



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

5/8/2018 Board Meeting

8-13

Subject

Adopt CEQA determination and express opposition to AB 3045 (Gallagher, R-Yuba City), regarding State Water Project Commission

Executive Summary

AB 3045, as amended in the Assembly on April, 25, 2018, (**Attachment 1**) would transfer control of the State Water Project (SWP) from the California Department of Water Resources to a new State Water Project Commission (Commission) under the California Natural Resources Agency (CNRA). The Commission would consist of nine members appointed by the Governor and subject to confirmation by the Senate. This bill requires Commission representation from the upstream watershed, but not the SWP's actual service area.

Details

Background

On February 16, 2018, Assembly Member James Gallagher, who represents the Oroville area, introduced AB 3045 proposing to establish the Division of Safety of Dams (DSOD) within the CNRA. The bill proposed to transfer authority over dams and reservoirs from DWR to the DSOD as a separate entity under the CNRA. AB 3045 was subsequently amended on April, 25, 2018, based on recommendations by the Assembly Water, Parks and Wildlife Committee consultant to strike language related to DSOD, and instead proposed creation of a Commission to oversee the entire SWP. Major provisions of the amended bill include:

- Creation of a nine-member board appointed by the Governor and confirmed by the Senate:
 - Members shall be from different regions of the state, to the extent possible;
 - Three members shall be registered engineers with experience in civil or hydrological engineering, at least one of whom shall have demonstrated experience in risk management, operations and human factors, and dam safety;
 - Two members shall have demonstrated experience in the fields of water rights, water conveyance, or water storage;
 - One member shall be nominated by the Butte County Board of Supervisors;
 - Three public members, one each representing agricultural interests, the environment and municipal water users; and
 - Commissioners would serve four-year terms.
- The Commission may employ an executive officer who shall hire employees necessary to carry out Commission functions;
- The Commission shall administer the SWP, and have full charge and control of construction, operation and maintenance of the SWP; and
- The Commission shall set all rates, charges and revenues associated with the SWP.

Staff Recommendation

While Metropolitan generally supports the concept of separating management of the SWP from other functions currently performed by DWR, much more study and coordination are needed before implementing major reforms. AB 3045 proposes sweeping changes in SWP governance without addressing the multitude of complex policy, legal and operational issues that are raised by this legislation. Among other things this bill:

- Fails to address the original purpose of this legislation, which was to bolster dam safety, not just at Lake Oroville, but throughout the State;
- Does not required that the Commission include any representatives from the public water agencies that pay the majority of SWP costs;
- Would transfer only certain duties and powers relevant to the management and operation of the SWP to the Commission, potentially creating a fractured and unworkable governance structure;
- Would require the duties and expertise of DWR's current staff to be split into separate organizations and necessitate hiring additional staff to manage the SWP and non-SWP functions;
- Could delay critical time-sensitive decision-making and adversely impact day-to-day operations of the SWP by imposing an additional and unnecessary layer of bureaucracy;
- Could disrupt major ongoing initiatives such as capital improvement and refurbishment of SWP infrastructure, aqueduct subsidence repairs, and ecosystem improvements;
- Would likely increase costs for both SWP and non-SWP related activities, which would impact both public water agencies and the State as a whole, since costs associated with the latter must be paid from the General Fund;
- Could potentially impact existing water rights, coordinated operations with Federal agencies, and ongoing permitting processes; and
- Fails to provide the new Commission with adequate authority to contract, issue revenue bonds, cooperate with the federal government, acquire/condemn property, or to establish funds and accounts necessary to operate the SWP.

In short, AB 3045 focuses solely on the expertise and geographical representation of the governing body for the proposed Commission without addressing how this Commission would actually function or what benefits, if any, this new governance structure would provide. Accordingly, staff recommends opposing AB 3045 as detrimental to the stability of the SWP and as contrary to a balanced public discourse on options for future SWP governance.

