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Date of Hearing: July 10, 2001

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE
Dean Florez, Chair
SB 221 (Kuehl) - As Amended: June 25, 2001

SENATE VOTE : 21-12

SUBJECT : Land use: water supplies.

SUMMARY : Prohibits a city or county (planning agency) from approving a development agreement that includes a subdivision of more than 200 units unless it provides that any tentative map prepared for the subdivision will comply with the requirements of the bill. Requires the planning agency to include as a condition in all tentative maps for 200 or more residential units a requirement that a sufficient water supply shall be available. Specifically, this bill :

- 1) Specifies that for purposes of the notice of intention to subdivide, in the case of a subdivision of more than 200 residential units, that the statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply required by the bill.
- 2) Specifies that a development agreement that includes a subdivision of more than 200 residential units shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the criteria specified in the bill.
- 3) Requires the planning agency to include as a condition in all tentative maps for 200 or more residential units a requirement that a sufficient water supply shall be available.
- 4) Specifies that proof of availability of a sufficient water supply shall be based on either of the following:
 - a) Written verification from the applicable water service provider (water supplier).
 - b) Written verification from the water supplier, and a finding made by the local agency that additional water supplies are, or will be, available prior to completion of the project. Requires the findings to be on the record and

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supported by substantial evidence.

- 1) Specifies that a local agency may seek a writ of mandamus if the water supplier fails to provide the written verification required.
- 2) Specifies that the water supplier's written verification of ability to provide a sufficient water supply shall be supported by substantial evidence based upon the water supplier's most recently adopted urban water management plan.
- 3) Requires, when written verification relies on obtaining projected water supplies, that the verification be based on all of the following:
 - a) Written contracts or other proof of entitlement to the identified water supply.
 - b) Copies of a capital outlay program for financing the delivery of the water supply that has been adopted by the applicable water supplier.
 - c) Securing of applicable federal, state, and local permits for construction of necessary infrastructure associated with supplying the water supply.
 - d) Any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply to the project.
- 1) Defines "sufficient water supply" to mean that the water supplier's total projected water supplies available during normal, single dry, or multiple dry years included in the urban water management plan (UWMP) 20-year projection will meet the projected water demand associated with the proposed subdivision, in addition to the water suppliers existing and planned future uses.
- 2) Provides that if the water supplier has no UWMP, or if there is no water supplier, that "sufficient water supply" shall mean the local agency has considered certain applicable facts and any water supply assessment required to be completed under existing law.
- 3) Specifies that the determination that sufficient water supply is available may include water supply reductions based on an urban water shortage contingency analysis prepared pursuant to existing law.

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- 4) Specifies that the total available water supplies of the water supplier may also include a long-term supply of water secured by the water provider that will be available prior to completion of the project.
- 5) Requires water suppliers whose water supply includes groundwater to include in the determination as to whether a sufficient water supply is available:
 - a) For adjudicated groundwater basins, the quantity of groundwater that may legally be provided to serve the proposed subdivision.
 - b) For basins not adjudicated, and not listed as over-drafted or in critical condition in Bulletin 118, the quantity of groundwater that can be withdrawn within the safe yield of the basin and without adversely affecting the environment.
 - c) Provides for a presumption, for basins not adjudicated, which are listed as over-drafted or in critical condition in Bulletin 118, that the use of groundwater will not be considered as part of a "sufficient water supply" absent substantial evidence that such groundwater pumping is part of a groundwater management program that will eliminate long-term overdraft.
- 1) Specifies that the bill does not apply to any residential project proposed for a site within an urbanized area, that has been previously developed for urban uses, or where the contiguous properties surrounding the site are, or have been, developed for urban uses.
- 2) Recognizes that current law requires water providers to grant priority for the provision of available and future water resources or services to proposed housing developments that help meet a local agencies share of the regional housing needs for lower income households.
- 3) Specifies that nothing in this section shall preclude a planning agency, at the request of the applicant, from making the determinations added by the bill earlier than required.
- 4) Specifies that this section is not intended to create a right or entitlement to water service or any specific level of water service, nor change existing law concerning a water supplier's

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obligation to provide water service to existing or potential future customers.

