



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

December 3, 2012
Agenda Item No. 8a (Discussion)

November 26, 2012

TO: Local Agency Formation Commission

FROM: Brendon Freeman, Analyst

SUBJECT: Informational Report on Private Community Water Systems

The Commission will receive an informational report from staff identifying the scope and range of private community water systems operating in Napa County. The report is in preliminary form and complies with the Commission's strategic plan to broaden the agency's understanding of private water systems supporting local growth and development. The report is being presented to the Commission for discussion and feedback in anticipation of preparing a complete report.

Local Agency Formation Commissions (LAFCOs) are responsible for regulating the formation and development of local governmental agencies under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH). LAFCOs inform their regulatory powers through various planning activities, including preparing studies. The Legislature, notably, directs LAFCOs to make studies and to obtain and furnish information in contributing to the logical and reasonable development of local agencies so as to advantageously provide for the needs of each county and its communities.

A. Background

On June 4, 2012, LAFCO of Napa County ("Commission") adopted a strategic plan to guide agency activities over the next two years consistent with the interests and preferences of its members in administering CKH. The strategic plan includes five near-term goals paired with various implementing strategies to collectively orient the Commission to proactively fulfill its duties and responsibilities in a manner responsive to local conditions. One of the five near-term goals included in the strategic plan is for the Commission to focus resources in anticipating and evaluating regional and statewide issues that lie outside the agency's explicit authority, but nonetheless affect local growth management. Towards this end, the strategic plan directs the Commission to prepare an informational report on private water systems to broaden the agency's understanding of these operations and their role in supporting growth and development in Napa County.

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B. Discussion

Scope of Analysis

As mentioned, the underlying purpose of this report is to broaden the Commission's understanding of private water systems relative to informing the agency's legislative mission to encourage orderly growth and development. The report – for purposes of focusing the analysis to the specific interest of the Commission – is oriented at this time to only examine private water systems in Napa County serving at least 15 connections yearlong or at least 25 residents yearlong.¹ These types of operations are classified as “private community water systems” and generally serve small to moderate residential developments in unincorporated areas with some exceptions.

Affected Providers

There are three types of private community water systems operating in California: investor-owned; mutual; and single owner. Each type of private system is briefly summarized below.

Investor-Owned Water Company

These are for-profit entities in which ownership is directly tied to stockholders. It appears these types of entities operate most frequently in urban areas in which the company operates under a lease agreement with a city or district. There is no explicit relationship between owner and service user.

Mutual Water Company

These are not-for-profit entities in which ownership is directly tied to shareholder titles. These types of entities appear to generally serve distinct residential subdivisions. There is an explicit relationship between owner and service user and only transferable by way of title with the affected land.

Single Owner Water System

These are auxiliary operations for either for-profit or not-for-profit entities and commonly associated with mobile home parks or farmworker housing centers.

¹ Classification of a “community water system” is codified under California Health and Safety Code 116275(i).

Application to Assembly Bill 54

It is important to note this report's orientation will assist the Commission in addressing its new legislative directive under Assembly Bill (AB) 54. This legislation was enacted in January 2012 and now directs LAFCOs to consider whether private water systems are complying with the California Safe Drinking Water Act as part of the municipal service review process. AB 54 also establishes new reporting protocols specific to mutual water companies and LAFCOs. This includes establishing a definition for mutual water companies and requiring these entities with 15 or more connections and/or have a year-round population of at least 25 submit copies of their service area maps to LAFCOs by December 31, 2012. AB 54 also directs mutual water companies to respond to information requests by LAFCOs in the course of preparing municipal service reviews and/or sphere of influence updates.²

C. Analysis

Regulating Private Water Systems

There are three different types of regulatory oversight potentially applicable to private community water systems in California; none of which directly involve LAFCOs. The most expansive and intensified level of oversight involves each system's need to secure and maintain an operating permit. Service areas and user rates are also regulated, albeit at a more limited and less intensified level. A summary of each type of oversight is provided below.