Policy

Minute Item 30007, October 9, 1973: Until the broader reorganization questions of land use, water resource management, and environmental controls were addressed, Metropolitan's Board found it untimely to support a proposal on separating SWP administration from DWR. The policy statement responds to the 1973 California Water Commission preliminary report on how to change DWR and establish the SWP as a separate state entity.

Minute Item 47135, dated June 12, 2007: Policy Principles on Delta Visioning (Delta Action Plan) regarding: governance of the State Water Project.

Information Board Letter 9-1, dated November 9, 2010: Summarizing Little Hoover Commission recommendations for reorganizing California state water agencies.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves a legislative proposal that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Public Resources Code Section 21065 and Section 15378(b)(1) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project under Public Resources Code Section 21065 and State CEQA Guidelines Section 15378(b)(1).

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA, and
 Authorize the General Manager to express opposition to AB 3045.

Fiscal Impact: No fiscal impacts to current practice if AB 3045 is not implemented.

Business Analysis: Status quo of State Water Project operations if AB 3045 is not implemented.

Option #2

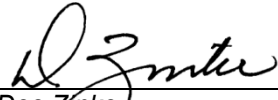
Take no action.

Fiscal Impact: Unknown fiscal impact at this time.

Business Analysis: Actions of Commission would determine if there would be cost savings or increases.

Staff Recommendation

Option # 1


 _____ 5/3/2018
 Dee Zinke Date
 Assistant General Manager and Chief
 External Affairs Manager


 _____ 5/3/2018
 Jeffrey Kightlinger Date
 General Manager

Attachment 1 – Assembly Bill No. 3045 Amended April 25, 2018

Ref# ea12659228

AMENDED IN ASSEMBLY APRIL 25, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 3045

Introduced by Assembly Member Gallagher
(Principal coauthor: Senator Nielsen)

February 16, 2018

An act to amend Section 12805 of the Government Code, ~~and to amend and renumber Section 6025 of, to add Section 6021 to, and to add Article 5 (commencing with Section 195) 191) to Chapter 2 of Division 1 of, of the Water Code, relating to dams and reservoirs: water.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 3045, as amended, Gallagher. Natural Resources Agency: ~~Division of Safety of Dams. State Water Project Commission.~~

Under existing law, the Department of Water Resources operates the State Water Resources Development System, known as the State Water Project, in accordance with the California Water Resources Development Bond Act to supply water to persons and entities in the state. Under existing law, the State Water Project is comprised of the State Water Facilities, as defined in the bond act, and additions determined by the department to be necessary and desirable.

This bill would establish within the Natural Resources Agency the State Water Project Commission, consisting of 9 members appointed by the Governor and subject to confirmation by the Senate, including one member nominated by the Butte County Board of Supervisors. By imposing a new duty on the Butte County Board of Supervisors, the bill would impose a state-mandated local program. The bill would transfer authority over and relating to the State Water Project from the department to the commission, as specified.

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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 the statutory provisions noted above.

~~Existing law provides that all dams and reservoirs in the state are under the jurisdiction of the Department of Water Resources. Existing law requires the department to supervise the construction, enlargement, alteration, repair, maintenance, operation, and removal of dams and reservoirs for the protection of life and property. Existing law makes it unlawful to construct, enlarge, repair, alter, remove, maintain, or operate any dam or reservoir except upon approval by the department, as prescribed.~~

~~This bill would establish within the Natural Resources Agency the Division of Safety of Dams. The bill would transfer authority over dams and reservoirs from the department to the division.~~

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

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

1 SECTION 1. Section 12805 of the Government Code is
2 amended to read:
3 12805. (a) The Resources Agency is hereby renamed the
4 Natural Resources Agency. The Natural Resources Agency consists
5 of the departments of Forestry and Fire Protection, Conservation,
6 Fish and Wildlife, Parks and Recreation, and Water Resources;
7 the State Lands Commission; the Colorado River Board; the San
8 Francisco Bay Conservation and Development Commission; the
9 Central Valley Flood Protection Board; the Energy Resources
10 Conservation and Development Commission; the Wildlife
11 Conservation Board; the Delta Protection Commission; the
12 California Science Center; the Native American Heritage
13 Commission; the California Conservation Corps; the California
14 Coastal Commission; the State Coastal Conservancy; the California
15 Tahoe Conservancy; the Santa Monica Mountains Conservancy;
16 the Coachella Valley Mountains Conservancy; the San Joaquin

