



## BOARD ACTION

**TO:** Governing Board

**FROM:** Carlos Quintero, General Manager

**DATE:** August 4, 2023

**SUBJECT:** Consideration to take an Oppose Unless Amended Position on Proposed Bill AB 399 (Boerner) and Support Position on AB 1594 (Garcia)

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### **SUMMARY**

There are two bills proposed for the Legislature's consideration:

**Assembly Bill 399 (Boerner)** related to the San Diego County Water Authority change of organization proceedings.

**Assembly Bill 1594 (Garcia)** related to medium and heavy-duty zero-emission vehicles.

### **AB 399 (Boerner) – Water Ratepayers Protections Act of 2023: County Water Authority Act: Exclusion of Territory: Procedure**

The County Water Authority Act provides that a member agency of a county water authority may obtain exclusion of the area (detachment from the county water authority) by submitting to the electors within the detaching public agency – at any general or special election – the proposition of excluding the public agency's corporate area from the county water authority (detachment). Under existing law, if a majority of electors approve the proposition, then actions will take place to implement the detachment.

AB 399, as amended on June 14, 2023, would additionally require the detaching 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. AB 399 would require the two elections to be separate, but would authorize both elections to run concurrently. AB 399 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 to be approved and advance. Additionally, AB 399 includes an "urgency clause," meaning that it would take effect immediately if approved by the Legislature and signed by the Governor.

In April 2020, the Fallbrook Public Utility District (FPUD) and the Rainbow Municipal Water District (RMWD) submitted resolutions to the San Diego County LAFCO to concurrently detach from the San Diego County Water Authority (SDCWA) and annex to

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Eastern Municipal Water District (Eastern MWD). The two districts have indicated that they wish to separate from SDCWA because they believe they can secure less expensive water rates from Eastern MWD.

After dozens of public meetings and hearings on the detachment proposal, the San Diego County Local Area Formation Commission (LAFCO) conditionally approved the detachment proposals by FPUD and RMWD at its July 10, 2023 meeting. Approval of the detachment is contingent on exit fees to be repaid by FPUD and RMWD over five years to mitigate against any cost-shifting that may occur for other remaining SDCWA member agencies as a result of the detachment.

Under the existing statutes that applied as of the date that FPUD and RMWD petitioned for detachment from SDCWA, approval would be required through an election within each of the petitioning districts, which totals approximately 37,000 registered voters. Under AB 399, the proposition for detachment would be subject to a countywide election involving approximately 1.9 million registered voters. During the LAFCO proceeding, SDCWA requested such an election to occur. However, LAFCO legal counsel determined it did not have the authority to override the principal act and expand the electorate in this manner, meaning SDCWA had to follow the procedures in its principal act, which only requires a vote of the electors from a district seeking separation. As a result, the City of San Diego asked Assemblymember Tasha Boerner to introduce legislation on the election issue, and subsequently, AB 399 was substantively amended on June 14, 2023, to advance the countywide vote requirement for detachment.

AB 399 raises a variety of public policy issues and concerns for SDCWA member agencies, and poses a substantial precedent that could have material effect on other agencies' ability to exercise self-determination through LAFCO change of organization proceedings in the future. Some of the relevant public policy issues include:

- **Conflict with legislative intent behind LAFCO laws.** The Cortese-Knox-Hertzberg Local Government Reorganization Act places great weight on the rights of individuals to determine the shape of their communities, including the structure, size, and scope of local government entities serving a community. As such, the current detachment procedure (election within the boundaries of the detaching agency) is essentially consistent with LAFCO intent, and the proposed expansion of the voting area under AB 399 would dilute the votes of those most affected by the proposal, and effectively disenfranchise the voters within those communities.
- **AB 399 seeks to undermine the result of an ongoing three-year long LAFCO proceeding.** The legislation – and specifically, the inclusion of an urgency clause – is intended to statutorily circumvent and up-end the LAFCO proceeding and its

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determinations regarding FPUD and RMWD, notwithstanding the fact that the proposed detachment has undergone an extensive, three-year data-driven process to arrive at its July 10 conclusion. AB 399 would establish a precedent that those not in agreement with a LAFCO decision can seek a politically-based legislative action to craft the conclusion they want on contentious LAFCO determinations.

Several SDCWA member agencies are in the process of considering a formal position on AB 399. Many of those agencies appear to be coalescing around an approach that communicates an Oppose Unless Amended position to Assemblymember Boerner. The basis of the Oppose Unless Amended position would be to very clearly elevate concerns relative to the newly-proposed expansive voting requirements for detachment embodied within the current provisions of AB 399. Additionally, many of the SDCWA member agencies that are considering a formal opposition position are also communicating a need for additional structural cleanup and revision to the broader Board of Directors' voting provisions within the County Water Authority Act.

One of the fundamental outcomes during the multiple debates over the SDCWA's role in advancing AB 399 and the proposed detachment of FPUD and RMWD from the SDCWA, has been a growing acknowledgment that the voting structure at the SDCWA should be revisited to create greater parity among the member agencies. Currently, the County Water Authority Act only applies a weighted vote methodology, wherein a member agency's vote percentage/weight is based on the agency's all-in historical financial contributions to the SDCWA. Based on this weighted vote methodology, a few larger member agencies can carry a vote at the SDCWA even if a majority of member agencies vote contrary.

