



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

7C

AGENDA REPORT
 Business | Action

June 5, 2023

TO: Commissioners

FROM: Keene Simonds, Executive Officer

SUBJECT: Recommendation to Oppose Assembly Bill 530 as Amended

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider a recommendation to formally oppose Assembly Bill 530 as amended on May 15th. The amended bill is authored by Assemblymember Tasha Boerner and seeks to require an affirmative vote of the entire San Diego County Water Authority electorate as a statutory condition to any member agency requesting and receiving LAFCO approval to detach. The Executive Officer recommends the Commission go on record to oppose the amended bill given significant concerns in terms of timing and content with the latter marked by diminishing the ability of member agencies – whether cities or special districts – to pursue otherwise meritorious detachment proposals based on local conditions.

BACKGROUND

Assembly Bill (AB) 530 was introduced by Assemblymember Boerner on February 8, 2023 to further address and manage methane emissions in California. On May 15th, the bill was comprehensively amended to revise the County Water Authority Act to require a confirming vote of the entire electorate of the San Diego County Water Authority should any member agency receive approval from LAFCO to detach. The amended bill is sponsored by the City of San Diego through the Mayor’s Office with the author confirming they will seek committee deadline waivers to allow the legislation to be considered this year.

<p>Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103-6624 T 619.321.3380 www.sdlafco.org lafco@sdcounty.ca.gov</p>	<p>Chair Jim Desmond County of San Diego</p> <p>Joel Anderson County of San Diego</p> <p>Nora Vargas, Alt. County of San Diego</p>	<p>Kristi Becker City of Solana Beach</p> <p>Dane White City of Escondido</p> <p>John McCann City of Chula Vista</p>	<p>Vice Chair Stephen Whitburn City of San Diego</p> <p>Marni von Wilpert, Alt. City of San Diego</p>	<p>Jo MacKenzie Vista Irrigation</p> <p>Barry Willis Alpine Fire Protection</p> <p>David A. Drake, Alt. Rincon del Diablo</p>	<p>Andy Vanderlaan General Public</p> <p>Harry Mathis, Alt. General Public</p>
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DISCUSSION

This item is for San Diego LAFCO to consider a recommendation to formally oppose AB 530 as amended on May 15th. An oppose position is being forwarded to the Commission now given the acknowledgement by the author of their intentions to pursue one or more rule waivers to allow the amended bill to continue this legislation session. Forwarding the oppose position now also – pertinently – ties to the Commission’s active consideration of proposals filed by Fallbrook Public Utility District (PUD) and Rainbow Municipal Water District (MWD) to detach from the County Water Authority, which are separately set for hearing on June 5th. Specifically, and as further detailed, the amended bill significantly complicates consideration of one of the three merited options available to the Commission.

A copy of AB 530 as amended is attached.

ANALYSIS

AB 530 as amended generates significant concerns with respect to timing and content.¹ Markedly, LAFCO staff and counsel made a series of decisions and determinations to guide its review of the Fallbrook PUD and Rainbow MWD detachment proposals in step with forwarding recommendations to the Commission ahead of a June 5th public hearing. The amended bill introduces an additional layer of uncertainty and influence at the 11th hour and negatively impacts staff’s ability to provide clear and reasonable guidelines and answers to Commissioners. This includes the amended bill’s overt complication to one of the three merited options evaluated and available to the Commission to administratively pause action on the proposals in favor of completing a comprehensive municipal service review on the County Water Authority, which would take 18 to 24 months to complete. The notion of returning to the proposals thereafter with new legislation that requires an affirming vote of the entire County Water Authority electorate would effectively serve as an external poison pill for the applicants irrespective of any LAFCO approvals. Additionally, the amended bill’s sidestepping of the Legislature’s long-standing delegation to LAFCOs to independently consider jurisdictional changes and term any approvals as appropriate is equally concerning and would set its own troubling precedent going forward.

RECOMMENDATION

It is recommended San Diego LAFCO approve an oppose position on AB 530 as amended consistent with Alternative Action One as outlined in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO:

¹ A comment letter from the Executive Officer to Assemblymember Boerner outlining concerns with the amended bill was previously forwarded to the Commission.

Alternative One (recommended):

Approve an oppose position on AB 530 as amended and authorize the Executive Officer to prepare a letter for the Chair's signature to the Assemblymember accordingly.

Alternative Two:

Continue consideration of the item to a future meeting.

Alternative Three:

Take no action.

