
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

Bill No: AB 1469
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Version: 6/20/23
Consultant: Peterson

Hearing Date: 7/5/23
Tax Levy: No
Fiscal: No

SANTA CLARA VALLEY WATER DISTRICT

Allows the Santa Clara Valley Water District to assist unsheltered people living along streams, riparian corridors, or otherwise within the district's jurisdiction in consultation with a city or the County of Santa Clara.

Background

Santa Clara Valley Water District. The Santa Clara Valley Water District (SCVWD) is the primary water resource agency for Santa Clara County. First formed as the Santa Clara Valley Water Conservation District in 1929, it now acts as the County's water wholesaler and the steward for its streams, creeks, underground aquifers, and district-built reservoirs. The District owns and manages 10 local surface reservoirs and associated creeks and recharge facilities, manages the County's groundwater basins and three water treatment plants, imports water from the Central Valley Project and the State Water Project, and delivers recycled water to parts of the County. SCVWD is also responsible for flood protection within the County. Its stewardship responsibilities include creek restoration and wildlife habitat projects, pollution prevention efforts, and a commitment to natural flood protection.

To carry about these duties, the Santa Clara Valley Water District Act allows SCVWD to:

- Protect Santa Clara County from floodwater and stormwater of the district;
- Protect from that floodwater or stormwater the public highways, life, property in the district, and the watercourses and watersheds of streams flowing within the district;
- Provide for the conservation and management of floodwater, stormwater, recycled water, or other water for beneficial and useful purposes;
- Protect, save, store, recycle, distribute, transfer, exchange, manage, and conserve in any manner any of the waters;
- Increase, and prevent the waste or reduction of the district's water supply;
- Obtain, retain, protect, and recycle drainage, stormwater, floodwater, or treated wastewater, or other water for beneficial uses;
- Enhance, protect, and restore streams, riparian corridors, and natural resources; and
- Preserve open space in Santa Clara County and support the county park systems.

SCVWD generates revenue from various sources, including water rates, property taxes, and parcel taxes.

To fulfill its obligation to prevent pollution in and around its waterways, SCVWD currently partners with local agencies and homelessness advocacy groups to reduce the impact of solid waste. The District assisted in the removal of 13,487 cubic yards of trash and debris from various waterways in Santa Clara County during the 2021-22 fiscal year. In 2020, SCVWD voters passed Measure S, which extended a \$0.006 per square foot parcel tax, to fund various district programs and activities, including \$500,000 annually for cost-share agreements to provide services related to homeless encampment cleanups. SCVWD's Good Neighbor Program, a program the District funds with money from Measure S, targets specific waste hot spot locations for cleanup. SCVWD and the City of San José have entered into Memorandum of Agreements (MOAs) to coordinate efforts to clean up encampments, provide outreach services, offer housing, remove trash rafts, and to manage other areas heavily impacted by trash and litter. While the District has MOAs with Gilroy and Sunnyvale, it has not successfully negotiated an MOA with Santa Clara County. According to SCVWD, these MOAs have had limited success because there is insufficient transitional or emergency interim housing available to unsheltered people, and it can only fund programs with a direct nexus to water supply or flood protection.

California's homelessness crisis. According to the most recent point in time (PIT) count, 171,521 people were experiencing homelessness in California—representing 30% of the nation's homeless population. Two-thirds of the homeless population in California is unsheltered. Over half (51%) of all unsheltered people in the U.S. were in California. Existing homelessness counts are imperfect for a variety of reasons. They likely underestimate the number of individuals experiencing homelessness because the federal PIT count only measures the homeless population on one day of the year. Moreover, the PIT count does not capture everyone experiencing homelessness, as some do not wish to be counted and others cannot be counted because their location is unknown to those counting. California has the largest concentration of severely unaffordable housing markets in the nation and the statewide average home value reached a new record in June 2022 at \$793,300. Over three-quarters (78%) of extremely low-income households in California are paying more than half of their income on housing costs compared to just 6% of moderate-income households.

The Committee has held two homelessness informational hearings over the past two years. In the joint hearing held by this Committee and four others on February 24, 2021, titled "A Perfect Storm: Confronting California's Homelessness Crisis during the Pandemic," the Committees examined the impact of homelessness on the state, and found that the way the homelessness crisis has evolved because of the pandemic is relatively unknown because the available data predates the pandemic.

In 2018, the 9th U.S. Circuit Court of Appeals ruled in the *Martin v. City of Boise* that cities could not prohibit individuals experiencing homelessness from camping in public places (e.g. sidewalks, public parks) unless the city had adequate shelter available. As a result of this ruling, California cities can no longer arrest, charge fines, or punish people for camping out in public if adequate shelter space is unavailable.

