



MEMORANDUM

TO: Water Resources Committee and Alternates, Board of Directors and Alternates

FROM: Scott Petersen, Water Policy Director

DATE: July 8, 2024

RE: Water Resources Committee to Consider Recommendations on Legislation /
Board of Directors to Consider Same

Recommendation

Recommend to the Board of Directors to adopt the following positions on legislation:

Support and Amend

- Adopt a position of "Support" on H.R. 4247 (Harder), Flood Prevention and Snowpack Management Act
- Adopt a position of "Support" on H.R. 4385 (Neguse), Drought Preparedness Act

Oppose

- Adopt a position of "Oppose" on A.B. 2735 (Rubio), Joint power agreements: water corporations.

Federal Legislation

H.R. 4247 (Harder), Flood Prevention and Snowpack Management Act.

RECOMMENDATION: Support

OBJECTIVE: Improve Outreach and Education

Summary

Requires the Secretary of the Army, acting through the Chief of Engineers, to establish the Task Force on the California Snowpack and Flood Mitigation to: (1) meet on the day after any day on which the California Department of Resources determines that any portion of the snowpack in California is 150 percent above the average snowpack; and (2) develop a plan of action for snowpack melt, flood mitigation and recovery, and expediting water storage projects to capture water from snowpack and alleviate future drought conditions. Directs the Secretary to establish a task force to develop and submit to four members from local community organizations that are impacted by, or provide resources or relief to, flooding in California.



Status

H.R. 4247 was introduced on June 21, 2023, and has been referred to the House Transportation and Infrastructure Subcommittee on Water Resources and Environment.

Importance to the Authority

This legislation would establish a 17-member task force, consisting of California federal legislators, federal and state agencies involved in water management, flood and emergency response, and members of local community organizations impacted by flooding to develop a plan of action for snowpack melt and expediting water storage projects to capture water from snowpack to alleviate future drought conditions in 90 days or less from the time of first meeting. The plan of action developed would be submitted to state and federal agencies, as well as the House Committee on Natural Resources and Senate Energy and Natural Resources Committee.

Both drought and flooding impact water management and emergency conditions for the water authority and its members. Coordinated response is often disconnected with water storage and future drought mitigation. This legislation would specifically require a plan of action to be developed in times where the snowpack is greater than 150% of normal that would connect flood management to drought mitigation in a coordinated fashion across state and federal agencies.

[H.R. 4385 \(Neguse\), Drought Preparedness Act.](#)

RECOMMENDATION: Support

OBJECTIVE: Restore Central Valley Project Water Supply for Member Agencies, Improve Water Infrastructure Affecting Authority Member Agencies

Summary

This bill reauthorizes through FY2028 the Reclamation States Emergency Drought Relief Act of 1991, which allows the Bureau of Reclamation to provide drought assistance to Hawaii or certain western states.

Status

H.R. 4385 passed the House of Representatives on February 5, 2024 by voice vote and has been referred to the Senate Committee on Energy and Natural Resources.

Importance to the Authority

Reclamation's Drought Response Program aids drought planning and mitigation. One of the authorities Reclamation relies on for this program is the Reclamation States Emergency Drought Relief Act of 1991 (Act). The Act gives Reclamation temporary emergency authorities to take certain measures to mitigate the impacts of drought in the 17 Reclamation states as well as the territories.

These measures include: the construction of temporary water infrastructure, the purchase of water from willing sellers, participation in state water banks, and the ability to make loans to water users to build drought mitigation infrastructure. The bill also gives Reclamation the authority to make available water from certain projects for use outside the authorized project service area to mitigate drought conditions. Reclamation is also authorized to make water available for the purposes of protecting or restoring fish and wildlife resources that are at risk due to drought conditions.



Reclamation is currently authorized to spend no more than \$130 million over the lifetime of the program. H.R. 4385 extends these authorities and the current authorized appropriations through fiscal year 2028.

State Legislation

[A.B. 2735 \(Rubio\), Joint powers agreements: water corporations.](#)

RECOMMENDATION: Ratify Oppose Position

OBJECTIVE: Improve Outreach and Education

Existing Law

Existing law, the Joint Exercise of Powers Act, authorizes 2 or more public agencies, if authorized by their governing bodies, by agreement to jointly exercise any power common to the contracting parties. Existing law authorizes a mutual water company, as defined, to enter into a joint powers agreement with a public agency for these purposes. Existing law authorizes 2 or more local public entities, or a mutual water company, as defined, and a public agency, to provide insurance, as specified, by a joint powers agreement. Existing law authorizes local public entities or a mutual water company and a public agency to enter into a joint powers agreement for the purposes of risk-pooling, as specified.

