

EXECUTIVE OFFICER'S REPORT

To The
Local Agency Formation Commission

Commissioner David West [Public]

Commissioner Michael Kelley [Supervisor]

Commissioner Jason Jackson [City] (Vice-Chair)

Commissioner Ray Castillo [Supervisor] (Chair)

Commissioner Maria Nava-Froelich [City]

Alternate Commissioner Jesus E. Escobar [Supervisor]

Alternate Commissioner Jim Predmore [City]

Alternate Commissioner Ed Snively [Public]

REPORT DATE: March 18, 2019

FROM: Jurg Heuberger, Executive Officer



PROJECT: Assembly Bill 854

HEARING DATE: April 4, 2019

TIME: 08:30a.m.

AGENDA ITEM NO: 6

HEARING LOCATION: El Centro City Council Chambers, 1275 Main St., El Centro, CA 92243

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (In Summary & Order)

OPTION #1: Take a position on the proposed AB 854 and direct the Executive Officer to send a letter notifying Assembly Member Mayes of the Commission's position.

OPTION #2: Take no action

ANAYLSIS/REPORT

Background:

On February 20, 2019, Assembly Member Chad Mayes introduced legislation that seeks to change the laws that govern the election of the Imperial Irrigation District's Board of Directors.

Proposed Assembly Bill 854:

Existing law, the Irrigation District Law, with certain exceptions, requires a director on the board of an irrigation district that provides electricity for residents of the district to be a voter of the district and a resident of the division that the director represents. Existing law authorizes an irrigation district to sell, dispose of, and distribute electricity for use outside of the district's boundaries.

This bill would require the membership of the board of directors of the Imperial Irrigation District to increase from 5 to 11 members, with the 6 additional directors meeting certain qualifications, including that each be a resident of and qualified as eligible to vote in the County of Riverside. The bill would provide for the election of the additional directors at the 2020 general district election. The bill would authorize the district board to adopt a resolution decreasing the number of directors and the divisions from which they are elected from 11 to 5 if a public utility district is formed that provides electricity outside the territory of the Imperial Irrigation District and consists of a board of directors with a majority of seats representing the County of Riverside. By imposing new duties on an irrigation district, this bill would impose a state-mandated local program. **The full text of the proposed bill is attached as EXHIBIT A.**

IID's position

The Imperial Irrigation District, at a special meeting on March 1, 2019 took a formal position on AB 854, strongly opposing the bill. **Attached is a copy of IID's letter to Assembly Member Chad Mayes as EXHIBIT B.**

It is also our understanding that the County Board of Supervisors took an opposed position at their March 5, 2019 meeting.

Recommendation:

It is recommended that the Commission take a formal position on the proposed Assembly Bill 854 and direct the Executive Officer to send a letter to Assembly Member Mayes notifying him of the Commission's position. **A Draft letter is attached as EXHIBIT C.**

EXECUTIVE OFFICERS RECOMMENDATION

It is the recommendation of the Executive Officer that LAFCO conduct a public hearing and consider all information presented in both written and oral form. The Executive Officer then recommends, assuming no significant public input warrants to the contrary, that LAFCO take the following action:

OPTION #1: Take a position on the proposed AB 854 and direct the Executive Officer to send a letter notifying Assembly Member Mayes of the Commission's position.

OPTION #2: Take no action

CC: Imperial Irrigation District

EXHIBIT A

ASSEMBLY BILL

No. 854

Introduced by Assembly Member Mayes

February 20, 2019

An act to add Section 21562.7 to the Water Code, relating to irrigation districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 854, as introduced, Mayes. Imperial Irrigation District: retail electric service.

Existing law, the Irrigation District Law, with certain exceptions, requires a director on the board of an irrigation district that provides electricity for residents of the district to be a voter of the district and a resident of the division that the director represents. Existing law authorizes an irrigation district to sell, dispose of, and distribute electricity for use outside of the district's boundaries.

This bill would require the membership of the board of directors of the Imperial Irrigation District to increase from 5 to 11 members, with the 6 additional directors meeting certain qualifications, including that each be a resident of and qualified as eligible to vote in the County of Riverside. The bill would provide for the election of the additional directors at the 2020 general district election. The bill would authorize the district board to adopt a resolution decreasing the number of directors and the divisions from which they are elected from 11 to 5 if a public utility district is formed that provides electricity outside the territory of the Imperial Irrigation District and consists of a board of directors with a majority of seats representing the County of Riverside. By imposing new duties on an irrigation district, this bill would impose a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Riverside and the Imperial Irrigation District.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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. It is the intent of the Legislature to encourage an
2 irrigation district that provides retail electricity outside its
3 boundaries to allow representation of those extraterritorial
4 customers on the district’s board of directors because these
5 customers have no ability to petition grievances to the district or
6 to the Public Utilities Commission.

