

Date of Hearing: May 6, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

AB 727 (Wilk) – As Amended April 6, 2015

SUBJECT: Castaic Lake Water Agency.

SUMMARY: Makes a number of changes to the Castaic Lake Water Agency (CLWA) Law, and to CLWA's contracting authority under the Public Contract Code. Specifically, **this bill:**

- 1) Increases CLWA's bid threshold for construction contracts, and its force account limit for the purchase of materials and supplies that will be used in any new construction, from \$5,000 to \$75,000.
- 2) Allows the CLWA Board of Directors (Board) to appoint more than one vice president.
- 3) Expands CLWA's existing authority to construct, operate and maintain works to develop hydroelectric energy projects by allowing CLWA to develop *any* kind of energy project, and makes conforming changes.
- 4) Allows CLWA to contract, in connection with the construction and operation of CLWA's works, for the sale of the right to use facilities or real property for electric energy purposes with any public agency or private entity engaged in the retail distribution of electric energy, for a term not to exceed 100 years.
- 5) Allows CLWA to establish and impose a facility capacity fee on any person who has an *existing* retail connection to the water distribution system of any retail water distributor within CLWA that obtains all, or any portion, of its water supplies from CLWA, and makes conforming changes.
- 6) Defines "facility capacity fee" to mean a fee for public facilities in existence at the time a fee is imposed and for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of CLWA involving capital expense relating to its use of existing or new public facilities. A "facility capacity fee" does not include a commodity charge.
- 7) Allows CLWA to use the facility capacity fee to adopt and carry out a plan to do the following:
 - a) To finance or reimburse CLWA for advancing the cost of acquiring facilities, works, property, improvements, and supplies of water and to allocate that cost among lands within water service areas of CLWA which, by reason of new development or new construction thereon, will need an *expanded* retail connection, or will result in *expanded* use of water at the retail connection, and will be benefited by making the additional supplies of CLWA water available for purchase by the retail water distributors that will supply those lands with water; and,

- b) To finance or reimburse CLWA for advancing net costs for capital facilities for remediating groundwater contamination, which originated solely from the land within a given water service area.
- 8) Allows CLWA to transmit electronically to interested parties who request it specified data regarding the costs of providing water to new developments.
- 9) Removes from CLWA's annual facility capacity fee capital budget payments of capital costs to the state for purposes of the State Water Project (SWP), and makes conforming changes.
- 10) Removes a requirement that CLWA annually adopt a resolution of intention to *continue* water service areas previously established.
- 11) Removes a requirement that CLWA annually adopt a resolution of intention to *form new* water service areas or *amend or modify* water service areas previously established, if there is not a change from the previous year to the water service areas or the existing facility capacity fees.
- 12) Repeals provisions of the CLWA Law governing CLWA's allocations of water to its water retailers.
- 13) Repeals provisions of CLWA Law allowing CLWA to adopt a multi-year capital budget.

EXISTING LAW:

- 1) Establishes the CLWA Law, which creates the CLWA and authorizes the CLWA to acquire water and water rights, including water from the SWP, and to provide, sell, and deliver water at wholesale for municipal, industrial, domestic, and other purposes.
- 2) Authorizes CLWA to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, for carrying out specified provisions.
- 3) Requires all CLWA contracts for any improvement or unit of work when the cost estimate exceeds \$5,000 to be let to the lowest responsible bidder or bidders.
- 4) Authorizes CLWA to have work done by force account without advertising for bids and to purchase in the open market materials and supplies when the estimated cost of the work does not exceed \$5,000.
- 5) Authorizes the CLWA Board, by majority vote, to appoint from its members one vice president.
- 6) Authorizes CLWA to construct, operate, and maintain works to develop hydroelectric energy for use by CLWA in the operation of its works or as a means of assisting in financing the construction, operation, and maintenance of its projects for the control, conservation, diversion, and transmission of water and to enter into contracts for the sale of the energy for a term not to exceed 100 years. The energy may be marketed only at wholesale to any public agency or private entity, or both, or the federal or state government.

