

AMENDED IN ASSEMBLY JUNE 15, 2016

AMENDED IN SENATE MAY 11, 2016

AMENDED IN SENATE APRIL 27, 2016

**SENATE BILL**

**No. 1262**

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**Introduced by Senators Pavley and Wieckowski**

February 18, 2016

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An act to amend Section 66473.7 of the Government Code, and to amend Section 10910 of the Water Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1262, as amended, Pavley. Water supply planning.

(1) Existing law requires a city or county that determines a project, as defined, is subject to the California Environmental Quality Act to identify certain water systems that may supply water for the project and to request those public water systems to prepare and approve a specified water supply assessment. Under existing law, if no public water system is identified, the city or county is required to prepare and approve the water supply assessment. Existing law provides that if, as a result of its assessment, the public water system or city or county concludes that its water supplies are, or will be, insufficient, the public water system or city or county is required to provide its plans for acquiring additional water supplies, as prescribed.

Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other

groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified. The act authorizes the State Water Resources Control Board to designate a basin as a probationary basin if the state board makes a certain determination and to develop an interim plan for the probationary basin.

This bill would require a city or county that determines a project is subject to the California Environmental Quality Act to identify any water system whose service area includes the project site and any water system adjacent to the project site. This bill would provide that hauled water ~~or groundwater from a probationary basin are~~ *is not sources a source* of water for the purposes of a water supply assessment, as specified. This bill would, if a water supply for a proposed project includes groundwater, require certain additional information to be included in the water supply assessment. By imposing additional duties on cities and counties, this bill would impose a state-mandated local program.

(2) Existing law, the Subdivision Map Act, establishes a statewide regulatory framework for controlling the subdividing of land. The act generally requires a subdivider to submit, and have approved by the city, county, or city and county in which the land is situated, a tentative map for subdivisions of land, as specified. Existing law requires a city or county to deny approval of a tentative map, or parcel map for which a tentative map was not required, if it makes certain findings relating to the proposed subdivision. Existing law requires a city or county to include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply be available. Existing law requires proof of the availability of a sufficient water supply, as prescribed, and that the written verification of a public water system's ability or inability to provide a sufficient water supply be supported by substantial evidence.

This bill would revise the definition of sufficient water supply to include additional factors relating to a proposed subdivision that relies in whole or in part on groundwater. ~~This bill would provide that groundwater from a probationary basin is not a water supply for these purposes, as specified.~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. Section 66473.7 of the Government Code is  
2 amended to read:

3 66473.7. (a) For the purposes of this section, the following  
4 definitions apply:

5 (1) “Subdivision” means a proposed residential development  
6 of more than 500 dwelling units, except that for a public water  
7 system that has fewer than 5,000 service connections, “subdivision”  
8 means any proposed residential development that would account  
9 for an increase of 10 percent or more in the number of the public  
10 water system’s existing service connections.

11 (2) “Sufficient water supply” means the total water supplies  
12 available during normal, single-dry, and multiple-dry years within  
13 a 20-year projection that will meet the projected demand associated  
14 with the proposed subdivision, in addition to existing and planned  
15 future uses, including, but not limited to, agricultural and industrial  
16 uses. In determining “sufficient water supply,” all of the following  
17 factors shall be considered:

18 (A) The availability of water supplies over a historical record  
19 of at least 20 years.

20 (B) The applicability of an urban water shortage contingency  
21 analysis prepared pursuant to Section 10632 of the Water Code  
22 that includes actions to be undertaken by the public water system  
23 in response to water supply shortages.

24 (C) The reduction in water supply allocated to a specific water  
25 use sector pursuant to a resolution or ordinance adopted, or a  
26 contract entered into, by the public water system, as long as that  
27 resolution, ordinance, or contract does not conflict with Section  
28 354 of the Water Code.

29 (D) The amount of water that the water supplier can reasonably  
30 rely on receiving from other water supply projects, such as  
31 conjunctive use, reclaimed water, water conservation, and water  
32 transfer, including programs identified under federal, state, and  
33 local water initiatives such as CALFED and Colorado River

1 tentative agreements, to the extent that these water supplies meet  
2 the criteria of subdivision (d).