1 River Conservancy; the San Gabriel and Lower Los Angeles Rivers
 2 and Mountains Conservancy; the Baldwin Hills Conservancy; the
 3 San Diego River Conservancy; the Sierra Nevada Conservancy;
 4 and the ~~Division of Safety of Dams~~. *State Water Project*
 5 *Commission*.

6 (b) Existing supplies, forms, insignias, signs, or logos shall not
 7 be destroyed or changed as a result of changing the name of the
 8 Resources Agency to the Natural Resources Agency, and those
 9 materials shall continue to be used until exhausted or unserviceable.

10 SEC. 2. ~~Article 5 (commencing with Section 195) is added to~~
 11 ~~Chapter 2 of Division 1 of the Water Code, to read:~~

12
 13 ~~Article 5. Division of Safety of Dams~~

14
 15 ~~195. There is in the Natural Resources Agency the Division~~
 16 ~~of Safety of Dams.~~

17 ~~SEC. 3. Section 6025 of the Water Code is amended and~~
 18 ~~renumbered to read:~~

19 ~~6020. It is the intent of the Legislature by this part to provide~~
 20 ~~for the regulation and supervision of dams and reservoirs~~
 21 ~~exclusively by the State.~~

22 ~~SEC. 4. Section 6021 is added to the Water Code, to read:~~

23 ~~6021. (a) The Division of Safety of Dams succeeds to and is~~
 24 ~~vested with all of the authority, duties, powers, purposes, functions,~~
 25 ~~responsibilities, and jurisdiction of the department and its~~
 26 ~~predecessors for purposes of this division.~~

27 ~~(b) The Division of Safety of Dams shall maintain authority~~
 28 ~~over the supervision of California's dams and reservoirs and carry~~
 29 ~~out the duties, responsibilities, and functions described in this~~
 30 ~~division. A statutory reference to "department" regarding a function~~
 31 ~~transferred to the Division of Safety of Dams shall refer to the~~
 32 ~~Division of Safety of Dams. A statutory reference to "director"~~
 33 ~~regarding a function transferred to the Division of Safety of Dams~~
 34 ~~shall refer to the Secretary of the Natural Resources Agency.~~

35 ~~(c) Regulations adopted, orders issued, and all other actions~~
 36 ~~taken by the department or its predecessors pursuant to the~~
 37 ~~authorities vested in the Division of Safety of Dams pursuant to~~
 38 ~~this section and in effect immediately preceding the operative date~~
 39 ~~of this section shall remain in effect and are fully enforceable until~~
 40 ~~they expire by their own terms unless readopted, amended, or~~

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1 ~~repealed. Regulations in the process of adoption pursuant to the~~
2 ~~authorities vested in the Division of Safety of Dams shall continue~~
3 ~~under the authority of the Division of Safety of Dams unless the~~
4 ~~Division of Safety of Dams determines otherwise. Any other action~~
5 ~~adopted, prescribed, taken, or performed by, or on behalf of, the~~
6 ~~department in the administration or performance of a duty,~~
7 ~~responsibility, or authorization transferred to the Division of Safety~~
8 ~~of Dams shall remain in effect and shall be deemed to be an action~~
9 ~~of the Division of Safety of Dams unless the Division of Safety~~
10 ~~of Dams determines otherwise.~~

11 ~~(d) Permits, licenses, and other formal approvals and~~
12 ~~authorizations issued by the department or any of its predecessors~~
13 ~~pursuant to authorities vested in the Division of Safety of Dams~~
14 ~~pursuant to this section are not affected by the transfer and remain~~
15 ~~in effect, in accordance with all applicable laws and regulations,~~
16 ~~unless renewed, reissued, revised, amended, suspended, or revoked~~
17 ~~by the Division of Safety of Dams.~~

