

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2470 (Gonzalez) – As Amended April 12, 2016

SUBJECT: Municipal water districts: water service: Indian tribes.

SUMMARY: Requires a municipal water district, upon request of an Indian tribe, to provide water service to a tribe's land outside the district. Specifically, **this bill:**

- 1) Requires, notwithstanding any other provision of law, a municipal water district, upon request of an Indian tribe and the satisfaction of the conditions stated in 3), below, to provide water service to the tribe's lands that are not within a district, if the Indian tribe's land meet all of the following requirements:
 - a) The lands were owned by the tribe on January 1, 2016;
 - b) The lands are contiguous with at least two districts;
 - c) The lands lie within the special study area of at least one district; and,
 - d) At least 70% of the Indian tribe's total Indian lands are currently within the boundaries of one or more districts.
- 2) Requires a district to provide water service, upon request of an Indian tribe, at substantially the same terms applicable to the customer of the district to an Indian tribe's lands that are not within the district, as if the lands had been fully annexed within the district, and any other special districts required for the provision of water service.
- 3) Requires the Indian tribe, before a district provides water service, to satisfy both of the following conditions:
 - a) The Indian tribe complies with all federal and tribal laws; and,
 - b) The Indian tribe acquires all federal and tribal approvals necessary for the applicable district to provide water service to the tribal lands on substantially the same terms applicable to customers of the district.
- 4) Deems, if a district provides water service to an Indian tribe's lands pursuant to this bill, the service areas of the district and of any public agency providing water to the district include the Indian tribe's lands for the longest of the following periods of time:
 - a) The time water service is provided by the district to the Indian tribe;
 - b) The time moneys are owed by the Indian tribe to the district for water service; and,
 - c) The term of any agreement between the district and the Indian tribe.

- 5) Requires an Indian tribe that is provided water service pursuant to this bill to make all required payments, including service payments, as if it were annexed into a district's service area. Provides that payments are a condition of continued water service by the district pursuant to this bill.
- 6) States that no reimbursement is required by this bill because a local agency or school district has the authority to levy service charges, fees, or other assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

- 1) Defines district to mean a municipal water district formed, pursuant to the Municipal Water District Act of 1911.
- 2) Authorizes a municipal water district to sell water under its control, without preference, to cities, other public corporations and agencies, and persons within the district for use within the district. Defines "water" to include potable and nonpotable water.
- 3) Authorizes a municipal water district to supply and deliver water to property not subject to district taxes at special rates, terms, and conditions as determined by the Board.
- 4) Establishes the Cortese-Knox-Hertzberg Act (Act), which defines the procedures for the organization and reorganization of cities, counties, and special districts, including district annexation.
- 5) Authorizes a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundaries, if it requests and receives written approval from the local agency formation commission (LAFCO) in the affected county, as specified.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Author's Statement.** According to the author, "California was admitted into the Union as the 31st state in 1850. The Sycuan Reservation was established through Executive Order of President Ulysses Grant in 1875. Nearly all of the tribal reservations in California were never included within the boundaries of neighboring municipal water districts. The Sycuan Reservation is uniquely placed in relation to surrounding water district boundaries. [The] reservation is surrounded on three sides by two different water districts, the Otay Municipal Water District and the Padre Dam Municipal Water District. Both districts are retail water agencies and members of both the San Diego County Water Authority and the Metropolitan Water District.

"Within the last 15 years, due in part to the economic success of the tribal government gaming operation, the tribe has purchased a number of private parcels of land. These purchases occurred for a number of reasons, but primarily to provide adequate space for tribal member housing. In addition, the tribe has desired to keep adjoining land as permanent open space; to prevent further future development; to protect cultural and archaeological resources; and to expand the tribe's economic diversification. These lands of course are the

aboriginal territory of the Sycuan Tribe pre-dating the establishment of California, the US, Mexico or even European contact by thousands of years.

"Ironically, to better serve tribal homes on after-acquired parcels with a safe and reliable source of drinking water (as a result of unsafe groundwater due to upstream contamination), the tribe paid millions of dollars to extend the water line within the boundaries of the [Padre Dam Municipal Water District]. This line terminates a mere two feet from the boundary of the original reservation, yet cannot be extended on to the original reservation without lengthy, costly, unnecessary and uncertain artificial state-created processes, including affirmative votes by [the] County Water Authority and Metropolitan Water District, LAFCO review and approval and CEQA analysis.

"The original reservation, or the 'hole in the donut', is entirely dependent upon groundwater in a fractured rock system. This creates a unique public safety problem in the event of an earthquake or other emergency situation. To ensure the public's safety in the event of a wildfire, earthquake, prolonged drought or other public emergency, Sycuan needs legislation requiring either adjoining water district to serve the developed portions of the original Reservation, assuming the tribe pays all necessary and appropriate charges as any other similarly situated development or governmental entity. Legislation would also reflect the unique government-to-government relationship between the tribe and the state."

- 2) **Bill Summary.** This bill requires a municipal water district, upon request of an Indian tribe, to provide water service to the tribe's lands that are not within a district. This bill only applies if the tribe's land meet specified requirements: a) the lands were owned by the tribe on January 1, 2016; b) the lands are contiguous with at least two districts; c) the lands lie within the special study area of at least one district; and, d) at least 70% of the tribe's total Indian lands are currently within the boundaries of one or more districts. A district would have to provide water service at the same terms available to their current customers. This bill also establishes conditions that an Indian tribe must meet prior to receiving water service. Under this bill, the service area of the district and any public agency providing water would include the tribe's land, as specified.