3 (E) If a proposed subdivision relies in whole or in part on  
4 groundwater, the following factors:

5 (i) For a basin for which a court or the State Water Resources  
6 Control Board has adjudicated the rights to pump groundwater,  
7 the order or decree adopted by the court or the State Water  
8 Resources Control Board.

9 (ii) For a basin that has not been adjudicated, as follows:

10 (I) For a basin designated as high- or medium-priority pursuant  
11 to Section 10722.4 of the Water Code, the most recently adopted  
12 or revised adopted groundwater sustainability plan or approved  
13 alternative. If there is no adopted groundwater sustainability plan  
14 or approved alternative, information as to whether the Department  
15 of Water Resources has identified the basin or basins as overdrafted  
16 or has projected that the basin will become overdrafted if present  
17 management conditions continue.

18 (II) For a basin designated as low- or very low priority pursuant  
19 to Section 10722.4 of the Water Code, information as to whether  
20 the Department of Water Resources has identified the basin or  
21 basins as overdrafted or has projected that the basin will become  
22 overdrafted if present management conditions continue.

23 (3) “Public water system” means the water supplier that is, or  
24 may become as a result of servicing the subdivision included in a  
25 tentative map pursuant to subdivision (b), a public water system,  
26 as defined in Section 10912 of the Water Code, that may supply  
27 water for a subdivision.

28 (b) (1) The legislative body of a city or county or the advisory  
29 agency, to the extent that it is authorized by local ordinance to  
30 approve, conditionally approve, or disapprove the tentative map,  
31 shall include as a condition in any tentative map that includes a  
32 subdivision a requirement that a sufficient water supply shall be  
33 available. Proof of the availability of a sufficient water supply  
34 shall be requested by the subdivision applicant or local agency, at  
35 the discretion of the local agency, and shall be based on written  
36 verification from the applicable public water system within 90  
37 days of a request.

38 (2) If the public water system fails to deliver the written  
39 verification as required by this section, the local agency or any

1 other interested party may seek a writ of mandamus to compel the  
2 public water system to comply.

3 (3) If the written verification provided by the applicable public  
4 water system indicates that the public water system is unable to  
5 provide a sufficient water supply that will meet the projected  
6 demand associated with the proposed subdivision, then the local  
7 agency may make a finding, after consideration of the written  
8 verification by the applicable public water system, that additional  
9 water supplies not accounted for by the public water system are,  
10 or will be, available prior to completion of the subdivision that  
11 will satisfy the requirements of this section. This finding shall be  
12 made on the record and supported by substantial evidence.

13 (4) If the written verification is not provided by the public water  
14 system, notwithstanding the local agency or other interested party  
15 securing a writ of mandamus to compel compliance with this  
16 section, then the local agency may make a finding that sufficient  
17 water supplies are, or will be, available prior to completion of the  
18 subdivision that will satisfy the requirements of this section. This  
19 finding shall be made on the record and supported by substantial  
20 evidence.

21 (c) The applicable public water system's written verification of  
22 its ability or inability to provide a sufficient water supply that will  
23 meet the projected demand associated with the proposed  
24 subdivision as required by subdivision (b) shall be supported by  
25 substantial evidence. The substantial evidence may include, but is  
26 not limited to, any of the following:

27 (1) The public water system's most recently adopted urban water  
28 management plan adopted pursuant to Part 2.6 (commencing with  
29 Section 10610) of Division 6 of the Water Code.

30 (2) A water supply assessment that was completed pursuant to  
31 Part 2.10 (commencing with Section 10910) of Division 6 of the  
32 Water Code.

33 (3) A groundwater sustainability plan adopted or alternative  
34 approved pursuant to Part 2.74 (commencing with Section 10720)  
35 of Division 6 of the Water Code.

36 (4) Other information relating to the sufficiency of the water  
37 supply that contains analytical information that is substantially  
38 similar to the assessment required by Section 10635 of the Water  
39 Code.

