



● **Board of Directors**
Communications and Legislation Committee

April 14, 2009 Board Meeting

8-10

Subject

Express support, if amended, for (1) AB 300 (Caballero, D-Salinas) – Subdivisions: water supply; and (2) AB 1408 (Krekorian, D-Burbank) – Subdivisions: Water Conservation Mitigation Fund

Description

Background: In 2001, the Legislature passed legislation that more closely links water supply to the planning and approval process for major development projects. The legislation was passed through two complementary bills – SB 610 introduced by Senator Jim Costa and SB 221 by Senator Sheila James Kuehl. These bills, which became effective in January 2002, require that cities and counties consider water supply in the approval of major developments, first at the environmental review stage (SB 610) and again at the subdivision map approval stage (SB 221).

With the passage of SB 610 and SB 221, the Legislature required coordinated planning of land use and water supplies. SB 610 links land use and water supply at the project environmental review stage by requiring that certain major developments assess their available water supplies over a 20-year period. SB 221 is triggered for major housing developments at the tract map approval stage by requiring written verification that the necessary long-term water supplies for a 20-year period will be available. The water supply assessments (required under SB 610) and verifications (under SB 221) are prepared by the retail water provider.

These existing laws do not directly encourage water conservation efforts. Indeed, even if voluntary water conservation measures are incorporated into a proposed project, those measures might not be taken into account by the water provider when assessing the project's water supply needs under these two laws.

Summary of Legislation: AB 300 ([Attachment 1](#)) and AB 1408 ([Attachment 2](#)) are competing bills that modify the existing water supply assessment and verification laws in an attempt to encourage additional water conservation in new developments. Both bills establish a voluntary program to allow developers to introduce new information about extraordinary water conservation strategies they are employing by allowing their projects to claim credit for the additional water savings. Both include follow-up monitoring requirements. AB 1408 goes significantly further by providing an alternative means of achieving verification of a sufficient water supply by creating a funding mechanism to completely offset the proposed development's increased water demand. AB 1408's Water Conservation Fund would be used to implement new offsetting water conservation measures elsewhere within the water provider's service area.

The basic rationale and policy behind both bills is sound – to encourage project developers to implement water conservation measures that go beyond existing statutory levels. Metropolitan staff recommends that the Board support both bills with respect to this overall policy principle. However, there are a number of technical issues and practical concerns with both bills that need to be addressed in subsequent amendments. These issues are described in the following analyses.

Analysis of AB 300: AB 300, sponsored by the California Building Industry Association, would operate at the two stages of water use review for proposed projects required under current law: at the California Environmental Quality Act (CEQA) stage of review (the water supply assessment stage under SB 610) and at the subdivision tract map approval stage of review (the water supply verification stage under SB 221). At both stages the

proposed legislation would allow the project proponent to reduce the reported water use below levels corresponding with existing statutory requirements by the amount attributed to extraordinary, voluntary measures. For conservation measures that are not currently quantified by the California Urban Water Conservation Council (CUWCC), the legislation would require the project proponent to enter into an agreement with the water provider to monitor and report on the actual water savings for a period of five years after the project is fully developed.

A number of practical concerns arise in applying these new requirements at both the CEQA review stage and at the tentative tract map approval stage. First, the water supply assessment stage of review applies to all types of projects in addition to residential developments: shopping centers, office buildings, hotels, industrial plants, and any other type of project that has water demands equivalent or greater than to 500 units of residential. Because myriad factors can affect water use for land uses other than residential, such as occupancy, plant production rates, or types of business or industry, the requirements for estimating savings and follow-up monitoring for residential uses would appear to be overly burdensome and provide questionable benefit. Further, even if the requirements attached only to residential developments at the CEQA stage, those requirements would introduce redundancy and conflict with the identical provisions of the bill that operate at the tract map approval stage. Finally, the bill's requirements as currently drafted for the CEQA assessment stage can be read to make water savings below existing statutory levels mandatory, which under this interpretation would create tension with local plumbing and building codes and tend to penalize forward looking cities and local agencies that already require advanced water conservation measures.

Another issue with the bill as currently drafted concerns the point in time at which water use monitoring is to begin. The language now states monitoring begins "after the project has been fully developed" but does not define what fully developed means.

Analysis of AB 1408: AB 1408, sponsored by the Planning and Conservation League and East Bay Municipal Utilities District, would create an option under the water supply verification process in which a sufficient water supply for new housing developments could be proven by offsetting the development's increased water demand through new water conservation measures. The bill would provide for a Water Conservation Mitigation Fund funded by the project developer and managed by the retail water provider that would implement new water conservation measures within the water provider's service area to completely offset proposed subdivision's increased water demand. The funds could not be used to supplant funding for water conservation measures required under existing law, measures paid for by existing customers, or measures required by CUWCC Memorandum of Understanding (MOU). A certain portion of the funds would be required to be directed to disadvantaged communities within the water agency's service area. To encourage developers to build highly efficient houses at the outset, the bill would allow "extraordinary water conservation measures" included in the development to be factored into the project's water demand. The bill also introduces follow-up reporting requirements into the Urban Water Management Plan process.

Metropolitan staff has a number of concerns with the legislation as currently drafted. A first area of concern is with the bill's treatment of conservation measures that are incorporated into the proposed development. The bill does not define extraordinary water conservation measures or how they should be quantified. The bill also calls for the water supplier to condition its water supply "assessment" (read "verification") on legally enforceable means such as CC&Rs to ensure the conservation measures remain in place. But such enforcement means would generally not be within the jurisdiction of the water supplier but remain with the city and county in their approval of the tract map.

A second concern is with the bill's requirement for a certain, yet-to-be-defined percentage of the Water Conservation Mitigation Fund to be spent in disadvantaged communities (defined by Public Resources Code section 75005 as less than 80 percent of statewide average annual income). Since the bill also requires that the Conservation Funds are spent within the water provider's service area, unless the service area is a disadvantaged community this requirement becomes impossible since most water providers' service areas correspond either exactly or closely with the cities/communities they serve. Further, for areas already fully urbanized, the requirement to limit expenditure of the funds to the retail water provider's service area may make it difficult to identify sufficient offsetting opportunities.

A third concern is with the bill's prohibition on the use of the funds to supplant funding for water conservation programs required by existing laws, paid for by existing customers, or required by the CUWCC MOU. The restriction to not fund programs funded by existing users is problematic as water agencies generally budget on an annual basis and with specific funding amounts for specific programs. Thus, by way of example, if existing ratepayers are funding high efficiency washer rebates in the current year, the bill could be read to prevent the Conservation Fund from expanding the rebates or rebate amounts in the current year, or prevent the Conservation Fund from funding the washer rebates program in its entirety in subsequent years. The restriction to not include measures required by the CUWCC MOU is in conflict with fundamental purpose of the CUWCC MOU to expedite implementation of advancing water conservation technologies. (The restriction is also internally inconsistent as many of the conservation measures identified in the bill that would qualify for funding are measures included in the CUWCC MOU.) The bill also requires that the water agency determine through a public hearing process that the mitigation funds would not supplant funding for programs required by existing laws, paid for by existing customers, or required by the CUWCC MOU. The requirement for a public hearing appears overly burdensome for what should be a purely internal check within the water agency's expertise and discretion.

Finally, the bill introduces requirements into the Urban Water Management Planning Act for documenting funding expenditures, verifying the funding restrictions, documenting actual water use by each subdivision, calculating water savings from fund measures, and if savings do not exceed water use, a schedule of additional actions to achieve a 100 percent offset. To the extent any new reporting requirements are introduced to the Urban Water Management Plan process, it must be clarified that these requirements apply only to the retail water provider administering the Conservation Fund and not to any wholesale water providers. The bill is currently ambiguous on this point. Further, the requirement for such detailed reporting, analysis, and schedule of corrective action at the subdivision level does not jibe well with the broad, long-range scope of Urban Water Management Plans. In staff's opinion, a better option for reporting would be to CUWCC, which could use the reporting data in informing the development of conservation BMPs.

Policy

By Minute Item 45208, dated February 11, 2003, the Board adopted a set of policy principles on water conservation to ensure a solid foundation for development of future Metropolitan positions on water conservation legislation and to provide guidance to Metropolitan staff.

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan's support for both AB 300 and AB 1408, if amended to address Metropolitan concerns.

Fiscal Impact: Unknown

Business Analysis: Unknown

Option #2

Adopt the CEQA determination and authorize the General Manager to express Metropolitan's support for either AB 300 or AB 1408 individually.

Fiscal Impact: Unknown

Business Analysis: Unknown

Option #3

Take no position on AB 300 or AB 1408.

Fiscal Impact: Unknown

Business Analysis: Unknown

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

4/3/2009
Date


Jeffrey Lightlinger
General Manager

4/3/2009
Date

Attachment 1 – Assembly Bill 300

Attachment 2 – Assembly Bill 1408

BLA #6690

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL**No. 300****Introduced by Assembly Member Caballero**

February 17, 2009

An act to amend, repeal, and add Section 66473.7 of the Government Code, and to amend, repeal, and add Section 10910 of the Water Code, relating to subdivision map approvals.