7 SEC. 2. Section 21562.7 is added to the Water Code, to read:
8 21562.7. (a) This section applies to the Imperial Irrigation
9 District.

10 (b) Notwithstanding Sections 21100 and 21550 and Division 3
11 (commencing with Section 56000) of Title 5 of the Government
12 Code, the membership of the board of directors of the district and
13 the divisions from which they are elected shall increase from 5 to
14 11.

15 (c) Each of the six directors added to the board pursuant to this
16 section shall meet the following qualifications:

- 17 (1) Reside in the County of Riverside.
- 18 (2) Qualify as eligible to vote in the County of Riverside.
- 19 (3) Reside in the division the director represents at the time of
20 their nomination or appointment and through their entire term.

21 (d) The six directors shall be elected at the 2020 general district
22 election.

23 (e) If a public utility district is formed pursuant to Division 7
24 (commencing with Section 15501) of the Public Utilities Code
25 that provides electricity outside the territory of the Imperial

1 Irrigation District and consists of a board of directors with a
2 majority of seats representing the County of Riverside, the board
3 of the directors of the district may adopt a resolution that decreases
4 the number of directors and the divisions from which they are
5 elected from 11 to 5 upon the expiration of the terms of the
6 members of the board qualified pursuant to subdivision (c).

7 SEC. 3. The Legislature finds and declares that a special statute
8 is necessary and that a general statute cannot be made applicable
9 within the meaning of Section 16 of Article IV of the California
10 Constitution because of the unique circumstances in the County
11 of Riverside and the Imperial Irrigation District.

12 SEC. 4. If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.

EXHIBIT B



IID

A century of service.

www.iid.com

Since 1911

Mailed and via e-mail to:

Assemblymember Mayes c/o angela.qualley@asm.ca.gov

February 27, 2019

The Honorable Chad Mayes
California State Assembly
Assembly Room Number 4098
Sacramento, CA 95814

RE: AB 854 - Strong Opposition

Dear Assemblymember Mayes:

The Imperial Irrigation District (IID) has taken an opposed position to Assembly Bill 854. It is our contention that you are seeking to fix something that has demonstrated effectiveness over the past 85 years.

IID remains confident of its socially conscious, reliable electric service in the Coachella Valley at *half* the rates of neighboring private electric service providers. IID's performance on behalf of its customers provided electric services has demonstrated efficient organization and management, and has benefited the public good.

AB 854 is turning to the California Legislature to resolve a legal dispute between Riverside County and IID after a Los Angeles County Superior Court found that prior related actions by the Riverside County Board of Supervisors likely constituted an unconstitutional usurpation of the California Legislature's law-making authority. (See enclosed Order)

More importantly, AB 854 would allow Riverside County voters, who **do not reside** within the IID, and **do not buy electricity or water** from IID, to vote for and serve as members of its Board of Directors. The residents of Riverside County are served by their own water districts and electric companies separate and apart from IID.

It is helpful to understand the historical circumstance that led to the current configuration of IID and the water districts and electric companies that serve Riverside County. IID was formed in 1911, as an irrigation district under what is referred to today as the Irrigation District Law in the California Water Code, to provide water to Imperial Valley residents. Coachella Valley Water District (CVWD) was formed in 1918, as a county water district under what is referred to today as the County Water District Law in the

California Water Code, to provide water in the Coachella Valley within Riverside County. In the 1920s, a private electric company served electricity to the inhabitants within the boundaries of both IID's and CVWD's territories at a high cost to the residents. In 1926, in order to secure cheaper sources of power, IID authorized an investigation into the possibility of developing hydroelectric power along its canal system.

In 1928, the U.S. Congress enacted the Boulder Canyon Project Act authorizing the development of the Hoover Dam and allowing IID and CVWD to develop facilities for generating and marketing electric power from the gravity fall of water through the canal system to these areas. In 1932, IID and the United States executed a contract under the Boulder Canyon Project Act for the development of the All-American Canal and the Imperial Dam, which diverts water from the Colorado River. The 1932 agreement set in place the boundaries of IID's water service territory and allowed IID to use all the power generation opportunities not reserved by the U.S. created by the canal system. It also allowed for CVWD to annex to IID and for IID to provide water to the Coachella area.