18 ~~(e) Any decision or order by the department pursuant to~~
19 ~~authorities vested in the Division of Safety of Dams pursuant to~~
20 ~~this section remains in effect, in accordance with all applicable~~
21 ~~laws and regulations, and the Division of Safety of Dams shall~~
22 ~~implement the decision or order and treat it as administrative~~
23 ~~precedent unless it is renewed, reissued, revised, amended,~~
24 ~~suspended, or revoked by the Division of Safety of Dams.~~

25 ~~(f) Any action or proceeding by or against the department,~~
26 ~~including any officer or employee of the department named in an~~
27 ~~official capacity, or any of its predecessors, pertaining to matters~~
28 ~~vested in the Division of Safety of Dams by this section shall not~~
29 ~~abate, but shall continue in the name of the Division of Safety of~~
30 ~~Dams. The Division of Safety of Dams shall be substituted for the~~
31 ~~department, including any officer or employee of the department~~
32 ~~named in an official capacity, and any of its predecessors, by the~~
33 ~~court or agency where the action or proceeding is pending. The~~
34 ~~substitution shall not in any way affect the rights of the parties to~~
35 ~~the action or proceeding.~~

36 ~~(g) On and after January 1, 2019, the unexpended balance of~~
37 ~~all funds available for use by the department or any of its~~
38 ~~predecessors in carrying out any functions transferred to the~~
39 ~~Division of Safety of Dams are available for use by the Division~~
40 ~~of Safety of Dams.~~

1 ~~(h) The department shall transfer to the Division of Safety of~~
2 ~~Dams books, documents, data, records, and property of the~~
3 ~~department pertaining to functions transferred to the Division of~~
4 ~~Safety of Dams.~~

5 ~~(i) A contract, lease, license, or any other agreement to which~~
6 ~~the department or any of its predecessors is a party is not void or~~
7 ~~voidable by reason of this section, but shall continue in full force~~
8 ~~and effect, with the Division of Safety of Dams assuming all of~~
9 ~~the rights, obligations, liabilities, and duties of the department and~~
10 ~~any of its predecessors as it relates to the duties, powers, purposes,~~
11 ~~responsibilities, and jurisdiction vested in the Division of Safety~~
12 ~~of Dams pursuant to this section. This assumption does not affect~~
13 ~~the rights of the parties to the contract, lease, license, or agreement.~~

14 *SEC. 2. Article 5 (commencing with Section 191) is added to*
15 *Chapter 2 of Division 1 of the Water Code, to read:*

16
17 *Article 5. State Water Project Commission*
18

19 *191. (a) The State Water Project Commission is hereby*
20 *established within the Natural Resources Agency.*

21 *(b) The commission shall consist of nine members. To the extent*
22 *possible, the commission shall be composed of members from*
23 *different regions of the state. The members of the commission shall*
24 *be appointed by the Governor and subject to confirmation by the*
25 *Senate, as follows:*

26 *(1) Three members shall be registered engineers with experience*
27 *in civil or hydrological engineering, at least one of whom shall*
28 *have demonstrated experience in risk management, operations*
29 *and human factors, and dam safety.*

30 *(2) Two members shall have demonstrated experience in the*
31 *fields of water rights, water conveyance, or water storage.*

32 *(3) One member shall be nominated by the Butte County Board*
33 *of Supervisors. The Governor shall have discretion to appoint or*
34 *reject a nominee of the Butte County Board of Supervisors. If the*
35 *Governor rejects a nominee, the Butte County Board of Supervisors*
36 *shall select a new nominee.*

37 *(4) Three shall be public members, one representing each of*
38 *the following:*

39 *(A) Agricultural interests.*

40 *(B) The environment.*

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1 (C) *Municipal water users.*

2 (c) *Refusal by or failure of the Senate to confirm an appointment*
3 *to the commission shall create a vacancy in the office to which the*
4 *appointment was made. Any vacancy shall be immediately filled*
5 *by the Governor, subject to confirmation by the Senate, for the*
6 *unexpired portion of the term in which the vacancy occurs.*

