

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 552 (Irwin) – As Amended April 4, 2017

SUBJECT: United Water Conservation District.

SUMMARY: Expands the remedies granted to the United Water Conservation District for the enforcement and collection of delinquent groundwater charges. Specifically, **this bill:**

- 1) Authorizes the United Water Conservation District (District), as an alternative to bringing suit pursuant to existing law, to collect any delinquent groundwater changes and any interest, penalties, or costs, and administrative changes. Requires the collection to be in the same manner as applicable to the collection of delinquent assessments, water charges, or tolls.
- 2) Authorizes the District, as an additional remedy, to order an operator to cease extraction of groundwater from a water-producing facility until all delinquent fees and charges are paid.
- 3) Requires the District to give notice to the operator by certified mail no less than 15 days in advance of the public hearing.
- 4) Provides that the remedies specified in 1), 2), and 3) above, for the collection and enforcement of fees are cumulative and authorizes the District to pursue them alternatively or to use them consecutively as determined by the Board.
- 5) Authorizes the District to require an operator to post a cash deposit or bond with the District providing the future assurance of payment of delinquent groundwater changes following the issuance of an injunction, restraining the operation of a water-producing facility and the termination of any stay, as a condition of allowing future operation of the facility.
- 6) Allows the District to require the cash deposit or bond to be in an amount equal to the amount of delinquent groundwater charges due for the preceding six-month period.
- 7) Authorizes the District, in addition to the District's right to bring suit against an operator for delinquent charges under existing law as a provisional remedy in the action, to seek a writ of attachment against the property of any named defendant in the suit and provides that the District shall not be required to furnish a bond or other undertaking, as provided in the Attachment Law in the Code of Civil Procedure.
- 8) Provides that a court may award attorneys' fees and costs to the prevailing party, in addition to allowing for the recovery of costs, administrative charges, interest, and penalties to the District in a suit against any operator of a water-producing facility for the collection of delinquent groundwater charges.
- 9) Authorizes the District to assess an administrative charge if the operator of a water-producing facility fails to file a water production statement or pay delinquent charges when due, to recover the cost of collection of delinquent unpaid charges.

- 10) Authorizes the District's governing board (Board) to provide by ordinance the excusable or justifiable circumstances in which administrative charges may be reduced or waived.
- 11) Authorizes the District to inspect any water-producing facility within the boundaries of the District, for the purpose of investigating compliance with or enforcing any provisions of the principal act for water conservation districts or any District ordinance.
- 12) Requires the District to give notice to the operator by certified mail no less than 15 days in advance of the scheduled inspection.
- 13) Requires the inspection to be made with the consent of the operator of the water-producing facility, or, if consent is refused, with an inspection warrant duly issued, pursuant to existing law.
- 14) Authorizes the District to affix seals to a facility, in accordance with existing law, when an operator provides notice to the District of the abandonment of a water-producing facility or a water-producing facility is abandoned.
- 15) Provides that the remedies specified in this bill and by existing law, pursuant to the principal act for water conservation districts, are cumulative and authorizes the District to pursue them alternatively or to use them concurrently as determined by the Board.
- 16) Makes legislative findings and declarations that a special statute is necessary and that a general statute cannot be made applicable, pursuant to the California Constitution, because of the unique circumstances associated with the District.
- 17) States that no reimbursement is required because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, as specified.

EXISTING LAW:

- 1) Establishes the principal act for water conservation districts, the Water Conservation District Law of 1931.
- 2) Defines the following terms:
 - a) "Water-producing facility" to mean any device or method, mechanical or otherwise, for the production of water from the groundwater supplies within the District;
 - b) "Groundwater" for the purposes of the District to mean "all water beneath the earth's surface, but does not include water that is produced with oil in the production of oil and gas, in a bona fide mining operation, during the construction operations, or from gravity or natural springs, which includes water produced from artesian wells, as specified;"
 - c) "Production" or "producing" to mean the act of extracting ground water by pumping or otherwise;