Recent state expenditures to address homelessness. To help address the persistent crisis, the state has increased funding for various homelessness programs. From 2018-19 to 2021-22, the state has allocated \$2.65 billion to California Interagency Council on Homelessness (Cal ICH) homelessness programs. The largest of these programs is the Homeless Housing, Assistance, and Prevention Program (HHAPP), which provides block grants to large cities, counties, continuums of care (CoCs), and tribal governments, to address homelessness using a variety of

means. These include rapid rehousing, operating subsidies, street outreach, services coordination, delivery of permanent and innovative housing solutions, and homelessness prevention. The state has also invested billions more for other housing and homelessness programs in other state agencies. This includes Project Homekey, a program the California Department of Housing and Community Development (HCD) administers to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings, and other types of housing to convert them into permanent, long-term housing for those experiencing or at-risk of homelessness. The state allocated \$2.25 billion to Project Homekey between 2018-19 and 2021-22.

Housing first. In 2016, the state’s efforts to address homelessness shifted to the Housing First model. Housing First is an evidence-based strategy that uses housing as a tool, rather than a reward, for recovery that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed or voluntarily requested, and does not make housing contingent on participation in services. The federal government has shifted to a Housing First approach over the last decade, and HUD housing programs utilize core components of this strategy. Since the implementation of this model, chronic homelessness in the U.S. has decreased 27% between 2010 and 2016. Housing First was first embraced in California as a result of SB 1380 (Mitchell, 2016), which requires all state housing programs to adopt this model. SB 1380 established the Homeless Coordinating and Financing Council (HCFC) to oversee implementation of Housing First regulations and to coordinate resources, benefits, and services aimed to prevent and end homelessness in California.

Surplus Lands Act (SLA). Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. The SLA spells out the steps local agencies must follow when they want to dispose of land. It requires local governments to give a “first right of refusal” to other governments and nonprofit housing developers, and to negotiate in good faith with them to try to come to agreement.

Before local officials can dispose of property, they must declare in a public meeting the land is no longer needed for the agency’s use and declare the land either “surplus land” or “exempt surplus land.” Agency use includes land being used, or planned to be used pursuant to a written plan that the local agency’s governing board adopts, or is disposed of to support agency work or operations.

The SLA designates certain types of land as “exempt surplus land,” which does not have to meet the requirements of the SLA. All other surplus land must follow the procedures laid out in the SLA before a local agency can sell it.

Before an agency can enter into negotiations to sell surplus land, it must send a written notice of availability to various public agencies and nonprofit groups, referred to as “housing sponsors,” notifying them that land is available.

SCVWD wants to take actions to assist unsheltered people living within its jurisdiction.

Proposed Law

Assembly Bill 1469 allows SCVWD to take the following actions to assist unsheltered people living along streams, riparian corridors, or otherwise within the district's jurisdiction, to provide solutions or improve outcomes for the unsheltered individuals, in consultation with a city or Santa Clara County:

- Collect waste or biowaste;
- Contract with a city, Santa Clara County, or the state to provide outreach, counseling, transitional or long-term housing, public safety, or other services for unsheltered people;
- Provide, develop, sell, or lease land for the purposes of constructing temporary or permanent structures for transitional or long-term housing or other services for unsheltered people;
- Contract with nongovernmental entities to provide outreach, counseling, transitional or long-term housing for unsheltered people. Any contract between the district and a nongovernmental entity must be in coordination with a city or Santa Clara County; and
- Any housing developed must be consistent with Housing First core components.

AB 1469 provides that SCVWD's use of land for these for these purposes constitutes "agency's use" under the SLA.

The bill also makes technical changes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "In *Martin v. City of Boise*, the U.S. Court of Appeals for the Ninth Circuit held that governments cannot criminalize sleeping outdoors on public property if there is no real option for sleeping indoors. Amid an unprecedented need for transitional and long-term housing in Santa Clara County, cities and the County often do not have shelter space to offer. Valley Water has very limited authority to expend its revenue or use other resources outside of purposes listed in the District Act, leaving some human health and safety risks on their lands unaddressed. AB 1469 will provide Valley Water with the flexibility needed to direct resources to assist unsheltered people on their lands and humanely address a crisis that can no longer be ignored."