- 5) Provides that the County of San Diego is deemed to comply with this section if the Office of Planning and Research determines

that certain specified conditions are met.

- 6) Adds to the list of current conditions for local agency denial of a tentative map, or a parcel map for which a tentative map is not required, the conditions that the design of the subdivision or the type of improvement does not:
 - a) Comply with the requirements of the bill.
 - b) Incorporate reasonable or practical measures to maintain the physical and economic integrity of agricultural lands.

EXISTING LAW :

- 1) Provides that unless waived, any person who intends to offer subdivided lands for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire which includes, among other things, a statement of the provisions, if any, that have been made for public utilities in the proposed subdivision.
- 2) Provides that a development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.
- 3) Provides that a city or county shall deny approval of a tentative map, or a parcel for which a tentative map was not required, if certain findings are made regarding the design or site.
- 4) Requires every water supplier with 3,000 service connections or more to prepare an UWMP. A water supplier with 3,000 or more service connections may, if requested, provide an assessment of water supply availability to a local planning agency for subdivisions of more than 500 dwelling units and other land developments.
- 5) Requires local planning agencies to consider the availability of water supplies for subdivisions of more than 500 dwelling

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units and other large land developments. The local planning agency must include the assessment in the environmental impact report required for the development, but may approve the development even if the assessment shows insufficient water supplies are available.

- 6) Exempts San Diego from the requirements of existing law by finding that Measure C, adopted by San Diego County voters, is functionally equivalent.

FISCAL EFFECT : Self-financing disclaimer.

COMMENTS :

The Subdivision Map Act (Act) requires tentative and final maps to be prepared before land may be divided into more than five parcels. Tentative maps show the intended design of, and improvements for, a proposed subdivision. A local planning agency has the discretion to place conditions on approval of the tentative map to ensure that certain standards of development are met. When conditions are imposed, the developer must satisfy all of the conditions before receiving the final map. When the developer fulfills all of the tentative map's conditions, approval of a final map is ministerial. The Act requires planning agencies to deny tentative maps if seven specified conditions exist, including inconsistency with the general plan, substantial environmental damage, or serious public health problems.

According to the sponsor, East Bay Municipal Utility District (EBMUD), a recent review of projects approved by local planning agencies revealed that many local planning agencies are not complying with the requirements of SB 901 (Chapter 881, Statutes of 1995). SB 901 by Senator Costa sought to link land use and water supply planning processes to ensure that land use and water supply agencies would communicate early in the planning process. SB 901 established multiple-dry water years as the water reliability assessment standard, as the predominant trend in California's hydrology has been for cycles of three to five dry water years followed by a similar cycle of wet water years.

Between 1996-2000 119 large-scale projects were subject to SB

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901. The review revealed that only 2% of the 119 projects fully complied with the water supply assessment required by existing law. In addition 136 projects of 500 units or greater were found to be exempt from SB 901 because of loopholes in the original statute. Only two out of 255 projects (500+ units) initiated since 1996 have completed a thorough water supply assessment. Of those projects including an identification of the source of water within the EIR, over 90% identified the State Water Project (SWP) or the Central Valley Project (CVP) as a source of water supply. Under present conditions, the SWP and the CVP currently have greater demands than they are able to meet.

According to the Department of Finance, California's population will double by 2040. Supporters contend that approving new development faster than new water supplies are developed puts existing customers at risk during future droughts. Supporters also maintain that the bill will encourage the development of new supplies at the local level in conjunction with the reality of growth needs in the region.