1 (d) When the written verification pursuant to subdivision (b)  
2 relies on projected water supplies that are not currently available  
3 to the public water system, to provide a sufficient water supply to  
4 the subdivision, the written verification as to those projected water  
5 supplies shall be based on all of the following elements, to the  
6 extent each is applicable:

7 (1) Written contracts or other proof of valid rights to the  
8 identified water supply that identify the terms and conditions under  
9 which the water will be available to serve the proposed subdivision.

10 (2) Copies of a capital outlay program for financing the delivery  
11 of a sufficient water supply that has been adopted by the applicable  
12 governing body.

13 (3) Securing of applicable federal, state, and local permits for  
14 construction of necessary infrastructure associated with supplying  
15 a sufficient water supply.

16 (4) Any necessary regulatory approvals that are required in order  
17 to be able to convey or deliver a sufficient water supply to the  
18 subdivision.

19 (e) If there is no public water system, the local agency shall  
20 make a written finding of sufficient water supply based on the  
21 evidentiary requirements of subdivisions (c) and (d) and identify  
22 the mechanism for providing water to the subdivision.

23 (f) In making any findings or determinations under this section,  
24 a local agency, or designated advisory agency, may work in  
25 conjunction with the project applicant and the public water system  
26 to secure water supplies sufficient to satisfy the demands of the  
27 proposed subdivision. If the local agency secures water supplies  
28 pursuant to this subdivision, which supplies are acceptable to and  
29 approved by the governing body of the public water system as  
30 suitable for delivery to customers, it shall work in conjunction  
31 with the public water system to implement a plan to deliver that  
32 water supply to satisfy the long-term demands of the proposed  
33 subdivision.

34 (g) The written verification prepared under this section shall  
35 also include a description, to the extent that data is reasonably  
36 available based on published records maintained by federal and  
37 state agencies, and public records of local agencies, of the  
38 reasonably foreseeable impacts of the proposed subdivision on the  
39 availability of water resources for agricultural and industrial uses  
40 within the public water system’s service area that are not currently

1 receiving water from the public water system but are utilizing the  
2 same sources of water. To the extent that those reasonably  
3 foreseeable impacts have previously been evaluated in a document  
4 prepared pursuant to the California Environmental Quality Act  
5 (Division 13 (commencing with Section 21000) of the Public  
6 Resources Code) or the National Environmental Policy Act (Public  
7 Law 91-190) for the proposed subdivision, the public water system  
8 may utilize that information in preparing the written verification.

9 (h) ~~(4)~~—Where a water supply for a proposed subdivision  
10 includes groundwater, the public water system serving the proposed  
11 subdivision shall evaluate, based on substantial evidence, the extent  
12 to which it or the landowner has the right to extract the additional  
13 groundwater needed to supply the proposed subdivision. Nothing  
14 in this subdivision is intended to modify state law with regard to  
15 groundwater rights.

16 ~~(2) Groundwater from a basin designated by the State Water  
17 Resources Control Board as a probationary basin pursuant to  
18 Chapter 11 (commencing with Section 10735) of Part 2.74 of  
19 Division 6 of the Water Code is not considered as a water supply  
20 for the purposes of this section. This paragraph does not apply to  
21 groundwater from any portion of a basin excluded from  
22 probationary status pursuant to subdivision (e) of Section 10735.2  
23 of the Water Code.~~

24 (i) This section shall not apply to any residential project  
25 proposed for a site that is within an urbanized area and has been  
26 previously developed for urban uses, or where the immediate  
27 contiguous properties surrounding the residential project site are,  
28 or previously have been, developed for urban uses, or housing  
29 projects that are exclusively for very low and low-income  
30 households.

31 (j) The determinations made pursuant to this section shall be  
32 consistent with the obligation of a public water system to grant a  
33 priority for the provision of available and future water resources  
34 or services to proposed housing developments that help meet the  
35 city's or county's share of the regional housing needs for lower  
36 income households, pursuant to Section 65589.7.