LEGISLATIVE COUNSEL'S DIGEST

AB 300, as introduced, Caballero. Subdivisions: water supply.

(1) The Subdivision Map Act prohibits approval of a tentative map, or a parcel map for which a tentative map was not required, or a development agreement for a subdivision of property of more than 500 dwelling units, except as specified, including the design of the subdivision or the type of improvement, unless the legislative body of a city or county or the designated advisory agency provides written verification from the applicable public water system that a sufficient water supply is available or, in addition, a specified finding is made by the local agency that sufficient water supplies are, or will be, available prior to completion of the project.

This bill would require, until January 1, 2020, the legislative body of a city or county or the designated advisory agency to approve or disapprove the subdivider's water savings projections attributable to voluntary demand management measures, as defined, after being reviewed by the retail water supplier and verified for accuracy, as specified, by the public water system or the local agency if there is no public water system. Water savings projections would be authorized to be calculated using the water savings projections adopted by the California Urban Water Conservation Council. Water savings projections

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for measures for which the California Urban Water Conservation Council does not have adopted findings would be required to be based on substantial evidence in the record and included in the water supply assessment adopted by the water supplier. If a project applicant proposes to use a new voluntary water reduction demand management measure that is not based on water savings projections adopted by the California Urban Water Conservation Council, the legislative body of a city or county or the advisory agency would be required to have the project applicant enter into an agreement with the water utility to implement and monitor the actual water savings over time, as specified. The public water system would be required to prepare a written report of the projected water demand versus the actual water use 5 years after the project has been fully developed. By adding to the duties of the public water system, this bill would impose a state-mandated local program.

(2) Existing law requires a city or county that determines a project, as defined, is subject to the California Environmental Quality Act to identify any public water system that may supply water for the project and to request those public water systems to prepare a specified water supply assessment. If no public water system is identified, the city or county is required to prepare the water supply assessment.

This bill would require, until January 1, 2020, any city, county, or public water system preparing a water supply assessment to reduce the projected water demand for the project to an amount below the current statutory and regulatory requirements, as defined, based on the project applicant's voluntary water demand management measures, as defined. Water savings projections would be authorized to be calculated using the water savings projections adopted by the California Urban Water Conservation Council. Water savings projections for measures for which the California Urban Water Conservation Council does not have adopted findings would be required to be based on substantial evidence in the record and included in the water supply assessment adopted by the water supplier. If a project applicant proposes to use a new voluntary water reduction demand management measure that is not based on water savings projections adopted by the California Urban Water Conservation Council, the legislative body of a city or county or the advisory agency would be required to have the project applicant enter into an agreement with the water utility to implement and monitor the actual water savings over time, as specified. The public water system would be required to prepare a written report of the projected water demand versus the actual water use 5 years after the project has been fully developed. By adding

to the duties of the public water system, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares:
- 2 (a) Current law requires an assessment of how new land use
- 3 proposals will affect water supply without recognizing the potential
- 4 benefits of evolving voluntary water conservation measures.
- 5 (b) Water conservation measures beyond those already required
- 6 by state law should be encouraged by accounting for their use
- 7 when quantifying project water demand.
- 8 (c) The amount of water demand reductions should be confirmed
- 9 by the water agencies responsible for providing water service to
- 10 new development in a cooperative approach with project
- 11 proponents and local governments that ensures projected water
- 12 savings are achieved.
- 13 (d) Water agencies and local government should provide
- 14 flexibility and encourage the development and implementation of
- 15 innovative new water conservation technology, water use
- 16 efficiency, and water management techniques to meet customer
- 17 needs throughout the differing hydrologic regions of the state.
- 18 (e) Encouraging widespread use of voluntary water conservation
- 19 measures will assist water agencies and the state in documenting
- 20 the potential water savings from new water use efficiency projects
- 21 and programs in a manner that will promote successful water
- 22 conservation strategies and discourage ineffective ones.
- 23 (f) There have been numerous water use efficiency technological
- 24 and management developments related to landscape irrigation in
- 25 recent years, and this act will promote the adoption of approaches
- 26 that go beyond the state’s Model Landscape Ordinance.
- 27 (g) More efficient use of water statewide also will reduce the
- 28 energy necessary to pump, transport, and treat water with

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1 potentially significant corresponding reductions in greenhouse gas
2 emissions.

3 SEC. 2. Section 66473.7 of the Government Code is amended
4 to read:

5 66473.7. (a) For the purposes of this section, the following
6 definitions apply:

7 (1) "Subdivision" means a proposed residential development
8 of more than 500 dwelling units, except that for a public water
9 system that has fewer than 5,000 service connections, "subdivision"
10 means any proposed residential development that would account
11 for an increase of 10 percent or more in the number of the public
12 water system's existing service connections.

13 (2) "Sufficient water supply" means the total water supplies
14 available during normal, single-dry, and multiple-dry years within
15 a 20-year projection that will meet the projected demand associated
16 with the proposed subdivision, in addition to existing and planned
17 future uses, including, but not limited to, agricultural and industrial
18 uses. In determining "sufficient water supply," all of the following
19 factors shall be considered:

20 (A) The availability of water supplies over a historical record
21 of at least 20 years.

22 (B) The applicability of an urban water shortage contingency
23 analysis prepared pursuant to Section 10632 of the Water Code
24 that includes actions to be undertaken by the public water system
25 in response to water supply shortages.

26 (C) The reduction in water supply allocated to a specific water
27 use sector pursuant to a resolution or ordinance adopted, or a
28 contract entered into, by the public water system, as long as that
29 resolution, ordinance, or contract does not conflict with Section
30 354 of the Water Code.

31 (D) The amount of water that the water supplier can reasonably
32 rely on receiving from other water supply projects, such as
33 conjunctive use, reclaimed water, water conservation, and water
34 transfer, including programs identified under federal, state, and
35 local water initiatives such as CALFED and Colorado River
36 tentative agreements, to the extent that these water supplies meet
37 the criteria of subdivision (d).

38 (3) "Public water system" means the water supplier that is, or
39 may become as a result of servicing the subdivision included in a
40 tentative map pursuant to subdivision (b), a public water system,

1 as defined in Section 10912 of the Water Code, that may supply
2 water for a subdivision.

3 (4) *“Projected demand associated with the proposed*
4 *subdivision” means the anticipated water demand for the project,*
5 *given current statutory and regulatory requirements, reduced by*
6 *the amount of voluntary demand management measures.*

7 (5) *“Voluntary demand management measures” means water*
8 *use efficiency measures that are permanently fixed to residential,*
9 *commercial, industrial, or other real property that will reduce the*
10 *subdivision’s water demand below the applicable statutory and*
11 *regulatory requirements for water conservation, and may include,*
12 *but are not limited to, all of the following:*

13 (A) *Smart irrigation controllers.*

14 (B) *Waterless urinals.*

15 (C) *Ultralow flow and dual flow toilets.*

16 (D) *Recycled water facilities.*

17 (E) *Rainwater capture and reuse facilities.*

18 (F) *Any other measure that will prevent the waste of water or*
19 *promote the reasonable and efficient use and reuse of available*
20 *water supplies by the subdivision or the public.*

21 (b) (1) The legislative body of a city or county or the advisory
22 agency, to the extent that it is authorized by local ordinance to
23 approve, conditionally approve, or disapprove the tentative map,
24 shall include as a condition in any tentative map that includes a
25 subdivision a requirement that a sufficient water supply shall be
26 available. Proof of the availability of a sufficient water supply
27 shall be requested by the subdivision applicant or local agency, at
28 the discretion of the local agency, and shall be based on written
29 verification from the applicable public water system within 90
30 days of a request. *The water savings projection attributable to*
31 *voluntary demand management measures shall be contained in*
32 *the written verification and verified for accuracy by the public*
33 *water system, or, if there is no public water system, the local*
34 *agency. The legislative body of a city or county or the advisory*
35 *agency shall approve or disapprove the subdivider’s water savings*
36 *projections attributable to voluntary demand management*
37 *measures after being reviewed by the public water system.*

38 (2) If the public water system fails to deliver the written
39 verification as required by this section, the local agency or any

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1 other interested party may seek a writ of mandamus to compel the
2 public water system to comply.

3 (3) If the written verification provided by the applicable public
4 water system indicates that the public water system is unable to
5 provide a sufficient water supply that will meet the projected
6 demand associated with the proposed subdivision, then the local
7 agency may make a finding, after consideration of the written
8 verification by the applicable public water system, that additional
9 water supplies not accounted for by the public water system are,
10 or will be, available prior to completion of the subdivision that
11 will satisfy the requirements of this section. This finding shall be
12 made on the record and supported by substantial evidence.

13 (4) If the written verification is not provided by the public water
14 system, notwithstanding the local agency or other interested party
15 securing a writ of mandamus to compel compliance with this
16 section, then the local agency may make a finding that sufficient
17 water supplies are, or will be, available prior to completion of the
18 subdivision that will satisfy the requirements of this section. This
19 finding shall be made on the record and supported by substantial
20 evidence.

