

BILL ANALYSIS

SENATE COMMITTEE ON GOVERNANCE AND FINANCE
 Senator Robert M. Hertzberg, Chair
 2015 - 2016 Regular

Bill No:	AB 2470	Hearing	6/22/16
		Date:	
Author:	Gonzalez	Tax Levy:	No
Version:	4/26/16	Fiscal:	Yes
Consultant:	Favorini-Csorba		

Municipal water districts: water service: Indian tribes

Requires a district to provide water to an Indian tribe outside of the district's boundaries upon request of the tribe.

Background

Local Government Boundaries. The Cortese-Knox-Hertzberg Act creates a local agency formation commission (LAFCO) in each county to control the boundaries of cities, county service areas, and most special districts. Local governments can only exercise their powers and provide services where LAFCO allows them to; the courts refer to LAFCOs as the Legislature's watchdog over boundary changes. To plan for the future boundaries and service areas of the cities and special districts, a LAFCO must adopt a policy document for each city and district called a sphere of influence. The LAFCOs' boundary decisions must be consistent with the spheres of influence of the affected cities or districts. Spheres must be updated at least every five years. In order to determine spheres of influence, LAFCOs must periodically conduct a "municipal service review" (MSR) to inform their decisions about spheres of influence. LAFCOs may also create special study areas to investigate the potential for annexations or other boundary changes.

LAFCO boundary changes can be considered projects under the

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California Environmental Quality Act (CEQA), in which case an annexation is scrutinized for environmental or growth-inducing impacts.

Municipal Water Districts. The Municipal Water District Act of 1911 establishes the powers and organization of municipal water districts. Among other things, the act allows municipal water districts to sell water to entities within the district for use within the district and to levy taxes on the land within the district. When acquiring new customers, municipal water districts may require them to implement water conservation requirements. A district may also establish special rates for areas acquired by annexation and may charge special fees when it serves areas that do not pay district taxes, such as property taxes.

San Diego County Water Provision. The Metropolitan Water District of Southern California (Metropolitan) is a water wholesaler that sells water to its 26 member agencies. About one-quarter of the water Metropolitan sells is purchased by the San Diego County Water Authority (SDCWA). SDCWA then sells it to its 24 member agencies, including Padre Dam Municipal Water District and Otay Water District, and coordinates regional water supplies. Metropolitan and SDCWA can only serve water within their boundaries, so annexations to member agencies like Padre Dam and Otay Water District also require annexations to Metropolitan and SDCWA. Thus an annexation of territory to these retail water agencies would require LAFCO approval and must also be consistent with Met's Administrative Code, the County Water Authority Act, and SDCWA's Annexation Policies and Procedures, which requires the Water Authority to evaluate the adequacy of water supplies and facilities to meet the needs of the proposed annexed territory.

Sycuan Tribe. The Sycuan Band of the Kumeyaay Nation is a federally recognized tribe of Mission Indians from Southern California, near El Cajon. The Tribe consists of 220 members, approximately 160 of whom are voting members (over 18 years old). The Tribe opened its first gambling facility, the Sycuan Bingo Palace, on its reservation in 1983. In 1999, the Tribe entered into a tribal-state gaming compact with the State of California which has provided it with extensive economic opportunities, including a profitable casino that can operate lucrative Class III games such as slot machines, in exchange for

accepting some gaming regulations, mitigating some of the impacts of the gaming operations, and paying substantial fees. In 2015, the Legislature ratified a new compact with the state that expanded the number of Class III games that the tribe may operate and requires payment of fees to the state of around \$11 million annually, including 4.75% of the tribe's gross gaming revenue plus a share of the costs of the state to perform duties required by the compact. Within the last 15 years, due in part to the economic success of the tribal government gaming operation, the tribe has purchased a number of private parcels of land to augment its original reservation lands.

The Sycuan Tribe is a sovereign government and is therefore not subject to state and local laws and regulations, except for those required under the compact. The compact requires the Tribe to prepare a Tribal Environmental Impact Report (TEIR) and negotiate mitigation of any off-reservation impacts prior to initiating the development of a project for a facility. The Tribe's failure to prepare an adequate TEIR when required is deemed a breach of the compact and is grounds for issuance of an injunction or other appropriate equitable relief. A completed TEIR must be filed with San Diego County, the Department of Justice, the State Clearinghouse and the State Gaming Agency. In 2015, Sycuan issued a notice of preparation of a TEIR for an expansion of their hotel and casino located on the reservation.

Otay Water District and Padre Dam currently serve water to much of the tribe's lands. However, the original reservation remains outside of, but largely surrounded by, the two districts' territories and is served by a single well that is vulnerable to contamination. In order to secure water for the original reservation, Sycuan paid to extend a water line through Padre Dam territory to the border of the district but was unable to connect to the system without going through LAFCO. Instead, Sycuan subsequently submitted a petition in 2008 to the Otay Water District to annex the original reservation parcels to the district. Otay prepared a draft environmental impact report covering the annexation and circulated it for comment, but Sycuan later withdrew the application.

Seeking to ensure that it has access to water sources other than the groundwater well on the reservation, Sycuan wants to connect to one of the two bordering water districts-most likely, Padre Dam Municipal Water District.

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Proposed Law

Assembly Bill 2470 requires-notwithstanding any other law-a district to provide water to an Indian tribe upon request of the tribe, subject to specified conditions. The water must be provided as if the Indian tribe's lands had been fully annexed into the district's territory and the territory of any other public agencies that are required for the provision of water service.