Operating Permits

All private community water systems are required to obtain an operating permit from the California Department of Public Health (CDPH).³ These operating permits are subject to ongoing compliance requirements with respect to meeting specified drinking water standards that are verified through regular testing by CDPH or a delegated county department if there are fewer than 200 connections.⁴ Additionally, all permitted water systems must prepare and mail annual "consumer confidence reports" to all users noting – among other items – disclosure of any contaminants or violations incurred during the previous 12 months. Importantly, in the event a permitted water system becomes unable or unwilling to serve its users, actually or effectively abandoned by its owners, or otherwise unresponsive, CDPH may petition the court to appoint a receiver to assume possession and operate the affected system.⁵

Type	Regulated
Investor-Owned	Yes
Mutual	Yes
Single-Owner	Yes

² AB 54 also establishes a number of pertinent provisions not directly related to LAFCOs. This includes establishing a definition of "mutual water company" to mean any corporation or business that sells, distributes, supplies, or delivers water for potable or irrigation purposes only to owners of its shares that are appurtenant to certain lands. AB 54 also requires board members to complete two-hour training courses on administrative, financial, and operational duties.

³ Private community water systems that provide supplies for agricultural purposes are exempt.

⁴ Requires compliance with primary and secondary drinking water standards and employ or utilize certified water treatment operators or water treatment operators in training.

⁵ Reference Public Health and Safety Code 116665.

Service Areas

The regulation of service areas or boundaries for private community water systems is primarily limited to oversight provided by the California Public Utilities Commission (CPUC) and is specific to investor-owned utilities. CPUC oversees investor-owned utility boundaries by approving requests for certificates of public conveyance; certificates that demark relatively exclusive service areas in which other regulated utilities are not authorized to serve unless special findings are made. The California Department of Corporations (CDC) also provides a basic level of boundary oversight for mutual water companies as part of its responsibilities for issuing and regulating business licenses. This level of oversight is drawn from Corporation Code and requires applicants forming mutual water companies to contact CPUC and LAFCO to determine if the proposed service area will overlap an existing service area or if another provider would be more appropriate. To this end, a determination by CPUC or LAFCO against the formation of a new mutual water company may lead to denial of the application. There is no boundary oversight for single owner water systems.

Type	Regulated
Investor-Owned	Yes
Mutual	Partial
Single-Owner	No

User Rates

The regulation of user rates of private community water systems is entirely limited to oversight provided by CPUC and is specific to investor-owned utilities. CPUC oversees investor-owned utility rates by approving, with or without modifications, rate proposals to cover operating costs along with providing an authorized rate of return. CPUC does allow for a streamlined procedure for utilities to adjust user rates on an annually based on changes to the Consumer Price Index so long as actual revenues are not exceeding the authorized rate of return. In contrast, there is no applicable regulation for mutual water companies and single owner water systems given these entities recover costs only through owner-approved assessments.

Type	Regulated
Investor-Owned	Yes
Mutual	No
Single-Owner	No

Private Community Water Systems in Napa County / Current Baseline

There are 22 private community water systems as defined in this report currently operating in Napa County. These private systems predominantly serve permanent residential developments operating in and around the unincorporated community of Angwin. There are also a small number of private systems serving transient residences (i.e., hotels, motels, inns) in the unincorporated area as well as farmworker housing sites.