37 (k) The County of San Diego shall be deemed to comply with  
38 this section if the Office of Planning and Research determines that  
39 all of the following conditions have been met:

1 (1) A regional growth management strategy that provides for a  
2 comprehensive regional strategy and a coordinated economic  
3 development and growth management program has been developed  
4 pursuant to Proposition C as approved by the voters of the County  
5 of San Diego in November 1988, which required the development  
6 of a regional growth management plan and directed the  
7 establishment of a regional planning and growth management  
8 review board.

9 (2) Each public water system, as defined in Section 10912 of  
10 the Water Code, within the County of San Diego has adopted an  
11 urban water management plan pursuant to Part 2.6 (commencing  
12 with Section 10610) of the Water Code.

13 (3) The approval or conditional approval of tentative maps for  
14 subdivisions, as defined in this section, by the County of San Diego  
15 and the cities within the county requires written communications  
16 to be made by the public water system to the city or county, in a  
17 format and with content that is substantially similar to the  
18 requirements contained in this section, with regard to the  
19 availability of a sufficient water supply, or the reliance on projected  
20 water supplies to provide a sufficient water supply, for a proposed  
21 subdivision.

22 (l) Nothing in this section shall preclude the legislative body of  
23 a city or county, or the designated advisory agency, at the request  
24 of the applicant, from making the determinations required in this  
25 section earlier than required pursuant to subdivision (b).

26 (m) Nothing in this section shall be construed to create a right  
27 or entitlement to water service or any specific level of water  
28 service.

29 (n) Nothing in this section is intended to change existing law  
30 concerning a public water system's obligation to provide water  
31 service to its existing customers or to any potential future  
32 customers.

33 (o) Any action challenging the sufficiency of the public water  
34 system's written verification of a sufficient water supply shall be  
35 governed by Section 66499.37.

36 SEC. 2. Section 10910 of the Water Code is amended to read:  
37 10910. (a) Any city or county that determines that a project,  
38 as defined in Section 10912, is subject to the California  
39 Environmental Quality Act (Division 13 (commencing with Section

1 21000) of the Public Resources Code) under Section 21080 of the  
2 Public Resources Code shall comply with this part.

3 (b) The city or county, at the time that it determines whether an  
4 environmental impact report, a negative declaration, or a mitigated  
5 negative declaration is required for any project subject to the  
6 California Environmental Quality Act pursuant to Section 21080.1  
7 of the Public Resources Code, shall identify any water system  
8 whose service area includes the project site and any water system  
9 adjacent to the project site that is, or may become as a result of  
10 supplying water to the project identified pursuant to this  
11 subdivision, a public water system, as defined in Section 10912,  
12 that may supply water for the project. If the city or county is not  
13 able to identify any public water system that may supply water for  
14 the project, the city or county shall prepare the water assessment  
15 required by this part after consulting with any entity serving  
16 domestic water supplies whose service area includes the project  
17 site, the local agency formation commission, and any public water  
18 system adjacent to the project site.

19 (c) (1) The city or county, at the time it makes the determination  
20 required under Section 21080.1 of the Public Resources Code,  
21 shall request each public water system identified pursuant to  
22 subdivision (b) to determine whether the projected water demand  
23 associated with a proposed project was included as part of the most  
24 recently adopted urban water management plan adopted pursuant  
25 to Part 2.6 (commencing with Section 10610).

26 (2) If the projected water demand associated with the proposed  
27 project was accounted for in the most recently adopted urban water  
28 management plan, the public water system may incorporate the  
29 requested information from the urban water management plan in  
30 preparing the elements of the assessment required to comply with  
31 subdivisions (d), (e), (f), and (g).

32 (3) If the projected water demand associated with the proposed  
33 project was not accounted for in the most recently adopted urban  
34 water management plan, or the public water system has no urban  
35 water management plan, the water supply assessment for the project  
36 shall include a discussion with regard to whether the public water  
37 system's total projected water supplies available during normal,  
38 single dry, and multiple dry water years during a 20-year projection  
39 will meet the projected water demand associated with the proposed

1 project, in addition to the public water system's existing and  
2 planned future uses, including agricultural and manufacturing uses.

