA.

Committee Meetings

During the regular legislative session, which begins in January of odd-numbered years, the Committee meets approximately every three weeks, for a total of ten meetings a year, to review legislation. Special meetings may be called on an as-needed basis. ACWA positions on legislation are determined by a vote of the Committee (i.e., Committee Members and approved alternates) based on analyses and recommendations prepared by ACWA legislative staff. Analyses are sent to members of the Committee and other ACWA members, as requested, in one or more electronic mailings before each Committee meeting. The Committee discusses each bill during its meetings and votes on positions to guide ACWA staff advocacy efforts on the legislation.

ACWA's Positions on Legislation

The Committee takes positions on legislation that, if enacted, would impact ACWA members. The Committee may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). ACWA's legislative staff testifies at hearings and lobbies legislators and staff through meetings and member agency contacts on all positions except

Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of ACWA's position is provided to the legislator.

Positions are not normally taken on legislation if member agencies are on opposite sides of an issue. Exceptions include legislation that, if enacted, would establish poor precedent if applied broadly to ACWA member agencies.

If a particular bill requires further review before consensus on an official ACWA position can be determined, policy subcommittees may be formed to assist the Committee's review of proposed legislation.

Motions During Debate

When bringing or debating a motion before the State Legislative Committee, the following process will apply. The three steps for bringing a motion before the State Legislative Committee (committee) are:

- (a) A Committee Member makes a motion
- (b) Another Committee Member seconds the motion
- (c) The Chair states the motion

Once the motion has been stated by the Chair, it is open to formal discussion. While only one motion can be considered at a time, and a motion must be disposed of before any other question is considered;

- (a) A motion may be amended before it is voted on, either by the consent of the Committee Members who moved and seconded, or by a new motion and second, which is then approved by the Committee.
- (b) A motion may be tabled before it is voted on by motion made to table, which is then seconded and approved by the Committee.
- (c) A motion may be rejected without further discussion of or action on the motion by a motion of "objection to consideration," which is then seconded and approved by the Committee.
- (d) Further discussion of a motion can be terminated by a motion "to call the question," which is then seconded and approved by the Committee. Any Committee Member, including the Chair, may make or second a motion.

Amendment Development Process

If the Committee takes an Oppose Unless Amended or Support if Amended position, the Committee will typically discuss the concepts for the amendments at the meeting. Then a Committee Member(s) or ACWA's legislative staff, in consultation with Committee Members as needed, will develop the amendments after the meeting.

In some situations, a Committee Member, staff or a guest may develop an amendment set for consideration by the Committee at the meeting. In order to facilitate an informed decision by the Committee, it is the Committee's policy to have proposed written amendment sets available for review by the Committee as soon as is feasible. Therefore, absent extenuating

circumstances, proposed written amendments should be provided to ACWA staff for distribution to the Committee at least forty-eight hours in advance of the Committee meeting. If extenuating circumstances exist so that a guest cannot provide an amendment set to staff 48 hours in advance of the meeting, a guest may ask a Committee Member to present the amendment set (as opposed to guests distributing amendment sets at the meeting without any prior vetting).

Information Sharing

To provide adequate information to the entire ACWA membership, the Committee sponsors an annual Legislative Symposium, provides state legislative updates in ACWA News, posts positions and other information on the State Legislative Committee page of ACWA's Web site, and sends out advisories and alerts on key legislation. State Legislative Committee Members may access information on the State Legislative Committee page by logging in on acwa.com and navigating to the My ACWA tab > ACWA Committees > State Legislative Committee > 2018 State Legislative Committee Meeting Materials (Members Only). ACWA's legislative department is available to provide specific information on bills, and Committee Members are encouraged to communicate ACWA positions on priority legislation at the region level. ACWA's State Legislative Department appreciates being informed by ACWA members of positions taken by ACWA members on legislation.

For more information, contact Wendy Ridderbusch, ACWA Director of State Legislative Relations, at (916) 441-4545 or wendyr@acwa.com.

ACWA State Legislative Committee

June 29, 2018

Capitol Event Center, 1020 11th St. Sacramento

10:00 a.m. – 12:00 p.m.

-
- | | |
|--|------------------------|
| 1. Welcome | Brian Poulsen, Chair |
| 2. Self-Introductions | Members, Guests, Staff |
| 3. Executive Director's Report | Tim Quinn |
| A. Federal Update | |
| B. Other | |
| 4. Deputy Executive Director for Government Relations' Report | Cindy Tuck |
| 5. Review of Bill Packet #1 and #2 | |
| 6. SB 998 (Dodd) Update | Wendy Ridderbusch |
| 7. Legislative Advocate I and Regulatory Advocate I Recruitment | Wendy Ridderbusch |
| 8. CA Water Commission Water Storage Investment Program Update | Dave Bolland |
| 9. Other Business | |
| 10. Adjourn | |

Reminder: Next State Legislative Committee Meeting on **August 10, 2018**

*Bill packets are also available online by logging on to www.acwa.com.

To access, go to the About My ACWA tab > ACWA Committees > State Legislative > 2018 State Legislative Committee Meeting Materials (Members Only)

BILL PACKET #2

Table of Contents

ASSEMBLY BILLS:	8
AB 327 South Coast Air Quality Management District: Fleets.....	8
AB 2064 Integrated regional water management plans: grants: advanced payment	10
AB 2258 Local Agency Formation Commissions: Grant Program	15
AB 2640 Protected species: Lost River sucker and shortnose sucker limited take authorization	17
AB 2649 Water rights: water management.....	19
AB 2697 Wildlife, bird, and waterfowl habitat: idled agricultural lands	25
AB 3206 Water conservation: water meters: accuracy and performance standards	30
SENATE BILLS:.....	33
SB 919 Water resources: stream gages	33

ASSEMBLY BILLS:

AB 327 South Coast Air Quality Management District: Fleets

Author: Gipson

Introduced: 02-07-17

Amended: 06-04-18

Sponsors:

Supporters: South Coast Air
Quality Management District

Opposition: None

Assigned to: Adam Quiñonez

Current Position:

NYC

Recommended Position:

Not Favor Unless Amended

Summary: Current law establishes the Air Resources Board as the air pollution control agency in California and establishes the South Coast Air Quality Management District (SCAQMD) with the responsibility to control stationary sources of air pollution in the South Coast Air Basin, including parts of Los Angeles, Riverside, and San Bernardino counties, and all of Orange County.

The SCAQMD has the authority to require operators of public and commercial fleet vehicles, consisting of 15 or more vehicles operating substantially in the south coast district, to purchase vehicles which are capable of operating on methanol or other equivalently clean burning alternative fuel, when the operator is adding vehicles to or replacing vehicles in an existing fleet or purchasing vehicles to form a new fleet. The SCAQMD may also require that these vehicles be operated, to the maximum extent feasible, on the alternative fuel when operating in the south coast district.

Under existing law emergency vehicles operated by law enforcement agencies, fire departments, or to paramedic and rescue vehicles are exempt from SCAQMD requirements.

As introduced this bill pertained pawnbrokers and sales and use taxes. The June 6 amendments gutted and amended the bill to deal with the SCAQMD.