- d) "Operator" or "owner" to also mean "the person to whom a water-producing facility is assessed by the county assessor of an affected county, or, if not separately assessed, the person who owns the land upon which a water-producing facility is located;" and,
 - e) "Person" or "operator" to mean "public agencies, federal, state, and local, private corporations, firms, partnerships, limited liability companies, individuals, or groups of individuals, whether legally organized or not."
- 3) Establishes the Sustainable Groundwater Management Agency (SGMA) to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater.
 - 4) Requires, by specified dates, all basins designed as high- or medium-priority basins, as basins that are subject to critical conditions of overdraft, to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans.
 - 5) Authorizes any local agency or combination of local agencies overlying a groundwater basin to elect to be a groundwater sustainability agency (GSA) for that basin, except as specified.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **United Water Conservation District.** The District was formed by the voters in 1950 to conserve and enhance the water resources of the Santa Clara River while protecting the river's natural features. According to the District, it enhances water supplies through groundwater replenishment, and through the construction and operation of water supply and delivery systems. The District is governed by a seven-member elected Board and by the principal act for water conservation districts. Located in Ventura County the District covers approximately 214,000 acres along the lower Santa Clara River valley and the Oxnard Plain. All or portions of eight groundwater basins lie within the District. There are four basins that are located completely within the boundaries of the district: Fillmore, Santa Paula, Oxnard Forebay, and Oxnard Plain. The District also includes most of Mound and Piru basins and a portion of Pleasant Valley and Las Posas basins.

According to the District, it serves as the conservator of groundwater resources that are utilized by the cities of Oxnard, Port Hueneme, Ventura, Santa Paula, and Fillmore, as well as several mutual water companies and number farms and individual pumpers, and provides surface water for agricultural irrigation and treated drinking water to the cities of Oxnard and Port Hueneme. The district is funded by property taxes, water delivery charges, and groundwater pumping charges. Existing law authorizes the District to determine rates for groundwater charges for two classes of use, water used for agricultural purposes and water used for other purposes, like drinking water or irrigating a park. The operators of water-producing facilities who are charged the groundwater extraction charges in the District are mainly farmers with wells for agricultural purposes and municipalities like cities. The District currently has a case before the California Supreme Court regarding whether the District, when imposing groundwater charges, is subject to the Constitutional requirements established by Proposition 218 (1996) and Proposition 26 (2010).

Existing law grants the District a number of remedies if the operators of a water-producing facility are delinquent in the payment of a ground water charge. Current law authorizes the District to file a petition or complaint in Superior Court seeking a temporary restraining order and injunctive relief against an operator of a water-producing facility which has not been registered with the District or who is delinquent in paying a ground water charge.

Additionally, the District may bring suit in any court having jurisdiction against any operator of a water-producing facility within the District for the collection of any delinquent groundwater charge. Current law authorizes the court, in addition to allowing recovery of costs to the District, to also include any interest and penalties to the District. Existing law authorizes the District to charge interest (1% each month) on delinquent ground water charges. Additionally, if an operator of a water-producing facility fails to register the facility or to file the water production statements then, the District may assess a penalty, in addition to interest, of 10% of the amount determined by the District to be due.

- 2) **Bill Summary.** This bill expands the remedies available to the District when an operator of a water-producing facility is delinquent in the payment of a ground water extraction charge (also referred to as pumping fee or groundwater charge). This bill provides that the remedies for the collection and enforcement of groundwater charges are cumulative, and authorizes the District to pursue them alternatively or consecutively as determined by the Board. This bill is sponsored by the District.
- a) **Collection.** This bill provides that as an alternative to bringing suit in court that the District may collect any delinquent groundwater charges, and any interest, penalties, costs, and administrative charges in the same manner as the collection of delinquent assessments, water charges, or tolls. This bill authorizes the District to impose administrative charges if an operator fails to file a water production statement of pay delinquent charges when due.
 - b) **Order to Cease Extraction of Groundwater.** This bill authorizes the District, after a public hearing, to order an operator to cease extraction of groundwater until all delinquent fees and charges are paid. Under this bill, the District would give notice to the operator no less than 15 days before the public hearing. The Legislature has granted GSAs with this authority.
 - c) **Cash Deposit or Bond.** This bill authorizes the District, as a condition of allowing future operation of a water-producing facility, to require an operator to post a cash deposit or bond as assurance of payment for future delinquent groundwater charges, following a court issuing an injunction restraining the operation of a water-producing facility and the termination of any stay.
 - d) **Writ of Attachment.** Attachment is an order by a court, while a civil action is pending, directing that money or property of the defendant be held as security for the eventual satisfaction of a judgment, if one is obtained. In other words, attachment is a provisional remedy to aid the plaintiff in the collection of a money judgment by seizure of the defendant's money or property in advance of a trial or judgment. It is ordered when a court, after a hearing on an application for a writ of attachment, finds that the plaintiff has established the probable validity of the claim, and that other requirements have been met. This bill authorizes the District, in addition to the District's right to bring suit against an operator for the collection of delinquent groundwater charges, to seek a writ of