To remedy this lack of parity and incongruity in the voting and governance structure at the SDCWA Board of Directors, AB 399 should be amended to modify the SDCWA voting structure from a straight weighted-vote methodology, to a voting structure that requires **both** a concurrent majority of the weighted vote **AND** an affirmative vote by a majority of the total number of member agencies. This hybrid voting structure would advance important public policy objectives, including:

- Reducing the dominance of agencies with large weighted votes.
- Providing the small agencies with a governance voice that does not now exist.
- Encouraging more effort at collaboration and compromise within the SDCWA Board process to achieve consensus.

### **AB 1594 (Garcia) – Medium- and Heavy-Duty Zero-Emission Vehicles: Public Agency Utilities**

Existing law establishes the goal of transitioning medium- and heavy-duty vehicles in California to zero-emission vehicles by 2045 for all operations where feasible, and

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requires the California Air Resources Board (CARB) to develop and propose medium- and heavy-duty vehicle regulations to meet that goal.

AB 1594, as amended on July 13, 2023, would require any state regulation that seeks to require or compel the procurement of medium- and heavy-duty zero-emission vehicles to authorize public agency utilities to purchase replacements for traditional utility-specialized vehicles that are at the end of life when needed to maintain reliable service and respond to major foreseeable events, including severe weather, wildfires, natural disasters, and physical attacks. AB 1594 would also define a public agency utility to include a community water system, a wastewater treatment provider, and a local publicly-owned electric utility.

Nearly 40 percent of California's greenhouse gas (GHG) emissions are generated by the transportation sector, which includes both the light-duty (passenger) and medium- and heavy-duty fleets. Trucks comprise only six percent of the state's vehicle population, but they represent almost a quarter of the state's transportation GHG emissions. In the transportation sector, measures to reduce GHG emissions include requiring the use of low carbon fuels, cleaner vehicles, and strategies to promote sustainable communities and improved transportation choices that reduce growth in number of vehicle miles traveled.

In 2020, the Governor issued Executive Order N-79-20, which requires 100 percent of medium- and heavy-duty vehicles in the state to be zero-emission by 2045 for all operations where feasible. In implementation of the Executive Order, CARB unanimously approved the Advanced Clean Fleets (ACF) regulation during April 2023. The ACF requires a phased-in transition toward zero-emission medium- and heavy-duty vehicles:

- Last mile delivery and yard trucks must transition to zero-emission by 2035
- Work trucks and day cab tractors must transition to zero-emission by 2039
- Sleeper cab tractors and specialty vehicles must be zero-emission by 2042

While the CARB regulations broadly address the zero-emission vehicle transition for medium- and heavy-duty vehicles, not all vehicles are used for the same purpose and have the same operating requirements. Publicly owned utilities, like Sweetwater Authority, operate under unique and often challenging circumstances, and its medium- and heavy-duty vehicle fleets are essential to effectively provide communities with critical public services. Publicly owned utilities operate specialty vehicles over long distances, in remote areas, on difficult terrain, and for extended periods of time. These vehicles often are needed for rapid response or emergency situations and require refueling in the field.

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While the ACF regulation includes purchase mandates for all fleets, it also provides an alternative, flexible compliance option for state and local agencies, referred to as the zero-emission vehicle milestone option. Under the zero-emission vehicle milestone option, a certain number of vehicles in the overall fleet are required to be zero-emission by key milestone dates. As long as the zero-emission milestones are met, fleet owners have considerable flexibility with the remainder of the fleet. Fleets can continue purchasing some internal combustion engine vehicles under this option. For example, if a fleet meets the zero-emission milestones and purchases an internal combustion engine vehicle in 2028, they will be able to operate it up to 2039, even when the rest of the fleet will need to be zero-emission.

AB 1594 is intended to statutorily memorialize this “glide-path” approach to implementation of the ACF regulations for medium- and heavy-duty vehicles and recognize the unique situations and environments within which public utility agency personnel must work and drive. While not providing a full exemption from the ACF regulations for utility vehicles, the most recently-amended version of AB 1594 continues to provide additional flexibility for public agency utilities to continue acquisition of traditional utility-specialized vehicles to maintain reliable service, respond to major foreseeable events, and in recognition of the unique and special needs associated with the provision of important public services, like water, power, and wastewater treatment.

CMUA is the sponsor of AB 1594, and ACWA has adopted a support position on the measure.

### **PAST BOARD ACTION**

April 26, 2023

The Governing Board took an oppose position on Proposed Bills AB 460 (Bauer-Kahan), AB 1337 (Wicks), and SB 389 (Allen)

### **FISCAL IMPACT**

There is no impact beyond staff time to take a position on the proposed bills.

### **POLICY /STRATEGIC PLAN**

Strategic Plan Goal 2: System and Water Supply Reliability - Achieve an uninterrupted, long-term water supply through investment, maintenance, innovation and developing local water resources.

- Objective SR4 – Maintain and replace fleet vehicles and equipment in accordance with manufacturer’s recognized standards and practices, and the Board-approved Green Fleet Plan and Vehicle and Equipment Replacement Policy.

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Strategic Plan Goal 3: Financial Viability - Ensure long-term financial viability of the agency through best practices, operational efficiency, and maximizing assets.

### **ALTERNATIVES**

1. Take an oppose unless amended position on AB 399 (Boerner) and a support position on AB 1594 (Garcia).
2. Other direction as determined by the Governing Board.

### **RECOMMENDATION**

Staff recommends that the Governing Board takes an oppose unless amended position on AB 399 (Boerner) and a support position on AB 1594 (Garcia).

### **ATTACHMENT**

Letter from Fallbrook Public Utilities District to South Bay Irrigation District