2. Mission creep? The SCVWD is charged with preventing pollution and commencing, maintaining, and defending actions that prevent any interference with its waterways. As evidenced by the efforts of many different types of groups such as law enforcement and social services agencies that are involved in the effort to clean up homeless encampments in Santa Clara County, homelessness can be an exceedingly complex issue. SCVWD is charged with providing water service, providing flood protection, and operating water infrastructure, as opposed to being a homelessness service provider. While helping provide services to individuals experiencing homelessness may not be part of SCVWD's core competency, it is often forced into

handling homelessness issues whether it wants to or not. According to Santa Clara Valley Water District:

In 2022, 77 percent of the unhoused population in Santa Clara County were unsheltered, with an estimated 2,300 taking refuge on Santa Clara Valley Water District property or land easements. Such circumstances have led to encampments along waterways, both a human and an environmental tragedy. The watersheds in Santa Clara County are prone to flash flooding, surprising unsheltered people and resulting in drownings or serious injury. These conditions also have increased community risks from fires and flooding due to blocked drainages, excavation of banks and levees, and the degradation of water quality from litter. Also degrading water quality is nutrient loading from human wastes that cause algal blooms that are harmful to natural and constructed aquatic habitat.

Through its solid waste removal efforts, Measure S encampment funding, and MOA with the City of San Jose, SCVWD has taken strides within its existing authority to help address the impacts of homelessness. AB 1469 both clarifies the existing powers SCVWD has used to address homelessness, and gives it new ones. For example, SCVWD already has various powers to protect and preserve its water supply. AB 1469 makes explicitly authorizes SCVWD to collect waste and biowaste. SCVWD and San Jose have an MOU to coordinate encampment cleanup efforts, but, without AB 1469, SCVWD does not have the explicit power to provide all types of homelessness services. On the one hand, AB 1469 expands SCVWDs authority to include powers where it may have limited expertise, such as the provision of services to individuals experiencing homelessness, which cities and counties typically provide. On the other hand, SCVWD argues that:

Cities and the County are overwhelmed and have their own public lands that are severely impacted by encampments. With an extreme shortage of very low- and low-income affordable housing, there simply isn't enough transitional or emergency interim housing to offer. That leaves Valley Water with a growing human and environmental tragedy unfolding on Valley Water-managed public lands. All that Valley Water can do is collect the trash and waste, provide warnings of flood danger, and accept that millions of dollars of restored habitat to support threatened and endangered species will be lost.

Does AB 1469 provide SCVWD with too much additional power? Or, does it allow for SCVWD to step in where cities and counties lack capacity to do so on their own? The Committee may wish to consider amending the bill to require SCVWD to report on how it used these expanded powers on a regular basis to allow the Legislature to assess whether these new responsibilities are necessary duties of water districts.

3. Who's going to pay? SCVWD has a lot of work on its hands. SCVWD anticipates its rates will increase between 8%-14.5% annually to maintain current service levels and complete infrastructure projects like Anderson Dam. Does the District have the financial capacity to expand its powers without placing additional burdens on ratepayers or taxpayers? According to SCVWD, to the extent additional financial resources prove necessary, those funds would come from the District's existing share of property tax revenue. Statutory and constitutional limits on how water rates and flood protection assessments may be spent are not impacted by this bill. According to SCVWD, "The concept isn't to expend large sums of money or increase rates; it is to gain the flexibility to fund some necessary services. Primarily the goal of this bill is to leverage land, which Valley Water already owns, to help solve a seemingly intractable problem created by the confluence of rapidly escalating numbers of unsheltered people, skyrocketed land

values, and the 2019 *Martin v. City of Boise* decision.” Can the SCVWD find resources to carry out these new responsibilities without taking resources away from their other responsibilities?

4. Jumping into the arena. AB 1469 allows SCVWD to provide, develop, sell, or lease land for the purposes of constructing temporary or permanent structures for transitional or long-term housing or other services for unsheltered people. While the District does not currently use land for this purpose, it does see an opportunity to use the property it already has to work with other local agencies to provide services for individuals experiencing homelessness, rather than require those agencies, or nonprofit organizations, to acquire additional land in the relatively expensive Santa Clara real estate market. While managing land for these specific purposes is new, SCVWD does have a real estate division that manages its various properties, some of which are residential properties the District purchased for future construction of flood control infrastructure. Its real estate unit manages these properties until project construction necessitates their vacancy, demolition, or other use. The District does not plan to provide direct services at these properties, but instead it intends to contract with cities, the County, or nonprofits (in coordination with a city or the County), for services the District cannot provide.