21 (5) *Water savings projections may be calculated using the water*
22 *savings projections adopted by the California Urban Water*
23 *Conservation Council. Water savings projections for measures*
24 *for which the California Urban Water Conservation Council does*
25 *not have adopted findings shall be based on substantial evidence*
26 *in the record and included in the water supply assessment adopted*
27 *by the water supplier. If a project applicant proposes to use a new*
28 *voluntary water reduction demand management measure that is*
29 *not based on water savings projections adopted by the California*
30 *Urban Water Conservation Council, the legislative body of a city*
31 *or county or the advisory agency shall require the project applicant*
32 *to enter into an agreement with the water utility to implement and*
33 *monitor the actual water savings over time through conditions of*
34 *approval for the project, which may include the adoption of legally*
35 *enforceable mechanisms, such as inclusion in covenants,*
36 *conditions, and restrictions. The public water system shall prepare*
37 *a written report of the projected water demand versus the actual*
38 *water use five years after the project has been fully developed.*

39 (c) The applicable public water system's written verification of
40 its ability or inability to provide a sufficient water supply that will

1 meet the projected demand associated with the proposed
2 subdivision as required by subdivision (b) shall be supported by
3 substantial evidence. The substantial evidence may include, but is
4 not limited to, any of the following:

5 (1) The public water system's most recently adopted urban water
6 management plan adopted pursuant to Part 2.6 (commencing with
7 Section 10610) of Division 6 of the Water Code.

8 (2) A water supply assessment that was completed pursuant to
9 Part 2.10 (commencing with Section 10910) of Division 6 of the
10 Water Code.

11 (3) Other information relating to the sufficiency of the water
12 supply that contains analytical information that is substantially
13 similar to the assessment required by Section 10635 of the Water
14 Code.

15 (d) When the written verification pursuant to subdivision (b)
16 relies on projected water supplies that are not currently available
17 to the public water system, to provide a sufficient water supply to
18 the subdivision, the written verification as to those projected water
19 supplies shall be based on all of the following elements, to the
20 extent each is applicable:

21 (1) Written contracts or other proof of valid rights to the
22 identified water supply that identify the terms and conditions under
23 which the water will be available to serve the proposed subdivision.

24 (2) Copies of a capital outlay program for financing the delivery
25 of a sufficient water supply that has been adopted by the applicable
26 governing body.

27 (3) Securing of applicable federal, state, and local permits for
28 construction of necessary infrastructure associated with supplying
29 a sufficient water supply.

30 (4) Any necessary regulatory approvals that are required in order
31 to be able to convey or deliver a sufficient water supply to the
32 subdivision.

33 (e) If there is no public water system, the local agency shall
34 make a written finding of sufficient water supply based on the
35 evidentiary requirements of subdivisions ~~(e)~~ (b), (c), and (d) and
36 identify the mechanism for providing water to the subdivision.

37 (f) In making any findings or determinations under this section,
38 a local agency, or designated advisory agency, may work in
39 conjunction with the project applicant and the public water system
40 to secure water supplies sufficient to satisfy the demands of the

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1 proposed subdivision. If the local agency secures water supplies
2 pursuant to this subdivision, which supplies are acceptable to and
3 approved by the governing body of the public water system as
4 suitable for delivery to customers, it shall work in conjunction
5 with the public water system to implement a plan to deliver that
6 water supply to satisfy the long-term demands of the proposed
7 subdivision.

8 (g) The written verification prepared under this section *also*
9 shall ~~also~~ include a description, to the extent that data is reasonably
10 available based on published records maintained by federal and
11 state agencies, and public records of local agencies, of the
12 reasonably foreseeable impacts of the proposed subdivision on the
13 availability of water resources for agricultural and industrial uses
14 within the public water system's service area that are not currently
15 receiving water from the public water system but are utilizing the
16 same sources of water. To the extent that those reasonably
17 foreseeable impacts have previously been evaluated in a document
18 prepared pursuant to the California Environmental Quality Act
19 (Division 13 (commencing with Section 21000) of the Public
20 Resources Code) or the National Environmental Policy Act (~~Public~~
21 ~~Law~~ (*P.L.* 91-190) for the proposed subdivision, the public water
22 system may utilize that information in preparing the written
23 verification.

24 (h) Where a water supply for a proposed subdivision includes
25 groundwater, the public water system serving the proposed
26 subdivision shall evaluate, based on substantial evidence, the extent
27 to which it or the landowner has the right to extract the additional
28 groundwater needed to supply the proposed subdivision. Nothing
29 in this subdivision is intended to modify state law with regard to
30 groundwater rights.

31 (i) This section shall not apply to any residential project
32 proposed for a site that is within an urbanized area and has been
33 previously developed for urban uses, or where the immediate
34 contiguous properties surrounding the residential project site are,
35 or previously have been, developed for urban uses, or housing
36 projects that are exclusively for very low and low-income
37 households.

38 (j) The determinations made pursuant to this section shall be
39 consistent with the obligation of a public water system to grant a
40 priority for the provision of available and future water resources

1 or services to proposed housing developments that help meet the
2 city's or county's share of the regional housing needs for lower
3 income households, pursuant to Section 65589.7.

4 (k) The County of San Diego shall be deemed to comply with
5 this section if the Office of Planning and Research determines that
6 all of the following conditions have been met:

7 (1) A regional growth management strategy that provides for a
8 comprehensive regional strategy and a coordinated economic
9 development and growth management program has been developed
10 pursuant to Proposition C as approved by the voters of the County
11 of San Diego in November 1988, which required the development
12 of a regional growth management plan and directed the
13 establishment of a regional planning and growth management
14 review board.

15 (2) Each public water system, as defined in Section 10912 of
16 the Water Code, within the County of San Diego has adopted an
17 urban water management plan pursuant to Part 2.6 (commencing
18 with Section 10610) of the Water Code.

19 (3) The approval or conditional approval of tentative maps for
20 subdivisions, as defined in this section, by the County of San Diego
21 and the cities within the county requires written communications
22 to be made by the public water system to the city or county, in a
23 format and with content that is substantially similar to the
24 requirements contained in this section, with regard to the
25 availability of a sufficient water supply, or the reliance on projected
26 water supplies to provide a sufficient water supply, for a proposed
27 subdivision.

28 (l) Nothing in this section shall preclude the legislative body of
29 a city or county, or the designated advisory agency, at the request
30 of the applicant, from making the determinations required in this
31 section earlier than required pursuant to subdivision (b).

32 (m) Nothing in this section shall be construed to create a right
33 or entitlement to water service or any specific level of water
34 service.

35 (n) Nothing in this section is intended to change existing law
36 concerning a public water system's obligation to provide water
37 service to its existing customers or to any potential future
38 customers.

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1 (o) Any action challenging the sufficiency of the public water
2 system’s written verification of a sufficient water supply shall be
3 governed by Section 66499.37.

4 (p) *This section shall remain in effect only until January 1, 2020,*
5 *and as of that date is repealed, unless a later enacted statute, that*
6 *is enacted before January 1, 2020, deletes or extends that date.*

7 SEC. 3. Section 66473.7 is added to the Government Code, to
8 read:

9 66473.7. (a) For the purposes of this section, the following
10 definitions apply:

11 (1) “Subdivision” means a proposed residential development
12 of more than 500 dwelling units, except that for a public water
13 system that has fewer than 5,000 service connections, “subdivision”
14 means any proposed residential development that would account
15 for an increase of 10 percent or more in the number of the public
16 water system’s existing service connections.

17 (2) “Sufficient water supply” means the total water supplies
18 available during normal, single-dry, and multiple-dry years within
19 a 20-year projection that will meet the projected demand associated
20 with the proposed subdivision, in addition to existing and planned
21 future uses, including, but not limited to, agricultural and industrial
22 uses. In determining “sufficient water supply,” all of the following
23 factors shall be considered:

24 (A) The availability of water supplies over a historical record
25 of at least 20 years.

26 (B) The applicability of an urban water shortage contingency
27 analysis prepared pursuant to Section 10632 of the Water Code
28 that includes actions to be undertaken by the public water system
29 in response to water supply shortages.

30 (C) The reduction in water supply allocated to a specific water
31 use sector pursuant to a resolution or ordinance adopted, or a
32 contract entered into, by the public water system, as long as that
33 resolution, ordinance, or contract does not conflict with Section
34 354 of the Water Code.

35 (D) The amount of water that the water supplier can reasonably
36 rely on receiving from other water supply projects, such as
37 conjunctive use, reclaimed water, water conservation, and water
38 transfer, including programs identified under federal, state, and
39 local water initiatives such as CALFED and Colorado River

1 tentative agreements, to the extent that these water supplies meet
2 the criteria of subdivision (d).

3 (3) “Public water system” means the water supplier that is, or
4 may become as a result of servicing the subdivision included in a
5 tentative map pursuant to subdivision (b), a public water system,
6 as defined in Section 10912 of the Water Code, that may supply
7 water for a subdivision.

