

Assembly Bill No. 1823

CHAPTER 841

An act to add and repeal Division 20.5 (commencing with Section 73500) of the Water Code, relating to regional water systems.

[Approved by Governor September 24, 2002. Filed
with Secretary of State September 24, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1823, Papan. Regional water systems.

(1) Under existing law, the City and County of San Francisco (city) operates the Hetch Hetchy Project as a regional water delivery system (bay area regional water system), supplying water to persons and entities in the city and the Counties of Alameda, San Mateo, and Santa Clara.

This bill would enact the Wholesale Regional Water System Security and Reliability Act, which would impose various requirements on wholesale regional water systems, as defined, thereby imposing a state-mandated program. The bill would require the city, by February 1, 2003, to adopt a capital improvement program. The bill would require the city, in consultation with other entities, to adopt an emergency response plan by September 1, 2003. The bill would require a regional wholesale water supplier, as defined, to distribute available water during any interruption to all customers on an equitable basis, to the extent feasible. The bill would require the city to continue its practice of operating reservoirs in the Counties of Tuolumne and Stanislaus in a manner that ensures that the generation of hydroelectric power will not cause any reasonably anticipated adverse impact on water service. The bill would require the city to assign higher priority to water delivery to the bay area than to electric power generation, unless the Secretary of the Interior notifies the city of a violation of federal law.

The bill would require the State Department of Health Services to conduct an audit relating to the bay area regional water system and an audit of other regional water systems. If the city and the bay area wholesale customers that are public agencies form a special district with authority to own, operate, and manage the bay area regional water system, the bill would impose the requirements of the act on that district instead of the city. The bill would require the State Department of Health Services to ensure that the bay area regional water system is operated in compliance with the California Safe Drinking Water Act and certain federal guidelines.

The bill would require the city to prepare various reports in connection with its operation of the bay area regional water system. The new requirements established by the bill for the city would impose a state-mandated local program. The bill would require a regional wholesale water supplier to reimburse the State Department of Health Services and the Seismic Safety Commission for costs incurred in connection with implementing the requirements imposed by the act. The bill would require the bay area wholesale customers to reimburse the city for their share of costs. The bill would require wholesale customers of other regional wholesale water suppliers to be responsible for reimbursing the regional wholesale water supplier for the proportional share of costs through the imposition of water charges.

The bill would make these provisions inoperative on the earlier of two specified dates and would repeal these provisions on January 1 immediately following that earlier date.

(2) 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.

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) The City and County of San Francisco has acquired or constructed a system of reservoirs, pipelines and tunnels, and treatment plants that provides water to 2.4 million Californians who live in San Francisco and in neighboring communities in the Counties of Alameda, San Mateo, and Santa Clara.

(b) Over two-thirds of the Californians who rely on San Francisco's regional water system, approximately 1.6 million persons, live outside San Francisco. A substantial majority of industrial, commercial, institutional, and governmental users are also located outside San Francisco.

(c) The reliability of this water infrastructure system is of vital importance to the health, welfare, safety, and economy of the region that it supplies.

(d) In turn, this region is of vital importance to the entire State of California, because of the resident industries, universities, and commercial enterprises that employ millions of Californians and generate billions of dollars in exports and tax revenues to the state.



(e) The regional water system is old, and designed to outdated seismic safety standards. The system either crosses, is located on, or is adjacent to, three major active earthquake faults, including the Calaveras fault, the San Andreas fault and the Hayward fault. Engineering investigations have disclosed that the system is at risk of catastrophic failure in a major earthquake. Many areas in all four counties served by the system face interruptions in their supplies of potable water for up to 30 days, and some areas could be without water for as long as 60 days.

(f) Interruptions in water supply of this magnitude and duration to a densely populated metropolitan region would be disastrous for public health and safety and for the regional and state economy. In addition, uncontrolled releases of water from pipelines, tunnels, and reservoirs could create severe flood damage and environmental harm to fish and wildlife habitat in the communities in which water facilities are located.

(g) Californians in neighboring counties, including those Californians outside the immediate service area of the regional water system, will benefit from the implementation of the act adding this section. Access to a reliable supply of water is an important component of the infrastructure necessary to a prosperous metropolitan economy.