Summary

This bill would authorize a water corporation, as defined, to enter into a joint powers agreement with a public agency for the purpose of jointly exercising any power common to the contracting parties. The bill would also authorize a water corporation and one or more public agencies to provide insurance, as specified, by a joint powers agreement.

The bill would also authorize a water corporation and one or more public agencies to enter into a joint powers agreement for the purposes of risk-pooling, as specified.

Status

A.B. 2735 was last amended on April 29, 2024, and was heard in the Senate Local Government Committee on July 3.

Importance to the Authority

Industry sources have estimated that there is 20 percent less availability for insurance options than there was just a year ago. AB 2375 has been introduced to authorize water corporations to join a JPA, which provides pooled insurance, so long as there's at least one public agency member in the JPA. If covered under a JPA, water corporations would likely encounter lower premiums and be offered broader coverage than would be available through the private marketplace.

However, ACWA JPIA has raised significant concerns regarding AB 2735 and the potential negative impacts to the pooled insurance community.

Despite recent amendments to narrow the bill to just water corporations, ACWA JPIA remains concerned that with the inclusion of water corporations into pooled insurance programs government agencies may move to regulate the entire community of pooled insurance programs and limit ACWA JPIA's ability to deliver benefits effectively.



AB 2735 would help water corporations obtain insurance by allowing them to join a JPA. The recent amendments narrow the bill to now focus solely on water corporations regulated by the CPUC. According to the sponsors, many of the water corporations that would benefit from a pooled insurance program are small rural water companies that cannot obtain cost effective insurance. However, ACWA JPIA has raised significant concern regarding the potential downstream impacts of expanding the types of entities that can join pooled insurance programs. This expansion could lead to pooled insurance programs that cannot pay claims or that do not provide adequate benefits, which could lead to state intervention and regulation. The sponsors, CWA and Cal Mutuals, maintain that the bill would help small water corporations to obtain cost effective insurance which benefits the community and neighboring water systems.

Guidelines for Taking Positions on Legislation

A number of controversial bills are introduced each year in the Congress and in the California Legislature. It is important to understand how the Authority takes positions on legislation.

Policy

By Agenda Item 7, dated December 7, 2023, the Board adopted the Fiscal Year 2025 Objectives.

Water Authority's Positions on Legislation

The Water Authority takes positions on legislation that, if enacted, would impact Water Authority members, consistent with Water Authority Board adopted Goals and Objectives. The Water Authority may take the following positions on legislation: Oppose, Support, Oppose Unless Amended, Support if Amended, Not Favor, Favor, Not Favor Unless Amended, Favor if Amended, and Watch (neutral). The Water Authority's staff and consultants testify and advocate with legislators and staff through meetings and member agency contacts on all positions except Watch, Favor and Not Favor. For Favor and Not Favor positions, written communication of the Water Authority's position is provided to the legislator. Nothing in this section should be read to preclude the Executive Director or his or her designee from taking an informal support or informal oppose position on behalf of the Water Authority that is consistent with adopted legislative or policy objectives, or to preclude the Executive Director from communicating a position on emergency legislation after obtaining the concurrence of the Chair, or the Chair's designee, provided that the Executive Director informs the Board regarding such positions on emergency legislation no later than the next regularly scheduled Board meeting.

Amendment Development Process

If the Water Authority takes an Oppose Unless Amended or Support if Amended position, the Water Authority will typically discuss the concepts for the amendments at the meeting. Then Water Authority staff, in consultation with Committee and/or Board Members as needed, will develop the amendments after the meeting.

Information Sharing

To provide adequate information to the entire Water Authority membership, the Water Authority provides legislative updates, posts positions and other information on our website, and sends out advisories and alerts on key legislation.



Memo to SLDMWA Water Resources Committee and Board Members

July 8, 2024

The Water Authority's legislative department is available to provide specific information on bills on request and Board Members are encouraged to communicate Water Authority positions on priority legislation in meetings with legislative staff, consistent with Water Authority policy. The Water Authority's Water Policy Director appreciates being informed by Water Authority members of positions taken by Water Authority members on legislation.

BILL TEXT

118TH CONGRESS
1ST SESSION

H. R. 4247

To direct the Secretary of the Army to establish a task force on the California snowpack and flood mitigation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2023

Mr. HARDER of California introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To direct the Secretary of the Army to establish a task force on the California snowpack and flood mitigation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Flood Prevention and
5 Snowpack Management Act”.