3 (4) If the city or county is required to comply with this part  
4 pursuant to subdivision (b), the water supply assessment for the  
5 project shall include a discussion with regard to whether the total  
6 projected water supplies, determined to be available by the city or  
7 county for the project during normal, single dry, and multiple dry  
8 water years during a 20-year projection, will meet the projected  
9 water demand associated with the proposed project, in addition to  
10 existing and planned future uses, including agricultural and  
11 manufacturing uses.

12 (d) (1) The assessment required by this section shall include  
13 an identification of any existing water supply entitlements, water  
14 rights, or water service contracts relevant to the identified water  
15 supply for the proposed project, and a description of the quantities  
16 of water received in prior years by the public water system, or the  
17 city or county if either is required to comply with this part pursuant  
18 to subdivision (b), under the existing water supply entitlements,  
19 water rights, or water service contracts.

20 (2) An identification of existing water supply entitlements, water  
21 rights, or water service contracts held by the public water system,  
22 or the city or county if either is required to comply with this part  
23 pursuant to subdivision (b), shall be demonstrated by providing  
24 information related to all of the following:

25 (A) Written contracts or other proof of entitlement to an  
26 identified water supply.

27 (B) Copies of a capital outlay program for financing the delivery  
28 of a water supply that has been adopted by the public water system.

29 (C) Federal, state, and local permits for construction of necessary  
30 infrastructure associated with delivering the water supply.

31 (D) Any necessary regulatory approvals that are required in  
32 order to be able to convey or deliver the water supply.

33 (e) If no water has been received in prior years by the public  
34 water system, or the city or county if either is required to comply  
35 with this part pursuant to subdivision (b), under the existing water  
36 supply entitlements, water rights, or water service contracts, the  
37 public water system, or the city or county if either is required to  
38 comply with this part pursuant to subdivision (b), shall also include  
39 in its water supply assessment pursuant to subdivision (c), an  
40 identification of the other public water systems or water service

1 contractholders that receive a water supply or have existing water  
2 supply entitlements, water rights, or water service contracts, to the  
3 same source of water as the public water system, or the city or  
4 county if either is required to comply with this part pursuant to  
5 subdivision (b), has identified as a source of water supply within  
6 its water supply assessments.

7 (f) If a water supply for a proposed project includes  
8 groundwater, the following additional information shall be included  
9 in the water supply assessment:

10 (1) A review of any information contained in the urban water  
11 management plan relevant to the identified water supply for the  
12 proposed project.

13 (2) (A) A description of any groundwater basin or basins from  
14 which the proposed project will be supplied.

15 (B) For those basins for which a court or the board has  
16 adjudicated the rights to pump groundwater, a copy of the order  
17 or decree adopted by the court or the board and a description of  
18 the amount of groundwater the public water system, or the city or  
19 county if either is required to comply with this part pursuant to  
20 subdivision (b), has the legal right to pump under the order or  
21 decree.

22 (C) For a basin that has not been adjudicated that is a basin  
23 designated as high- or medium-priority pursuant to Section  
24 10722.4, information regarding the following:

25 (i) Whether the department has identified the basin as being  
26 subject to critical conditions of overdraft pursuant to Section 12924.

27 ~~(ii) Whether the board has designated the basin as a probationary  
28 basin pursuant to Chapter 11 (commencing with Section 10735)  
29 of Part 2.74.~~

30 ~~(iii)~~

31 (ii) If a groundwater sustainability agency has adopted a  
32 groundwater sustainability plan or has an approved alternative, a  
33 copy of that alternative or plan.

34 (D) For a basin that has not been adjudicated that is a basin  
35 designated as low- or very low priority pursuant to Section 10722.4,  
36 information as to whether the department has identified the basin  
37 or basins as overdrafted or has projected that the basin will become  
38 overdrafted if present management conditions continue, in the  
39 most current bulletin of the department that characterizes the  
40 condition of the groundwater basin, and a detailed description by

1 the public water system, or the city or county if either is required  
2 to comply with this part pursuant to subdivision (b), of the efforts  
3 being undertaken in the basin or basins to eliminate the long-term  
4 overdraft condition.