The bill only applies to Indian lands that meet requirements that narrow the bill to apply only to the Sycuan tribe, specifically:

— The lands were owned by the tribe on January 1, 2016;

The lands are contiguous with at least two districts;

The lands lie within the special study area of at least one district; and,

At least 70% of the Indian tribe's total Indian lands are currently within the boundaries of one or more districts.

AB 2470 requires the tribe to meet certain conditions prior to the district providing water. Specifically, the tribe must comply with all federal and tribal laws and secure all federal and tribal approvals necessary for the water to be provided on substantially the same terms applicable to customers of the district. The Indian tribe must also, by agreement, accept all terms of and payments to the district and to any public agency providing water to said district, including service payments. These terms and payments are a condition of continued service by the district.

AB 2470 deems the service area of a district providing water to a tribe pursuant to this bill to include the tribe's lands as

long as water is provided to the tribe, the tribe owes money to the district, or there is an agreement between the tribe and the district, whichever is longest.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill . The original Sycuan reservation is currently served by a single well that is vulnerable to upstream contamination and could be threatened by an earthquake due to the geology of the area. But time-consuming and expensive local processes stand in the way of shoring up supplies for the reservation, even though there are two water districts that border the tribe's land and water lines have already been laid. AB 2470 cuts through the red tape of these processes by requiring a nearby district to serve the original reservation. It provides the Sycuan tribe with the independence that is warranted by its sovereign nation status and lets the tribe deal with the Legislature on equal footing instead of subjecting itself to local processes-the outcome of which is far from guaranteed. AB 2470 paves the way for quickly addressing the public safety risks currently faced by the tribe, while ensuring that it pays its fair share for water service.

2. Precedent . The Legislature has delegated the power to control local boundaries to the 58 LAFCOs, directing the LAFCOs to discourage urban sprawl, preserve open space and agricultural lands, and provide efficient government services, while considering local conditions and circumstances. This bill bypasses LAFCO and circumvents the usual annexation process, including approval by other districts in the chain of water suppliers. Currently, Metropolitan and the Eastern Municipal Water District in Riverside County are undergoing an annexation process to include a commercial zone within the Pechanga Indian Reservation into the district. Proponents of this bill argue that it is appropriate for the Legislature to make this determination, instead of LAFCO, to reflect the unique relationship between the state and the tribe. Will this bill set a precedent and encourage additional tribes or other parties

to bypass the local process, and instead, ask for a statutory fix from the Legislature?

3. CEQA . Annexation often requires CEQA analysis on the part of the LAFCO and the agency proposing the annexation, and the 2008 proceedings for annexation of the reservation into Otay Water District was no exception. Yet CEQA does not apply to actions where an agency has no discretion. By mandating that a district serve the tribe instead of going through LAFCO, AB 2470 eliminates a level of CEQA analysis that would otherwise need to be done. Should some analysis of the potential for growth inducement be required?

4. Who pays ? Annexations to water districts, including Metropolitan, SDCWA, and Padre Dam typically include payment of connection fees to ensure that new customers share in the costs of the infrastructure that the districts have developed. These fees can be considerable-potentially reaching the millions of dollars. In addition, these districts levy taxes and assessments that the tribe's lands would not be subject to. AB 2470 requires Sycuan to make payments as if the tribe's lands were fully annexed but also provides that water must be provided on the same terms as those for existing customers. Thus it is ambiguous whether these districts will be authorized to charge connection fees or fees in lieu of taxes, potentially shifting burdens onto existing ratepayers. As sovereign nations, tribes generally may not be sued, leaving the water districts with few options in the event of any dispute. The Committee may wish to consider amending AB 2470 to specify that the payments made by the tribe shall include connection fees and other fees necessary to ensure that the cost of infrastructure is equitably distributed between the tribe and existing ratepayers.

5. Mandate . The California Constitution generally requires the state to reimburse local agencies for their costs when the state imposes new programs or additional duties on them. According to the Legislative Counsel's Office, AB 2470 creates a new state-mandated local program because it imposes new duties on municipal water districts. AB 2470 disclaims this liability by stating that no reimbursement is required under the Constitution because local agencies have the authority to levy fees sufficient to cover the cost of the increased services.

Assembly Actions

Assembly Local Government Committee:	8-0
Assembly Appropriations Committee:	20-0
Assembly Floor:	67-0

Support and
Opposition (6/16/16)

Support : Sycuan Band of the Kumeyaay Nation (sponsor); Ace Parking Management, Inc; Agua Caliente Band of Cahuilla Indians Tribal Council; Associated General Contractors of America, San Diego Chapter, Inc.; Barona Band of Mission Indians; Barrio Station; California Teamsters Public Affairs Council; Cynthia L. Eldred, Esq.; Deputy Sheriff's Association of San Diego County; Endangered Habitats League; JDRF San Diego; Kumeyaay Diegueno Land Conservancy; Leong-Kuba Sea Products, Inc; Mayor Kevin L. Faulconer, City of San Diego; Mayor Randy Voepel, City of Santee; Mocerri Produce; Mothers Against Drunk Driving; Newport Meat Company; Ocean Defenders Alliance; Otay Water District; Paradise Creek Educational Park; Pepsi Beverages Company; PlanSEA.org; San Diego County Water Authority; San Diego Gas & Electric; San Diego Museum of Man; San Diego Police Officers Association; San Diego Regional Economic Development Corporation; Santa Ynez Band of Chumash Indians; Supervisor Bill Horn, 5th District, County of San Diego; The Art Miles Mural Project; Urban Corps of San Diego County; UNITE HERE; Wildcoast.

Opposition : Unknown.

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