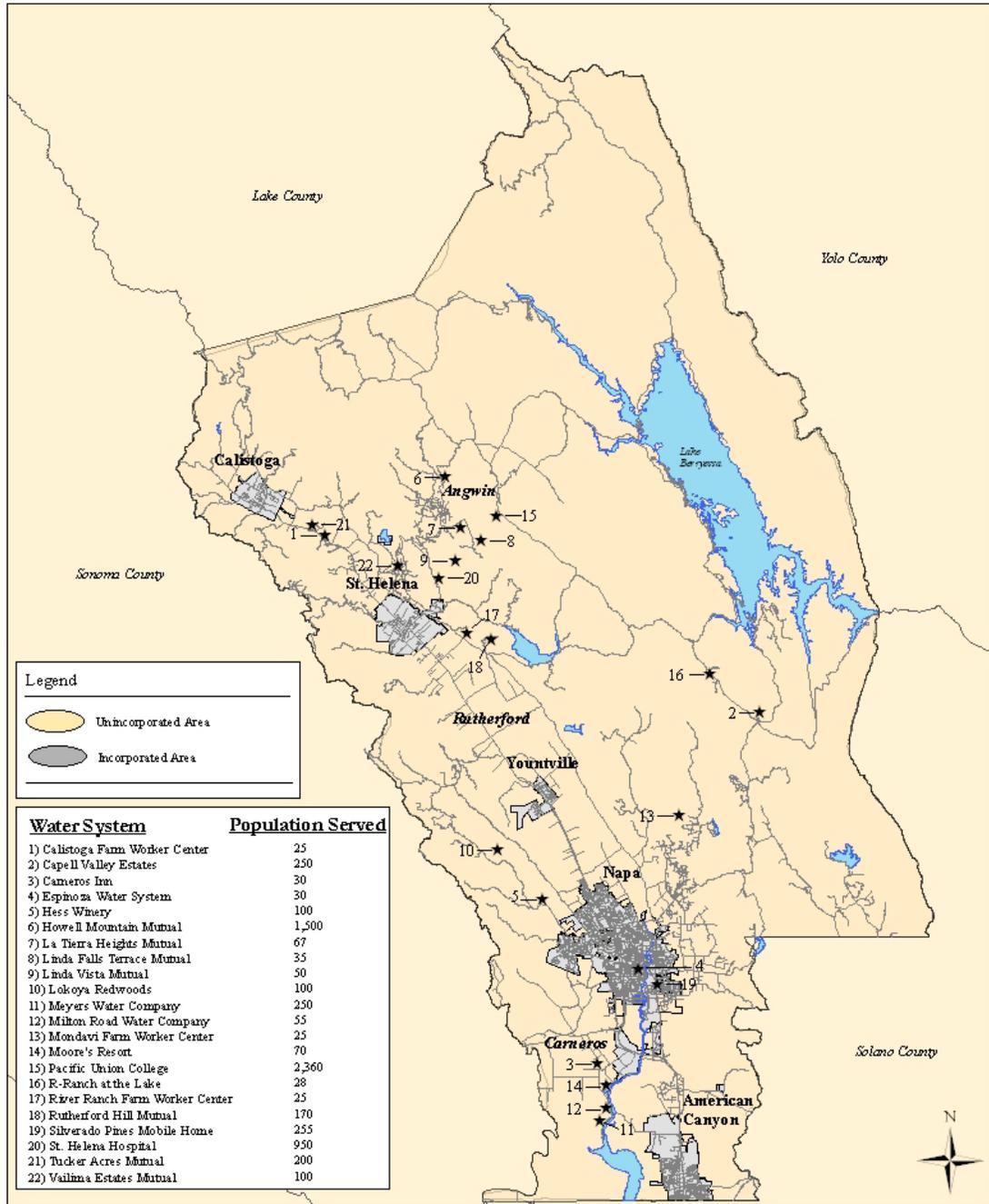
Only one of the 22 private community water systems in Napa County is investor-owned (Meyers) and subject to CPUC's oversight. The others are mostly mutual water companies, although and importantly, an exact number is not known at this time due to changes in the underlying definition enacted as part of AB 54 as detailed in succeeding section. All but three of the private systems have less than 200 connections, and as a result, maintain operating permits directly with the County of Napa through a primacy agreement with CDPH.

A review of CDPH and County indices identifies the average service population of private community water systems in Napa County is 300. The overall estimated service population dependent on private community water systems – including permanent and seasonal occupancies – is 6,675; an amount that has remained relatively stagnant over the last five calendar years.