8 (b) (1) The legislative body of a city or county or the advisory
9 agency, to the extent that it is authorized by local ordinance to
10 approve, conditionally approve, or disapprove the tentative map,
11 shall include as a condition in any tentative map that includes a
12 subdivision a requirement that a sufficient water supply shall be
13 available. Proof of the availability of a sufficient water supply
14 shall be requested by the subdivision applicant or local agency, at
15 the discretion of the local agency, and shall be based on written
16 verification from the applicable public water system within 90
17 days of a request.

18 (2) If the public water system fails to deliver the written
19 verification as required by this section, the local agency or any
20 other interested party may seek a writ of mandamus to compel the
21 public water system to comply.

22 (3) If the written verification provided by the applicable public
23 water system indicates that the public water system is unable to
24 provide a sufficient water supply that will meet the projected
25 demand associated with the proposed subdivision, then the local
26 agency may make a finding, after consideration of the written
27 verification by the applicable public water system, that additional
28 water supplies not accounted for by the public water system are,
29 or will be, available prior to completion of the subdivision that
30 will satisfy the requirements of this section. This finding shall be
31 made on the record and supported by substantial evidence.

32 (4) If the written verification is not provided by the public water
33 system, notwithstanding the local agency or other interested party
34 securing a writ of mandamus to compel compliance with this
35 section, then the local agency may make a finding that sufficient
36 water supplies are, or will be, available prior to completion of the
37 subdivision that will satisfy the requirements of this section. This
38 finding shall be made on the record and supported by substantial
39 evidence.

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1 (c) The applicable public water system’s written verification of
2 its ability or inability to provide a sufficient water supply that will
3 meet the projected demand associated with the proposed
4 subdivision as required by subdivision (b) shall be supported by
5 substantial evidence. The substantial evidence may include, but is
6 not limited to, any of the following:

7 (1) The public water system’s most recently adopted urban water
8 management plan adopted pursuant to Part 2.6 (commencing with
9 Section 10610) of Division 6 of the Water Code.

10 (2) A water supply assessment that was completed pursuant to
11 Part 2.10 (commencing with Section 10910) of Division 6 of the
12 Water Code.

13 (3) Other information relating to the sufficiency of the water
14 supply that contains analytical information that is substantially
15 similar to the assessment required by Section 10635 of the Water
16 Code.

17 (d) When the written verification pursuant to subdivision (b)
18 relies on projected water supplies that are not currently available
19 to the public water system, to provide a sufficient water supply to
20 the subdivision, the written verification as to those projected water
21 supplies shall be based on all of the following elements, to the
22 extent each is applicable:

23 (1) Written contracts or other proof of valid rights to the
24 identified water supply that identify the terms and conditions under
25 which the water will be available to serve the proposed subdivision.

26 (2) Copies of a capital outlay program for financing the delivery
27 of a sufficient water supply that has been adopted by the applicable
28 governing body.

29 (3) Securing of applicable federal, state, and local permits for
30 construction of necessary infrastructure associated with supplying
31 a sufficient water supply.

32 (4) Any necessary regulatory approvals that are required in order
33 to be able to convey or deliver a sufficient water supply to the
34 subdivision.

35 (e) If there is no public water system, the local agency shall
36 make a written finding of sufficient water supply based on the
37 evidentiary requirements of subdivisions (c) and (d) and identify
38 the mechanism for providing water to the subdivision.

39 (f) In making any findings or determinations under this section,
40 a local agency, or designated advisory agency, may work in

1 conjunction with the project applicant and the public water system
2 to secure water supplies sufficient to satisfy the demands of the
3 proposed subdivision. If the local agency secures water supplies
4 pursuant to this subdivision, which supplies are acceptable to and
5 approved by the governing body of the public water system as
6 suitable for delivery to customers, it shall work in conjunction
7 with the public water system to implement a plan to deliver that
8 water supply to satisfy the long-term demands of the proposed
9 subdivision.

10 (g) The written verification prepared under this section also
11 shall include a description, to the extent that data is reasonably
12 available based on published records maintained by federal and
13 state agencies, and public records of local agencies, of the
14 reasonably foreseeable impacts of the proposed subdivision on the
15 availability of water resources for agricultural and industrial uses
16 within the public water system's service area that are not currently
17 receiving water from the public water system but are utilizing the
18 same sources of water. To the extent that those reasonably
19 foreseeable impacts have previously been evaluated in a document
20 prepared pursuant to the California Environmental Quality Act
21 (Division 13 (commencing with Section 21000) of the Public
22 Resources Code) or the National Environmental Policy Act (P.L.
23 91-190) for the proposed subdivision, the public water system may
24 utilize that information in preparing the written verification.

25 (h) Where a water supply for a proposed subdivision includes
26 groundwater, the public water system serving the proposed
27 subdivision shall evaluate, based on substantial evidence, the extent
28 to which it or the landowner has the right to extract the additional
29 groundwater needed to supply the proposed subdivision. Nothing
30 in this subdivision is intended to modify state law with regard to
31 groundwater rights.

32 (i) This section shall not apply to any residential project
33 proposed for a site that is within an urbanized area and has been
34 previously developed for urban uses, or where the immediate
35 contiguous properties surrounding the residential project site are,
36 or previously have been, developed for urban uses, or housing
37 projects that are exclusively for very low and low-income
38 households.

39 (j) The determinations made pursuant to this section shall be
40 consistent with the obligation of a public water system to grant a

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1 priority for the provision of available and future water resources
2 or services to proposed housing developments that help meet the
3 city's or county's share of the regional housing needs for lower
4 income households, pursuant to Section 65589.7.

5 (k) The County of San Diego shall be deemed to comply with
6 this section if the Office of Planning and Research determines that
7 all of the following conditions have been met:

8 (1) A regional growth management strategy that provides for a
9 comprehensive regional strategy and a coordinated economic
10 development and growth management program has been developed
11 pursuant to Proposition C as approved by the voters of the County
12 of San Diego in November 1988, which required the development
13 of a regional growth management plan and directed the
14 establishment of a regional planning and growth management
15 review board.

16 (2) Each public water system, as defined in Section 10912 of
17 the Water Code, within the County of San Diego has adopted an
18 urban water management plan pursuant to Part 2.6 (commencing
19 with Section 10610) of the Water Code.

20 (3) The approval or conditional approval of tentative maps for
21 subdivisions, as defined in this section, by the County of San Diego
22 and the cities within the county requires written communications
23 to be made by the public water system to the city or county, in a
24 format and with content that is substantially similar to the
25 requirements contained in this section, with regard to the
26 availability of a sufficient water supply, or the reliance on projected
27 water supplies to provide a sufficient water supply, for a proposed
28 subdivision.

29 (l) Nothing in this section shall preclude the legislative body of
30 a city or county, or the designated advisory agency, at the request
31 of the applicant, from making the determinations required in this
32 section earlier than required pursuant to subdivision (b).

33 (m) Nothing in this section shall be construed to create a right
34 or entitlement to water service or any specific level of water
35 service.

36 (n) Nothing in this section is intended to change existing law
37 concerning a public water system's obligation to provide water
38 service to its existing customers or to any potential future
39 customers.

1 (o) Any action challenging the sufficiency of the public water
2 system's written verification of a sufficient water supply shall be
3 governed by Section 66499.37.

4 (p) This section shall become operative on January 1, 2020.

5 SEC. 4. Section 10910 of the Water Code is amended to read:

6 10910. (a) Any city or county that determines that a project,
7 as defined in Section 10912, is subject to the California
8 Environmental Quality Act (Division 13 (commencing with Section
9 21000) of the Public Resources Code) under Section 21080 of the
10 Public Resources Code shall comply with this part.

11 (b) The city or county, at the time that it determines whether an
12 environmental impact report, a negative declaration, or a mitigated
13 negative declaration is required for any project subject to the
14 California Environmental Quality Act pursuant to Section 21080.1
15 of the Public Resources Code, shall identify any water system that
16 is, or may become as a result of supplying water to the project
17 identified pursuant to this subdivision, a public water system, as
18 defined in Section 10912, that may supply water for the project.
19 If the city or county is not able to identify any public water system
20 that may supply water for the project, the city or county shall
21 prepare the water assessment required by this part after consulting
22 with any entity serving domestic water supplies whose service
23 area includes the project site, the local agency formation
24 commission, and any public water system adjacent to the project
25 site.

26 (c) (1) The city or county, at the time it makes the determination
27 required under Section 21080.1 of the Public Resources Code,
28 shall request each public water system identified pursuant to
29 subdivision (b) to determine whether the projected water demand
30 associated with a proposed project was included as part of the most
31 recently adopted urban water management plan adopted pursuant
32 to Part 2.6 (commencing with Section 10610).

33 (2) If the projected water demand associated with the proposed
34 project was accounted for in the most recently adopted urban water
35 management plan, the public water system may incorporate the
36 requested information from the urban water management plan in
37 preparing the elements of the assessment required to comply with
38 subdivisions (d), (e), (f), and (g).