attachment against this property of any named defendant in the suit. Under this bill, the District would not be required to furnish a bond similar to the authority granted to a groundwater sustainability agency (GSA) under SGMA and to the Santa Clara Valley Water District.

- e) **Attorney Fees.** This bill also authorizes a court to award attorneys' fees and costs to the prevailing party. The Legislature has granted similar authority to the Water Replenishment District of Southern California (WRD), pursuant to SB 620 (Wright), Chapter 638, Statutes 2013, which requires the court to award to WRD or operator of a water-producing facility the reasonable attorney's fees and costs relating to a motion seeking injunctive relief whenever WRD or an operator of a water-producing facility prevails on a petition or complaint. SB 620 exempted specified pending litigation from the provisions of the bill that increased the penalty and award attorney's fees.
 - f) **Inspection.** This bill authorizes the District to inspect any groundwater extraction facility within its boundaries with the consent of the facility operator. The bill provides that if the operator refuses to consent, the District has the authority to seek an inspection warrant allowing it to inspect the facility. Most recently, the Legislature granted this authority to the Fox Canyon Groundwater Management Agency, pursuant to SB 988 (Jackson), Chapter 121, Statutes of 2014.
- 3) **Author's Statement.** According to the author this bill "...would provide the United Water Conservation District with additional enforcement remedies for the collection of groundwater extraction fees. Under current law, UWCD has a limited number of enforcement remedies for the collection of groundwater extraction fees from delinquent water operators. For example, UWCD can bring action in Superior Court for delinquent charges, in addition to interest and penalties. UWCD can also seek an injunction or temporary restraining order against a water operator that is not paying for water extracted. As noted above, in order for UWCD to take action against a water operator, it must sue the delinquent party in court or send them to collections, both of which are costly and time consuming. AB 552 would grant UCWD additional remedies to address delinquent water operators without having to sue in court."
 - 4) **Policy Consideration.** The Committee may wish to consider that several remedies granted by this bill are precedent setting in the sense that the Legislature has only granted this authority to GSAs, and not to individual districts. According to the District, in several of the basins within the District, the District is currently working towards the formation of the GSA pursuant to the creation of a JPA which the District will be party to. Additionally, the District includes a basin that is within the Fox Canyon Agency and a basin that is subject to a court judgement in which the District is one entity of a designated Watermaster. The Committee may wish to consider if there will be implementation challenges if the District has additional remedies that Fox Canyon, other entities party to a JPA that serves as the GSA, or a GSA does not possess. The Committee may wish to consider if some of these enforcement mechanisms are appropriately granted to the District given the statutory purpose and powers of the District in contrast to a GSA.
 - 5) **Arguments in Support.** The United Water Conservation District argues, "This bill is vital to the District's efforts to move expeditiously and cost-effectively to properly maintain the viability of our basin's precious water recourses. Under current law, UWCD as a water

conservation district has a limited number of enforcement remedies for the collection of groundwater extraction fees from delinquent water operators. Other types of water agencies may pursue enforcement remedies not currently available to UWCD."

6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

United Water Conservation District [SPONSOR]

Opposition

None on file

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