CVWD chose not to annex to IID and challenged IID's contract seeking its own contract with the United States for the development of the Coachella Canal branching off the All-American Canal to serve the Coachella Valley. To resolve this dispute, IID and CVWD entered into the 1934 Compromise Agreement ("1934 Agreement"). Under the 1934 Agreement, CVWD agreed to subordinate its water rights to IID and the parties planned to enter into a 99- year lease to address the rights CVWD would have in the hydroelectric power potential of the Coachella Canal. (A copy of the 1934 Agreement is attached.)

While the Coachella Canal was eventually built without any drops and, therefore, there was never any hydroelectric power opportunities from it, IID has paid a significant amount of money to CVWD from energy revenues pursuant to the 1934 Agreement. Of course, should AB 854 be enacted and allowed to stand, the induced breach of contract would certainly relieve the IID from paying the portion of revenue.

In 1934, IID also began to acquire diesel electric generators and to construct a distribution system in the Imperial Valley. In 1943, IID decided to expand its power business to the Coachella Valley when it acquired the electric system and properties of the California Electric Power Company in Imperial County and parts of San Diego and Riverside Counties. IID and California Electric Power Company entered into a purchase and sale agreement conditioned upon IID receiving appropriate regulatory approvals and agreeing not to compete in specified areas. Unlike CVWD, as an irrigation district under the California Water Code sections 22115 and 22120 (adopted in 1943), IID has the specific power to generate, transmit, distribute and sell electricity within and outside its boundaries.

The purchase contract with California Electric Power Company determined the electric service territory boundaries for 25 years. Since then IID's electric service area has been formalized further by a succession of boundary service agreements with Southern

California Edison, a successor to California Electric Power Company, which has been approved by the California Public Utilities Commission.

The agreements with CVWD and SCE are expressly allowed by federal law, long-standing agreements involving water rights, among other things, and state law under which the California Legislature expressly authorizes irrigation districts such as IID to “sell, dispose of, and distribute electric power for use outside of its boundaries.” (Cal. Wat. Code §22120)

AB 854 faces a number of additional legal obstacles of which you should be aware. In addition to impairing historical contractual and legal obligations of CVWD and IID, AB 854 arguably is preempted by federal law. The 1934 Agreement between CVWD and IID is integral to resolution of legal disputes involving water and hydroelectric power rights. As such, it was an organic part of the whole federal legislative effort to control and mediate the differing competing interests involving the Colorado River. This extensive federal interest was acknowledged by the Supreme Court in *Arizona v. California* (1963) 373 U.S. 546, 588. The Supreme Court elaborated on federal involvement in *California v. United States* (1978) 438 U.S. 645, 673–74: “...because of the unique size and multistate scope of the [Boulder Canyon] Project, Congress did not intend the States to interfere with the Secretary’s power to determine with whom and on what terms water contracts would be made.” AB 854 would abrogate the IID’s contracted rights in its 1932 agreement and under the 1934 Agreement. This abrogating effect would not only impact IID, but all federal contracting agencies with rights to the Colorado River within California. The legal ramifications of AB 854 would create a ripple effect of uncertainty to numerous subsequent federal and state contracts involving the Colorado River and IID’s water rights, as well as IID’s legal obligations to transfer water to CVWD, San Diego County Water Authority and the Metropolitan Water District of Southern California, undermining any stability to California’s water supplies.

In addition, AB 854 raises First Amendment issues. It overrides Imperial Valley residents’ electoral control over the IID Board of Directors and it arguably denies the residents of Imperial Valley their right to association. The Supreme Court has recognized: “The freedom to join together in furtherance of common political beliefs necessarily presupposes the freedom to identify the people who constitute the association to those people only. That is to say, a corollary of the right to associate is the right not to associate.” *Cal. Democratic Party v. Jones* (2000) 530 U.S. 567, 574. The Supreme Court recognized an association’s right to “limit control over their decisions to those who share the interests and persuasions that underlie the association’s being.” *Id.* at 574. AB 854 denies the residents of Imperial Valley that right.

AB 854 also violates the “one person, one vote” principle required by the Fourteenth Amendment. Diluting the rights of Imperial Valley residents by adding a greater number of Coachella Valley residents to the voting roster fails under the Fourteenth Amendment’s principle of “one person, one vote.” *Reynolds v. Sims* (1964) 377 U.S. 533, 538; *Assembly v. Deukmejian* (1982) 30 Cal. 3d 638, 659. “Overweighting and overvaluation of the votes of those living here has the certain effect of **dilution and undervaluation** of the votes of those living there... weighing the votes of citizens differently... merely because of where they happen to reside, hardly seems justifiable.” *Reynolds*, 377 U.S. at 563. (emphasis added). AB 854 deprives the residents of Imperial Valley that right.