A summary listing of all 22 local private community water systems in order of their estimated service population as calculated by the affected entity follows along with a map depicting each entity's approximate service area.

Name	Type	Source	Connections	Population	Service Area
Pacific Union College	- n/a -	Wells	211	2,360	Angwin
Howell Mountain	Mutual	Lake/Wells	377	1,500	Angwin
St. Helena Hospital	- n/a -	Wells	213	950	Angwin
Silverado Pines Co.	Single	Wells	85	255	Napa
Meyers Water Co.	Investor	Well	99	250	Elderly Island
Capell Valley Estates	Single	Lake	60	250	Capell Valley
Tucker Acres	Mutual	Wells	23	200	North Valley
Rutherford Hill	Mutual	Wells	3	170	Central Valley
Lokoya Redwoods	- n/a -	Spring/Well	18	100	Lokoya
Hess Winery	Single	Springs	1	100	South Valley
Vailima Estates	Mutual	Well	1	100	Angwin
Moore's Resort	- n/a -	Well	20	70	Carneros
La Tierra Heights	Mutual	Wells	19	67	Angwin
Milton Road Water Co.	- n/a -	Well	24	55	Carneros
Linda Vista	Mutual	Wells	15	50	Angwin
Linda Falls Terrace	Mutual	Wells	10	35	Angwin
Espinoza Water	- n/a -	Well	11	30	Napa
Carneros Inn	Mutual	Wells	1	30	Carneros
R Ranch at the Lake	- n/a -	Wells	1	28	Capell Valley
Calistoga Farmworker	Single	Well	15	25	North Valley
Mondavi Farmworker	Single	Wells	15	25	North Valley
River Ranch Farmworker	Single	Well	15	25	North Valley

Private Community Water Systems in Napa County
 15 or More Connections and/or 25 or More Users



***Private Community Water Systems in Napa County /
Outstanding Issues***

This report on private community water systems in Napa County remains in preliminary form given at least two outstanding and related issues merit additional analysis. The first issue involves performing additional outreach to the private system operators in an attempt to better understand local service conditions, including a more exact description of the service areas for many of the affected entities. Additional outreach, importantly, would also provide the Commission the opportunity to engage an otherwise overlooked service provider in better understanding their respective interests and challenges in supporting unincorporated developments. The second issue involves addressing AB 54's new provisions relating to LAFCOs and mutual water companies. In particular, and as referenced, AB 54 establishes a broad new definition that requires more analysis to determine the actual number of mutual water companies operating in Napa County.⁶

D. Commission Review

Commissioners are encouraged to discuss and provide feedback on the preliminary report on private community water systems. This includes providing direction to staff with respect to additional analysis in anticipation of presenting a complete report at a future regular meeting.

Attachment:

- 1) Assembly Bill 54

⁶ In May 2012, staff issued a notice to all private community water service providers regarding the new provisions under AB 54. The letter also requested the affected entities reply to the Commission with certain information, including maps of their service areas and other related information. To date, eight of the 22 affected agencies have provided some response to the Commission. A complete listing of information provided will be included in the complete report.

Assembly Bill No. 54

CHAPTER 512

An act to amend Section 14300 of, and to add Sections 14300.5, 14301.1, 14301.2, and 14301.3 to, the Corporations Code, to amend Sections 56375 and 56430 of the Government Code, and to add Section 116760.65 to, and to add Article 12 (commencing with Section 116755) to Chapter 4 of Part 12 of Division 104 of, the Health and Safety Code, relating to drinking water.

[Approved by Governor October 7, 2011. Filed with
Secretary of State October 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 54, Solorio. Drinking water.

(1) Existing law authorizes any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes, and requires any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for domestic use, to provide in its articles or bylaws that water shall be sold, distributed, supplied, or delivered only to owners of its shares and that those shares are appurtenant to certain lands, as specified.