PROCEDURES FOR CONSIDERATION

This item has been placed on San Diego LAFCO's agenda for action as part of the business calendar. The following procedures are recommended in the consideration of this item:

- 1) Receive verbal presentation from staff unless waived.
- 2) Invite comments from interested audience members.
- 3) Discuss item and consider the recommendation.

Respectfully,



Keene Simonds
Executive Officer

Attachments: as stated.

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AMENDED IN ASSEMBLY MAY 15, 2023
AMENDED IN ASSEMBLY MARCH 09, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 530

Introduced by Assembly Member Boerner

February 08, 2023

~~An act to amend Section 39731 of the Health and Safety Code, relating to greenhouse gases.~~ *An act to amend Section 11 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to water.*

LEGISLATIVE COUNSEL'S DIGEST

AB 530, as amended, Boerner. ~~Methane emissions.~~ *County Water Authority Act: exclusion of territory: procedure.*

The County Water Authority Act provides for the formation of county water authorities and grants to those authorities specified powers with regards to providing water service. The act provides 2 methods of excluding territory from any county water authority, one of which is that a public agency whose corporate area as a unit is part of a county water authority may obtain exclusion of the area by submitting to the electors within the public agency, at any general or special election, the proposition of excluding the public agency's corporate area from the county water authority. Existing law requires that, if a majority of the electors approve the proposition, specified actions take place to implement the exclusion.

This bill would additionally require the public entity to submit the proposition of excluding the public agency's corporate area from the county water authority to the electors within the territory of the county water authority. The bill would require the 2 elections to be separate; however, the bill authorizes both elections to run concurrently. The bill would require a majority vote for withdrawal in both elections for the withdrawal of the public agency from the territory of the county water authority.

~~Existing law requires the State Air Resources Board, no later than January 1, 2016, to complete a comprehensive strategy to reduce emissions of short-lived climate pollutants in the state. Existing law requires the state board, no later than January 1, 2018, to approve and begin implementing the comprehensive short-lived climate pollutant strategy to achieve a reduction in the statewide emissions of methane by 40%, hydrofluorocarbon gases by 40%, and anthropogenic black carbon by 50% below 2013 levels by 2030. Existing law requires the state board to undertake certain tasks, including consulting with federal and state agencies, independent scientific experts, and any other appropriate entities to gather or acquire the necessary information to carry out a life-cycle greenhouse gas emission analysis of natural gas produced and imported into the state using the best available and cost-effective scientific and technical methods, and to update relevant policies and programs to incorporate this information and other specified information.~~

~~This bill would additionally require the state board to consult with the aforementioned stakeholders to gather and acquire the necessary information to estimate, using the best available and cost-effective scientific and technical methods, methane emissions from landfills in the state. The bill would require the state board, no later than~~

~~December 31, 2024, to update relevant policies and programs to incorporate this information. The bill would require the state board to consider additional policies to encourage the use of natural gas produced in the state with the lowest life-cycle emissions.~~

Digest Key

Vote: majority Appropriation: no Fiscal Committee: ~~yes~~no Local Program: no

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

***SECTION 1.** Section 11 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), as amended by Section 3 of Chapter 1408 of the Statutes of 1985, is amended to read:*

Sec. 11. (a) Exclusion of territory from any county water authority may be effected by either of the following methods:

(1) Territory excluded from the portion of the corporate area of any public agency ~~which that~~ lies within the exterior boundaries of a county water authority, the public agency being a unit of the authority, and ~~which that~~ exclusion occurs in accordance with the provisions of law applicable to those exclusions, shall thereby be excluded from and shall no longer be a part of the authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the ~~bounded~~ bonded or other indebtedness outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof shall be, at the time of the exclusion, subject to special taxes levied, or to be levied, by the county water authority pursuant to terms and conditions previously fixed under paragraph subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to those special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies.

Exclusion of territory from a county water authority pursuant to this paragraph shall not occur if two or more public agencies that are included in a county water authority as separate units are subject to a reorganization of their boundaries under applicable provisions of law ~~which that~~ would result in an exchange or transfer, but not an overlapping, of territory that is entirely within the county water authority. The boundaries of those agencies within the county water authority, upon that reorganization and the filing with the secretary of the county water authority of a copy of the certificate of completion prepared, executed, and filed by the executive officer of the local agency formation commission responsible therefore constitute the boundaries of the agencies for all purposes of the county water authority, without action by the board of directors of the county water authority. If the exchange includes territory subject to special conditions and tax levies pursuant to the terms of annexation at the time the territory became a part of the county water authority, the territory shall continue to be subject to those conditions and to be taxable by the county water authority or those levies.

