

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
SB 307 (Roth) – As Amended April 30, 2019

Policy Committee: Natural Resources Vote: 7 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill prohibits a water transfer from a groundwater basin in specified desert lands unless the State Lands Commission (SLC) finds the transfer will not adversely affect the natural or cultural resources of the nearby public lands. Specifically, this bill:

- 1) Prohibits a transferor of water to use a water conveyance facility with unused capacity to transfer water from a groundwater basin underlying desert lands in the vicinity of a national monument, a national preserve, a national park, a state or federal wilderness area or state lands unless the SLC, in consultation with the Department of Fish and Wildlife (DFW) and the Department of Water Resources (DWR), finds the transfer will not adversely affect the natural or cultural resources, including the groundwater resources or habitat, of those federal and state lands.
- 2) Requires a transferor of water subject to the provisions of this bill to submit an application to the SLC for review.
- 3) Requires the application to include, at a minimum, both of the following:
 - a) The names of the transferor and the owner of the water conveyance facility.
 - b) Data and reports pertinent to making the finding required by this bill.
- 4) Requires the SLC to review the application within 15 months of receipt and make a written finding, available to the public, on whether the proposed transfer will not adversely affect the natural or cultural resources. Authorizes SLC to extend the 15-month review period to 24 months based on a specified determination.
- 5) Requires the SLC to review all available scientific information, as defined, in making the finding.
- 6) Requires the transferor of water to annually report to the SLC on the condition of the groundwater basin, if the SLC makes a finding that allows the transfer.
- 7) Defines “desert lands” as a specified area in the Mojave Desert surrounding where the Cadiz Valley Water Conservation, Recovery, and Storage Project (Cadiz Project) is proposed.

FISCAL EFFECT:

Unknown, reimbursable costs for the SLC to review the Cadiz Project application, consult with DFW and DWR and make a finding, likely in the range of several hundreds of thousands of to low millions of dollars. All state costs are anticipated to be minor, absorbable or reimbursable.

The SLC will structure reimbursement agreements with the project applicant as well as with DWR and DFW. It is unknown the extent to which the SLC will consult with the other state departments. The SLC may establish inter-agency agreements for either or both departments to perform environmental work for the commission, or the SLC may have the departments review the work of contractors prior to making a finding. Some costs will be incurred by all agencies prior to the reimbursement agreements, but should be minor or absorbable.

COMMENTS:

- 1) **Background.** This bill is focused on the proposed groundwater extraction and transfer project known as the Cadiz Valley Water Conservation, Recovery and Storage Project. The Cadiz Valley is about 3 miles south of historic Route 66 near the now abandoned town of Chambless in the Mojave Desert. According to the Cadiz Inc. website, the project:

...is designed to capture and conserve billions of gallons of renewable native groundwater flowing beneath our property in California's Mojave Desert that is currently being lost to evaporation and salt contamination at nearby dry lakes. Through the active management of the aquifer system and employing a state-of-the-art groundwater protection program, the Project will reduce the loss of groundwater to evaporation from the dry lakes, put this water to beneficial use and create a reliable water supply for Southern California.

Current law prohibits a public agency from denying a bona fide water transferor access to and conveyance in a water facility with unused capacity for the period of time for which that capacity is available, if (a) fair compensation is paid for that use and (b) the transferred water does not reduce the beneficial uses or lessen the water quality of the water in the facility. Additionally, use of the facility cannot injure any legal user of water; unreasonably affect fish, wildlife or other instream beneficial uses; or unreasonably affect the overall economy or environment of the county from which the water is being transferred.

In this case, the Cadiz Project would rely on the use of the Colorado River Aqueduct owned by the Metropolitan Water District of Southern California (MWD). Currently, MWD keeps its aqueduct at capacity filled with Colorado River water, its cheapest source of water. Unused capacity is an unlikely scenario. The Cadiz Project could instead pursue a dedicated capacity agreement, which would require MWD board approval.

Additionally, the groundwater associated with the Cadiz Project contains arsenic and chromium 6 at a greater level than what is currently in the Colorado River aqueduct. In order to meet the water quality requirements of the aqueduct, water treatment will be necessary and is part of the project design.