7 (d) (1) *The Governor shall determine the expiration of each*
8 *member's term at the time of appointment in accordance with the*
9 *following:*

10 (A) *The initial term of one of the members of the commission*
11 *shall expire on January 15, 2020.*

12 (B) *The initial term of two of the members of the commission*
13 *shall expire on January 15, 2021.*

14 (C) *The initial term of two of the members of the commission*
15 *shall expire on January 15, 2022.*

16 (D) *The initial term of two of the members of the commission*
17 *shall expire on January 15, 2023.*

18 (E) *The initial term of two of the members of the commission*
19 *shall expire on January 15, 2024.*

20 (2) *Upon the expiration of each term described in paragraph*
21 *(1), the term of each succeeding member shall be four years.*

22 (e) *The Legislature may remove a member of the commission*
23 *from office for dereliction of duty, corruption, or incompetency by*
24 *concurrent resolution adopted by a majority vote of the*
25 *membership in each house of the Legislature.*

26 192. (a) *The headquarters of the commission shall be in*
27 *Sacramento.*

28 (b) *The commission shall determine the times and places for its*
29 *meetings.*

30 (c) *All meetings of the commission shall be conducted in*
31 *accordance with the Bagley-Keene Open Meeting Act (Article 9*
32 *(commencing with Section 11120) of Chapter 1 of Part 1 of*
33 *Division 3 of Title 2 of the Government Code).*

34 (d) *The members of the commission shall select a chairperson*
35 *from among their members, who shall serve as chairperson at the*
36 *pleasure of the members of the commission.*

37 (e) (1) *Notwithstanding Section 11009 of the Government Code,*
38 *a member of the commission shall receive one hundred dollars*
39 *(\$100) for each day of actual service performed in carrying out*
40 *the member's duties. The amount of compensation shall not exceed*

1 *the sum of five hundred dollars (\$500) per member for any*
2 *calendar month.*

3 *(2) In addition to the compensation provided in paragraph (1),*
4 *a member of the commission shall receive his or her actual and*
5 *necessary expenses incurred in the performance of the member's*
6 *duties.*

7 *(3) Compensation and expenses provided in this subdivision*
8 *shall be paid from the rates, charges, and revenues assessed for*
9 *the State Water Project.*

10 *193. (a) The commission may employ an executive officer who*
11 *shall serve at the pleasure of the commission.*

12 *(b) The executive officer shall hire employees necessary to carry*
13 *out commission functions.*

14 *(c) The executive officer may purchase or rent necessary*
15 *supplies, instruments, tools, equipment, and conveniences.*

16 *(d) The department shall furnish to the commission, at its*
17 *request, assistance, including, but not limited to, legal and clerical*
18 *services, as may be required.*

19 *194. (a) The commission succeeds to and is vested with all of*
20 *the authority, duties, powers, purposes, functions, responsibilities,*
21 *and jurisdiction of the department, its predecessors, and its director*
22 *for purposes of all of the following:*

23 *(1) Chapter 8 (commencing with Section 12930) of Part 6 of*
24 *Division 6.*

25 *(2) Chapter 3 (commencing with Section 11419), Chapter 10*
26 *(commencing with Section 11900), and Article 3 (commencing*
27 *with Section 11970) of Chapter 11 of Part 3 of Division 6.*

28 *(3) Section 138.10.*

29 *(4) Part 2 (commencing with Section 10500) of Division 6.*

30 *(5) Section 11260.*

31 *(6) Section 147.5.*

32 *(b) The commission shall administer the State Water Project,*
33 *have full charge and control of the construction, operation, and*
34 *maintenance of the State Water Project, and shall set all rates,*
35 *charges, and revenues associated with the State Water Project.*
36 *The commission shall carry out the duties, responsibilities, and*
37 *functions described in this section. Statutory reference to*
38 *“department” or “director” regarding a function transferred to*
39 *the commission shall refer to the commission.*

