



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

May 29, 2015

The Honorable Mark Leno
Chair, State Budget Joint Legislative Conference Committee
State Capitol, Room 5100
Sacramento, CA 95814

**RE: Budget Trailer Bill #325 – Consolidation of Public Water Systems and
Limitation on Liability for Consolidated Public Water Systems (Dated
5/22/2015) – OPPOSE**

Dear Senator Leno:

The Rural County Representatives of California (RCRC) has participated in discussions with the Brown Administration on how best to address the very real water supply and water quality problems faced by small communities, as well as individual's relying on private wells. The complexity of the issues surrounding consolidation, the Brown Administration's proposed long-term solution, has become more evident at each meeting as new issues have been raised. RCRC has urged that the Brown Administration reconsider utilizing a budget trailer bill to enact the major policy changes proposed. Given the short time-frame, and the multitude of unresolved issues, RCRC must oppose any effort to enact this legislation as part of the State Budget.

The proposed budget trailer bill would authorize the State Water Board to require a public water system to consolidate with or extend service to another public water system (which includes mutual water companies and investor owned utilities regulated by the Public Utilities Commission), a state small system, or domestic well users or provide technical, managerial, or financial management assistance to another public water system if certain conditions are met. Following are some of the unresolved issues identified to date:

1. Consolidations are very complex. Consolidating two public water systems poses a variety of challenges (governance structure, employees, retirement obligations, etc.). Consolidating a public water system with a water provider, such as a Community Service District (CSD) or a County Service Area (CSA) that provides services beyond provision of water adds a whole new dimension of difficulty and additional processes (divestiture) that must be undertaken. There are additional complications if a municipality is involved. The budget trailer bill does not address these issues.

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2. The budget trailer bill proposes that the State Water Board take certain actions prior to ordering consolidation or extension of service. The State Water Board would be required to “consult” with the local agency formation commission (LAFCOs) and the local governments with land use authority, but it is unclear what this consultation entails. Numerous other key terms remain undefined in the budget trailer bill. Criteria and standards are needed.
3. The budget trailer bill does not require the State Water Board to consult with the water systems and/or individuals not served by a water system. Instead, the first direct contact by the State Water Board appears to be the notification of the deadline (no longer than six months) to negotiate consolidation. During the interim period, the State Water Board would be required to provide technical assistance and to assist in development of a financing package. This approach - issuing an ultimatum and then offering assistance - may well prove counter-productive.
4. The budget trailer bill proposes to withhold state water-related grant funding from homeowners who are not served by a public water system or a state small water system unless they consent to inclusion in the consolidation. It is not clear if there is an existing process or what actions an individual homeowner would undertake to comply with this requirement. While the withholding of state grant funding unless certain actions are taken is not uncommon as it relates to agencies or districts, applying it to individual homeowners in this same manner should be fully vetted.
5. The budget trailer bill would require that the State Water Board, upon mandating consolidation, make funds available (grants or loans) to the receiving system necessary to complete the consolidation or extension of service. Grants would be more appropriate when the State mandates consolidation. The language of this section also appears to give the State Water Board the authority to determine the appropriate level of financial assistance - which may not necessarily be the cost incurred by the receiving system.
6. The proposed state financial assistance is limited to capital improvements, managerial consolidation etc., and it does not include operations and maintenance (O&M). It is understood that there are no bond funds available for O&M; however, it is the ongoing O&M that is most problematic for small communities, and by extension, the receiving system. Proposition 218 is yet another unresolved issue.
7. The budget trailer bill would require the State Water Board to make certain findings prior to mandating consolidation. The budget trailer bill language will spell out the criteria that the State Water Board would use to determine what is “appropriate” and “technically and economically feasible”. For example, economic feasibility should be based on local conditions.
8. The budget trailer bill states that the consolidated water system shall not charge new customers more than the costs of providing them with water service. It is unclear what may or may not be included in the cost equation.

9. The budget trailer bill proposes state funding to pay the fair market value to privately held companies when their failed water systems are subsumed. Factors that will be included in the assessed valuation should be enumerated.
10. It is unclear how the State Water Board plans to address mandated water conservation in relation to mandated consolidation, i.e. water system reduction in water use v. additional connections.
11. The budget trailer bill includes limitation on liability for consolidated public water systems language patterned on Senate Bill 1130 (Roth). This bill was narrowly crafted to address a specific consolidation – and the provisions of the bill cannot be applied statewide. No two consolidations are exactly alike. Limitation on liability is very important, and must be thoughtfully constructed.
12. There are water right implications that have not been discussed to date. Water rights are conditioned by time and place of use. Annexation of the new area to be served and applying to the State Water Board for a change in water right are two more issues that must be vetted and addressed.

Existing law (Cortese-Knox-Hertzberg) allows LAFCOs to approve the extension of services in the case of a threat to public health and safety. RCRC has suggested that the Brown Administration consider utilizing this existing framework, and adapt it as needed, as opposed to the current approach. RCRC is of the opinion that local decision-making is key and that local agencies are in the best position to determine on a case-by-case basis the best course of action at the local level.

In conclusion, RCRC stands ready to engage in a deliberative process so that the final solution is well thought out and unintended consequences are avoided. Please contact me if you have any questions at (916) 447-4806 or kmannion@rcrcnet.org.

Sincerely,



KATHY MANNION
Legislative Advocate

cc: Governor Edmund G. Brown, Jr.
Members, State Budget Joint Legislative Conference Committee
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Ms. Martha Guzman-Aceves, Office of the Governor
Ms. Debbie Davis-Franco, Office of Planning & Research
Ms. Liz Haven, State Water Resources Control Board
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