6 **SEC. 2. TASK FORCE ON CALIFORNIA SNOWPACK AND**
7 **FLOOD MITIGATION.**

8 (a) ESTABLISHMENT.—The Secretary of the Army,
9 acting through the Chief of Engineers, shall establish a
10 task force to be known as the “Task Force on the Cali-

1 fornia Snowpack and Flood Mitigation” (in this section
2 referred to as the “Task Force”).

3 (b) MEMBERSHIP.—

4 (1) IN GENERAL.—The Task Force shall con-
5 sist of 17 members, to be appointed by the Chief of
6 Engineers, as follows:

7 (A) 1 member of the Senate representing
8 the State of California.

9 (B) 5 members of the House of Represent-
10 atives, including—

11 (i) 1 member who represents North-
12 ern California;

13 (ii) 1 member who represents North-
14 ern San Joaquin Valley;

15 (iii) 1 member who represents Central
16 San Joaquin Valley;

17 (iv) 1 member who represents South-
18 ern San Joaquin Valley; and

19 (v) 1 member who represents South-
20 ern California.

21 (C) A representative of the Corps of Engi-
22 neers.

23 (D) A representative of the Federal Emer-
24 gency Management Agency.

1 (E) A representative of the Bureau of Rec-
2 lamation.

3 (F) A representative of the National Oce-
4 anic and Atmospheric Administration.

5 (G) A representative of the California Of-
6 fice of Emergency Services.

7 (H) A representative of the California De-
8 partment of Water Resources.

9 (I) 4 members from local community orga-
10 nizations that are impacted by, or provide re-
11 sources or relief to individuals impacted by,
12 flooding in California.

13 (J) A representative of Tribal communities
14 in California.

15 (2) CHAIRPERSON; VICE CHAIRPERSON.—The
16 Chairperson and Vice Chairperson of the Task Force
17 shall be elected by the members of the Task Force.

18 (c) MEETINGS.—

19 (1) INITIAL MEETING.—The Task Force shall
20 meet on the day after any day on which the Cali-
21 fornia Department of Resources determines that any
22 portion of the snowpack in California is 150 percent
23 above the average snowpack in California.

24 (2) SUBSEQUENT MEETINGS.—After conducting
25 the initial meeting described under paragraph (1),

1 the Task Force shall meet on a periodic basis until
2 the plan of action required under subsection (d) is
3 complete.

4 (d) DUTIES.—The duties of the Task Force shall be
5 to—

6 (1) examine and assess the risks posed by the
7 snowpack in California;

8 (2) assess what local, State, and Federal ac-
9 tions may be taken to mitigate such risks; and

10 (3) not later than 90 days after conducting an
11 initial meeting under subsection (c)(1), develop a
12 plan of action for snowpack melt, flood mitigation
13 and recovery, and expediting water storage projects
14 to capture water from the snowpack and alleviate fu-
15 ture drought conditions.

16 (e) REPORT.—Upon completion of a plan of action
17 under subsection (d), the Task Force shall submit each
18 such plan of action to—

19 (1) the Governor of California;

20 (2) the California Office of Emergency Services;

21 (3) the California Department of Water Re-
22 sources;

23 (4) the Administrator of the Federal Emer-
24 gency Management Agency;

25 (5) the Chief of Engineers;

1 (6) the Committee on Natural Resources of the
2 House of Representatives; and

3 (7) the Committee on Energy and Natural Re-
4 sources of the Senate.

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118TH CONGRESS
2D SESSION

H. R. 4385

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2024

Received; read twice and referred to the Committee on Energy and Natural
Resources

AN ACT

To extend authorization of the Reclamation States
Emergency Drought Relief Act of 1991.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Drought Preparedness
3 Act”.

4 **SEC. 2. EXTENSION OF AUTHORIZATION.**

5 (a) DROUGHT PROGRAM.—Section 104(c) of the Rec-
6 lamation States Emergency Drought Relief Act of 1991
7 (43 U.S.C. 2214(c)) is amended by striking “2022” and
8 inserting “2028”.

9 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
10 301 of the Reclamation States Emergency Drought Relief
11 Act of 1991 (43 U.S.C. 2241) is amended by striking
12 “2022” and inserting “2028”.

Passed the House of Representatives February 5,
2024.

Attest: KEVIN F. MCCUMBER,
Clerk.