We have heard that the intent of AB 854 is to redress the idea that IID’s electrical service in the eastern Coachella Valley is akin to “taxation without representation.” Just so the record is correct, a charge for electrical service is a fee and not a tax. See, Cal. Const. art. XIII §1 (e), [defining fees]; *Isaac v. City of Los Angeles* (1998) 66 Cal. App. 4th 586, 597-98. The courts have also held that fee paying ratepayers are not entitled to voting rights when paying fees. *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal. App. 4th 686, 693. If IID were a private electric company, such as Southern California Edison which also serves the Coachella Valley and large areas of Riverside County, no such complaint would be heard from customers.

Finally, and perhaps most troublesome of all the legal obstacles AB 854 faces is the change it seeks to achieve in the ownership of IID’s water rights. IID has defended its water rights for more than seventy years against various attacks that have led to decisions by the United States Supreme Court affirming the nature of IID’s water rights. From *Arizona v. California* (1963) 373 U.S. 546 to *Bryant v. Yellen* (1980) 447 U.S. 352 IID has successfully defended its water rights. Even today, IID is involved in litigation defending its Colorado River water rights. AB 854 would transfer control of the IID Board of Directors to Riverside County, a political subdivision of the state holding no water rights of its own, thereby giving full control over IID’s water rights to board members elected by voters from Riverside County. Neither the IID board nor its residents can allow this to happen. Indeed, a cynical view would lead one to believe that such is the real intent of this proposed legislation. Perhaps it is an unintended consequence of AB 854, nonetheless it is a real threat and unacceptable.

In short, IID has done nothing more than what is in the best interest of its residents and customers and fully authorized by federal and state law, which has been memorialized in contracts among several parties. And both IID and CVWD are bound by federal law to honor the 1934 Agreement. AB 854 is more than the shoehorning of Coachella Valley or Riverside County residents onto IID’s Board. Rather, it seems a precursor to


The Honorable Chad Mayes
February 27, 2019
Page 5 of 5

obtain leverage over IID's water rights through a forced renegotiation of the 1934 Agreement.

IID hopes that upon review of these facts and law, you reconsider the pursuit of AB 854.

In the spirit of continued cooperation on issues of existential importance, IID urges your office to withdraw AB 854, and instead, engage IID in a productive discussion of Coachella Valley ratepayer concerns.

Very truly yours,


Frank A. Oswalt, III
General Counsel

Attachments: LA County Superior Court Order
Tentative Order
1934 Compromise Agreement

EXHIBIT C

April 4, 2019

The Honorable Chad Mayes
California State Assembly
Assembly Room Number 4098
Sacramento, CA 95814

RE: AB 854- Opposition

Dear Assemblymember Mayes:

The Imperial Local Agency Formation Commission (IC LAFCO) is aware of and has been following your bill AB 854. The I.C. Local Agency Formation Commission voted unanimously to oppose this bill for several reasons.

First and foremost, as written this bill would have far reaching ramifications throughout the state, and severely impact ratepayers in both Imperial and Riverside County in a very negative way.

Second, it will most likely result in litigation, which in this case would use taxpayer funds on both sides to adjudicate a new law that is neither necessary nor desired and would be a total waste of taxpayer funds.

Third, the bill infringes on long legal standing agreements and relationships all of which have provided affordable and reliable electrical service to all the rate payers that are served by the IID, both in Imperial County and Riverside County.

Fourth, the bill as written would allow the voters in another county to regulate a special district in this County when in fact the majority of voters in Riverside County receive no water or power service from IID.

Fifth, the service area served by IID in Riverside County is a very small portion of Riverside County yet as written AB 854 would grant a majority vote on the IID Board to Riverside County residents and therefore dilute the vote of the Imperial County residents. This is especially troubling since none of the residents in Riverside County receive water from IID and therefore would have a controlling say in water issues that solely affect Imperial County.

Sixth, to our knowledge, Riverside LAFCO was not consulted in this bill and most certainly Imperial LAFCO was not. Yet LAFCO's were given broad powers in recent years to assure that special districts are reviewed regularly and held accountable to provide the required services. This bill is contrary to how changes to special districts should be made.

Lastly, if there is a problem, which we know does not exist, there are much better and more acceptable solutions instead of unilaterally and without consultation introducing legislation that appears to be unnecessary in the first place.

In closing, we urge you to closely consider the far-reaching and negative impacts of your legislation to all the communities served by IID.

Sincerely,

Ray Castillo
Chair
Imperial Local Agency Formation Commission

DRAFT