39 (3) If the projected water demand associated with the proposed
40 project was not accounted for in the most recently adopted urban

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1 water management plan, or the public water system has no urban
2 water management plan, the water supply assessment for the project
3 shall include a discussion with regard to whether the public water
4 system's total projected water supplies available during normal,
5 single dry, and multiple dry water years during a 20-year projection
6 will meet the projected water demand associated with the proposed
7 project, in addition to the public water system's existing and
8 planned future uses, including agricultural and manufacturing uses.

9 (4) If the city or county is required to comply with this part
10 pursuant to subdivision (b), the water supply assessment for the
11 project shall include a discussion with regard to whether the total
12 projected water supplies, determined to be available by the city or
13 county for the project during normal, single dry, and multiple dry
14 water years during a 20-year projection, will meet the projected
15 water demand associated with the proposed project, in addition to
16 existing and planned future uses, including agricultural and
17 manufacturing uses.

18 (5) *The projected water demand shall be reduced for the project*
19 *to an amount below the current statutory and regulatory*
20 *requirements, as defined in Section 10912, based on the project*
21 *applicant's voluntary water demand management measures. The*
22 *public water system, or, if there is no public water system, the*
23 *local agency, shall quantify the reduction of anticipated water*
24 *demand attributable to the voluntary demand management*
25 *measures. For purposes of this section, "voluntary water demand*
26 *management measures" means water use efficiency measures*
27 *below statutory and regulatory requirements that are permanently*
28 *fixed to residential, commercial, industrial, or other real property*
29 *that will reduce projected water demand, and may include, but*
30 *are not limited to, all of the following:*

31 (A) *Smart irrigation controllers.*

32 (B) *Waterless urinals.*

33 (C) *Ultralow flow and dual flow toilets.*

34 (D) *Recycled water facilities.*

35 (E) *Rainwater capture and reuse facilities.*

36 (F) *Any other measure that will prevent the waste of water or*
37 *promote the reasonable and efficient use and reuse of available*
38 *water supplies by the subdivision or the public.*

39 (6) *Water savings projections may be calculated using the water*
40 *savings projections adopted by the California Urban Water*

1 *Conservation Council. Water savings projections for measures*
2 *for which the California Urban Water Conservation Council does*
3 *not have adopted findings shall be based on substantial evidence*
4 *in the record and included in the water supply assessment adopted*
5 *by the water supplier. If a project applicant proposes to use a new*
6 *voluntary water reduction demand management measure that is*
7 *not based on water savings projections adopted by the California*
8 *Urban Water Conservation Council, the legislative body of a city*
9 *or county or the advisory agency shall require the project applicant*
10 *to enter into an agreement with the water utility to implement and*
11 *monitor the actual water savings over time through conditions of*
12 *approval for the project, which may include the adoption of legally*
13 *enforceable mechanisms, such as inclusion in covenants,*
14 *conditions, and restrictions. The public water system shall prepare*
15 *a written report of the projected water demand versus the actual*
16 *water use five years after the project has been fully developed.*

17 (d) (1) The assessment required by this section shall include
18 an identification of any existing water supply entitlements, water
19 rights, or water service contracts relevant to the identified water
20 supply for the proposed project, and a description of the quantities
21 of water received in prior years by the public water system, or the
22 city or county if either is required to comply with this part pursuant
23 to subdivision (b), under the existing water supply entitlements,
24 water rights, or water service contracts.

25 (2) An identification of existing water supply entitlements, water
26 rights, or water service contracts held by the public water system,
27 or the city or county if either is required to comply with this part
28 pursuant to subdivision (b), shall be demonstrated by providing
29 information related to all of the following:

30 (A) Written contracts or other proof of entitlement to an
31 identified water supply.

32 (B) Copies of a capital outlay program for financing the delivery
33 of a water supply that has been adopted by the public water system.

34 (C) Federal, state, and local permits for construction of necessary
35 infrastructure associated with delivering the water supply.

36 (D) Any necessary regulatory approvals that are required in
37 order to be able to convey or deliver the water supply.

38 (e) If no water has been received in prior years by the public
39 water system, or the city or county if either is required to comply
40 with this part pursuant to subdivision (b), under the existing water

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1 supply entitlements, water rights, or water service contracts, the
2 public water system, or the city or county if either is required to
3 comply with this part pursuant to subdivision (b), shall also include
4 in its water supply assessment pursuant to subdivision (c), an
5 identification of the other public water systems or water service
6 contractholders that receive a water supply or have existing water
7 supply entitlements, water rights, or water service contracts, to the
8 same source of water as the public water system, or the city or
9 county if either is required to comply with this part pursuant to
10 subdivision (b), has identified as a source of water supply within
11 its water supply assessments.

12 (f) If a water supply for a proposed project includes
13 groundwater, the following additional information shall be included
14 in the water supply assessment:

15 (1) A review of any information contained in the urban water
16 management plan relevant to the identified water supply for the
17 proposed project.

18 (2) A description of any groundwater basin or basins from which
19 the proposed project will be supplied. For those basins for which
20 a court or the board has adjudicated the rights to pump
21 groundwater, a copy of the order or decree adopted by the court
22 or the board and a description of the amount of groundwater the
23 public water system, or the city or county if either is required to
24 comply with this part pursuant to subdivision (b), has the legal
25 right to pump under the order or decree. For basins that have not
26 been adjudicated, information as to whether the department has
27 identified the basin or basins as overdrafted or has projected that
28 the basin will become overdrafted if present management
29 conditions continue, in the most current bulletin of the department
30 that characterizes the condition of the groundwater basin, and a
31 detailed description by the public water system, or the city or
32 county if either is required to comply with this part pursuant to
33 subdivision (b), of the efforts being undertaken in the basin or
34 basins to eliminate the long-term overdraft condition.

35 (3) A detailed description and analysis of the amount and
36 location of groundwater pumped by the public water system, or
37 the city or county if either is required to comply with this part
38 pursuant to subdivision (b), for the past five years from any
39 groundwater basin from which the proposed project will be
40 supplied. The description and analysis shall be based on

1 information that is reasonably available, including, but not limited
2 to, historic use records.

3 (4) A detailed description and analysis of the amount and
4 location of groundwater that is projected to be pumped by the
5 public water system, or the city or county if either is required to
6 comply with this part pursuant to subdivision (b), from any basin
7 from which the proposed project will be supplied. The description
8 and analysis shall be based on information that is reasonably
9 available, including, but not limited to, historic use records.

10 (5) An analysis of the sufficiency of the groundwater from the
11 basin or basins from which the proposed project will be supplied
12 to meet the projected water demand associated with the proposed
13 project. A water supply assessment shall not be required to include
14 the information required by this paragraph if the public water
15 system determines, as part of the review required by paragraph
16 (1), that the sufficiency of groundwater necessary to meet the initial
17 and projected water demand associated with the project was
18 addressed in the description and analysis required by paragraph
19 (4) of subdivision (b) of Section 10631.

20 (g) (1) Subject to paragraph (2), the governing body of each
21 public water system shall submit the assessment to the city or
22 county not later than 90 days from the date on which the request
23 was received. The governing body of each public water system,
24 or the city or county if either is required to comply with this act
25 pursuant to subdivision (b), shall approve the assessment prepared
26 pursuant to this section at a regular or special meeting.

27 (2) Prior to the expiration of the 90-day period, if the public
28 water system intends to request an extension of time to prepare
29 and adopt the assessment, the public water system shall meet with
30 the city or county to request an extension of time, which shall not
31 exceed 30 days, to prepare and adopt the assessment.

32 (3) If the public water system fails to request an extension of
33 time, or fails to submit the assessment notwithstanding the
34 extension of time granted pursuant to paragraph (2), the city or
35 county may seek a writ of mandamus to compel the governing
36 body of the public water system to comply with the requirements
37 of this part relating to the submission of the water supply
38 assessment.

39 (h) Notwithstanding any other provision of this part, if a project
40 has been the subject of a water supply assessment that complies

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1 with the requirements of this part, no additional water supply
2 assessment shall be required for subsequent projects that were part
3 of a larger project for which a water supply assessment was
4 completed and that has complied with the requirements of this part
5 and for which the public water system, or the city or county if
6 either is required to comply with this part pursuant to subdivision
7 (b), has concluded that its water supplies are sufficient to meet the
8 projected water demand associated with the proposed project, in
9 addition to the existing and planned future uses, including, but not
10 limited to, agricultural and industrial uses, unless one or more of
11 the following changes occurs:

12 (1) Changes in the project that result in a substantial increase
13 in water demand for the project.

14 (2) Changes in the circumstances or conditions substantially
15 affecting the ability of the public water system, or the city or county
16 if either is required to comply with this part pursuant to subdivision
17 (b), to provide a sufficient supply of water for the project.

18 (3) Significant new information becomes available which was
19 not known and could not have been known at the time when the
20 assessment was prepared.