Summary of Amendments: As amended on June 6, AB 327 would change existing law to authorize the SCAQMD to require operators of public and commercial fleet vehicles, consisting of 15 or more vehicles to purchase the “*cleanest commercially available vehicles*” that will meet the operator’s operational needs and require the replacement of no more than 15 percent of existing vehicles per calendar year. The bill would also specify that SCAQMD may require that

these vehicles be operated, to the maximum extent feasible, in the south coast district and maintain an exemption for emergency vehicles.

Staff Comments: As amended this bill would provide the SCAQMD the authority to require water agencies in their district to replace existing fleets with the cleanest commercially available vehicles.

This change would be a significant expansion of the SCAQMD's authority. Under current law, the SCAQMD can only require a change when a fleet owner purchases vehicles to form a new fleet or when a fleet owner adds or replaces vehicles in an existing fleet. In addition, current law states that the SCAQMD can only require fleet owners to purchase vehicles capable of operating on methanol or other equivalently clean burning alternative fuel. This bill would expand that authority to allow SCAQMD to require the purchase of any type of vehicle.

While the intent of this bill is laudable it presents some very serious issues for ACWA members. The primary issue with the bill is cost. The language in the bill is extremely broad and would provide SCAQMD the ability to require that an agency replace vehicles irrespective of cost. As the bill defines the term "*cleanest commercially available vehicle*" to simply mean that the vehicle substantially reduces emissions and is "*technically feasible*" the SCAQMD could require the purchase of vehicles that may reduce emissions but are still cost prohibitive for water agencies.

In addition, AB 327 would allow SCAQMD to require an agency to replace 15% of its fleet yearly. For fleets that meet the minimum threshold of SCAQMD regulation, 15 vehicles, this could mean the replacement of two vehicles every year. The bill is also vague in regards to an agency's existing useable fleet. The bill would simply require the SCAQMD to give "*due consideration*" to the useful life of an existing vehicle fleet. This language is unclear and could mean the replacement of vehicles with years of useful life left.

ACWA is supportive of efforts to protect the environment and reduce greenhouse gas emissions. Many public water agencies have already taken great steps to utilize renewable energy, modernize their fleets, and reduce their carbon footprint. However, these efforts must be balanced with the cost of providing water to customers. ACWA should consider adopting an "Not Favor Unless Amended" position on AB 327 to request amendments that narrow the requirement to purchase the "*cleanest commercially available vehicle*" to only those instances when an agency is replacing a vehicle.

Recommended Position: Not Favor Unless Amended

AB 2064 Integrated regional water management plans: grants: advanced payment

Author: Gloria

Introduced: 02-07-18

Amended: 06-13-18

Sponsors:
San Diego County Water
Authority

Supporters: California
Municipal Utilities Association,
California Water Association,
City of San Diego, Clean Water
Action, Community Water
Center, East Bay Municipal
Utility District, Leadership
Council for Justice &
Accountability, North Coast
Resource Partnership, Rural
County Representatives of
California

Opposition:

Assigned to: Whitnie Wiley/Melissa Sparks

Current Position:

Favor

Recommended Position:

Favor

Summary: Existing law, the Integrated Regional Water Management Planning Act (Act), authorizes a regional water management group (RWMG) to prepare and adopt an integrated regional water management (IRWM) plan with specified components relating to water supply and water quality. The Act provides that an IRWM plan is eligible for funding allocated specifically for implementation of integrated regional water management.

Existing law requires an RWMG, within 90 days of notice that a grant has been awarded, to provide the Department of Water Resources (DWR) with a list of projects to be funded by the grant funds if the project proponent is a non-governmental organization (NGO) or a disadvantaged community (DAC) or the project benefits a DAC. Existing law requires DWR, within 60 days of receiving this project information, to provide advanced payment of 50 percent of the grant award for those projects that the grant award is less than \$1 million and require the advanced funds to be handled as prescribed, including that the funds are required to be spent within six months of the date of receipt unless DWR waives this requirement. These provisions sunset on January 1, 2025.

As introduced, until January 1, 2025, AB 2064 would require a project proponent, after spending the initial 50 percent of advanced funds, to provide a mid-project accountability report documenting the completion of project objectives and how advanced funds were used.

The bill would require DWR to provide advanced payment of the remaining grant award within 60 days of receiving the report if the project proponents have completed the identified project objectives for the first one-half of the project and DWR has determined that the initial advancement was spent consistent with the guidelines and requirements provided by DWR. The bill would authorize DWR to withhold up to 10 percent of the remaining advanced grant award as retention proceeds that DWR is required to release fully to the project proponent upon verification by DWR of project completion. The bill would require a project proponent to submit a final project accountability report to DWR upon completion of the project.

As amended on April 2, 2018, the bill would include the following funding provisions for advanced payment:

- 1) The recipient shall place the funds in a noninterest-bearing account until expended.
- 2) The funds shall be spent within six months of the date of receipt, unless the department waives this requirement.
- 3) The recipient shall, on a quarterly basis, provide an accountability report to the department regarding the expenditure and use of any advanced grant funds that provides, at a minimum, the following information:
 - A) An itemization as to how advanced payment funds provided under this section have been expended.
 - B) A project itemization as to how any remaining advanced payment funds provided under this section will be expended over the period specified in paragraph (2).
 - C) Whether the funds are placed in a noninterest-bearing account, and if so, the date that occurred and the dates of withdrawals of funds from that account, if applicable.
- 4) If funds are not expended, the unused portion of the grant shall be returned to the department within 60 days after project completion or the end of the grant performance period, whichever is earlier.
- 5) The department may adopt additional requirements for the recipient regarding the use of the advanced payment to ensure that the funds are used properly.

As amended on May 25, 2018, the bill would remove the provision capping grant awards to less than \$1 million for advanced payment projects. Specifically, the bill would clarify the requirement that DWR, within 60 days of receiving project information from a project proponent who requests and demonstrates a need for advanced payment, to advance \$500,000 or 50 percent of the grant award, whichever is less, for projects in which the project proponent is a nonprofit organization or a disadvantaged community, or the project benefits a disadvantaged community.

Summary of Amendments: As amended on June 13, 2018, the bill would specify that the RWMG must include in their list of projects to DWR the qualifications of the project proponents to manage the project and project finances.

The bill would include specific criteria for the project proponent of advanced payment to meet, including:

- 1) The project proponent is a nonprofit organization, DAC or the project benefits a DAC;
- 2) The project proponent has demonstrated to DWR's satisfaction a need for an advance payment; and
- 3) (A) The project proponent has demonstrated to DWR's satisfaction that the project proponent is sufficiently qualified to manage the project and the project finances;
(B) If DWR is not satisfied that the project proponent is sufficiently qualified to manage the project and the project finances, DWR may impose additional requirements on the project proponent, including requiring additional partners to manage the project, the financing, or both.

The bill would add a requirement to the quarterly reports, to be completed by the advanced fund recipient, that an evaluation of whether the project is on schedule or not and if the project is behind schedule, the report would be required to identify what has caused the delay and the actions taken or being taken to remedy the delay.

The bill would specify DWR's ability to adopt additional requirements to ensure advanced funds are used properly, including random audits and other verifications of the authorized use of funds.

The bill would require DWR withhold 10 percent of the total grant award as retention proceeds.

The bill would allow DWR, at its sole discretion, to provide funding for the second half of the project through a drawdown based on completion of project milestones.