This bill would specify that any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes, and any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for domestic use that provides in its articles or bylaws that the water shall be sold, distributed, supplied, or delivered only to owners of its shares and that those shares are appurtenant to certain lands shall be known as a mutual water company.

The bill would also require each mutual water company that operates a public water system to, by December 31, 2012, submit a map depicting the approximate boundaries of the property that the municipal water company serves to the local agency commission within the county in which the mutual water company operates. The bill would prohibit a mutual water company from expanding its boundaries without approval from the appropriate local agency formation commission. The bill would require a mutual water company that operates a public water system to supply certain information to a local agency formation commission upon request, as specified. This bill would require a mutual water company that operates a public water system to maintain a financial reserve fund to be used for certain types of activities.

The bill would also require each board member of a mutual water company that operates a public water system to, within 6 months of taking office, complete a 2-hour course offered by a qualified trainer, as specified.

(2) Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law establishes the Safe Drinking Water State Revolving Fund, continuously appropriated to the department for the provision of grants and revolving fund loans to provide for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law requires the department to establish criteria to be met for projects to be eligible for consideration for this funding.

This bill would provide that in considering an application for funding a project, the department shall not be prejudiced by the applicant initiating the project prior to the department approving the application for funding. This bill would also provide that preliminary project costs or construction costs that are otherwise eligible for funding shall not be ineligible because the costs were incurred by the applicant during certain time periods.

(3) Existing law, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, sets forth the powers and duties of a local agency formation commission, including, among others, the powers to review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.

This bill would additionally authorize the commission to approve, with or without amendment, wholly, partially, or conditionally, or disapprove the annexation of territory served by a mutual water company that operates a public water system into the jurisdiction of a city, a public utility, or a special district, with the consent of the respective public agency or public utility and mutual water company.

(4) Under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, each local agency formation commission is required to develop and determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere of influence. In order to prepare and update spheres of influence, the commission is required to conduct a service review, including the review of growth and population projections for the affected area, present and planned capacity of public facilities and adequacy of public services, financial ability of agencies to provide services, the status of, and opportunities for, shared facilities,

accountability for community service needs, and any other matter related to effective or efficient service delivery, as required by commission policy.

This bill would authorize the commission to include in the service review, a review of whether the agencies under review comply with safe drinking water standards. This bill would provide that a public water system may comply with that review by submitting certain documents.

(5) Existing law provides for the imposition of civil fines in amounts up to \$5,000 or \$25,000 for specified violations of the California Safe Drinking Water Act.

This bill would provide that a mutual water company is liable for any fines, penalties, costs, expenses, or other amounts that may be imposed upon the mutual water company under the California Safe Drinking Water Act. This bill would authorize a mutual water company to levy an assessment to pay those fines. This bill would provide that if the amount of those fines exceeds 5% of the annual budget of a mutual water company, then the mutual water company would be required to levy an assessment to pay those fines.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Californians rely on a broad diversity of public and private organizations to deliver clean and safe drinking water to their home water taps. Regardless of the form of the organization that operates a public water system, these organizations provide a public service that remains one of the core duties of the people's government.

(b) While the state's goal is to ensure clean and safe drinking water, California's drinking water quality has deteriorated and some public water systems continue to suffer poor water quality that are inconsistent with safe drinking water standards.

(c) The state provides funding to public water systems to improve drinking water quality through the Safe Drinking Water Revolving Fund, but demand far exceeds the available funding. Based on the United States Environmental Protection Agency's Drinking Water Infrastructure Needs Survey and Assessment, which was performed in 2007, the State Department of Public Health estimates that the 20-year drinking water infrastructure need for California is \$39 billion. Funding for such projects, however, for 1997–2008 totaled only \$1.2 billion.