The Association of California Water Agencies (ACWA) concurs with the intent of the bill. ACWA believes, however, that the failure to implement SB 901 results from a fundamental disconnection between the California Environmental Quality Act (CEQA) and the SB 901 process. ACWA has proposed amendments to the bill that would remove their opposition. Specific concerns include the inconsistency between SB 901 that provides for a threshold of 500 units as opposed to this measure that sets a threshold of 200 units. Instead of a specific number of units specified in statute, ACWA supports amending CEQA to specify a threshold of significance by which to determine whether a project will have a potential significant effect on the environment. ACWA also does not believe that the information relating to groundwater that the bill would require be provided to a planning agency would be available to a water provider, and supports amending CEQA to provide guidance on the evaluation of groundwater availability. In addition, Section 5 of the bill is opposed in the belief that it would create insurmountable conflict between the provision of housing and the preservation of agricultural lands.

Additional Comments for July 10, 2001 Hearing

This bill is double referred to the Local Government Committee.

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The author has been working on amendments to the bill that will be outlined to the Committee prior to the vote. As the Local Government Committee hearing is on Wednesday, July 11, 2001, the amendments will be placed in the bill in that Committee should it pass the Water, Parks & Wildlife Committee.

Proposed amendments include:

- 1) Deletion of the 200 unit standard, and replacement with the SB 901 standard of 500 units.
- 2) The addition of language proposed by ACWA that requires a local agency to send a notice to any applicable water supplier that a city or county has determined that a tentative map application for a proposed subdivision is complete. The notice is to include information such as the location of the subdivision, the number of units, density, and any other

information that would be relevant.

- 3) Clarification of the map condition requirements and process for verification requested by the American Planning Association (APA) and California Supervisors Association of California (CSAC). Provides for a 90-day timeline as opposed to the suggested 30-day timeline.
- 4) Provides additional guidance to water suppliers who have no UWMP as to what constitutes a "sufficient water supply" by referencing existing law relative to the UWMP.
- 5) Provides additional guidance to local agencies, if there is no water supplier, as to what constitutes a "sufficient water supply" by referencing existing law relative to the UWMP. The need for separate requirements for areas with no water service provider was proposed by APA and CSAC.
- 6) A re-write of language relating to groundwater in a basin which is not been adjudicated and which has been identified as currently overdrafted. Deletion of the term "safe yield".
- 7) New language that requires the determination of sufficient water supply include consideration of the reasonably foreseeable impacts of the proposed subdivision on the availability of water resources that serve agricultural and industrial uses within the water suppliers service area.

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- 8) New language relative to all other groundwater basins that provides that a "sufficient water supply" is one that is sufficient to serve the proposed subdivision without resulting in an overdraft or a water shortage if present management conditions continue.
 - 9) New language which specifies that the information used to make the determination of sufficient water supply is that information contained in the UWMP and supplemented by information that is reasonably available.
 - 10) Deletes all of Section 5 as requested by various opponents. This section had proposed to add "maintaining the physical and economic integrity of agricultural lands" to the Subdivision Map Act.

Similar legislation: SB 610 (Costa) would strengthen certain requirements established by SB 901 and add new requirements with the intent of improving planning agency compliance with SB 901.

REGISTERED SUPPORT / OPPOSITION :

Support

Audubon-California
 California Farm Bureau Federation
 Community Alliance with Family Farmers
 Defenders of Wildlife
 East Bay Municipal Utility District (sponsor)
 League of Women Voters of California
 Nature Conservancy
 Office of the Attorney General
 Planning and Conservation League
 Sierra Club
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Support if Amended

American Planning Association
 City of Los Angeles
 County Supervisors Association of California

Opposition

Association of California Water Agencies

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California Association of REALTORS
 California Building Industry Association
 California Business Properties Association
 California Chamber of Commerce
 City of Moreno Valley
 Consulting Engineers and Land Surveyors of California
 Home Ownership Advancement Foundation
 League of California Cities
 Orange County Board of Supervisors
 Resource Landowners Coalition
 San Diego County Board of Supervisors
 Tejon Ranch Company
 Weston, Benshoof, Rochefort, Rubalcava, MacCuish LLP

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