The bill would require the project proponent, upon completion of the project, to submit to DWR a final accountability report. DWR would be required to verify the project's completion and once the project is deemed complete, DWR would be required to release any retention proceeds fully to the project proponent.

Staff Comments: Under the voter-approved Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), existing law appropriates funding through DWR's IRWM program to RWMGs to assist in funding locally-developed and approved IRWM projects. RWMGs include NGOs and DACs in the IRWM planning and Proposition 1 set forth the foundation for a DAC Involvement program as part of the IRWM funding appropriation, in the amount of \$51 million statewide to ensure the involvement of DACs in IRWM planning efforts. The DAC Involvement program is currently underway and DWR is managing 12 agreements with the IRWM funding areas to increase collaborative solutions to address DAC-related water challenges within the IRWM regions.

Per existing state grant award processes, once DWR funding is approved for IRWM projects, the local entity bears the entire cost of the project up front and receives funding for the projects on

a reimbursement basis from state bonds that are sold to refund the approved state matched portion of the project. Chaptered in 2015, SB 208 (Lara) set up the existing advanced payment process for the IRWM program for those eligible entities to receive a grant advancement of the first one-half of the project funds. The SB 208 advanced payment process has been used in DWR's IRWM program under Proposition 84 and Proposition 1, in particular the DAC Involvement program, where the NGOs and DACs have received such financial assistance, where they would otherwise not be able to float the costs upfront for such large-scale projects.

However, under current law, once the project is 50 percent complete and the advanced funds are depleted, the project proponent must then complete the remaining 50 percent of the project on the traditional reimbursement basis, wherein the work is completed and invoices are presented to DWR for reimbursement payment upon invoice approval and verification of the completed work. This continues to pose cashflow difficulties for NGOs and DACs who typically conduct the planning and environmental documentation activities during the first-half of the project and conduct the more costly construction activities during the second-half of the project. There is no statutory authority for DWR to provide a 50 percent advanced payment for the remainder of the project to satisfy the project proponent's cash-flow issues.

San Diego County Water Authority (SDCWA) is the sponsor of AB 2064. AB 2064 would provide a statutory structure for an advanced grant award for the second one-half of eligible projects, while keeping in mind several important accountability conditions and measures that would protect the state's and taxpayer's interests relative to use of public funds, including a full completion of project objectives for the first one-half of the project, the demonstration of responsibility and accountability by the project proponent in completing an accountability report for advanced payment, and acceptance of a 10 percent retention fund by DWR to be released upon final approval of the completed project.

The sponsor believes this will improve the existing advanced payment process and alleviate all related cashflow concerns for NGOs and DACs while maintaining accountability for project completion. The bill does not change existing local match requirements or any other aspects of the IRWM program.

AB 2060 (Eduardo Garcia) is another bill this year that would, among other changes, remove the provision that the grant award must be less than \$1 million for advanced payment under DWR's IRWM program. AB 2060 would also propose advanced payment of either \$500,000 or 50 percent of the grant award, whichever is less, and would remove the sunset date of January 1, 2025. This proposal would change the amount of funds advanced, compared to the proposed 100 percent advancement in AB 2064.

ACWA worked with SDCWA as the sponsor of AB 2064 and Assembly Member Eduardo Garcia's office to suggest there be consistent requirements in both bills, including agreed upon provisions for the grant award amount, the amount for advancement, and the sunset date of the statute. ACWA staff discussed the potential conflict between the two bills with SDCWA and Assembly Member Garcia's staff.

As amended on April 2, 2018, the advanced payment funding provisions included in the bill are consistent with the processes that DWR currently exercises for the first one-half advanced payment for eligible projects. The bill was listed in the suspense file in the Assembly Appropriations Committee.

On May 25, AB 2064 moved off of the Assembly Appropriations Committee suspense file with amendments. The May 25 amendments to AB 2064 remove the grant award cap of less than \$1 million, which was previously included in AB 2060. AB 2060 was also amended off of the suspense file to remove the duplicative language related to the IRWM advanced payment provisions. Since the two bills are no longer overlapping or duplicative, ACWA staff suggested a 'Favor' position.

The June 13 version of the bill would make specific changes to ensure that eligible project proponents have the managerial and financial means necessary to account for advanced payment of grant funds. Further, DWR would now have the discretion to provide advanced funding for the second-half of projects through a drawdown based on completion of project milestones. The sponsor, SDCWA, fully supports the June 13 amendments to the bill.

Recommended Position: Favor

AB 2258 Local Agency Formation Commissions: Grant Program

Author: Caballero

Introduced: 02/13/18

Amended: 04/23/18

Sponsors: California Association of Local Agency Formation Commissions

Supporters: California State Association of Counties, LAFCOs of: Butte, Calaveras, Contra Costa, El Dorado, Fresno, Humboldt, Imperial, Kern, Lake, Los Angeles, Marin, Mendocino, Monterey, San Benito, San Bernardino, San Luis Obispo, Santa Cruz, Solano, Sonoma, and Yolo, Rural County Representatives of California, Urban Counties Caucus

Opposition: California Special Districts Association, McKinleyville Community Services District

Assigned to: Adam Quiñonez/Emilye Reeb

Current Position:

Favor

Recommended Position:

Watch

Summary: Existing law requires a local agency formation commission (LAFCO) in each county to encourage the orderly formation and development of local agencies based upon local conditions and circumstances. Existing law requires the county auditor to apportion, the net operating expenses of the LAFCO among the county, cities, and special districts within the LAFCO's jurisdiction.

Current law establishes the Strategic Growth Council (Council) in state government and assigns the Council the responsibility to provide funding and distribute data and information to local governments and regional agencies that will assist in the development and planning of sustainable communities. Current law also mandates that before specific LAFCO actions, such as consolidation or dissolution, a protest hearing must be held in the impacted area.

AB 2258 was introduced as a spot bill.

As amended on March 15, 2018, AB 2258 would require the Council, until January 1, 2024, to establish and administer a LAFCO grant program for the payment of costs related to initiating and completing the dissolution of inactive districts, the payment of costs associated with a study of the services provided within a county by a public agency, and for other specified

purposes, including the initiation of an action, based on determinations found in the study, as approved by the LAFCO.

In order to receive funds, the bill would require LAFCOs to submit applications for each of the three approved activities listed above and would require the Council to review applications and notify applicants of a decision within specified time periods. If approved, the Council would provide funds to the LAFCO within 60 days.

As amended on April 9, this bill would require the Council, after consulting with the California Association of LAFCOs, to develop and adopt guidelines, timelines, and application and reporting criteria for development and implementation of the program. This bill would exempt these guidelines, timelines, and criteria from the rulemaking provisions of the Administrative Procedure Act. This bill would make funding for the program subject to appropriation in the annual Budget Act.

The April 9 amendments would also raise the protest threshold for LAFCO actions for those LAFCOs that receive funding pursuant to this bill. Specifically, the amendments would increase the protest threshold from 10 percent to 25 percent of registered voters during the protest hearing. Raising the protest threshold would mean that a greater number of residents would need to protest an action at a public hearing to force the proposed LAFCO action to be taken up in an election.

Summary of Amendments: As amended on April 23, this bill would delete the previous language relating to the dissolution of “inactive districts” and replaces it with “a special district that is listed by the Controller as inactive” to correspond with Government Code Section 56879, which currently governs the responsibilities of the Controller and a LAFCO when dealing with the dissolution of inactive special districts.