21 *(i) This section shall remain in effect only until January 1, 2020,*
22 *and as of that date is repealed, unless a later enacted statute, that*
23 *is enacted before January 1, 2020, deletes or extends that date.*

24 SEC. 5. Section 10910 is added to the Water Code, to read:

25 10910. (a) Any city or county that determines that a project,
26 as defined in Section 10912, is subject to the California
27 Environmental Quality Act (Division 13 (commencing with Section
28 21000) of the Public Resources Code) under Section 21080 of the
29 Public Resources Code shall comply with this part.

30 (b) The city or county, at the time that it determines whether an
31 environmental impact report, a negative declaration, or a mitigated
32 negative declaration is required for any project subject to the
33 California Environmental Quality Act pursuant to Section 21080.1
34 of the Public Resources Code, shall identify any water system that
35 is, or may become as a result of supplying water to the project
36 identified pursuant to this subdivision, a public water system, as
37 defined in Section 10912, that may supply water for the project.
38 If the city or county is not able to identify any public water system
39 that may supply water for the project, the city or county shall
40 prepare the water assessment required by this part after consulting

1 with any entity serving domestic water supplies whose service
2 area includes the project site, the local agency formation
3 commission, and any public water system adjacent to the project
4 site.

5 (c) (1) The city or county, at the time it makes the determination
6 required under Section 21080.1 of the Public Resources Code,
7 shall request each public water system identified pursuant to
8 subdivision (b) to determine whether the projected water demand
9 associated with a proposed project was included as part of the most
10 recently adopted urban water management plan adopted pursuant
11 to Part 2.6 (commencing with Section 10610).

12 (2) If the projected water demand associated with the proposed
13 project was accounted for in the most recently adopted urban water
14 management plan, the public water system may incorporate the
15 requested information from the urban water management plan in
16 preparing the elements of the assessment required to comply with
17 subdivisions (d), (e), (f), and (g).

18 (3) If the projected water demand associated with the proposed
19 project was not accounted for in the most recently adopted urban
20 water management plan, or the public water system has no urban
21 water management plan, the water supply assessment for the project
22 shall include a discussion with regard to whether the public water
23 system's total projected water supplies available during normal,
24 single dry, and multiple dry water years during a 20-year projection
25 will meet the projected water demand associated with the proposed
26 project, in addition to the public water system's existing and
27 planned future uses, including agricultural and manufacturing uses.

28 (4) If the city or county is required to comply with this part
29 pursuant to subdivision (b), the water supply assessment for the
30 project shall include a discussion with regard to whether the total
31 projected water supplies, determined to be available by the city or
32 county for the project during normal, single dry, and multiple dry
33 water years during a 20-year projection, will meet the projected
34 water demand associated with the proposed project, in addition to
35 existing and planned future uses, including agricultural and
36 manufacturing uses.

37 (d) (1) The assessment required by this section shall include
38 an identification of any existing water supply entitlements, water
39 rights, or water service contracts relevant to the identified water
40 supply for the proposed project, and a description of the quantities

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1 of water received in prior years by the public water system, or the
2 city or county if either is required to comply with this part pursuant
3 to subdivision (b), under the existing water supply entitlements,
4 water rights, or water service contracts.

5 (2) An identification of existing water supply entitlements, water
6 rights, or water service contracts held by the public water system,
7 or the city or county if either is required to comply with this part
8 pursuant to subdivision (b), shall be demonstrated by providing
9 information related to all of the following:

10 (A) Written contracts or other proof of entitlement to an
11 identified water supply.

12 (B) Copies of a capital outlay program for financing the delivery
13 of a water supply that has been adopted by the public water system.

14 (C) Federal, state, and local permits for construction of necessary
15 infrastructure associated with delivering the water supply.

16 (D) Any necessary regulatory approvals that are required in
17 order to be able to convey or deliver the water supply.

18 (e) If no water has been received in prior years by the public
19 water system, or the city or county if either is required to comply
20 with this part pursuant to subdivision (b), under the existing water
21 supply entitlements, water rights, or water service contracts, the
22 public water system, or the city or county if either is required to
23 comply with this part pursuant to subdivision (b), shall also include
24 in its water supply assessment pursuant to subdivision (c), an
25 identification of the other public water systems or water service
26 contractholders that receive a water supply or have existing water
27 supply entitlements, water rights, or water service contracts, to the
28 same source of water as the public water system, or the city or
29 county if either is required to comply with this part pursuant to
30 subdivision (b), has identified as a source of water supply within
31 its water supply assessments.

32 (f) If a water supply for a proposed project includes
33 groundwater, the following additional information shall be included
34 in the water supply assessment:

35 (1) A review of any information contained in the urban water
36 management plan relevant to the identified water supply for the
37 proposed project.

38 (2) A description of any groundwater basin or basins from which
39 the proposed project will be supplied. For those basins for which
40 a court or the board has adjudicated the rights to pump

1 groundwater, a copy of the order or decree adopted by the court
2 or the board and a description of the amount of groundwater the
3 public water system, or the city or county if either is required to
4 comply with this part pursuant to subdivision (b), has the legal
5 right to pump under the order or decree. For basins that have not
6 been adjudicated, information as to whether the department has
7 identified the basin or basins as overdrafted or has projected that
8 the basin will become overdrafted if present management
9 conditions continue, in the most current bulletin of the department
10 that characterizes the condition of the groundwater basin, and a
11 detailed description by the public water system, or the city or
12 county if either is required to comply with this part pursuant to
13 subdivision (b), of the efforts being undertaken in the basin or
14 basins to eliminate the long-term overdraft condition.

15 (3) A detailed description and analysis of the amount and
16 location of groundwater pumped by the public water system, or
17 the city or county if either is required to comply with this part
18 pursuant to subdivision (b), for the past five years from any
19 groundwater basin from which the proposed project will be
20 supplied. The description and analysis shall be based on
21 information that is reasonably available, including, but not limited
22 to, historic use records.

23 (4) A detailed description and analysis of the amount and
24 location of groundwater that is projected to be pumped by the
25 public water system, or the city or county if either is required to
26 comply with this part pursuant to subdivision (b), from any basin
27 from which the proposed project will be supplied. The description
28 and analysis shall be based on information that is reasonably
29 available, including, but not limited to, historic use records.

30 (5) An analysis of the sufficiency of the groundwater from the
31 basin or basins from which the proposed project will be supplied
32 to meet the projected water demand associated with the proposed
33 project. A water supply assessment shall not be required to include
34 the information required by this paragraph if the public water
35 system determines, as part of the review required by paragraph
36 (1), that the sufficiency of groundwater necessary to meet the initial
37 and projected water demand associated with the project was
38 addressed in the description and analysis required by paragraph
39 (4) of subdivision (b) of Section 10631.

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1 (g) (1) Subject to paragraph (2), the governing body of each
2 public water system shall submit the assessment to the city or
3 county not later than 90 days from the date on which the request
4 was received. The governing body of each public water system,
5 or the city or county if either is required to comply with this act
6 pursuant to subdivision (b), shall approve the assessment prepared
7 pursuant to this section at a regular or special meeting.

8 (2) Prior to the expiration of the 90-day period, if the public
9 water system intends to request an extension of time to prepare
10 and adopt the assessment, the public water system shall meet with
11 the city or county to request an extension of time, which shall not
12 exceed 30 days, to prepare and adopt the assessment.

13 (3) If the public water system fails to request an extension of
14 time, or fails to submit the assessment notwithstanding the
15 extension of time granted pursuant to paragraph (2), the city or
16 county may seek a writ of mandamus to compel the governing
17 body of the public water system to comply with the requirements
18 of this part relating to the submission of the water supply
19 assessment.

20 (h) Notwithstanding any other provision of this part, if a project
21 has been the subject of a water supply assessment that complies
22 with the requirements of this part, no additional water supply
23 assessment shall be required for subsequent projects that were part
24 of a larger project for which a water supply assessment was
25 completed and that has complied with the requirements of this part
26 and for which the public water system, or the city or county if
27 either is required to comply with this part pursuant to subdivision
28 (b), has concluded that its water supplies are sufficient to meet the
29 projected water demand associated with the proposed project, in
30 addition to the existing and planned future uses, including, but not
31 limited to, agricultural and industrial uses, unless one or more of
32 the following changes occurs:

33 (1) Changes in the project that result in a substantial increase
34 in water demand for the project.

35 (2) Changes in the circumstances or conditions substantially
36 affecting the ability of the public water system, or the city or county
37 if either is required to comply with this part pursuant to subdivision
38 (b), to provide a sufficient supply of water for the project.

1 (3) Significant new information becomes available which was
2 not known and could not have been known at the time when the
3 assessment was prepared.

4 (i) This section shall become operative on January 1, 2020.

5 SEC. 6. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 a local agency or school district has the authority to levy service
8 charges, fees, or assessments sufficient to pay for the program or
9 level of service mandated by this act, within the meaning of Section
10 17556 of the Government Code.

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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL**No. 1408****Introduced by Assembly Member Krekorian**

February 27, 2009

An act to amend Section 66473.7 of the Government Code, relating to subdivision map approvals.

