

-VIA ELECTRONIC MAIL-

November 16, 2020

MEMORANDUM

TO: Stacy Taylor, Mesa Water District

FROM: Dennis K. Albiani, Anthony Molina, California Advocates, Inc.

SUBJECT: November Report

The last month was unique – closing the chapter of the 2019-2020 legislative session, engaging in conversations around legislative priorities for upcoming year, and transitioning to this year's highly anticipated elections.

Through our conversations on the upcoming legislative session, many, if not all staffers and Legislators believe business will begin with no "in-person" activities – Zoom meetings and phone calls until further notice. Nonetheless, we are preparing and will adapt accordingly. Also, in some very preliminary discussions around priority legislative topics for next session, the following have been brought to our attention: COVID-19 response, budget (federal stimulus), economic recovery/bonds, wildfires, and housing/homelessness. As we move closer to the next month, more information will be daylighted by the Administration and newly sworn-in Legislators.

Additionally, there are several Budget and Informational Hearings taking place on COVID-19 response, wildfire response, natural resources, and the budget. We are actively monitoring those hearings and engaging constructively with staff and Members. As we receive pertinent information on issues relevant to Mesa Water District, we will communicate in a timely manner.

Election – Key Races for Mesa Water District

Below are key races and ballot propositions of importance to Mesa Water District. Below we have outlined those races and their outcome (in some races votes are still being counted).

California State Senate:

The California State Senate had four very close races. The race of importance to Mesa Water District was Senator John Moorlach. On Friday, November 13th Senator Moorlach conceded the race. Dave Min, who is a Democrat, will be the new Senator in Senate District 37. While the other three races are still too early to call, it looks as if the Assembly Democrats will pick up two additional seats. The makeup of next year's Senate body will likely be 31 Democrats and 9 Republicans.

Senate District 37

Dave Min (D) – 269,906 – 51.2%
John Moorlach (R) – 257,711 – 48.8%

Outcome: Incumbent Senator John Moorlach has conceded the race. Dave Min will win the election.

California State Assembly:

The California State Assembly was slated to have a handful of Democratic targets and pickups. However, this was not the case. The Assembly Democrats were unable to win any new Republican seats. The Assembly Republican Caucus was able to capitalize on one seat, netting them an extra member. The likely makeup of next year's Assembly will be 60 Democrats, 19 Republicans, and 1 Independent. Below are the Orange County Assembly races around Mesa Water District.

Assembly District 68

Melissa Fox (D) – 120,692– 46.9%

Steven Choi (R) – 136,503 – 53.1%

Outcome: Incumbent Assemblymember Steven Choi will win reelection.

Assembly District 72

Diedre Nguyen (D) – 103,483– 45.9%

Janet Nguyen (R) – 122,021– 54.1%

Outcome: Candidate Janet Nguyen will win this race.

Assembly District 74

Cottie Petrie-Norris (D) – 133,309 – 50.5%

Diane Dixon (R) – 130,657 – 49.5%

Outcome: This race is too close to call. However, late votes are trending towards Incumbent Assemblymember Cottie Petrie-Norris.

Proposition(s):**Prop. 15 "Split Roll" Property Tax**

Increase property taxes on land and properties worth more than \$3 million. Commercial and industrial land and buildings to be taxed based on how much they could be sold for instead of their original purchase price. Phases in starting in 2022 and does not start before 2025 for properties used by California businesses that meet certain rules and have 50 or fewer employees. Ag land with improvements will be subject to reassessment. The "split roll" measure could generate between \$6.5 billion and \$11.5 billion a year for schools and local governments.

Outcome: Failed

Prop. 24 "Bolster Consumer Privacy Laws"

Would establish a new state agency dedicated to enforcing privacy laws, increase financial penalties against violators and allow consumers to ask that their personal information not be sold. Changes would generally reduce the number of businesses required to meet these requirements. For example, consumer data privacy requirements currently apply to businesses that buy, sell, or share for business purposes the personal data of 50,000 or more consumers, households, or devices annually. The proposition (1) no longer counts devices and (2) increases the annual threshold to 100,000 or more consumers or households.

Outcome: Passed

2020 Legislative Tracking

AB 2560 (Quirk) Water quality: notification and response levels: procedures.

AB 2560 will provide greater transparency and clarify the notification level (NL) and response level (RL) process to provide all water agencies clear and consistent information as they can continue to provide safe, clean and affordable drinking water to their constituents. Specifically, AB 2560 requires the State Water Board to do the following: Post on its internet website that it has initiated the development of a NL or RL and additionally post a draft NL or RL when it's available; Submit a draft NL or RL for external peer review; and, take a formal action to finalize the NL or RL.

Status: This Governor signed this bill.

2021 Proposed Legislation

Irvine Ranch Water District (RWD) has proposed legislation for ACWA to sponsor on "Retail Water Rates Validation Actions". IRWD proposal seeks to provide an option for retail water agencies to prevent costly and time-consuming water rates litigation challenging their rates and charges years after they have been adopted and collected while still ensuring that the adopted rates and charges comply with Proposition 218 and the law. At the last AWCA State Legislative Committee Meeting, AWCA agreed to sponsor the proposal. Mesa Water District is working diligently with stakeholders to continue vetting the proposal.