Staff Comments: AB 2258 would provide additional resources to LAFCOs for the dissolution and consolidation of districts. Assembly Member Caballero is also carrying AB 2050, the Small System Water Authority Act, which would provide the State Water Resources Control Board (State Water Board) with alternative authority to mandate consolidation. Under AB 2050, LAFCOs would play a much more significant role in the consolidation process and this bill, as currently drafted, would provide LAFCOs with the resources to do this and other work.

Recently, ACWA members have expressed concern regarding the increased protest threshold and the additional authority the bill would provide LAFCOs even if the intent is limited to LAFCOs that receive funding under AB 2258. The 10 percent threshold was initially put in place because of the nature of LAFCO actions which are often not voluntary, such as forced consolidation, and should be subject to lower protest thresholds. Further, the California Special Districts Association has expressed significant concern regarding the bill and the increased authority it would provide LAFCOs. As a result of these concerns, staff recommends moving to a “Watch” position on AB 2258.

Recommended Position: Watch

AB 2640 Protected species: Lost River sucker and shortnose sucker limited take authorization

Author: Wood

Introduced: 02-15-18

Amended: 06-20-18

Sponsor:

Supporters: CA Dept. of Fish and Wildlife

Opposition:

Assigned to: Wendy Ridderbusch/Melissa Sparks

Current Position: Favor

Recommended Position: Favor

Summary: Existing law prohibits the taking or possession of a fully protected fish, except as provided, and designates the Lost River sucker and the shortnose sucker as fully protected fish. The California Endangered Species Act (CESA) prohibits the taking of an endangered or threatened species, except as specified. Under that act, the Department of Fish and Wildlife (DFW) is permitted to authorize, by permit, the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

As introduced, this bill would permit DFW to authorize under the CESA the take or possession of the Lost River sucker and shortnose sucker resulting from impacts attributable to or otherwise related to the decommissioning of the Iron Gate Dam, Copco 1 Dam, Copco 2 Dam, or J.C. Boyle Dam, consistent with the Klamath Hydroelectric Settlement Agreement, if specified conditions are met.

Summary of Amendments: As amended on June 20, 2018, the bill would include both species names for the Lost River sucker, including *Deltistes luxatus* and *Catostomus luxatus*.

The bill would specify the four dams to be decommissioned and removed be located on the Klamath River.

The bill would provide that the take authorization requires DFW approval of a sampling, salvage, and relocation plan to be implemented and requires a description of the necessary measures to minimize the take of adult Lost River sucker and shortnose sucker. The bill would require the plan to provide for sampling efforts, the results of which would generate information used to make decisions and implement the plan through adaptive management principles.

Staff Comments: AB 2640 would allow DFW to authorize the take or possession of the Lost

River sucker and the shortnose sucker resulting from impacts attributable to the decommissioning of four dams consistent with the Klamath Hydroelectric Settlement Agreement, based on the following conditions:

- 1) If DFW determines the authorized take will not jeopardize the continued existence of the Lost River sucker or shortnose sucker;
- 2) If the impacts of the authorized take are minimized; and
- 3) If the take authorization provides for the development and implementation of an adaptive management plan, approved by the DFW, for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize the impacts of the authorized take.

Klamath River Basin stakeholders have negotiated a Settlement Agreement that lays out the steps and criteria for removing the lower four Klamath River dams. This is the most ambitious and large scale dam removal effort in United States history and it has the support of Klamath River Tribes, Upper Basin irrigators, fishermen, conservation groups, and the dam owner, PacifiCorp.

The Klamath Hydroelectric Settlement Agreement, or KHSA, lays out the process for conducting necessary additional studies, environmental reviews, and a decision by the Secretary of the Interior as to whether 1) removal of the lower four dams on the Klamath River owned by PacifiCorp will advance restoration of the salmonid fisheries of the Klamath Basin, and 2) removal of the dams is in the interest of Tribes, local communities, and the general public. In October 2016, Secretary of the Interior Sally Jewell requested the Federal Energy Regulatory Commission to approve the plan to remove the four dams from the Klamath River. The next phase would be dam removal, which included in the KHSA are provisions for the interim operation of the dams prior to dam removal as well as the process to transfer, decommission, and remove the dams.

Existing studies by a variety of agencies and scientists, including the Federal Energy Regulatory Commission and the California Energy Commission, indicate that dam removal is not only the best way to advance fisheries restoration and improve water quality, but is cheaper than relicensing the aging facilities which would require millions of dollars in upgrades in order get a new license.

The KHSA establishes 2020 as the target date for dam removal. The KHSA is the companion agreement to the Klamath Basin Restoration Agreement. Together, the two agreements address the needs of the watershed through dam removal, enhanced in-stream flows, and restoration. At the same time, the two agreements combined address the economic needs of local communities through water and power security.

AB 2640 would allow the take of the Lost River sucker and shortnose sucker for purposes related to decommissioning the four dams along the Klamath River for improved restoration in

the Klamath Basin as well as improvements in management of water and power resources for the local communities.

Recommended Position: Favor

AB 2649 Water rights: water management

Author: Arambula

Introduced: 02-15-18

Amended: 06-18-18

Sponsors:

Supporters: California Pear Growers Association, California Seed Association, California State Floral Association, California Association of Wheat Growers, California Association of Winegrape Growers, California Warehouse Association, Allied Grape Growers, Sustainable Conservation, Pacific Egg and Poultry Association, Merced County, City of San Joaquin, California Partnership for the San Joaquin Valley, Fresno Chamber of Commerce, Association of California Egg Farmers, Tulare County, City of Mendota, City of Selma, Fresno Irrigation District, Orange Cove, Rural County Representatives of California, San Joaquin Valley Water Infrastructure Authority, California Bean Shippers Association, California Grain & Feed Association

Opposition:

Assigned to: Whitnie Wiley/Melissa Sparks

Current Position:

Watch

Recommended Position:

Pending Committee Input

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 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.

As introduced, AB 2649 would state the intent of the Legislature to enact legislation to increase groundwater recharge.

As amended on March 22, 2018, the bill would require the State Water Board to prioritize a temporary permit for a project that enhances the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water rights priorities and protection of fish and wildlife. The bill would exempt temporary permits for these types of storage or recharge projects from the California Environmental Quality Act (CEQA). The bill would require the State Water Board to set a reduced application fee for an applicant for a temporary permit for these projects.

As amended on April 4, 2018, the bill would add the declaration that groundwater recharge, groundwater banking, or both, undertaken pursuant to or consistent with an adopted groundwater sustainability plan authorized by a groundwater sustainability agency, be considered a beneficial and reasonable use of water consistent with Section 2 of Article X of the California Constitution.

As amended on April 25, 2018, the bill would declare that the diversion of water to underground storage, including the diversion of water for groundwater recharge, constitutes a diversion of water for beneficial use for which an appropriation may be made if the diverted water is put to beneficial use. The bill would state that the beneficial use of water diverted to underground storage is not limited to uses requiring subsequent extraction or release of the stored water and may include beneficial uses such as protection of water quality made while the water is in underground storage. The bill would declare that forfeiture periods in existing statute would not include any period when the water is being used in the aquifer or storage area or when being held in underground storage for later application to beneficial use.