LEGISLATIVE COUNSEL'S DIGEST

AB 1408, as introduced, Krekorian. Subdivisions: Water Conservation Mitigation Fund.

(1) The Subdivision Map Act establishes a statewide regulatory framework for controlling the subdividing of land. The act generally requires a subdivider to submit, and have approved by the city, county, or city and county in which the land is situated, a tentative map. The act requires the legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, to include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply be available. The act authorizes the legislative body to request written verification of sufficient water supply, and, when the written verification relies on projected water supplies that are not currently available to the public water system to provide a sufficient water supply to the subdivision, requires that the written verification as to those projected water supplies be based on prescribed elements.

This bill would establish a Water Conservation Mitigation Fund to be administered, as specified, by a public water system. A legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or

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disapprove the tentative map, would be required to include as a condition in any tentative map that includes a subdivision a requirement that the subdivision have a sufficient water supply be available or that sufficient water supplies will be made available through a Water Conservation Mitigation Fund held by the public water system. The amount of funding needed for voluntary participation by the subdivision applicant in the Water Conservation Mitigation Fund would be required to be based on offsetting at least 100 percent of the projected water demand associated with the subdivision, as determined by the public water system. The public water system would be required to expend all funds in the Water Conservation Mitigation Fund on water conservation measures that will offset at least 100 percent of the projected demand associated with the subdivision, as specified. By adding to the duties of public water system officials, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66473.7 of the Government Code is
2 amended to read:

3 66473.7. (a) For ~~the~~ purposes of this section, the following
4 definitions apply:

5 (1) "Subdivision" means a proposed residential development
6 of more than 500 dwelling units, except that for a public water
7 system that has fewer than 5,000 service connections, "subdivision"
8 means any proposed residential development that would account
9 for an increase of 10 percent or more in the number of the public
10 water system's existing service connections.

11 (2) "Sufficient water supply" means the total water supplies
12 available during normal, single-dry, and multiple-dry years within
13 a 20-year projection that will meet the projected demand associated
14 with the proposed subdivision, in addition to existing and planned

1 future uses, including, but not limited to, agricultural and industrial
2 uses. In determining “sufficient water supply,” all of the following
3 factors shall be considered:

4 (A) The availability of water supplies over a historical record
5 of at least 20 years.

6 (B) The applicability of an urban water shortage contingency
7 analysis prepared pursuant to Section 10632 of the Water Code
8 that includes actions to be undertaken by the public water system
9 in response to water supply shortages.

10 (C) The reduction in water supply allocated to a specific water
11 use sector pursuant to a resolution or ordinance adopted, or a
12 contract entered into, by the public water system, as long as that
13 resolution, ordinance, or contract does not conflict with Section
14 354 of the Water Code.

15 (D) The amount of water that the water supplier can reasonably
16 rely on receiving from other water supply projects, such as
17 conjunctive use, reclaimed water, water conservation, and water
18 transfer, including programs identified under federal, state, and
19 local water initiatives such as CALFED and Colorado River
20 tentative agreements, to the extent that these water supplies meet
21 the criteria of subdivision (d).

22 (3) “Public water system” means the water supplier that is, or
23 may become as a result of servicing the subdivision included in a
24 tentative map pursuant to subdivision (b), a public water system,
25 as defined in Section 10912 of the Water Code, that may supply
26 water for a subdivision.

27 (4) *“Projected water demand associated with the subdivision”*
28 *means the projected water demand associated with the subdivision*
29 *based on physical characteristics of the subdivision, including,*
30 *but not limited to, lot size and use, water using fixtures, current*
31 *local ordinances, statutory and regulatory requirements, and*
32 *permanently fixed extraordinary water conservation measures, as*
33 *determined by the public water system.*

34 (5) *“Water Conservation Mitigation Fund” means the fund used*
35 *to finance conservation measures that would achieve water savings*
36 *equivalent to the projected water demand associated with the*
37 *subdivision, as determined by the public water system.*

38 (b) (1) The legislative body of a city or county or the advisory
39 agency, to the extent that it is authorized by local ordinance to
40 approve, conditionally approve, or disapprove the tentative map,

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1 shall include as a condition in any tentative map that includes a
2 subdivision a requirement that a sufficient water supply shall be
3 available *or that sufficient water supplies will be made available*
4 *through a Water Conservation Mitigation Fund held by the public*
5 *water system. The amount of funding needed for voluntary*
6 *participation by the subdivision applicant in the Water*
7 *Conservation Mitigation Fund shall be based on offsetting at least*
8 *100 percent of the projected water demand associated with the*
9 *subdivision, as determined by the public water system. Proof of*
10 *the availability of a sufficient water supply and, where applicable,*
11 *participation in the Water Conservation Mitigation Fund shall be*
12 *requested by the subdivision applicant or local agency, at the*
13 *discretion of the local agency, and shall be based on written*
14 *verification from the applicable public water system within 90*
15 *days of a request.*

16 (2) If the public water system fails to deliver the written
17 verification as required by this section, the local agency or any
18 other interested party may seek a writ of mandamus to compel the
19 public water system to comply.

20 (3) If the written verification provided by the applicable public
21 water system indicates that the public water system is unable to
22 provide a sufficient water supply that will meet the projected
23 demand associated with the proposed subdivision, then the local
24 agency may make a finding, after consideration of the written
25 verification by the applicable public water system, that additional
26 water supplies not accounted for by the public water system are,
27 or will be, available prior to completion of the subdivision that
28 will satisfy the requirements of this section. This finding shall be
29 made on the record and supported by substantial evidence.

30 (4) If the written verification is not provided by the public water
31 system, notwithstanding the local agency or other interested party
32 securing a writ of mandamus to compel compliance with this
33 section, then the local agency may make a finding that sufficient
34 water supplies are, or will be, available prior to completion of the
35 subdivision that will satisfy the requirements of this section. This
36 finding shall be made on the record and supported by substantial
37 evidence.

38 (5) *The public water system shall include in the written*
39 *verification of its assessment of the projected demand associated*
40 *with the subdivision its ability or inability to provide a sufficient*

1 *water supply. If the public water system bases its assessment of*
2 *the projected water demand associated with the subdivision on*
3 *inclusion of permanently fixed extraordinary water conservation*
4 *measures, the assessment shall be conditioned with appropriate*
5 *measures to ensure that the extraordinary water conservation*
6 *measures will be retained and that actual long-term water demand*
7 *associated with the subdivision will be consistent with the water*
8 *demand projection. The conditions shall include adoption of legally*
9 *enforceable mechanisms, such as inclusion in covenants,*
10 *conditions, and restrictions. Water savings and demand projections*
11 *associated with permanently fixed extraordinary water*
12 *conservation measures may be calculated using the water savings*
13 *projections adopted by the California Urban Water Conservation*
14 *Council. Water savings and demand projections for measures for*
15 *which the California Urban Water Conservation Council does not*
16 *have adopted findings shall be based on substantial evidence in*
17 *the record.*

18 *(6) A public water system may impose a more stringent*
19 *requirement than provided for in this section.*

20 (c) The applicable public water system's written verification of
21 its ability or inability to provide a sufficient water supply that will
22 meet the projected demand associated with the proposed
23 subdivision as required by subdivision (b) shall be supported by
24 substantial evidence. The substantial evidence may include, but is
25 not limited to, any of the following:

26 (1) The public water system's most recently adopted urban water
27 management plan adopted pursuant to Part 2.6 (commencing with
28 Section 10610) of Division 6 of the Water Code.

29 (2) A water supply assessment that was completed pursuant to
30 Part 2.10 (commencing with Section 10910) of Division 6 of the
31 Water Code.

32 (3) Other information relating to the sufficiency of the water
33 supply that contains analytical information that is substantially
34 similar to the assessment required by Section 10635 of the Water
35 Code.

36 (d) When the written verification pursuant to subdivision (b)
37 relies on projected water supplies that are not currently available
38 to the public water system, to provide a sufficient water supply to
39 the subdivision, the written verification as to those projected water

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1 supplies shall be based on all of the following elements, to the
2 extent each is applicable:

3 (1) Written contracts or other proof of valid rights to the
4 identified water supply that identify the terms and conditions under
5 which the water will be available to serve the proposed subdivision.

6 (2) Copies of a capital outlay program for financing the delivery
7 of a sufficient water supply that has been adopted by the applicable
8 governing body.

9 (3) Securing of applicable federal, state, and local permits for
10 construction of necessary infrastructure associated with supplying
11 a sufficient water supply.

12 (4) Any necessary regulatory approvals that are required in order
13 to be able to convey or deliver a sufficient water supply to the
14 subdivision.

15 (e) If there is no public water system, the local agency shall
16 make a written finding of sufficient water supply based on the
17 evidentiary requirements of subdivisions (c) and (d) and identify
18 the mechanism for providing water to the subdivision.