The Cadiz Project will require a water pipeline to connect the pumped groundwater to the Colorado River aqueduct. The project proposed to use an existing railroad right of way across federal land to pipe supplies from its proposed well field to the aqueduct.

In 2015, the U.S. Bureau of Land Management (BLM) ruled the Cadiz Project could not use the right of way and would instead need to obtain federal permission to run the pipeline across the surrounding federal land, triggering an environmental review.

After President Trump took office, a BLM official revoked the agency's 2015 decision and gave the Cadiz Project permission to use the right of way. Last month, a federal judge struck down the Trump administration's decision, thus upholding the 2015 ruling that requires environmental review for pipeline siting.

Current law requires a public agency to comply with the California Environmental Quality Act (CEQA) when it undertakes a project that may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. If the lead agency determines a project's significant environmental impacts cannot be avoided, the agency is required to prepare an extensive environmental impact report (EIR). CEQA provisions are enforced, as necessary, by the public through litigation.

On December 4, 2018, Director of DFW Charlton H. Bonham sent a letter to the CEO of Cadiz Inc. In that letter, Director Bonham wrote:

In anticipation of the Project Lake and Streambed Alteration (LSA) notification, the Department began re-familiarizing itself with the Project EIR certified by the CEQA lead agency Santa Margarita Water District (District) and other related material. In the course of its review, the Department identified information of substantial importance that was developed after the District certified the Project EIR. This new information indicates the Project may cause significant effects not discussed or substantially more severe effects than shown in the Project EIR.”

Specifically, new information demonstrates a hydrologic connection between the aquifer underlying the Project pumping site and nearby Bonanza Spring. The Department began installing GPS collars on desert bighorn sheep in the area of the Project in 2013 and this data indicates these legally-projected sheep utilize the spring. Further analysis and additional review of these effects will be necessary for the Department to evaluate the anticipated LSA notification, to consider and take appropriate action in response under the Fish and Game Code, and to fulfill its public trust responsibility for California fish and wildlife and the habitat on which they depend.

Nevertheless, the Cadiz Project has a certified Final Environmental Impact Record (EIR) and has been validated and upheld by California's courts in 12 separate decisions.

2) **Purpose.** According to the author:

SB 307 seeks to protect valuable public land resources in the Mojave Desert. Many significant natural and cultural heritage sites rely on the precariously balanced ecosystem...Protecting these resources requires an independent

science review and the establishment of an environmentally sustainable pumping rate before Cadiz can proceed with pumping and export to Southern California. It is incumbent upon us as stewards of public lands to ensure environmental sustainability for all of our natural resources.

- 3) **Support and Opposition.** This bill is supported by numerous environmental groups who generally oppose the Cadiz Project. This bill is opposed by numerous business, water and labor groups who generally support the Cadiz project and/or oppose the precedent established in the bill.

Cadiz recently took the position of oppose unless amended on the bill. Cadiz is requesting amendments to:

- a) Substitute the word “determine” or “determination” for “finding” to allow for legal recourse.
- b) Set a shorter review timeline.
- c) Require the SLC to condition the transfer, if necessary, and include recommendations on how to avoid adverse environmental impacts if any are identified.

The author has declined to accept the amendments stating they are unnecessary or inappropriate. According to the author, there is no legal effect of using the word “determination.” The author notes that the Code of Civil Procedures contains the term “finding” as well as “determination” and both terminologies entitle an appeal process to be made. The author states that requiring the SLC to impose conditions on the project, essentially redesigning the project, is improper. Instead, if the SLC finds adverse impacts, then Cadiz will have the opportunity to redesign its own project.

- 4) **Prior Legislation.** AB 1000 (Friedman), of the 2016-17 Legislative Session, was substantially similar to this bill. The bill was held on suspense in the Senate Appropriations Committee.

SB 120 (Roth), of the 2016-2017 Legislative Session, was substantially similar to this bill with the exception of not having an application process or consultation with DWR. The bill was held on suspense in the Senate Appropriations Committee.

Neither AB 1000 nor SB 120 were heard in this committee.