- 7) Allows CLWA to contract, in connection with the construction and operation of CLWA's works, for the sale of the right to use falling water for electric energy purposes with any public agency or private entity engaged in the retail distribution of electric energy, for a term not to exceed 100 years.
- 8) Authorizes CLWA to establish and impose a facility capacity fee for the right to make a new retail connection to the water distribution system of any retail water distributor within CLWA that obtains water supplies from CLWA.
- 9) Requires the proceeds of the facility capacity fee to be used exclusively for CLWA's annual capital budget, as specified.
- 10) Defines the CLWA's capital budget to include payments of capital costs to the state for purposes of the SWP.
- 11) Authorizes CLWA to develop, treat, distribute, and reclaim water, and to store and recover water from groundwater basins located outside CLWA's boundaries.
- 12) Requires the CLWA Board to annually adopt a resolution of intention to form new water service areas, or to continue, amend, or modify water service areas previously established.
- 13) Requires, until July 1, 1991, or the date the Board finds and declares by resolution that there is more than 25,000 acre-feet of potable water available each year from the CLWA, whichever is later, CLWA to allocate water to each purveyor on a specified percentage basis. The allocation of CLWA water after this date is to be with respect to CLWA's water service areas.
- 14) Authorizes the CLWA Board to adopt a multiyear capital budget, not to encompass more than three fiscal years.
- 15) Governs the procedures local agencies must follow in adopting fees for water connections, and defines a "capacity charge" to mean a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the local agency involving capital expense relating to its use of existing or new public facilities. A "capacity charge" does not include a commodity charge. (GOV 66013)

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill makes numerous changes to CLWA's powers and duties under its enacting statute, the CLWA Law, and to its contracting authority under the Public Contract Code. The major provisions of this bill include:
 - a) An expansion of CLWA's contracting authority by increasing CLWA's construction bid threshold and force account limits from \$5,000 to \$75,000;

- b) An expansion of CLWA's authority to construct, operate and maintain energy projects, which is currently limited to hydroelectric energy and is expanded by this bill to include any type of energy generation;
- c) A change to CLWA's facility capacity fee, which is currently limited to new connections, to also include existing connections;
- d) A new authorization to adopt and implement a plan to finance or reimburse CLWA for advancing net costs for capital facilities for remediating groundwater contamination, which originated solely from land within a given water service area; and,
- e) Repealing provision of CLWA Law that govern CLWA's allocation of water to its retailers.

This bill is sponsored by CLWA.

- 2) **Author's Statement.** According to the author, "The purpose of AB 727 is to make some minor changes to the Castaic Lake Water Agency Act (Water Code Appendix 103-2) to improve efficiency, make it consistent with existing budgeting practices, and provide greater internal flexibility, among other small changes."
- 3) **Background.** The CLWA is a special act special district that was established by the Legislature in 1962 as a contractor agency to the SWP. CLWA is a water wholesaler that historically provided water to four retailers within its boundaries. Two are public retailers – the Newhall County Water District (NCWD) and the Los Angeles County Waterworks District #36. The other two were private retailers – the Valencia Water Company (Valencia) and the Santa Clarita Water Company (SCWC).

The CLWA provides about half of the water that Santa Clarita households and businesses use. CLWA operates three treatment plants, three pump stations, three storage facilities, and over 45 miles of transmission pipelines. The Santa Clarita Valley's available sources of drinking water include rivers, lakes, streams, ponds, reservoirs, springs and wells. CLWA supplements local groundwater supplies with SWP water from Northern California.

- 4) **State Water Project.** The SWP is a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants that extends for more than 600 miles – two-thirds the length of California.

Planned, constructed, and operated by the Department of Water Resources (DWR), the SWP is the largest state-built, multi-purpose water project in the U.S. It provides water supply to more than 25 million Californians in Northern California, the Bay Area, the San Joaquin Valley, the Central Coast and Southern California. The system also provides flood control, power generation, recreation, fish and wildlife protection, and water quality improvements in the Sacramento-San Joaquin Delta.

In 1951, the Legislature authorized what is now the SWP. Construction began on facilities at Oroville in 1957, and in 1960 voters approved a \$1.75 billion bond act to build the initial SWP facilities. Work began on the California Aqueduct in 1963 and the SWP was able to deliver water to the San Joaquin Valley by 1968. SWP facilities were completed in 1973 to

allow water delivery to Lake Perris in Riverside County, the southernmost point in the system.

Costs for water development and delivery are paid by SWP water supply contractors, which are comprised of 29 local and regional water agencies. The CLWA is one of those contractors. Existing law allows CLWA, or any other public agency that is a contractor with the SWP, to sell state water to any ultimate water consumer.

- 5) **What is a Facility Capacity Fee?** According to the CLWA website, "In accordance with the Castaic Lake Water Agency (CLWA) Act Section 26.1, all new developments requiring a retail connection to the water distribution system of any retail water distributor within CLWA that obtains all, or any portion, of its water supplies from the CLWA service area is subject to a Facility Capacity Fee (FCF). As part of the permitting process, applicants must reimburse CLWA for the costs associated with water supply acquisition, facility capital investment, and facility operation and maintenance.

"In addition to the determination and collection of FCFs for new development and associated retail connections, CLWA includes in its capital improvement plan and water supply portfolio facilities and supplies to accommodate additional demands on the water system not related to new development (e.g., tenant improvements, remodels or conversions, etc.). Government Code Section 66013 allows for the imposition of capacity charges, separate from FCFs, that can be imposed on any person, firm, corporation or other entity that requests an additional water connection, a larger water connection, or in any other way increases the water usage required to serve a property as a result of new construction, the addition of any type of dwelling, commercial or industrial unit or units, or the conversion of all or a portion of any dwelling, commercial or industrial unit or units."