19 (f) In making any findings or determinations under this section,
20 a local agency, or designated advisory agency, may work in
21 conjunction with the project applicant and the public water system
22 to secure water supplies sufficient to satisfy the demands of the
23 proposed subdivision. If the local agency secures water supplies
24 pursuant to this subdivision, which supplies are acceptable to and
25 approved by the governing body of the public water system as
26 suitable for delivery to customers, it shall work in conjunction
27 with the public water system to implement a plan to deliver that
28 water supply to satisfy the long-term demands of the proposed
29 subdivision.

30 (g) The written verification prepared under this section shall
31 also include a description, to the extent that data is reasonably
32 available based on published records maintained by federal and
33 state agencies, and public records of local agencies, of the
34 reasonably foreseeable impacts of the proposed subdivision on the
35 availability of water resources for agricultural and industrial uses
36 within the public water system's service area that are not currently
37 receiving water from the public water system but are utilizing the
38 same sources of water. To the extent that those reasonably
39 foreseeable impacts have previously been evaluated in a document
40 prepared pursuant to the California Environmental Quality Act

1 (Division 13 (commencing with Section 21000) of the Public
2 Resources Code) or the National Environmental Policy Act (Public
3 Law 91-190) for the proposed subdivision, the public water system
4 may utilize that information in preparing the written verification.

5 (h) Where a water supply for a proposed subdivision includes
6 groundwater, the public water system serving the proposed
7 subdivision shall evaluate, based on substantial evidence, the extent
8 to which it or the landowner has the right to extract the additional
9 groundwater needed to supply the proposed subdivision. Nothing
10 in this subdivision is intended to modify state law with regard to
11 groundwater rights.

12 (i) This section shall not apply to any residential project
13 proposed for a site that is within an urbanized area and has been
14 previously developed for urban uses, or where the immediate
15 contiguous properties surrounding the residential project site are,
16 or previously have been, developed for urban uses, or housing
17 projects that are exclusively for very low and low-income
18 households.

19 (j) The determinations made pursuant to this section shall be
20 consistent with the obligation of a public water system to grant a
21 priority for the provision of available and future water resources
22 or services to proposed housing developments that help meet the
23 city's or county's share of the regional housing needs for lower
24 income households, pursuant to Section 65589.7.

25 (k) The County of San Diego shall be deemed to comply with
26 this section if the Office of Planning and Research determines that
27 all of the following conditions have been met:

28 (1) A regional growth management strategy that provides for a
29 comprehensive regional strategy and a coordinated economic
30 development and growth management program has been developed
31 pursuant to Proposition C as approved by the voters of the County
32 of San Diego in November 1988, which required the development
33 of a regional growth management plan and directed the
34 establishment of a regional planning and growth management
35 review board.

36 (2) Each public water system, as defined in Section 10912 of
37 the Water Code, within the County of San Diego has adopted an
38 urban water management plan pursuant to Part 2.6 (commencing
39 with Section 10610) of the Water Code.

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1 (3) The approval or conditional approval of tentative maps for
 2 subdivisions, as defined in this section, by the County of San Diego
 3 and the cities within the county requires written communications
 4 to be made by the public water system to the city or county, in a
 5 format and with content that is substantially similar to the
 6 requirements contained in this section, with regard to the
 7 availability of a sufficient water supply, or the reliance on projected
 8 water supplies to provide a sufficient water supply, for a proposed
 9 subdivision.

10 (l) Nothing in this section shall preclude the legislative body of
 11 a city or county, or the designated advisory agency, at the request
 12 of the applicant, from making the determinations required in this
 13 section earlier than required pursuant to subdivision (b).

14 (m) Nothing in this section shall be construed to create a right
 15 or entitlement to water service or any specific level of water
 16 service.

17 (n) Nothing in this section is intended to change existing law
 18 concerning a public water system's obligation to provide water
 19 service to its existing customers or to any potential future
 20 customers.

21 (o) Any action challenging the sufficiency of the public water
 22 system's written verification of a sufficient water supply shall be
 23 governed by Section 66499.37.

24 (p) *When the written verification pursuant to subdivision (b)*
 25 *relies on voluntary participation in the Water Conservation*
 26 *Mitigation Fund held by the by the public water system, the written*
 27 *verification shall include an assessment by the public water system*
 28 *of funds needed for the public water system to implement water*
 29 *conservation measures that offset at least 100 percent of the*
 30 *projected water demand associated with the subdivision and proof*
 31 *that the funds have been voluntarily deposited in a Water*
 32 *Conservation Mitigation Fund held by the public water system.*
 33 *The public water system's assessment of funds shall include*
 34 *identification and quantification of the water savings resulting*
 35 *from the water conservation measures that the public water system*
 36 *will implement to offset at least 100 percent of the projected water*
 37 *demand associated with the subdivision.*

38 (q) *For purposes of a Water Conservation Mitigation Fund held*
 39 *by a public water system, the public water system shall be required*
 40 *to expend all funds from the Water Conservation Mitigation Fund*

1 on water conservation measures that will offset at least 100 percent
 2 of the projected demand associated with the subdivision. The
 3 expenditures may be made within the subdivision or elsewhere
 4 within the service area of the public water supplier, at its
 5 discretion.

6 (1) Not less than _____percent of the proceeds from the Water
 7 Conservation Mitigation Fund shall be directed to water
 8 conservation programs in any disadvantaged community, as
 9 defined in Section 75005 of the Public Resources Code, within the
 10 service area of the public water system.

11 (2) The public water system shall be prohibited from using any
 12 funds from the Water Conservation Mitigation Fund to supplant
 13 funding for water conservation programs required by existing law
 14 or paid for by existing customers through water rates and
 15 surcharges.

16 (3) The public water system shall be prohibited from using any
 17 funds from the Water Conservation Mitigation Fund to comply
 18 with requirements of the California Urban Water Conservation
 19 Council Memorandum of Understanding, except where funds are
 20 directed to disadvantaged communities.

21 (4) The governing body of a public water system shall determine,
 22 after a public hearing, that the funds deposited in the Water
 23 Conservation Mitigation Fund do not supplant funds for water
 24 conservation programs required by existing law, paid for by
 25 existing customers through water rates and surcharges, or that
 26 are required for participation in the California Urban Water
 27 Conservation Council.

28 (5) Actions for which the public water supplier may use water
 29 conservation mitigation funding must be quantifiable, verifiable,
 30 have a planned completion date that is concurrent with when the
 31 buildings within the subdivision will require service, and have a
 32 life expectancy of at least 20 years. These actions include all of
 33 the following:

- 34 (A) High-efficiency toilet replacements.
- 35 (B) Faucet aerators.
- 36 (C) Prerinse spray valves.
- 37 (D) High-efficiency washing machines.
- 38 (E) Weather-based “smart” timers.
- 39 (F) Rotator spray heads.
- 40 (G) Cash for grass programs.

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- 1 (H) *Landscape rebates.*
- 2 (I) *Single-family high water use notifications.*
- 3 (J) *Home-leak detection kits.*
- 4 (K) *Water brooms.*
- 5 (L) *High-efficiency commercial dishwashers.*
- 6 (M) *Cooling tower conductivity controllers.*
- 7 (N) *X-ray film processor recirculation systems.*
- 8 (O) *Connectionless food steamers.*
- 9 (P) *Steam sterilizers.*
- 10 (Q) *Dry vacuum pumps.*
- 11 (R) *Commercial ice machine.*
- 12 (S) *School toilet leak detection.*
- 13 (T) *Water recycling.*
- 14 (U) *Advanced (automated) metering systems.*
- 15 (V) *Stormwater capture, graywater systems, and groundwater*
- 16 *treatment.*
- 17 (W) *Other water efficiency measures for which substantial*
- 18 *evidence demonstrates the measure will achieve a quantifiable*
- 19 *reduction in demand.*
- 20 (r) *Pursuant to Part 2.6 (commencing with Section 10610) of*
- 21 *Division 6 of the Water Code, the public water system shall do all*
- 22 *of the following:*
- 23 (1) *Document all expenditures from the water conservation*
- 24 *mitigation funding, if the public water system holds a Water*
- 25 *Conservation Mitigation Fund, in its Urban Water Management*
- 26 *Plan and confirm that the water conservation mitigation funding*
- 27 *was not used to supplant funding for water conservation programs*
- 28 *required by existing law, paid for by existing customers through*
- 29 *water rates and surcharges, or that are required for participation*
- 30 *in the California Urban Water Conservation Council.*
- 31 (2) *Document the measured annual water use of each*
- 32 *subdivision pursuant to this section.*
- 33 (3) *Calculate the water savings attributable to the water*
- 34 *conservation measures financed by the water conservation*
- 35 *mitigation funding from each subdivision.*
- 36 (4) *In the event that the calculated water savings in subdivision*
- 37 *(q) do not equal or exceed the measured water demand in*
- 38 *subdivision (b) over a five-year period, the public water system*
- 39 *shall include in its Urban Water Management Plan a schedule of*

1 *actions designed to achieve the savings necessary to offset 100*
2 *percent of the actual demand of the subdivision.*

3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

O