The bill would remove the declaration that groundwater recharge, groundwater banking, or both, undertaken pursuant to or consistent with an adopted groundwater sustainability plan authorized by a groundwater sustainability agency, be considered a beneficial and reasonable use of water consistent with Section 2 of Article X of the California Constitution.

As amended May 25, 2018, the amendments would clarify that diverting water for groundwater recharge consistent with the applicable permit or license is authorized, if the diverted water is put to beneficial use.

Summary of Amendments: As amended on June 18, 2018, the bill would remove the general temporary permit application language under existing law, including California Water Code Section 1426 and 1432.

The bill would clarify that a minor application to mean either of the following:

- 1) Any application which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year; or
- 2) An application by a groundwater sustainability agency (GSA) or local agency for a diversion previously authorized by a temporary permit and that the Division of Water Rights has determined, in its discretion, that data available from a field investigation and operation under the temporary permit is sufficient to issue a decision.

The bill would clarify that the State Water Board may issue a conditional, temporary permit, otherwise specified as a temporary urgency permit.

The bill would define “beneficial use” to include, but not be limited to:

- 1) Prevention of significant and unreasonable seawater intrusion;
- 2) Prevention of significant and unreasonable degradation of water quality, including the migration of contaminant plumes that impair water supplies;
- 3) Prevention of significant and unreasonable land subsidence that substantially interferes with surface land uses;
- 4) Maintenance or enhancement of groundwater dependent ecosystems; and
- 5) Beneficial uses that require the extraction of stored water.

The bill would allow a GSA or local agency, whether or not an applicant, permittee, or licensee, to apply for, and the State Water Board to, issue a conditional temporary permit for diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin.

The bill would specify that before issuing a permit, the State Water Board would be required to make all of the following findings based upon a preponderance of the evidence:

- 1) The proposed diversion is to underground storage for beneficial use that advances the sustainability goal of a groundwater basin;
- 2) The water may be diverted and used without injury to any lawful user of water. This finding could be satisfied by demonstrating both of the following:
 - A) The proposed diversion to underground storage would occur only when flows in the source waterbody exceed the claims of all known legal users who divert water downstream of the proposed point of diversion; and
 - B) Storage and extraction from storage in the basin under the proposed permit would be subject to accounting methods and reporting requirements established by a groundwater sustainability plan (GSP), interim plan, or alternative approved that the State Water Board finds adequate to prevent injury to any lawful user of water.
- 3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
- 4) The proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

The bill would require an application for a temporary permit to be accompanied by any maps, drawings, and other data that may be required by the State Water Board. An applicant would be required to pay an application fee and, if a permit is issued, a permit fee. An application would be required to include all of the following:

- 1) Evidence that the applicant has completed any environmental review required by, or the project is exempt from, the California Environmental Quality Act;
- 2) A certification that the applicant has consulted with the Department of Fish and Wildlife (DFW) at least 30 days before submission of the application. The certification shall include a copy of any conditions proposed by DFW;
- 3) A complete water availability analysis that quantifies, under a range of foreseeable hydrologic conditions, the amount of unappropriated water available considering instream beneficial uses and all known legal users who divert water hydrologically connected to the proposed point of diversion, except if the applicant proposes to divert water only when flows in the source waterbody exceed an established or calculated flood stage, a simplified water availability analysis; and
- 4) A proposed accounting method for storage and extraction of water diverted under the permit that is certified to be consistent with the GSP or alternative approved by the GSA or local agency for the basin where the water is proposed to be stored.

The bill would require the State Water Board to issue and deliver to the applicant a notice of the application that includes the following information:

- a) The number of the application;
- b) The name and address of the applicant;
- c) The date of filing;
- d) The source of supply;
- e) The amount applied for;
- f) The season of diversion;
- g) The location of the point of diversion;
- h) The use to be made;
- i) The location of the place of use;
- j) The date of issuance of the notice;
- k) Such other information as the board deems necessary; and
- l) A list of persons who, in the judgment of the State Water Board, could be adversely affected by the temporary diversion and use. The State Water Board would be required to post the notice to its Internet Website within 10 days of issuing the notice to the applicant.

The bill would require the applicant to provide notice by registered or electronic mail to each person on the list of interested persons provided by the State Water Board and the list of interested persons maintained by any GSA or local agency for the basin where the water is proposed to be stored. The applicant would be required to provide proof of notice to the State Water Board.

The bill would allow any interested person to file an objection to the temporary diversion and use with the State Water Board within 30 days of the mailing of the notice by the applicant. A person filing an objection would be required to send a copy to the applicant.

The bill would require the State Water Board to consider an objection, and may hold a hearing on the objection after notice to all interested persons, before acting upon an application for a permit.

The bill would require the State Water Board to supervise diversion and use of water under a permit issued for the protection of all lawful users of water and instream beneficial uses and for compliance with permit conditions. The permit could allow for the requirement that a person who extracts water stored under the permit to comply with regulatory and permitting requirements for groundwater extraction set by the GSP or alternative approved for the basin.

The bill would not allow a permit issued to result in the creation of a vested right, even of a temporary nature. The permit would be subject, at all times, to modification or revocation at the discretion of the State Water Board. The authorization to divert and use water under the permit would automatically require expiration five years after the authorization takes effect, unless an earlier date is specified or the temporary permit is revoked, and would be required to be junior in priority to any subsequent appropriation. The five-year period would not include any time required for monitoring, reporting, or mitigation before or after the authorization to divert or use water under the permit. The five-year period would be a limitation on the authorization to divert and not a limitation on the authorization for beneficial use of the water diverted to underground storage.

The bill would allow the State Water Board to renew a permit issued if the State Water Board, in its judgment, concludes that the applicant has exercised due diligence in applying for a permit and in pursuing that application once it is filed. The State Water Board would be required to process a request for a renewal of a permit issued, except that the State Water Board would not require the permittee to file duplicate maps, drawings, or other data if they were furnished with the original application for the permit. Each renewal of a permit issued would be required to be valid for a period not to exceed five years from the date of renewal.

Staff Comments: For the history and detailed analyses of the prior versions of the bill, please review the analysis of the April 25 version in the May 4, 2018, Bill Packet 2.

The State Legislative Committee (SLC) took a 'Watch' position on the May 25 version of the bill at the June 8, 2018 meeting, and the SLC Groundwater Recharge Work Group began analyzing a mock-up of amendments to the bill. However, the bill was further amended on June 18, 2018 by the author to include a specific temporary permitting process proposed by the State Water Board.

The attached amendments were drafted after a work group meeting between some of the upstream and downstream interests. Pending receiving additional input from ACWA members outside the work group who haven't been following this issue closely, there could be need for other or modifications to the amendments presented here.

The members of the work group have agreed to propose removing Water Code Section 1242 from the bill due to the potential conflicts over water rights that may occur within the water community if the existing language were to be modified. The work group, including member agencies representatives from both northern and southern California, has expressed a willingness to continue the discussion of how to amend the temporary permit language. After ACWA staff and work group members met with the author's office and testified in the Senate Natural Resources and Water Committee hearing, the author expressed a willingness to consider amendments to the temporary permit language over the summer recess. There is a work group meeting scheduled for Thursday, June 28, 2018 prior to the SLC meeting to clarify the mock-up amendments provided with this analysis. Should there be further changes to the mock-up amendments, they will be provided as a hand carry at the June 29 SLC meeting.