In Tentative Ruling, Court Declares Governor's Abuse of Power Unconstitutional

On Monday, a California Superior Court judge ruled in the first major blow to the Governor's executive authority amid the pandemic. The judge ruled that Governor Newsom does not have the power to issue Executive Orders (EO) that amend or make new state laws. The tentative ruling found that the Governor's June EO, establishing new election regulations was unconstitutional because it violated the state's separation of powers — only legislators have the power to make new laws.

The tentative ruling holds that the Governor overstepped his emergency authority when he issued an Executive Order (N-67-20) relating to election rules, including ensuring that all voters get a mailed ballot, county election officials must use a specific barcode technology and other election law changes. The Court finds that the Governor does not have the authority to unilaterally enact or amend statutes under the California Emergency Services Act and, therefore, determined this EO unconstitutional.

Many are asking how this impacts many actions taken during the pandemic – especially reopening orders. Unfortunately, it is too early to tell. As way of background, earlier this year Governor Newsom used his emergency authority to shut down large portions of the economy to help reduce the spread of the COVID-19 virus. On May 4th, the Governor signed EO N-60-20 directing the State Public Health Officer to establish criteria to determine whether and how, in light of local conditions, to reopen our economy. Since the Governor's Blueprint to Reopen our Economy stems from this EO, the question is does today's court decision impact this reopening EO? It is too early to tell but the court decision opens the possibility for new challenges to the reopening rules if a court believes the Governor was "amending or enacting new statutes" in violation of the California Constitution and the CA Emergency Services Act. Below are a few specific questions that may be asked:

1. **Does the court ruling impact voters getting mailed ballots for the 2020 General Election?** No, the Legislature acted, and the Governor signed the law changing California law enabling all voters to receive a mail ballot. In other words, the Legislature similarly acted so the law is changed but the executive order, which was not rescinded, is no longer in valid.

2. **Does the court ruling impact future EO made by the Governor?** Yes, if those orders are relying on California's Emergency Services Act (ESA) which grants the authority for the Governor to act during a declared state of emergency. The Judge held that if the Governor's authority is authorized by the ESA then the Governor can suspend laws but cannot unilaterally make or amend state laws, which is what Assemblymembers Gallagher and Kiley alleged the Governor did with that particular election-related Executive Order.
3. **Why did the Court make this declaratory relief ruling?** The court wanted to correctly interpret the CA Emergency Service Act as it relates the Executive Order N-67-20 but also all future violations during the "ongoing state of emergency" as it is a controversy in front of the court, both parties are diametrically opposed to each other and it's a matter of widespread public interest.
4. **What is the biggest take away from the court's ruling?** Here is the key from the tentative ruling granting injunctive relief: Governor Newsom "is enjoined and prohibited from exercising any power under the CA Emergency Services Act...which amends, alters, or changes existing statutory law or makes new statutory law or legislative policy."
5. **Is the California Emergency Service Act constitutional?** Yes, the Judge finds that the Legislature only enables the Governor during a state of emergency to "make, amend, and rescind orders and regulations" which is different than "amending or making new statutes".
6. **Does the ruling make any other Executive Orders unconstitutional?** This issue is unclear and ambiguous, but I believe if the tentative ruling becomes permanent it will be the basis for anyone who wants to challenge one of the 50+ EO's issued by Governor Newsom during this pandemic. Any EO issued by the Governor which arguably "amends or makes new statutes" could likely be deemed unconstitutional.

We are monitoring the status of the courts, speaking with administration and legislative leaders. and working through this process. We will keep you informed of any new information we receive.

Regulatory

- On October 7th, Governor Newsom signed an Executive Order (EO) on "Natural and Cultural Resources". The order directs state agencies, which include the California Environmental Protection Agency, the Natural Resources Agency, the California Air Resources Board, and the California Department of Food and Agriculture to deploy several strategies to store carbon in the state's natural and working lands and remove it from the atmosphere. The order also sets a first-in-the-nation goal to conserve 30 percent of the state's land and coastal water by 2030 – an attempt to fight species loss and ecosystem destruction. The text of the EO can be found [here](#).
 - We have participated in conference call with agency Secretaries (Crowfoot and Ross) on the Governor's "Natural and Cultural Resources" Executive Order.
 - We also participated in a Zoom meeting with the CA Natural Resources Agency leads on the Governor "Natural and Cultural Resources" Executive Order. We have been seeking out key information on terms in the EO, such as "protect", "conserve", and "biodiversity". All terms were left undefined in the EO.
- November 12th, The Legislative Analyst's Office (LAO) released its report, "Expanding Access to Safe and Affordable Drinking Water in California – A Status Update." The report finds that "over one million Californians currently lack access to safe drinking water," due to water sources not meeting "established standards." The report also finds some California struggle to afford access to safe drinking water, some paying in excess of 5% of their income on their water bills." The report recommends the Legislature "provide careful oversight" of the State Water Resources

Control Board “ongoing efforts” to ensure its Safe and Affordable Funding for Equity and Resilience (SAFER) program which provides up to \$130 million annually to help improve drinking water safety is “implemented effectively and struggling drink water systems are improved.” A link to the report can be found [HERE](#).

Important Dates and Deadlines for 2020

Fall Deadlines:

- November 3rd – General Election.
- November 30th – Adjournment sine die at midnight.
- December 7th – 2021-22 Regular Session convenes for Organizational Session at 12 noon.