5 (3) A detailed description and analysis of the amount and  
6 location of groundwater pumped by the public water system, or  
7 the city or county if either is required to comply with this part  
8 pursuant to subdivision (b), for the past five years from any  
9 groundwater basin from which the proposed project will be  
10 supplied. The description and analysis shall be based on  
11 information that is reasonably available, including, but not limited  
12 to, historic use records.

13 (4) A detailed description and analysis of the amount and  
14 location of groundwater that is projected to be pumped by the  
15 public water system, or the city or county if either is required to  
16 comply with this part pursuant to subdivision (b), from any basin  
17 from which the proposed project will be supplied. The description  
18 and analysis shall be based on information that is reasonably  
19 available, including, but not limited to, historic use records.

20 (5) An analysis of the sufficiency of the groundwater from the  
21 basin or basins from which the proposed project will be supplied  
22 to meet the projected water demand associated with the proposed  
23 project. A water supply assessment shall not be required to include  
24 the information required by this paragraph if the public water  
25 system determines, as part of the review required by paragraph  
26 (1), that the sufficiency of groundwater necessary to meet the initial  
27 and projected water demand associated with the project was  
28 addressed in the description and analysis required by paragraph  
29 (4) of subdivision (b) of Section 10631.

30 (g) (1) Subject to paragraph (2), the governing body of each  
31 public water system shall submit the assessment to the city or  
32 county not later than 90 days from the date on which the request  
33 was received. The governing body of each public water system,  
34 or the city or county if either is required to comply with this act  
35 pursuant to subdivision (b), shall approve the assessment prepared  
36 pursuant to this section at a regular or special meeting.

37 (2) Prior to the expiration of the 90-day period, if the public  
38 water system intends to request an extension of time to prepare  
39 and adopt the assessment, the public water system shall meet with

1 the city or county to request an extension of time, which shall not  
2 exceed 30 days, to prepare and adopt the assessment.

3 (3) If the public water system fails to request an extension of  
4 time, or fails to submit the assessment notwithstanding the  
5 extension of time granted pursuant to paragraph (2), the city or  
6 county may seek a writ of mandamus to compel the governing  
7 body of the public water system to comply with the requirements  
8 of this part relating to the submission of the water supply  
9 assessment.

10 (h) Notwithstanding any other provision of this part, if a project  
11 has been the subject of a water supply assessment that complies  
12 with the requirements of this part, no additional water supply  
13 assessment shall be required for subsequent projects that were part  
14 of a larger project for which a water supply assessment was  
15 completed and that has complied with the requirements of this part  
16 and for which the public water system, or the city or county if  
17 either is required to comply with this part pursuant to subdivision  
18 (b), has concluded that its water supplies are sufficient to meet the  
19 projected water demand associated with the proposed project, in  
20 addition to the existing and planned future uses, including, but not  
21 limited to, agricultural and industrial uses, unless one or more of  
22 the following changes occurs:

23 (1) Changes in the project that result in a substantial increase  
24 in water demand for the project.

25 (2) Changes in the circumstances or conditions substantially  
26 affecting the ability of the public water system, or the city or county  
27 if either is required to comply with this part pursuant to subdivision  
28 (b), to provide a sufficient supply of water for the project.

29 (3) Significant new information becomes available that was not  
30 known and could not have been known at the time when the  
31 assessment was prepared.

32 (i) For the purposes of this section, ~~the following are hauled~~  
33 ~~water is~~ not considered as a source of ~~water~~: *water*.

34 (1) ~~Hauled water.~~

35 (2) ~~Groundwater from a basin designated by the board as a~~  
36 ~~probationary basin pursuant to Chapter 11 (commencing with~~  
37 ~~Section 10735) of Part 2.74. This paragraph does not apply to~~  
38 ~~groundwater from any portion of a basin excluded from~~  
39 ~~probationary status pursuant to subdivision (e) of Section 10735.2~~  
40 ~~of the Water Code.~~

1 SEC. 3. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 a local agency or school district has the authority to levy service  
4 charges, fees, or assessments sufficient to pay for the program or  
5 level of service mandated by this act, within the meaning of Section  
6 17556 of the Government Code.

O