The perimeters established by this bill currently apply to the Sycuan Nation in San Diego County. The Sycuan's original reservation is contiguous with two municipal water districts, Otay Water District and Padre Dam Municipal Water District, and is within a special study area in Padre Dam Municipal Water District. This bill is sponsored by the Sycuan Band of the Kumeyaay Nation (Sycuan).

- 3) **Background.** According to the 2013 San Diego Integrated Regional Water Management Plan, San Diego County features the largest number of Tribes and Reservations in the state, including the Sycuan, one of the 18 federally recognized Tribal Nation Reservations. The Sycuan Band is a sovereign government and is therefore not subject to state and local laws and regulations, except for those required under a Compact with the state. The tribal nations are subject to federal requirements and compliance with the Federal Clean Water Act and Safe Drinking Water Act. According to the San Diego Integrated Regional Water Management Plan, "Though tribes may have adequate, modern, systems in place, they cannot purchase or receive imported water without annexing all or part of their systems to a water district, which can be a barrier because it may be considered a lack of acknowledgement of Tribes' sovereign governmental status."

The municipal water districts, which surround Sycuan's original reservation, are, however, subject to LAFCO. The Cortese-Knox-Hertzberg Act delegates the Legislature's power to control the boundaries of cities and special districts to LAFCOs. The Act prohibits the districts from providing water service to the lands outside their boundaries, unless the area is annexed within their boundaries or they obtain written approval to serve territory outside their boundaries.

The San Diego County Water Authority (SDCWA) is a regional umbrella agency that oversees the distribution of potable water, invokes emergency store quotas and maintains agreements between neighboring agencies for emergency interconnections. SDCWA is a water wholesaler and purchases more than half of the water used in the region from the Metropolitan Water District of Southern California (Metropolitan) and sells it to its 24 member agencies, including Padre Dam Municipal Water District and Otay Municipal Water District. According to San Diego LAFCO's municipal service review, "Membership in SDCWA is a prerequisite for gaining entitlement to imported Colorado River water and membership requires local agencies to defer to SDCWA in certain areas of governance; for example, SDCWA boundaries determine where agencies can extend service."

Annexations to member agencies like Padre Dam and Otay Municipal Water District also require annexations to the entities that provide them with the imported potable water they provide to their customers. Under existing law, for Padre Dam Municipal Water District to provide water service to the tribe's lands outside its boundaries would require LAFCO approval pursuant to the Act, and must also be consistent with Metropolitan's Administrative Code, the County Water Authority Act, and SDCWA's Annexation Policies and Procedures which requires the Water Authority to evaluate the adequacy of water supplies and facilities to meet the needs of the proposed annexed territory. Sycuan submitted a petition in 2008 to the Otay Water District to annex the original reservation parcels to the district, but later withdrew the application.

- 4) **Policy Consideration.** The Legislature has delegated the power to control local boundaries to the 58 LAFCOs, directing the LAFCOs to discourage urban sprawl, preserve open space and agricultural lands, and provide efficient government services, while considering local conditions and circumstances. This bill bypasses LAFCO, and does not require the usual annexation process to occur. Currently, Metropolitan and the Eastern Municipal Water District in Riverside County are undergoing an annexation process to include a commercial zone within the Pechanga Indian Reservation into the district. Proponents of this bill argue that it is appropriate for the Legislature to make this determination, instead of LAFCO, to reflect the unique relationship between the state and the tribe. The Committee may wish to consider if this bill will set a precedent and may encourage additional tribes to bypass the local process, and instead, ask for a statutory fix from the Legislature.
- 5) **Arguments in Support.** Supporters argue that the Sycuan Tribe's original reservation is served through groundwater wells in a fractured rock system. This bill would authorize the tribe to purchase water, under the same terms and conditions as other, from an adjacent municipal water district.
- 6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:**Support**

Sycuan Band of the Kumeyaay Nation [SPONSOR]
Ace Parking
Agua Caliente Band of Cahuilla Indians Tribal Council
Associated General Contractors of America, San Diego Chapter, Inc.
Barona Band of Mission Indians
Barrio Station
California Teamsters Public Affairs Council
Deputy Sheriffs' Association of San Diego County
Endangered Habitats League (if amended)
JDRF, San Diego Chapter
Kumeyaay Diegueno Land Conservancy
Law Office of Cynthia L. Eldred, APC
Leong-Kuba Sea Products, Inc
Mayor Kevin L. Faulconer, City of San Diego
Mayor Randy Voepel, City of Santee
Moceri Produce
Mothers Against Drunk Driving, San Diego Affiliate
Ocean Defenders Alliance
Paradise Creek Educational Park
PlanSEA.org
Urban Corps of San Diego County
San Diego Gas & Electric
San Diego Museum of Man
San Diego Police Officers Association, Inc.
San Diego Regional Chamber of Commerce
San Diego Regional EDC
Santa Ynez Band of Chumash Indians\
Supervisor Bill Horn, 5th District, County of San Diego
The Art Miles Mural Project
The Metropolitan Water District of Southern California (if amended)
UNITE HERE
Urban Corps of San Diego County
Wildcoast
Individual letters (3)

Opposition

None on file

Analysis Prepared by: Misa Lennox / L. GOV. / (916) 319-3958