

## MEMORANDUM LOCAL AGENCY FORMATION COMMISSION

**TO:** Local Agency Formation Commission

**FROM:** Stephen Lucas, Executive Officer

**SUBJECT:** **Agenda Item 4.2 - Discussion of Drought Issues**

**DATE:** August 25, 2021 for the meeting of September 2, 2021

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### Issue

Most of California including Butte County are experiencing an increasing severity of drought conditions. On April 21, 2021, Governor Newsom declared a drought emergency for the Russian River Watershed and Klamath Basin. On May 10, 2021, Governor Newsom expanded the drought declaration to 41 counties including Butte County. On July 8, Governor Newsom expanded the drought declaration again to another 9 counties for a total of 50 counties under the drought state of emergency. The U.S. Drought Monitor has classified most of California, including Butte County, as being in an exceptional drought condition. At the local level, Butte County is experiencing drought conditions which are resulting in increased occurrences of dry wells or wells with water quality concerns. The Butte County Drought Task Force discussions indicate that this scenario will only get worse with time...and much worse should another dry winter occur.

### *We Have Water*

Butte County is fortunate enough to have a few **potable** water providers/districts that do have sufficient treated water supplies to serve parcels with compromised domestic wells (not ag wells). Staff has had contact with the big three, South Feather Water and Power Agency (SFWPA), Thermalito Water and Sewer District (TWSD and the Paradise Irrigation District (PID), all of which have adequate potable water supplies to share and have historically provided potable water filling stations and continue to do so. All agencies report an uptick in inquiries.

### *State Water Board Hurdles*

We have learned from affected districts that pursuant to the declared drought emergency affecting 50/58 counties, the SWB Water Rights Enforcement forbids water providers from providing water hauling to parcels that are not within a district's jurisdictional boundaries. This is a real problem as many folks outside of district boundaries and without water come to local filling stations to obtain potable water.

Additionally, the State Water Board requires local agencies to comply with State Mandated Potable Hauling Requirements (Attachment 1) or face fines and potential water rights impacts. The SWB rule limits water hauling to a maximum of 250 gallons, above 250 gallons requires a Water Haulers License from the State Department of Public Health. This is a ridiculously low quantity of water as average homes would use this amount in several days to week. It is noted that most water haulers have 500-2,000 gallon tanks and wish to minimize trips (apparently the SWB isn't concerned about vehicle miles traveled (VMTs) or the impacts to local roads.

### *Butte County Hurdles*

In Butte County, the Butte County Environmental Health Division provides guidance to water haulers. If someone needs to haul water for **private use**, EHD has no requirements, just a recommendation on safe handling of potable water containers. If an individual or business is providing hauled water for **public use**, then they do need to contact Environmental Health and may need to obtain a temporarily permit as a small water system if they meet the threshold and require water quality monitoring (bacteriological only if water is from an approved source like SFWPA) to ensure the public's safety.

### LAFCo Role

The LAFCo role in this discussion relates to our powers to authorize services and jurisdictional boundary changes such as annexations and extensions of service outside jurisdictional boundaries and even outside of adopted spheres of influence when addressing public health and safety concerns. (GC56133). Historically LAFCo would routinely address this issue by either processing annexations into a district or authorizing an extension of services (a much less expensive and quicker solution during an emergency).

It is Staff's belief, as well as other LAFCo's from around the state that a LAFCo approved extension of service (EOS) request is the functional equivalent to being "*in the district*" for purposes of receiving district services. However, some of our districts are understandably wary of running afoul of the SWB and are hesitant to request and act on EOS approval without assurances that the SWB will react negatively.

LAFCo Staff has been in contact with individual LAFCo's and the California Association of Local Agency Formation Commissions (CALAFCO) about this issue. There is a strong interest in CALAFCO pursuing solutions with the SWB that do not excessively restrict landowners with failing wells from obtaining locally available potable water.

**ACTION REQUESTED:** Provide direction to Staff to offer assistance to affected local agencies, coordinate with CALAFCO efforts and communicate with the State Water Resources Control Board of the need to be flexible and allow LAFCo to address extensions of service/annexation where feasible.

# HAULING WATER?

**Notice:** Unauthorized drafting, or hauling water, is subject to prosecution and fines by the State Water Board and the Department of Fish & Wildlife. If hauling potable water, you must also be licensed by the Department of Public Health.

## Laws covering water hauling:

California Health and Safety Code requires water haulers to get a Water Hauler's License from the Department of Public Health, Food and Drug Branch (FDB). The Water Hauler's License is required to haul more than 250 gallons by any means of transportation for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans.

Get a Water Hauler's License application (CDPH 8605) by telephoning the FDB program desk at: (916) 324-2170 or by downloading the form at:

<http://www.cdph.ca.gov/pubsforms/forms/CtrlForms/cdph8605.pdf>

## Consequences:

- Substantial diversion or obstruction of natural flow, or alteration of a stream bed, bank or channel is a misdemeanor subject to one year in jail and a \$2,000 fine. Violations in connection with the production or cultivation of a controlled substance are subject to a civil penalty of up to \$10,000 for each violation.
- The diversion, or use of surface water, without a valid Water Right, is a trespass. You face fines of up to \$500 a day. During a drought year, you face up to \$1,000 a day, and \$2,500 per acre-foot of water diverted.
- Water diverters must file a Statement of Water Diversion and Use with the State Water Board, or face a civil liability of \$1,000 for failure to file a statement and \$500 a day for each day the violation continues after receiving notice.
- During a drought, you face a civil liability of \$500 a day for violating a term or condition of a permit, license, certificate or registration under a regulation adopted by the State Water Board.

## Additional licensing information:

Once licensed, periodic on-site inspections are conducted to assess compliance with state and federal laws and regulations. Inspections include a review of required water testing, equipment maintenance, sanitation, and record-keeping.

Water quality testing must be conducted by a laboratory certified by the California Environmental Laboratory Accreditation Program (ELAP), or the United States Environmental Protection Agency (US EPA).

## State Water Board, Division of Drinking Water/ELAP:

[http://www.waterboards.ca.gov/drinking\\_water/certlic/labs/index.shtml](http://www.waterboards.ca.gov/drinking_water/certlic/labs/index.shtml)

## Questions?

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