While members are continuing to discuss the attached amendments, there is a question of whether ACWA should support the bill. One of the stated policy goals of the Association's Strategic and Business Plan is that ACWA will lead by identifying strategies to increase groundwater replenishment and a number of member agencies see this legislation as an opportunity to do just that.

To encourage the broadest possible discussion of this issue and to ensure any additional amendments needed to address any remaining concerns beyond those expressed here, staff is leaving ACWA's position open pending committee input.

Recommended Position: Pending Committee Input

AB 2697 Wildlife, bird, and waterfowl habitat: idled agricultural lands

Author: Gallagher

Introduced: 02-15-18

Amended: 06-18-18

Sponsors: California
Waterfowl Association

Supporters: Audubon California,
The Black Brant Group, California
Bowman Hunters Association and
State Archery Association, California
Deer Association, California
Houndsmen for Conservation,
California Rice Commission, California
Rifle and Pistol Association, Cal-Ore
Wetlands and Waterfowl Council,
Conaway Preservation Group,
Defenders of Wildlife, Delta
Waterfowl, Ducks Unlimited,
Environmental Defense Fund,
Grassland Water District, Lower
Sherman Island Duck Hunters
Association, National Wild Turkey
Federation, The Nature Conservancy,
Northern California Water
Association, Pheasants Forever, Inc.,
Quail Forever, Suisun Resource
Conservation District, Wild Sheep
Foundation California Chapter

Opposition:

Assigned to: Wendy Ridderbusch/Melissa Sparks

Current Position:

Watch

Recommended Position:

Watch

Summary: Existing law establishes the Wildlife Conservation Board (WCB) within the Department of Fish and Wildlife (DFW) and requires the WCB to investigate, study, and determine what areas within the state are most essential and suitable for wildlife production and preservation, and will provide suitable recreation. Existing law also requires the WCB to ascertain and determine what lands within the state are suitable for game propagation, game refuges, bird refuges, waterfowl refuges, game farms, fish hatcheries, game management areas, and what streams and lakes are suitable for, or can be made suitable for, fishing and hunting.

Existing law also authorizes the WCB to administer various habitat conservation programs.

As introduced, the bill would require the WCB to establish a program, which may include direct payments or other incentives, to encourage landowners to voluntarily cultivate or retain cover crops or natural vegetation on idled lands to provide waterfowl, upland game bird, and other

wildlife habitat cover for purposes, including, but not limited to, encouraging the use of idle agricultural lands for wildlife habitat. The bill would also authorize DFW to provide incentives pursuant to the program for the creation or enhancement of waterfowl brood habitat, and to develop guidelines and criteria for the program as it deems appropriate.

The bill would require WCB and the Department of Water Resources (DWR) to consult with the DFW and the United States Fish and Wildlife Service (USFWS) before implementing those provisions, to determine the optimal ways of increasing and enhancing wildlife habitat on idled lands.

Existing law requires DWR to regulate water resources in the state, including water transfers. Existing law requires landowners to be encouraged, when agricultural lands are being idled in order to provide water for transfer and an amount of water is determined to be made available by that idling, to cultivate or retain nonirrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat.

This bill would require DWR to allow nonirrigated cover crops or natural vegetation to remain on idled agricultural lands, without penalty to the landowner, unless it determines, based on scientific or other credible evidence, that an injury to another legal user of water would occur as a result of allowing those crops or vegetation to remain on those lands. The bill would provide that, if DWR makes such a determination that an injury would occur, DWR may require the landowner to remove or kill the nonirrigated cover crops or natural vegetation from those lands.

As amended on April 17, the bill would specify that covered crops or other upland vegetation on idle lands apply under the WCB voluntary incentive program.

In developing the program, the WCB would be required to prohibit, in connection with the approval of a transfer, a landowner who participates in the program from diverting or using any water under any basis of right to irrigate land idled in order to provide water for transfer, unless the transfer is expressly allowed by the State Water Resources Control Board (State Water Board) or by DWR. Further the bill would allow for activities undertaken or requested by mosquito control agencies to address mosquito production under the program, if necessary.

The bill would expand the entities to receive consultation to include the Natural Resources Conservation Service, the State Water Board, and nonprofit waterfowl and upland gamebird organizations. The consultation process would include the opportunity to determine optimal ways to increase and enhance waterfowl and upland gamebird breeding habitat on idled lands and ensure that any applicable water transfer requirements are met.

The bill would specify that the program be established for waterfowl and other gamebird breeding purposes and would be prohibited from being used to provide waterfowl wintering habitat, including managed wetland habitat.

The bill would set forth that DWR could require the abatement of any nonirrigated cover crops or vegetation that are actively transpiring water beyond that associated with normal annual precipitation. Landowners would be required to remove, either through discing or chemical treatment, only to that portion of the subject area that requires abatement to maintain waterfowl and upland gamebird nesting cover. Nonirrigated cover crops or vegetation could remain on the subject area for as long as DFW deems allowable. The bill would require notification be given to permitted entities to conduct egg salvage activities prior to any abatement of nonirrigated cover crops or vegetation. Participating landowners would not be subject to additional regulations for subsequent manipulation or removal of nonirrigated cover crops or vegetation during normal agricultural activities. The bill would require DWR to incorporate these requirements into their water transfer guide.

As amended on May 25, 2018, the bill would remove DWR and the State Water Board from the required consultation list of entities that WCB must consult with before implementing the program to determine optimal ways to increase and enhance waterfowl and upland gamebird breeding habitat on idled lands.

The bill would remove the provisions that would allow DWR to require the abatement of any nonirrigated cover crops or vegetation that are actively transpiring water beyond that associated with normal annual precipitation.

The bill would remove the requirement that landowners must remove, either through discing or chemical treatment, only to that portion of the subject area that requires abatement to maintain waterfowl and upland gamebird nesting cover.

The bill would remove the requirement that notification be given to permitted entities to conduct egg salvage activities prior to any abatement of nonirrigated cover crops or vegetation.

The bill would remove the requirement that participating landowners would not be subject to additional regulations for subsequent manipulation or removal of nonirrigated cover crops or vegetation during normal agricultural activities.

The bill would remove the requirement that DWR shall incorporate these provisions into their water transfer guide.

Summary of Amendments: As amended on June 18, 2018, the bill would specify that the bill be implemented only if the Water Supply and Water Quality Act of 2018 (Jerry Meral's water bond) is approved by the voters at the November 6, 2018, general election or a sufficient amount of federal grants or other funds are secured, as determined by WCB.

Staff Comments: AB 2697 (Gallagher) is a similar version of Assembly Member Frazier's AB 472 from 2017. AB 472 was gutted-and-amended in September 2017 to relate to small business practices and is currently held in the Senate Rules Committee. ACWA's State Legislative Committee took a "Not Favor" position on AB 472 due to the proposed changes to no longer

require the person proposing the water transfer to prove that the transfer would not harm any legal water user and rather, proposed that DWR prove that there is harm to a legal water user or else it must approve the transfer.