SEC. 2. Section 14300 of the Corporations Code is amended to read:

14300. (a) Any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation purposes may provide, and any corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for domestic use shall provide, in its articles or bylaws that water shall be sold, distributed, supplied, or delivered only to owners of its shares and that the shares shall be appurtenant to certain lands when the same are described in the certificate

issued therefor; and when the certificate is so issued and a certified copy of the articles or bylaws recorded in the office of the county recorder in the county where the lands are situated the shares of stock shall become appurtenant to the lands and shall only be transferred therewith, except after sale or forfeiture for delinquent assessments thereon as provided in Section 14303. Notwithstanding this provision in its articles or bylaws, any such corporation may sell water to the state, or any department or agency thereof, or to any school district, or to any public agency, or, to any other mutual water company or, during any emergency resulting from fire or other disaster involving danger to public health or safety, to any person at the same rates as to holders of shares of the corporations; and provided further, that any corporation may enter into a contract with a county fire protection district to furnish water to fire hydrants and for fire suppression or fire prevention purposes at a flat rate per hydrant or other connection. In the event lands to which any stock is appurtenant are owned or purchased by the state, or any department or agency thereof, or any school district, or public agency, the stock shall be canceled by the secretary, but shall be reissued to any person later acquiring title to the land from the state department, agency, or school district, or public agency.

(b) A corporation described in subdivision (a) shall be known as a mutual water company.

SEC. 3. Section 14300.5 is added to the Corporations Code, to read:

14300.5. For purposes of this chapter, "public water system" shall have the same meaning as provided in Section 116275 of the Health and Safety Code.

SEC. 4. Section 14301.1 is added to the Corporations Code, to read:

14301.1. (a) No later than December 31, 2012, each mutual water company that operates a public water system shall submit to the local agency formation commission for its county a map depicting the approximate boundaries of the property that the mutual water company serves.

(b) A mutual water company that operates a public water system shall respond to a request from a local agency formation commission, located within a county that the mutual water company operates in, for information in connection with the preparation of municipal service reviews or spheres of influence pursuant to Chapter 4 (commencing with Section 56425) of Part 2 of Division 3 of Title 5 of the Government Code within 45 days of the request. The mutual water company shall provide all reasonably available nonconfidential information relating to the operation of the public water system. The mutual water company shall explain, in writing, why any requested information is not reasonably available. The mutual water company shall not be required to disclose any information pertaining to the names, addresses, or water usage of any specific shareholder. This subdivision shall not be interpreted to require a mutual water company to undertake any study or investigation. A mutual water company may comply with this section by submitting to the local agency formation commission the same information that the mutual water company submitted to the State Department of Public Health.

(c) A mutual water company that operates a public water system shall be subject to the requirements of, and has the powers granted by, subdivision (b) of Section 116755 of the Health and Safety Code.

SEC. 5. Section 14301.2 is added to the Corporations Code, to read:

14301.2. Each board member of a mutual water company that operates a public water system shall comply with the training requirements set out in subdivision (a) of Section 116755 of the Health and Safety Code.

SEC. 6. Section 14301.3 is added to the Corporations Code, to read:

14301.3. (a) All construction on public water systems operated by a mutual water company shall be designed and constructed to comply with the applicable California Waterworks standards, as provided in Chapter 16 of Title 22 of the California Code of Regulations.

(b) A mutual water company that operates a public water system shall maintain a financial reserve fund for repairs and replacements to its water production, transmission, and distribution facilities at a level sufficient for continuous operation of facilities in compliance with the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and the California Safe Drinking Water Act (Chapter 4 (commencing with 116270) of Part 12 of Division 104 of the Health and Safety Code).

SEC. 7. Section 56375 of the Government Code is amended to read:

56375. The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) (1) To review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.

(2) The commission may initiate proposals by resolution of application for any of the following:

(A) The consolidation of a district, as defined in Section 56036.

(B) The dissolution of a district.

(C) A merger.

(D) The establishment of a subsidiary district.

(E) The formation of a new district or districts.

(F) A reorganization that includes any of the changes specified in subparagraph (A), (B), (C), (D), or (E).