(h) The state has concerns for the health, safety, and the economic strength of the region that warrant requiring San Francisco to take prudent steps to upgrade the regional water system in a timely manner.

SEC. 2. Division 20.5 (commencing with Section 73500) is added to the Water Code, to read:

DIVISION 20.5. WHOLESALE REGIONAL WATER SYSTEM
SECURITY AND RELIABILITY ACT

73500. This division shall be known as and may be cited as the Wholesale Regional Water System Security and Reliability Act.

73501. (a) Unless the context otherwise requires, the definitions set forth in this section govern the construction of this division.

(b) “Association” means the San Francisco Bay Area Water Users Association.

(c) “Bay area regional water system” means the facilities for the storage, treatment, and transmission of water located in the Counties of Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, and San Mateo, together with three terminal reservoirs in the city.

(d) “Bay area wholesale customers” means the 26 public agencies in the Counties of San Mateo, Alameda, and Santa Clara that purchase water from the city pursuant to the master water sales contract, including the Alameda County Water District, the City of Brisbane, the City of Burlingame, the Coastside County Water District, the City of Daly City,



the City of East Palo Alto, the Estero Municipal Improvement District, Guadalupe Valley Municipal Improvement District, City of Hayward, the Town of Hillsborough, the Los Trancos County Water District, the City of Menlo Park, the Mid-Peninsula Water District, the City of Millbrae, the City of Milpitas, the City of Mountain View, the North Coast County Water District, the City of Palo Alto, the Purissima Hills Water District, the City of Redwood City, the City of San Bruno, the City of San Jose, the City of Santa Clara, the Skyline County Water District, the City of Sunnyvale, and the Westborough Water District, Stanford University, the California Water Service Company, and the Cordilleras Mutual Water Association.

(e) “City” means the City and County of San Francisco.

(f) “Master water sales contract” means the agreement entitled “Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers” entered into in 1984 by the city and the wholesale customers.

(g) “Regional water system” means facilities for the storage, treatment, and transmission of water owned and operated by a regional wholesale water supplier, other than the city.

(h) “Regional wholesale water supplier” means any city, county, or city and county, including the city, that operates a regional water system, and furnishes water on a wholesale basis to local government agencies and public utilities that, in turn, supply water to a combined population of 1.5 million or more residents of geographic areas outside the boundary of the regional wholesale water supplier.

(i) “Wholesale customers” means local government agencies and public utilities, including, but not limited to, the bay area wholesale customers, that purchase water from a regional wholesale water supplier and distribute that water to retail customers in their respective service areas.

73502. (a) The city, on or before February 1, 2003, shall adopt the program of capital improvement projects designed to restore and improve the bay area regional water system that are described in the capital improvement program report prepared by the San Francisco Public Utilities Commission dated February 25, 2002. A copy of the program shall be submitted, on or before March 1, 2003, to the State Department of Health Services. The program shall include a schedule for the completion of design and award of contract, and commencement and completion of construction of each described project. The schedule shall require that projects representing 50 percent of the total program cost be completed on or before 2010 and that projects representing 100 percent of the total program cost be completed on or before 2015. The program shall also contain a financing plan. The city shall review and update the



program, as necessary, based on changes in the schedule set forth in the plan adopted pursuant to subdivision (d).

(b) The plan shall require completion of the following projects:

Project	Location	Project Identification Number
1. Irvington Tunnel Alternative	Alameda/Santa Clara Counties	9970
2. Crystal Springs Pump Station & Pipeline	San Mateo County	201671
3. BDPL 1 & 2—Repair of Caissons/Pipe Bridge	Alameda/San Mateo Counties	99
4. BDPL Pipeline Upgrades at Hayward Fault	Alameda County	128
5. Calaveras Fault Crossing Upgrade	Alameda County	9897
6. Crystal Springs Bypass Pipeline	San Mateo County	9891
7. BDPL Cross Connections 3 & 4	Alameda/Santa Clara Counties	202339
8. Conveyance Capacity West of Irvington Tunnel	Alameda/Santa Clara/San Mateo Counties	201441
9. Calaveras Dam Seismic Improvements	Alameda County	202135

(c) The city shall submit a report to the Joint Legislative Audit Committee, the Seismic Safety Commission, and the State Department of Health Services, on or before September 1 of each year, describing the progress made on the implementation of the capital improvement program for the bay area regional water system during the previous fiscal year.