Assembly Member Gallagher, the author of the bill states that, *“Vegetative cover provides valuable nesting habitat for waterfowl and other gamebirds and makes working lands more wildlife-friendly. A voluntary incentive program that is flexible for California landowners would increase the amount of habitat available for these important purposes. Habitat incentive programs have a proven track record in both California and other states of providing significant benefits for wildlife. This bill would establish an incentive program to encourage landowners to maintain cover crops or natural vegetation on idled agricultural lands to provide habitat and nesting cover for waterfowl and other wildlife. The bill also streamlines the process for retaining cover crops when land is idled for the purpose of a water transfer.”*

As amended on April 17, the bill requires WCB to establish an incentive program to encourage landowners to provide wildlife habitat on idled lands. The bill specifies WCB develop guidelines for the program and that the program does all of the following:

- a. Prohibit the landowner, as specified, from disking, spraying herbicides, mowing, chipping, or rolling any vegetation on idled lands until after July 1, or as late as possible each year;
- b. Utilize professionals to monitor nesting and salvage eggs prior to permitting the removal of vegetation;
- c. Be consistent with the breeding goals of the Central Valley Joint Venture Implementation Plan. Specify certain allowed landowner practices; and
- d. Prohibit irrigation of idled land under any basis of right except as expressly allowed by the State Water Board or the DWR.

Supporters of the bill assert the measure would be helpful to fulfill an important need of providing additional nesting cover and upland habitat for waterfowl, other game birds, and songbirds on private lands, consistent with the Central Valley Joint Venture Implementation Plan. Supporters believe the bill would particularly benefit breeding birds in the rice growing areas of the Sacramento Valley that periodically participate in water transfers and offer beneficial brood water for ducks in the spring and summer. The bill would create an incentive-based program for landowners to help increase waterfowl populations.

Two primary concerns regarding AB 2697 were conveyed to ACWA from Byron Bethany Irrigation District: 1) landowners should be required to demonstrate that no injury to another legal user of water shall occur as a result of allowing those crops or vegetation to remain on the lands, and 2) ensure that applicable water transfer requirements are met. The author of the bill accepted the second amendment in the April 17 version of the bill, however did not include the first suggested amendment, a ‘no injury to other legal water users’ clause. Instead, the author struck the entire paragraph related to injury.

At the May 4 ACWA State Legislative Committee, ACWA members discussed continuing with a 'Not Favor Unless Amended' position on the bill. Some members proposed amendments and suggested language to include a 'no injury to other legal water users' clause like what Bryon Bethany Irrigation District proposed, while others members suggested that the bill should remain focused on developing the WCB incentive program and not add language related to injury. Additionally, members shared that after a discussion with DWR staff, the bill would impact DWR's current activities on water transfers and would shift some of the water transfer accounting responsibilities from landowners to the state.

In May, AB 2697 was referred to the Assembly Appropriations suspense file. The bill was amended and passed off of the suspense file and ordered to the Senate. The May 25 version of the bill struck the language which would have required DWR to monitor any nonirrigated cover crops or upland vegetation that are actively transpiring water beyond that associated with normal annual precipitation and would require them to be abated. The bill no longer requires DWR to provide certain notifications to permitted entities to conduct egg salvage activities prior to any abatement and the bill no longer requires DWR to incorporate these requirements into its water transfer guide.

The May 25 version of the bill focused on developing the WCB incentive program to encourage landowners to voluntarily cultivate or retain cover crops or other upland vegetation on idled lands to provide waterfowl, upland game bird, and other wildlife habitat cover. At the June 8, 2018, the State Legislative Committee moved to a 'Watch' position on the May 25 version of the bill.

The June 18 version of the bill makes a small change with respect to funding sources. ACWA continues to have members that both support and oppose this bill in its current form. For that reason, staff recommend we continue to maintain our current 'Watch' position.

Recommended Position: Watch

AB 3206 Water conservation: water meters: accuracy and performance standards

Author: Friedman

Introduced: 02-16-18

Amended: 06-18-18

Sponsors:

Supporters: Clean Water Action, Natural Resources Defense Council (NRDC), Sierra Club California, Southern California Watershed Alliance, California Trout, Wholly H2O, Mono Lake Committee

Opposition: Association of California Water Agencies, California Water Association

Assigned to: Whitnie Wiley/Emilye Reeb

Current Position:
Not Favor Unless Amended
Recommended Position:
Not Favor Unless Amended

Summary: Existing law requires the State Energy Resources Conservation and Development Commission (commission) to establish design and construction standards, and energy and water conservation design standards that increase efficiency in the use of energy and water for new residential and new nonresidential buildings to recuse the wasteful, uneconomic, inefficient, or unnecessary consumption of energy. Existing law requires the commission to establish minimum levels of operating efficiency to promote the use of energy and water efficient appliances, including landscape irrigation equipment.

As introduced, this bill would require the commission, on or before January 1, 2020, to adopt regulations setting standards for the accuracy of water meters purchased, repaired, or reconditioned on and after the effective date of those regulations, including, water meters installed pursuant to the Water Measurement Law. The bill would allow a water purveyor to install a water meter before the effective date of the regulations for a time period deemed appropriate by the commission.

As amended on April 3, 2018, this bill would apply to the regulations setting standards on meters purchased on or after the effective date of the regulations adopted by the commission. The amendments also delete requirements for accuracy testing of installed water meters and delete the requirement of the State Water Board to adopt protocols to be used by each urban water supplier for the regular sampling and testing of its customers' service meters.

Summary of Amendments: As amended on June 18, the bill would extend the date from January 1, 2020, to January 1, 2022, in which the commission must adopt regulations for the accuracy of water meters. The bill specifies that only to the extent that funding is available must the commission adopt these standards.

The bill would specify that the commission shall adopt regulations setting standards for the accuracy of water meters that, on or after the effective date of those regulations are installed by a water purveyor or manufactured and sold or offered for sale in the state. The bill would require that the regulations adopted by the commission allow a water purveyor to install a water meter that, as of the effective date of the regulations, the water purveyor possesses, or has entered into a contract to purchase, and has not yet installed. The bill would also require that the regulations allow a water purveyor to maintain all water meters installed as of the effective date of the regulations until the end of their useful service, as determined by the water purveyor. Finally, in adopting regulations, the commission may consider the fifth edition of the American Water Works Association's Water Meters—Selection, Installation, Testing and Maintenance, Manual M6.

As amended, the State Water Resources Control Board (State Water Board) would be required to adopt regulations requiring the sampling and testing by each urban water supplier of its customer service meters that, when followed, will produce a statistically sound estimate of the accuracy of the urban water supplier's meter fleet. In adopting regulations, the State Water Board would be able to consider both the results of a survey of urban water suppliers, to be conducted by the State Water Board, on the methodologies they use to sample and test customer service meters, and industry standards of practice and manuals from the American Water Works Association (AWWA).

Staff Comments: The June 18 amendments do not address ACWA's concerns relating to the inconsistency of AB 3206's reporting requirements with the recently signed water use efficiency measures, AB 1668 (Chapter 15, Statutes of 2018) and SB 606 (Chapter 14, Statutes of 2018).

While staff was collecting information on the bill and developing the original analysis, staff expressed concerns with the author's office on several sections of the bill. In response to those concerns, the author deleted sections 2 and 3 in the April 3 version of the bill. However, there remain other concerns that if amended, could improve the bill.

Meter accuracy favors the water agency. When meters lose accuracy, they under-register, meaning the water agency would not be charging for the full amount of water being used. It's in our member agencies' best interest to ensure that meters are reasonably accurate. Testing installed meters, means taking them out of service and bench testing them, which would be costly and time-consuming for possibly little benefit.