(3) A commission may initiate a proposal described in paragraph (2) only if that change of organization or reorganization is consistent with a recommendation or conclusion of a study prepared pursuant to Section 56378, 56425, or 56430, and the commission makes the determinations specified in subdivision (b) of Section 56881.

(4) A commission shall not disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is any of the following:

(A) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for

urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city.

(B) Located within an urban service area that has been delineated and adopted by a commission, which is not prime agricultural land, as defined by Section 56064, and is designated for urban growth by the general plan of the annexing city.

(C) An annexation or reorganization of unincorporated islands meeting the requirements of Section 56375.3.

(5) As a condition to the annexation of an area that is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded, territory.

(6) A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements.

(7) The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. A commission shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at build-out, and are consistent with the city's general plan. However, the commission shall not specify how, or in what manner, the territory shall be rezoned.

(b) With regard to a proposal for annexation or detachment of territory to, or from, a city or district or with regard to a proposal for reorganization that includes annexation or detachment, to determine whether territory proposed for annexation or detachment, as described in its resolution approving the annexation, detachment, or reorganization, is inhabited or uninhabited.

(c) With regard to a proposal for consolidation of two or more cities or districts, to determine which city or district shall be the consolidated successor city or district.

(d) To approve the annexation of unincorporated, noncontiguous territory, subject to the limitations of Section 56742, located in the same county as that in which the city is located, and that is owned by a city and used for municipal purposes and to authorize the annexation of the territory without notice and hearing.

(e) To approve the annexation of unincorporated territory consistent with the planned and probable use of the property based upon the review of general plan and rezoning designations. No subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the rezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred

in circumstances that necessitate a departure from the rezoning in the application to the commission.

(f) With respect to the incorporation of a new city or the formation of a new special district, to determine the number of registered voters residing within the proposed city or special district or, for a landowner-voter special district, the number of owners of land and the assessed value of their land within the territory proposed to be included in the new special district. The number of registered voters shall be calculated as of the time of the last report of voter registration by the county elections official to the Secretary of State prior to the date the first signature was affixed to the petition. The executive officer shall notify the petitioners of the number of registered voters resulting from this calculation. The assessed value of the land within the territory proposed to be included in a new landowner-voter special district shall be calculated as shown on the last equalized assessment roll.

(g) To adopt written procedures for the evaluation of proposals, including written definitions consistent with existing state law. The commission may adopt standards for any of the factors enumerated in Section 56668. Any standards adopted by the commission shall be written.

(h) To adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653 and the initiation of a change of organization or reorganization pursuant to subdivision (a).

(i) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(j) To incur usual and necessary expenses for the accomplishment of its functions.

(k) To appoint and assign staff personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the commission.

(l) To review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.

(m) To waive the restrictions of Section 56744 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

(n) To waive the application of Section 22613 of the Streets and Highways Code if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(o) If the proposal includes the incorporation of a city, as defined in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property

tax revenue to be exchanged by the affected local agencies pursuant to Section 56810.

(p) To authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133.

(q) To enter into an agreement with the commission for an adjoining county for the purpose of determining procedures for the consideration of proposals that may affect the adjoining county or where the jurisdiction of an affected agency crosses the boundary of the adjoining county.

(r) To approve with or without amendment, wholly, partially, or conditionally, or disapprove pursuant to this section the annexation of territory served by a mutual water company formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code that operates a public water system to a city or special district. Any annexation approved in accordance with this subdivision shall be subject to the state and federal constitutional prohibitions against the taking of private property without the payment of just compensation. This subdivision shall not impair the authority of a public agency or public utility to exercise eminent domain authority.

SEC. 8. Section 56430 of the Government Code is amended to read:

56430. (a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

- (1) Growth and population projections for the affected area.
- (2) Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies.
- (3) Financial ability of agencies to provide services.
- (4) Status of, and opportunities for, shared facilities.
- (5) Accountability for community service needs, including governmental structure and operational efficiencies.
- (6) Any other matter related to effective or efficient service delivery, as required by commission policy.