AMENDED IN ASSEMBLY APRIL 29, 2024

AMENDED IN ASSEMBLY APRIL 1, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2735

Introduced by Assembly Member Blanca Rubio

February 15, 2024

An act to amend Sections 990.8 and 6525 of the Government Code, relating to water corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2735, as amended, Blanca Rubio. Joint powers agreements: water corporations.

Existing law, the Joint Exercise of Powers Act, authorizes 2 or more public agencies, if authorized by their governing bodies, by agreement to jointly exercise any power common to the contracting parties. ~~Existing law authorizes a mutual water company, as defined, to enter into a joint powers agreement with a public agency for these purposes.~~ Existing law authorizes 2 or more local public entities, or a mutual water ~~company~~ *company, as defined*, and a public agency, to provide insurance, as specified, by a joint powers agreement. Existing law authorizes local public entities or a mutual water company and a public agency to enter into a joint powers agreement for the purposes of risk-pooling, as specified.

This bill would authorize a water corporation, as defined, ~~to enter into a joint powers agreement with a public agency for the purpose of jointly exercising any power common to the contracting parties.~~ The ~~bill would also authorize a water corporation~~ and one or more public agencies to provide insurance, as specified, by a joint powers agreement.

The bill would also authorize a water corporation and one or more public agencies to enter into a joint powers agreement for the purposes of risk-pooling, as specified.

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

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

1 SECTION 1. Section 990.8 of the Government Code is
2 amended to read:

3 990.8. (a) Two or more local public entities, a mutual water
4 company and a public agency, or a water corporation and one or
5 more public agencies, as authorized under subdivision (b) of
6 Section 6525, by a joint powers agreement made pursuant to Article
7 1 (commencing with Section 6500) of Chapter 5 of Division 7,
8 may provide insurance authorized by this part or for any other
9 purpose by any one or more of the methods specified in Section
10 990.4. Where two or more hospital districts have joined together
11 to pool their self-insurance claims or losses, any nonprofit
12 corporation created pursuant to subdivision (p) of Section 32121
13 of the Health and Safety Code, and affiliated with a hospital district
14 which is a party to the pool may participate in the pool.

15 (b) Two or more local public entities having the same governing
16 board, a mutual water company and a public agency, or a water
17 corporation and one or more public agencies, as authorized under
18 subdivision (b) of Section 6525, may be coinsured under a master
19 policy and the total premium may be prorated among those entities.

20 (c) The pooling of self-insured claims or losses among entities
21 as authorized in subdivision (a) of Section 990.4 shall not be
22 considered insurance nor be subject to regulation under the
23 Insurance Code.

24 (d) Any liability or loss under a joint powers agreement for the
25 pooling of self-insured claims or losses authorized by this part and
26 provided pursuant to this section may, notwithstanding Section
27 620 of the Insurance Code or any other provision of law, be
28 reinsured to the same extent and the same manner as insurance
29 provided by an insurer.

30 (e) Where a joint powers agreement authorized by this part or
31 authorized pursuant to Section 6516 provides for the pooling of
32 self-insured claims or losses among entities, if any peril insured

1 or covered under contract has existed, and the joint powers
2 authority or other parties to the pool have been liable for any
3 period, however short, the agreement may provide that the party
4 insured or covered under contract is not entitled to the return of
5 premiums, contributions, payments, or advances so far as that
6 particular risk is concerned.

7 (f) For purposes of this section:

8 (1) “Mutual water company” has the same meaning as defined
9 in Section 14300 of the Corporations Code.

10 (2) “Water corporation” has the same meaning as defined in
11 Section 241 of the Public Utilities Code.

12 SEC. 2. Section 6525 of the Government Code is amended to
13 read:

14 6525. (a) Notwithstanding any other provision of this chapter,
15 a mutual water company ~~or a water corporation~~ may enter into a
16 joint powers agreement with any public agency for the purpose of
17 jointly exercising any power common to the contracting parties.

18 (b) (1) Notwithstanding any other provisions of this chapter, a
19 mutual water company and a public agency, or a water corporation
20 and one or more public agencies, may enter into a joint powers
21 agreement for the purpose of risk-pooling in accordance with
22 Section 990.8, provided that the agreement shall ensure that no
23 participating public agency becomes responsible for the underlying
24 debts or liabilities of the joint powers agency, and shall indemnify
25 any participating public agency against those debts and liabilities.

26 (2) A joint powers agency established pursuant to this
27 subdivision shall solely utilize any revenues it generates through
28 the insurance provided to its members under this section for its
29 necessary operating expenses, and to provide technical support,
30 continuing education, safety engineering, operational and
31 managerial advisory assistance to its members for the purpose of
32 reducing risk liabilities and furthering the technical managerial
33 and financial capacity of those members.