From and after the effective date of the inclusion of the territory by the including public agency, the territory shall be considered to be a part of the corporate area of the including agency; provided, however, that, if the taxable property within the territory, or any portion thereof, is subject to special taxes levied or to be levied by

the county water authority pursuant to terms and ~~condition~~ *conditions* previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the territory or portion thereof to the county water authority, then the taxable property within the territory shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of the special taxes pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been ~~or so~~ raised by the special tax levy.

(2) Any public agency whose corporate area as a unit has become or is a part of any county water authority may obtain the exclusion of the area therefrom *by elections conducted* in the following manner:

~~The~~

(A) (i) The governing body of any public agency may submit to the electors thereof at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority. ~~A~~

(ii) The governing body of any public agency may submit to the electors within the territory of the county water authority at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors within the territory of the county water authority voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority.

(iii) The elections conducted pursuant to this subparagraph shall be separate elections; however, they may run currently with one another. A majority vote in both elections for withdrawal is necessary for the withdrawal of the public agency from the territory of the county water authority.

*(B) A certificate of the proceedings shall be made by the secretary of the county water authority and filed with the Secretary of State. Upon the filing of the certificate, the corporate area of the public agency shall be excluded from the county water authority and shall no longer be a part thereof; provided, that the taxable property within the excluded area shall continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded area or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to the terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded area or part thereof to the county water authority, the taxable property within the excluded area or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies. Upon the filing of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate reciting the filing of the papers in ~~his or her~~ *the Secretary of State's* office and the exclusion of the corporate area of the public agency from the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy thereof to the county clerk of the county in which the county water authority is situated.*

(b) Whenever territory is excluded from any public agency in accordance with paragraph (1) of subdivision (a), the governing body, or clerk thereof, of the public agency shall file with the board of directors of the county

water authority a statement of the change of boundaries of the public agency, setting forth the legal description of the boundaries of the public agency, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating the boundaries.

(c) Whenever any territory has been excluded from any public agency prior to the effective date of this section, under conditions ~~which~~ *that* would have resulted in the exclusion of the territory from a county water authority had paragraph (1) of subdivision (a) then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be excluded from and shall no longer be a part of, the authority, the last-mentioned provisions being as follows:

(1) The governing body of the public agency may adopt an ordinance ~~which,~~ *that,* after reciting that the territory has been excluded from the public agency by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date or dates upon which the exclusion became effective, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, excluded from the county water authority.

(2) The governing body, or clerk thereof, of the public agency shall file a certified copy of the ordinance with the Secretary of State. Upon the filing of the certified copy of the ordinance in the office of the Secretary of State, the territory shall be excluded from, and shall no longer be a part of, the county water authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the bonded or other indebtedness outstanding or contracted for at the time of the exclusion, and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed, and until the aggregate sums have been so raised by the special tax levies.

(3) Upon the filing of the certified copy of the ordinance, the Secretary of State shall, within 10 days issue a certificate describing the territory, reciting the filing of certified copy of the ordinance and the exclusion of the territory from the county water authority, and declaring that the territory is no longer a part of the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy of the certificate to the county clerk of the county in which the county water authority is situated.

(d) Whenever any territory has been exchanged or transferred pursuant to law prior to January 1, 1986, among two or more public agencies that are included in a county water authority as separate units, the territory shall not be deemed excluded from the county water authority, notwithstanding the failure of the county water authority to give its consent to the exchange or transfer of the territory, if there has been filed with the board of directors of the county water authority prior to January 1, 1986, a statement of the change of boundaries of the agencies, as so changed, and of the part within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

~~SECTION 1. Section 39731 of the Health and Safety Code is amended to read:~~

~~39731. The state board shall do all of the following:~~

~~(a) Monitor and measure, in consultation with districts that monitor methane, high-emission methane hot spots in the state using the best available and cost-effective scientific and technical methods.~~

~~(b) Consult with federal and state agencies, independent scientific experts, and any other appropriate entities to gather or acquire the necessary information to estimate, using the best available and cost-effective scientific and technical methods, methane emissions from landfills in the state and carry out a life-cycle greenhouse gas~~

~~emission analysis of natural gas produced and imported into the state.~~

~~(c) Update, no later than December 31, 2024, relevant policies and programs to incorporate the information gathered and acquired pursuant to subdivisions (a) and (b).~~

~~(d) Consider additional policies to encourage the use of natural gas produced in the state with the lowest life-cycle emissions.~~

~~(e) Review, in consultation with independent scientific experts, the most recent available scientific data and reports on the atmospheric reactivity of methane as a precursor to the formation of photochemical oxidants.~~

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