

**ACWA State Legislative Committee
2013 Annual Planning Meeting
October 26, 2012**

Proposal number: #4
Submitted by: Bighorn-Desert View Water Agency
Analyzed by: Wendy Ridderbusch / Rick Morin

I. BACKGROUND

The Bighorn-Desert View Water Agency was formed in 1990 by consolidating the Desert View County Water District and the Bighorn Mountains Water Agency. Assembly Bill 1819 (Woodruff) authorized the Local Agency Formation Commission (LAFCO) to facilitate the consolidation. ACWA supported AB 1819. In authorizing the consolidation, the bill contained a number of provisions, one of which enacted Water Code section 33305. Section 33305 provides:

Section 31012 applies to a county water district consolidated with the Bighorn Mountains Water Agency.

Section 31012 was enacted by Senate Bill 2219 (Song) in 1974. SB 2219 was sponsored by the California Special Districts Association (CSDA) and supported by ACWA. In its letter to Governor Reagan expressing support of SB 2219, ACWA stated:

This bill gives assurance to county water districts that subsequent acquisition of such districts by another public agency will not have the effect of allowing such public agency to boost water rates with the idea that the water customers will assist in financing the acquiring public agency's general fund. This measure specifies the ways in which such funds can be spent and we think is a desirable improvement in the law.

The Agency is concerned that Section 31012 could be interpreted as requiring it to maintain and operate two separate water systems. The Agency states that it has rigorously maintained a separate accounting of pre-consolidation debt and associated revenue, but that it has not operated as two separate and independent enterprise districts. The Agency only became aware of its noncompliance after a recent audit.

In its analysis of AB 1819 in 1989, the Senate Agriculture and Water Resources Committee referenced the inclusion of Section 33305:

County Water District Law contains a section [referring to Section 31012] dealing with acquisition of a district water system by another public agency other than by vote. AB 1819 maintains the applicability of that section of law as it relates to the consolidated district.

(A thorough search of legislative records at the California State Archives could turn up no other reference for the need or intent behind the inclusion of Section 33305 in AB 1819.)

Thus, a plain reading of AB 1819 requires that the Bighorn-Desert View Water Agency comply with Water Code section 31012. Section 31012 reads as follows:

If... substantially all of a district water system is acquired by another public agency... the following provisions shall apply:

- (a) All funds derived from the operation of the former district shall be separately accounted for and used exclusively for the purposes of maintenance, operation, betterments, and bond service of the acquired system.
- (b) No funds derived from the former district's system shall be used for any other such purpose until all debt of that former system has been paid in full or until a majority vote of the electorate of the area served by that former system has authorized such other expenditures.

In early 2012, the Agency approached their State Senator Jean Fuller (R – Bakersfield) to repeal Section 33305. Senator Fuller agreed to provide assistance and introduced a spot bill, SB 1519. However, the bill was never amended to become a substantive measure and it did not advance. The Senator's office ultimately felt that the proposal needed additional vetting before the bill was ready to be moved.

The Agency intends to move forward with another legislative proposal in 2013 that would repeal Section 33305 and they are asking for ACWA's support. The Agency also indicated that it will be seeking support from CSDA.

II. DISCUSSION

The requirement that the Bighorn-Desert View Water Agency comply with Section 33305 seems to have been lost to time, having only been recently noticed through an audit. The Agency believes that Section 33305's presence in statute creates legal uncertainty for its operations – uncertainty that it prefers to address via legislation. The Agency states that retroactive compliance with the law is nearly impossible, and that future compliance would be so costly as to effectively negate the operational efficiencies that resulted from the original consolidation of the two entities. Moreover, the Agency points to the fact that it has operated successfully for over 20 years despite its noncompliance. The Agency also states that its combined base of ratepayers have not been harmed over the years, and that there are potential costs associated with strict compliance that would have to be passed on to ratepayers.

The Agency further claims that compliance with Section 31012 is not needed. This contention is supported by an investigation into the original intent behind the law. Governor Reagan's staff noted that the law was needed to disincentive certain proposals by public agencies that were attempting to acquire county water districts. According to the analysis, such acquisitions at the time were initiated out of a desire to improve the acquiring agency's financial position, among other things. Thus, it appears that the intent behind the bill was to prevent the acquiring agency from "raiding" the coffers of a county water

district. The statute accomplishes this goal by requiring that funds be segregated as described above. The Bighorn Agency will argue that such protections are not needed because: 1) the two entities merged through a mutually-agreed upon consolidation, not an acquisition; 2) the consolidation of the two entities was not done to “raid” the funds of either agency; and 3) the combined agency has been run effectively for over 20 years without prejudice to its combined base of ratepayers. In short, it does not appear that Section 31012 was designed with this type of consolidation in mind.

Importantly, the proposal does not eliminate Section 31012 from the Water Code, and thus the proposal would not affect future acquisitions of county water districts. Instead, it would only remove the requirement in Section 33305 that the Bighorn-Desert View Water Agency comply with Section 31012. Absent a compelling rationale for imposing the requirements of Section 31012 on the Agency 20 years after its consolidation, sound public policy dictates that the Agency should not be burdened with the potential costs of compliance with Section 31012.

Because the Agency has demonstrated that compliance with this particular law is not appropriate, ACWA should support the Agency’s proposal to repeal Water Code section 33305.

III. RECOMMENDATION

Support