(b) In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area.

(c) In conducting a service review, the commission may include a review of whether the agencies under review, including any public water system as defined in Section 116275, are in compliance with the Safe Drinking Water Act. A public water system may satisfy any request for information as to compliance with the Safe Drinking Water Act by submission of the consumer confidence or water quality report prepared by the public water system as provided by Section 116470 of the Health and Safety Code.

(d) The commission may request information, as part of a service review under this section, from identified public or private entities that provide wholesale or retail supply of drinking water, including mutual water companies formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, and private utilities, as defined in Section 1502 of the Public Utilities Code.

(e) The commission shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or 56426.5 or to update a sphere of influence pursuant to Section 56425.

SEC. 9. Article 12 (commencing with Section 116755) of Chapter 4 of Part 12 of Division 104 is added to the Health and Safety Code, to read:

Article 12. Board Member Training

116755. (a) Each board member of a mutual water company that operates a public water system, as defined in Section 116275, shall, within six months of taking office, or by December 31, 2012, if that member was serving on the board on December 31, 2011, complete a two-hour course offered by a qualified trainer regarding the duties of board members of mutual water companies, including, but not limited to, the duty of a corporate director to avoid contractual conflicts of interest and fiduciary duties, the duties of public water systems to provide clean drinking water that complies with the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and this chapter, and long-term management of a public water system. For the purposes of this subdivision, a trainer may be qualified in any of the following ways:

- (1) Membership in the California State Bar.
- (2) Accreditation by the International Association of Continuing Education and Training (IACET) ANSI/IACET 1-2007.
- (3) Sponsorship by either the Rural Community Assistance Corporation or the California Rural Water Association.

(b) A mutual water company formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code shall be liable for the payment of any fines, penalties, costs, expenses, and other amounts that may be imposed upon the mutual water company pursuant to this chapter. The mutual water company may levy an assessment, pursuant to Section 14303 of the Corporations Code, to pay these fines, penalties, costs, expenses, and other amounts so imposed. If the amount of outstanding fines, penalties, costs, expenses and other amounts imposed pursuant to this chapter exceed 5 percent of the annual budget of the mutual water company, then the mutual water company shall levy an assessment, pursuant to Section 14303 of the Corporations Code, to pay those fines, penalties, costs, expenses, and other amounts so imposed.

SEC. 10. Section 116760.90 of the Health and Safety Code is amended to read:

116760.90. (a) The department shall not approve an application for funding unless the department determines that the proposed study or project is necessary to enable the applicant to meet safe drinking water standards, and is consistent with an adopted countywide plan, if any. The department may refuse to fund a study or project if it determines that the purposes of this chapter may more economically and efficiently be met by means other than the proposed study or project. The department shall not approve an application for funding a project with a primary purpose to supply or attract future growth. The department may limit funding to costs necessary to enable suppliers to meet primary drinking water standards, as defined in Chapter 4 (commencing with Section 116270).

(b) With respect to applications for funding of project design and construction, the department shall also determine all of the following:

(1) Upon completion of the project, the applicant will be able to supply water that meets safe drinking water standards.

(2) The project is cost-effective.

(3) If the entire project is not to be funded under this chapter, the department shall specify which costs are eligible for funding.

(c) In considering an application for funding a project that meets all other requirements of this chapter and regulations, the department shall not be prejudiced by the applicant initiating the project prior to the department approving the application for funding. Preliminary project costs that are otherwise eligible for funding pursuant to the provisions of this chapter shall not be ineligible because the costs were incurred by the applicant prior to the department approving the application for funding. Construction costs that are otherwise eligible for funding pursuant to the provisions of this chapter shall not be ineligible because the costs were incurred after the approval of the application by the department but prior to the department entering into a contract with the applicant pursuant to Section 116761.50.