5. A complication. If a local agency retains land “for agency use,” it does not have to declare it “surplus” land or “exempt surplus land” and follow the procedures of the SLA. Since the SLA’s definition of agency use does not explicitly include land that an agency like SCVWD uses to provide housing for unsheltered individuals, these arrangements may end up subject to the SLA. AB 1469 attempts to clarify how the SLA should treat these projects by declaring SCVWD’s use of land for these purposes meets the definition of agency use. Since AB 1486 (Ting, 2019) expanded the scope of the SLA, local agencies have sought relief from these provisions so they can use land without offering it first for affordable housing and negotiating with any providers that state their interest. The Legislature is considering numerous other proposals that provide specific provisions or exemptions regarding surplus land:

- SB 34 (Umberg, 2023), which the Committee approved on a 6-2 vote at its April 19th hearing, creates a process for HCD to determine whether land disposals in Orange County violate the SLA. The bill is currently pending in the Assembly Local Government Committee.
- SB 229 (Umberg, 2023), which the Committee approved on a 6-1 vote at its April 19th hearing, requires a local agency to hold an open and public meeting if HCD notifies the local agency that its disposal of a parcel violates the SLA. The bill is currently pending in the Assembly Local Government Committee.
- SB 693 (Seyarto, 2023) exempts certain parcels in the City of Murrieta from the SLA. The bill is currently pending in the Senate Governance and Finance Committee.
- SB 747 (Caballero, 2023), which the Committee approved on a 8-0 vote at its April 12th hearing, makes numerous changes to the Surplus Land Act, including expanding the definition of agency use, and exempt surplus land. The bill is currently pending in the Assembly Housing and Community Development Committee.
- AB 129 (Committee on Budget, 2023) includes, among its many provisions, an exemption from the SLA for land acquired by a local agency under an adopted sectional area plan. The bill is currently on the Governor’s desk.
- AB 457 (Joe Patterson, 2023), which the Committee approved on a 8-0 vote at its June 28th hearing, creates an exemption from the Surplus Land Act (SLA) for parcels abutting a state highway right-of-way that a local agency identified in its circulation element or

capital improvement plan for future roadway development. The bill is currently pending on the Senate Floor.

- AB 480 (Ting, 2023), which the Committee approved on a 6-1 vote at its June 28th hearing, changes the penalty provisions of the SLA and makes procedural changes to noticing provisions that apply to “surplus land” and “exempt surplus land” disposed of by local agencies subject to the SLA. The bill is currently pending in the Senate Housing Committee.
- AB 837 (Alvarez, 2023) creates an exemption from the SLA for land acquired by a local agency under an adopted sectional area plan. The bill is pending in the Senate Governance and Finance Committee.
- AB 983 (Cervantes, 2023) expands the definition of exempt surplus land to include land designated in an adopted downtown revitalization plan not to exceed 1.1 square miles and includes residential, commercial, office, civic, and hospitality uses. The bill is currently pending in the Assembly Local Government Committee.
- AB 1734 (Jones-Sawyer, 2023) Exempts certain housing and homelessness projects from the SLA in local agencies that have declared a local homelessness emergency and meet other requirements. The bill is also scheduled for this Committee’s July 5th meeting.

SB 747 seeks to address broader concerns over the SLA compared to many of these bills that provide more tailored flexibility to particular agencies, or types of projects. If enacted, SB 747 could reduce the need to pursue one-off legislation. To help address broader SLA concerns without the need for piecemeal legislation, the Committee may wish to consider amending the bill to make its SLA provision’s enactment contingent on SB 747’s enactment.

6. Previous legislation. SB 519 (Beall, 2017) would have authorized SCVWD to engage in acts the Board of Directors deems appropriate and beneficial to reduce impacts from camping, construction, and the discharge or disposal of waste in and around waterways within its jurisdiction. The measure was later amended to cover a different topic.

7. Related legislation. AB 939 (Pellerin, 2023), which the Committee approved on a 7-0 vote at its June 7th hearing, makes various changes to the Santa Clara Valley Water District Act, including how its board members receive compensation, and how SCVWD finances its projects. The bill is currently pending on the Senate Floor.

8. Special legislation. Section 16 of Article Four of the California Constitution prohibits special legislation when a general law can apply. AB 1469 contains findings and declarations explaining the need for legislation that applies only to the Santa Clara Valley Water District.

Assembly Actions

Assembly Housing and Community Development:	8-0
Assembly Floor:	72-0

Support and Opposition (6/30/23)

Support: Santa Clara Valley Water District (Sponsor)
City of Gilroy Council Member Zach Hilton
Asian Americans for Community Involvement

Association of California Water Agencies (ACWA)
California Municipal Utilities Association
City of Cupertino
City of Palo Alto
City of San Jose
City of Santa Clara
Compassion Center
County of Santa Clara
Destination: Home
Hispanic Chamber of Commerce Silicon Valley
Homefirst Services of Santa Clara County
Midpeninsula Regional Open Space District
Pitstop Outreach
Sustainable Silicon Valley

Opposition: None received.

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