In May 2018, ACWA staff communicated with member agencies to develop appropriate amendments to improve the bill. Recently, a work group comprised of member agencies and ACWA staff drafted mockup language and submitted the proposed amendments to the author's

office. The amendments include language that would:

- Require consideration of cost-effectiveness and technical feasibility
- Allow water meter suppliers to install water meters that they have already purchased, but are not yet installed, and meters they have contracted to purchase
- Ensure water suppliers can maintain their installed meter until the end of the meters' useful service life; and
- Include in paragraph 10608.34(h)(2) a reference to the existing water meter standards developed by AWWA.

The Senate Natural Resources and Water Committee analyses recommended four amendments that largely match those offered by ACWA and the California Water Association (CWA). The author accepted proposed amendment #4 to provide consistency with the dates of the reporting requirements in AB 1668 and SB 606 and agreed to look at proposed amendment #2 in concept, which would require the State Water Board to consider industry standards of practice and manuals from AWWA. However, the author rejected proposed amendments #1 and #3, which would give the Department of Water Resources (DWR), rather than the State Water Board, the ability to “develop recommendations” rather than adopt regulations and require DWR to continue to adopt rules consistent with each manual released from AWWA.

ACWA should continue to work with the author of AB 3206 to ensure that water suppliers have a cost-effective and consistent framework to follow when implementing this bill. While there was no agreement reached to take the suggested amendments in relation to this concern, the author's staff agreed to work with stakeholders during the upcoming summer recess to develop amendments to do so.

Recommended Position: Not Favor Unless Amended

SENATE BILLS:

SB 919 Water resources: stream gages

Author: Dodd

Introduced: 01-22-2018

Amended: 06-12-2018

Sponsors: The Nature Conservancy

Supporters: Sonoma County Water Agency, Sustainable Conservation, California Trout, Trout Unlimited, Bay Area Council, Rural County Representatives of California

Opposition:

Assigned to: Whitnie Wiley/Melissa Sparks

Current Position:

Support

Recommended Position:

Support

Summary: Pursuant to the Open and Transparent Water Data Act, the Department of Water Resources (DWR), in conjunction with the State Water Resources Control Board (SWRCB), the Department of Fish and Wildlife (DFW), and the California Water Quality Monitoring Council, is developing a Water Data Platform that will integrate local, state, and federal water data and make that information available to water managers and others throughout the state. Existing law also authorizes the SWRCB to administer a water rights program, and requires the Water Quality Monitoring council to undertake various actions relating to water quality data collection.

As introduced on January 22, 2018, SB 919 would require the SWRCB, upon appropriation by the Legislature, to develop a plan to deploy a network of stream gages that includes a determination of funding needs and opportunities for reactivating existing gages. This bill would also require the SWRCB, in consultation with DWR, to prioritize the deployment of stream gages based upon gaps in the existing system of gages. The bill provides the following criteria for determining prioritization:

- (1) Integrating with the existing gage network.
- (2) Consistency with the California Water Action Plan.
- (3) Evaluating conditions, including flow settlements, voluntary flow agreements, and ability to integrate multiple benefit water management strategies.
- (4) Ability to provide data to help protect threatened and endangered fisheries and wildlife.
- (5) Prioritizing watersheds that are included in state wildlife action plans, integrated regional water management plans, or other multi-benefit program categories, or areas with approved sustainable groundwater management plans.

- (6) Prioritizing areas where local agencies may enter cost-share arrangements to facilitate ongoing integration and use of best practices in water management.

As amended on February 26, 2018, SB 919 would designate DWR as the lead agency to develop a plan to deploy a network of stream gages. The bill would require DWR to consult with the State Water board, DFW, CVFPB, interested stakeholders, and, to the extent they wish to consult, local agencies, to prioritize the deployment of stream gages based upon gaps in the existing stream gage system and specified considerations. The amendments also added the following considerations to the criteria DWR must consider for prioritization: (1) ability to provide data to help with drought, floods, and impact from wildfires and other natural disasters; (2) ability to provide data to assist with groundwater management; and (3) prioritizing watershed with historical gage data.

As amended on March 15, 2018, the plan would address significant gaps in information necessary for water management. DWR would be required to give priority in the plan to placing or reactivating stream gages where lack of data contributes to conflicts in water management actions. Water management actions would include, but would not be limited to, the following: water supply management, flood management, water quality management, ecosystem management.

The bill would also require DWR to include the following additional criteria in developing a plan: opportunities for local agencies to enter cost-share arrangements to install or maintain the stream gage, ease of integrating the stream gage into the existing network, availability of historic gage data for specific locations.

Summary of Amendments: As amended on June 12, 2018, the bill would require that DWR include in their stream gage plan a determination of funding needs and opportunities for modernizing and reactivating existing gages and deploying new gages in priority locations across hydrologic regions in the state including reference sites.

The bill would add the Department of Conservation to the list of agencies for DWR to consult with when developing the plan to address significant gaps in information necessary for water management and the conservation of freshwater species.

The bill would include the following additional criteria to be considered by DWR in developing the plan, including the availability of temperature data for specific locations; degree of water quality and flow impacts related to cannabis cultivation; and integration with the Open and Transparent Water Data Act.

Staff Comments: Stream gages are used to measure the discharge, or the volume of water moving through a channel, of a stream. This information can be important in helping inform water management decisions during climate extremes and highly variable flows. The United State Geological Survey (USGS) has traditionally been the largest sponsor of stream gages in

California, working with federal and state agencies, including DWR, to install, maintain, and compile data from an existing network of gages.

However, California's stream gage network is deficient in its current state. It is poorly funded, disorganized, and data on existing gages pertaining to funding, location, and operating conditions is difficult to find. There are over 3,600 locations in California where stream gages have been active at some point, but only 54 percent have been active recently. Many of the gages in operation fail to report key variables, such as flow, temperature, and drainage. Compiling information produced by stream gages is a tedious process since there is no universal database that stores existing data. And while 57 percent of USGS-funded gages are also funded by a local agency, data about which specific agencies are already funding particular stream gages is available for only 20 percent of active gages in California.

The author states that as floods and droughts become more frequent, California must improve its water management system to maximize the benefits of its limited water supply. Stream gages will be an essential component of preparing for a changing climate if they record quality data, report key variables, and make its data accessible to the public promptly. The current network is not equipped to address this challenge.

SB 919 identifies a state-wide problem and outlines a strategy that will help design a comprehensive system of gages. However, since this legislation is short on details, ACWA should obtain certain assurances before providing support.

Since stream gage data can benefit a variety of water management strategies, additional state agencies should be involved in the consultation process, including the Central Valley Flood Protection Board (CVFPB) and DFW. For example, stream gage data can warn officials when a levee has breached or a channel exceeds flood stage, allowing officials to initiate emergency notifications. Additionally, DFW relies on stream gage data to determine when to close rivers to fishing due to low water flows. It is important that the lead agency collaborates with other agencies to determine how the stream gage network can best inform these responsibilities.

California's network of stream gages is long overdue for an upgrade, and ACWA's members will benefit from an improved and more robust set of data.

The June 12 version of the bill makes minor, technical changes to include in the stream gage plan opportunities for modernizing existing gages or deploying new gages in priority locations.

ACWA staff recommends continuing with our "Support" position on SB 919.

Recommended Position: Support