34 (c) For purposes of this section:

35 (1) “Mutual water company” has the same meaning as defined
36 in Section 14300 of the Corporations Code.

37 (2) “Water corporation” has the same meaning as defined in
38 Section 241 of the Public Utilities Code.

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San Luis & Delta-Mendota Water Authority



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July 1, 2024

VIA EMAIL

The Honorable Maria Elena Durazo
Chair
Senate Local Government Committee
State Capitol, Room 407
Sacramento, CA 95814

The Honorable Kelly Seyarto
Vice Chair
Senate Local Government Committee
State Capitol, Room 407
Sacramento, CA 95814

RE: OPPOSE - Assembly Bill 2735 (Rubio)

The San Luis & Delta Mendota Water Authority (“Water Authority”) writes in respectful opposition to Assembly Bill 2735 (A.B. 2735), which would allow a water corporation to enter into a joint powers agreement (JPA) with a public agency for purposes of insurance risk pooling. At the heart of our concern is the potential downstream and unanticipated impact to the risk pooling industry in California by allowing investor-owned private water corporations to join or form a risk pool.

The Water Authority is a public agency with its principal office located in Los Banos, California. It was formed in 1992 as a joint powers authority, and has twenty-seven member agencies who provide water to approximately 1.2 million acres of agricultural lands within areas of San Joaquin, Stanislaus, Merced, Fresno, Kings, San Benito, and Santa Clara Counties, a portion of the water supply for nearly 2 million people, including in urban areas within Santa Clara County referred to as the “Silicon Valley,” and millions of waterfowl that depend upon nearly 200,000 acres of managed wetlands and other critical habitat within the largest contiguous wetland in the western United States. Water management, including conjunctive use, is of vital interest and importance to the Water Authority, its member agencies, and the people, farms, businesses, communities, and wildlife and wildlife enthusiasts they serve. We serve two main purposes for our membership: (1) to operate and maintain the infrastructure upon which their water supply is reliant, and (2) to represent them on issues of common concern. AB 2735 is an issue of common concern for our membership, as many of our members participate in a risk pool through the Association of California Water Agencies Joint Powers Insurance Authority.

Up until the passing of A.B. 656 in 2015, the ability to form an insurance risk pool was reserved exclusively for public entities. This has now expanded to include private mutual water companies. Prior to this, the only avenue for a non-public entity to self-insure risks with other similar entities was by forming a Self-Insurance Group (SIG). Provisions within A.B. 2735 would go further and

July 1, 2024

expand the definition of who can join or form a risk pool to allow investor-owned private water corporations to also form a risk pool and/or join an existing risk pool.

Should a new risk pool of largely non-public entities be allowed to form, or a current risk pool absorb a significant number of non-public entity members, and should it fail financially, it jeopardizes the ability to exist for every other risk pool in the State. Investor-owned private water corporations are fundamentally different from public entities and – specifically – public water agencies, thereby posing substantially increased risk.

Some key structural and operational elements exclusive to public water agencies that make them a highly desirable risk as compared to investor-owned private water companies are that public water agencies: 1) have a singular mission and focus; 2) have autonomous operations overseen by publicly elected Boards; 3) do not rely on State and Federal funding for operational costs; 4) have control over customer rates and commit to charging rates necessary for proactive and effective operations, maintenance, and capital improvement projects; 5) have requirements to maintain the highest possible standards as stewards of public access to clean, safe drinking or irrigation water; and 6) invest significant budgetary dollars in ongoing capital improvement projects.

By contrast, investor-owned private water corporations are not public entities; therefore, 1) critical immunities that public water agencies have access to as defenses against tort liabilities are not available to them, and 2) in the event of a catastrophic loss, there is no FEMA backstop or CDAA, putting significantly added pressure on the risk pool and the insurers to cover more of the cost of a 1st party property loss. Both of these issues can substantially increase the ultimate cost of liability coverage and litigated claims and the cost of property coverage and the companies' abilities to fully recover from loss, potentially leading to compromising decisions relative to the recovery and rebuilding process.

For these reasons, we believe that public agencies are better suited for the JPA membership. Therefore, we are respectfully opposed to AB 2735, and request your “no” vote. If you have any questions, please reach out to Scott Petersen, Water Policy Director, at scott.petersen@sldmwa.org.

Sincerely,



Federico Barajas
Executive Director

Cc: Assembly Member Blanca Rubio