- 6) **Lawsuits and Legislation.** In 1999, CLWA purchased SCWC for \$63 million. This purchase spurred litigation against CLWA and subsequent legislation in the form of AB 134 (Kelley), Chapter 929, Statutes of 2001. AB 134 specified the provisions under which CLWA may exercise its authority to sell SWP water, specifically the rules by which it could sell water at retail in the boundaries of SCWC.

More recently, CLWA also purchased Valencia. This purchase prompted a similar lawsuit challenging the legal authority of CLWA to purchase Valencia stock, a move that was criticized as lacking in public transparency. The Court has ruled in favor of CLWA, although the case can still be appealed.

- 7) **Minor Changes, or CLWA Act Rewrite?** According to CLWA, this bill's proposed amendments to the CLWA Act would:
- a) **Allow the Board to elect one or more vice presidents of the Board.** The CLWA Act currently only allows one vice president. The proposed change would provide the Board, which is composed of eleven members, with more flexibility for covering meetings and representing CLWA, as well as provide training and succession planning opportunities.
 - b) **Remove reference to "hydroelectric" power as the only kind of power that the Agency may develop.** This change will enable CLWA to develop and operate other forms of energy, including, but not limited to, solar and wind power facilities. This will

help CLWA reduce its carbon footprint and may also provide opportunities to reduce operating costs. According to CLWA, a number of water districts around the state have, or are developing, renewable energy projects to defray power costs associated with the transporting and providing water. CLWA has developed two solar projects (1 MW and 3.5 MW) on its property, which CLWA accesses through power purchase agreements (PPA) with a private company. CLWA cannot currently own and operate these plants, even if it could do so more cost effectively. CLWA has also been approached about a larger solar project (up to 200 MW) on its properties, and has been approached about wind turbine projects.

- c) **Incorporate provisions of Government Code section 66013 into the CLWA Act to allow CLWA to follow the same procedures for the adoption of facility capacity fees for the expansion of existing connections as they currently follow for new connections.** According to CLWA, the proposed language essentially consolidates two processes, both of which are authorized under existing law, into one process in the CLWA Act. The CLWA Act currently allows CLWA to impose facility capacity fees for *new* water connections that result in increased water demands on the CLWA system. Government Code section 66013 authorizes CLWA to impose capacity fees for *increases* in water demand related to *expansion of existing connections*. Each of these has its own procedures to follow for adoption that are not the same. As a result, CLWA has to engage in a two-step process that is less efficient. AB 727 would consolidate these into the CLWA Act and make them subject to the more rigorous process for adoption that is in the CLWA Act.
- d) **Clarify that CLWA may apply facility capacity fees to pay for facilities to clean up contaminated groundwater in connection with providing water for new and expanded water connections.** This is of particular importance in one area in CLWA's service area, where the cost of providing new and expanded service is higher because of necessary groundwater cleanup. This addition will also ensure that the lands that are the source of contaminated groundwater will fund the clean-up, rather than all of the service area's ratepayers and taxpayers.
- e) **Change references in the Act to “annual capital budget” to the “annual facility capacity fee capital budget.”** This change makes the CLWA Act consistent with its annual budgeting process.
- f) **Remove the requirement that CLWA have an annual hearing and adopt a resolution to *continue* water service areas and facility capacity fees if there are no changes to the service areas or fees from the previous year.** This change would relieve CLWA from having to spend unnecessary time and expense to re-adopt an annual resolution for water service area boundaries and existing facility capacity fees in years in which there are no changes to either.
- g) **Increase the public works contract amount from \$5,000 to \$75,000.** This change is being sought to account for construction cost inflation since 1962, when the bid thresholds were established. It will also improve cost effectiveness by avoiding expensive preparation of engineering plans and technical specifications, and enhance timely project completion for minor repair and maintenance projects.

CLWA notes that preparation of design plans and technical specifications in a format suitable for public bidding adds time and expense disproportionate to the cost of the work. For small projects of \$5,000 or less, the cost of public bidding and advertising can significantly exceed the contract price by 100% or more. For minor projects of \$75,000 or less, the cost of public bidding and advertising can increase total project costs by 25% or more, disproportionately more than for large construction projects. The public bidding and advertising requirements can also significantly impact the schedule for smaller projects, which are often critical repair projects. Increasing the public works contract amount will not change CLWA's compliance with other purchasing laws and regulations, such as prevailing wage rules. Examples of recent projects include:

- i) Modifications to treatment plant washwater return basins to meet water quality regulations (\$70,000);
- ii) Treatment plant pipe trench modifications to meet operational requirements (\$45,000);
- iii) Repair of critical pumps at water treatment plants (\$25,000 to \$50,000);
- iv) Modification of service connections to meet water quality regulations (\$30,000);
- v) Installation of drain pipe at treatment plant pipes to address operational issues (\$75,000);
- vi) Repairs to pumping systems of groundwater wells addressing perchlorate contamination (\$30,000 to \$75,000); and,
- vii) Construction of recycled water connections (\$65,000).

8) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Bid Threshold Increase.** According to the United States Department of Labor Bureau of Labor Statistics' CPI Inflation Calculator, \$5,000 in 1962 has the same buying power as about \$38,700 today. CLWA is asking for an increase to \$75,000, significantly higher than a CPI adjustment. The Committee may wish to consider whether an increase to \$75,000 is appropriate, or whether a more modest increase is preferable.
- b) **Expansion of Power Projects.** Existing law allows CLWA to construct, operate and maintain works to develop *hydroelectric* energy projects. This bill allows CLWA to develop *any kind* of energy project. CLWA has cited two types of renewable energy projects it would like to develop as an owner (rather than a party to a PPA): solar and wind. Given this stated intent, and California's policies promoting renewable energy and discouraging the use of fossil fuels, the Committee may wish to consider narrowing this expansion to renewable energy projects only.
- c) **Repeal of Water Allocation Rules.** This bill repeals the provisions of CLWA Law governing CLWA's authority to allocate water to its retailers. According to information provided by the author, CLWA's Board on April 22 took action to amend, rather than to repeal, these provisions to state, "The Board of Directors may adopt reasonable

allocations of water within the Agency's service area." The Committee may wish to consider whether this modification or a different amendment of these rules would be more prudent than repealing them altogether.

d) **Pending Litigation.** AB 134 (Kelly) contained findings and declarations that its effect was prospective to ensure that it didn't prejudice pending legal actions. CLWA finds itself in a very similar position as it occupied at the time AB 134 was enacted: there is pending legal action against CLWA regarding its purchase of one of its water retailers. The Committee may wish to consider whether a similar clarification is needed for this bill.

9) **Previous Legislation.** SB 61 (Runner), Chapter 688, Statutes of 2008, lengthened the initial term of office for the CLWA's at-large director position from two years to four years and deleted obsolete statutory language.

AB 1425 (Pacheco) of 2003 would have extended the boundaries of the Newhall County Water District and the CLWA to include the Paradise Ranch Mobile Home Park. AB 1425 was referred to this Committee, but was never heard.

AB 134 (Kelley), Chapter 929, Statutes of 2001, specified statutory provisions under which the CLWA may exercise its authority to sell SWP water.

AB 553 (Runner), Chapter 225, Statutes of 2001, converted an appointed directorial position of the CLWA board to an elected one.

10) **Arguments in Support.** CLWA, sponsor of this measure, writes, "The original Agency Act was enacted in 1962 and underwent significant amendments in 1986 to provide the Agency with the ability to impose Facility Capacity Fees and appointed Directors, in 1998 to provide powers for recycled water operations and in 2001 to allow for retail water service within the Santa Clarita Water Division service area."

11) **Arguments in Opposition.** The State Building and Construction Trades Council, in opposition, states, " Existing law protects private sector contractors by allowing local agencies such as the CLWA, to perform a project of up to \$45,000 with its own workforce if the agency follows the cost accounting procedures within the policies and procedures made available by the Uniform Public Construction Cost Accounting Act (Act) in the Public Contract Code. AB 727 would bypass the flexibilities and protections of the Act by instead raising the bid limit to \$75,000 for construction and for the purchase of materials and supplies related to maintenance work and channel protection. AB 727 seems to include minor governance changes along with major expansions of authority relating to bid thresholds. While we are not opposed to the agency's need to alter its system of governance, the combination of changes this bill seeks raises serious concerns."

The Newhall County Water District (NCWD), which has adopted an "oppose, unless amended" position, is requesting amendments as follows:

a) Define, for the purposes of the facility capacity fee, "existing retail connection" as "verifiable volumetric increase;"

- b) Strike language in the bill pertaining to groundwater cleanup, as "it implies CLWA has authority over the management of groundwater basins, which it does not;" and,
- c) Include language stating, "No provision contained in this legislation is intended to allow or authorize the agency to exercise retail water authority outside of the boundaries described in Section 15.1(a) of the existing CLWA governing act."

NCWD also asserts that any proposed changes to the CLWA Act are premature while legal disputes between NCWD and CLWA continue.

12) **Double-Referral.** This bill is double-referred to the Utilities and Commerce Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Castaic Lake Water Agency [SPONSOR]

Opposition

State Building and Construction Trades Council
Newhall County Water District

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