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1 (c) Regulations adopted, orders issued, and all other
2 administrative actions taken by the department, any of its
3 predecessors, or its director, pursuant to the authorities vested in
4 the commission and in effect immediately preceding the operative
5 date of this section shall remain in effect and are fully enforceable
6 until they expire by their own terms, unless readopted, amended,
7 or repealed. Regulations in the process of adoption pursuant to
8 the authorities vested in the commission shall continue under the
9 authority of the commission unless the commission determines
10 otherwise. Any other administrative action adopted, prescribed,
11 taken, or performed by, or on behalf of, the department, or its
12 director, in the administration of a program or the performance
13 of a duty, responsibility, or authorization transferred to the
14 commission shall remain in effect and shall be deemed to be an
15 action of the commission unless the commission determines
16 otherwise.

17 (d) Permits, licenses, accreditations, certificates, and other
18 formal approvals and authorizations issued by the department or
19 its director pursuant to authorities vested in the commission
20 pursuant to this section or permits, licenses, accreditations,
21 certificates, and other formal approvals and authorizations that
22 the department or its director are subject to pursuant to authorities
23 vested in the commission pursuant to this section, including State
24 Water Resources Control Board Decision No. 1641, are not
25 affected by the transfer and remain in effect, subject to all
26 applicable laws and regulations, unless renewed, reissued, revised,
27 amended, suspended, or revoked.

28 (e) Any action or proceeding by or against the department,
29 including any officer or employee of the department named in an
30 official capacity, pertaining to matters vested in the commission
31 by this section shall not abate, but shall continue in the name of
32 the commission. The commission shall be substituted for the
33 department, including any officer or employee of the department
34 named in an official capacity, by the court or agency where the
35 action or proceeding is pending. The substitution shall not in any
36 way affect the rights of the parties to the action or proceeding.

37 (f) On and after July 1, 2019, the unexpended balance of all
38 funds available for use by the department in carrying out any
39 functions transferred to the commission are available for use by
40 the commission.

1 (g) Books, documents, data, records, and property of the
2 department pertaining to functions transferred to the commission
3 shall be transferred to the commission.

4 (h) A contract, lease, license, or any other agreement, to which
5 the department, its director, or their agents, is a party, is not void
6 or voidable by reason of this section, but shall continue in full
7 force and effect, with the commission assuming all of the rights,
8 obligations, liabilities, and duties of the department as it relates
9 to the duties, powers, purposes, responsibilities, and jurisdiction
10 vested in the commission pursuant to this section. This assumption
11 does not affect the rights of the parties to the contract, lease,
12 license, or agreement.

13 195. (a) The commission may hold any hearings and conduct
14 any investigations in any part of the state necessary to carry out
15 the powers vested in it. For the purposes of this subdivision, the
16 commission shall have the powers of a head of a department as
17 set forth in Article 2 (commencing with Section 11180) of Chapter
18 2 of Part 1 of Division 3 of Title 2 of the Government Code.

19 (b) Except as provided in subdivision (c), any hearing or
20 investigation by the commission may be conducted by any member
21 of the commission or representative authorized by the commission
22 to exercise the powers of this section.

23 (c) Any final action in a hearing or investigation shall be taken
24 by a majority of the members of the commission at a meeting duly
25 called and held.

26 196. The commission shall conduct an annual review of the
27 progress of construction and operation of the State Water Project.
28 The commission shall report annually its findings and any
29 recommendations it deems appropriate to the department and to
30 the Legislature. A report submitted to the Legislature pursuant to
31 this section shall be submitted in compliance with Section 9795
32 of the Government Code.

33 197. The commission shall hold public hearings on all
34 additional facilities proposed to be added to the State Water
35 Project pursuant to the authority in Sections 12931 and 12938.

36 198. This article shall become operative on July 1, 2019.

37 SEC. 3. If the Commission on State Mandates determines that
38 this act contains costs mandated by the state, reimbursement to
39 local agencies and school districts for those costs shall be made

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- 1 *pursuant to Part 7 (commencing with Section 17500) of Division*
- 2 *4 of Title 2 of the Government Code.*

O