(d) (1) The city may determine that completion dates for projects contained in the capital improvement program adopted pursuant to subdivision (a), including those projects described in subdivision (b), should be delayed or that different projects should be constructed.

(2) The city shall provide written notice, not less than 30 days prior to the date of a meeting of the city agency responsible for management of the bay area regional water system, that a change in the program is to



be considered. The notice shall include information about the reason for the proposed change and the availability of materials related to the proposed change. All bay area wholesale customers shall be permitted to testify or otherwise submit comments at the meeting.

(3) If the city adopts a change in the program that deletes one or more projects from the program, or postpones the scheduled completion dates, the city shall promptly furnish a copy of that change and the reasons for that change to the State Department of Health Services and the Seismic Safety Commission. The State Department of Health Services and the Seismic Safety Commission shall each submit written comments with regard to the significance of that change with respect to public health and safety to the city and the Joint Legislative Audit Committee not later than 90 days after the date on which those entities received notice of that change.

73503. (a) The city, in consultation with the association and the offices of emergency services in Alameda County, Santa Clara County, and San Mateo County, shall prepare an emergency response plan describing how water service will be restored to the area served by the bay area regional water system after an interruption caused by earthquake or other natural or manmade catastrophe. A draft of the plan shall be submitted to the Office of Emergency Services on or before July 1, 2003, for comment and shall be adopted by the city on or before September 1, 2003, and thereafter shall be implemented.

(b) During any interruption in supply caused by earthquake, or other natural or manmade catastrophe, a regional wholesale water supplier shall distribute water to customers on an equitable basis, to the extent feasible given physical damage to the regional water system, without preference or discrimination based on a customer's geographic location within or outside the boundary of the regional wholesale water supplier.

73504. (a) Commencing in 2003, a regional wholesale water supplier shall submit a report to the Legislature and the State Department of Health Services, on or before February 1 of each year, describing the progress made during the previous calendar year on securing supplemental sources of water to augment existing supplies during dry years.

(b) In order to supply adequately, dependably, and safely the requirements of all users of water, the city shall continue its practice of operating the reservoirs in the Counties of Tuolumne and Stanislaus in a manner that ensures that the generation of hydroelectric power will not cause any reasonably anticipated adverse impact on water service. The city shall assign higher priority to delivery of water to the bay area than to the generation of electric power, unless the Secretary of the Interior, in writing, notifies the city that doing so would violate the Raker Act (63



P.L. 41). The city shall make available to the public, on request, its plans of operations (rule curves) for these reservoirs.

(c) The city shall be deemed to be a local public agency for the purposes of Article 4 (commencing with Section 1810) of Chapter 11 of Part 2 of Division 2.

73505. The State Department of Health Services shall conduct an audit, or arrange for an audit to be performed by contract, of the city's program of maintenance of the bay area regional water system prior to July 1, 2004. The audit shall include both of the following:

(a) A review of the adequacy of the city's procedures and resources for all of the following:

- (1) Identifying needed maintenance.
- (2) Planning, budgeting, scheduling, and completing maintenance.
- (3) Recordkeeping of maintenance activities.

(b) A field investigation of the major facilities of the bay area regional water system to determine the general condition of those facilities and the adequacy of existing maintenance efforts.

(c) The State Department of Health Services shall submit a report to the city, the Joint Legislative Audit Committee, and the Seismic Safety Commission on its findings and recommendations based on the audit on or before January 1, 2005.

73506. The State Department of Health Services shall conduct an audit of the regional water systems operated by all regional wholesale water suppliers, other than the city, subject to this division and shall submit to the Legislature a report thereon on or before February 1, 2006.

73508. If the city and the bay area wholesale customers that are public agencies form a special district with authority and responsibility to own, operate, and manage the bay area regional water system and whose governing board's composition reflects the proportionate use of water delivered by the bay area regional water system within the city and within the aggregate geographic area served by the bay area wholesale customers, the obligations imposed on the city by this division shall be applicable to that district. The city shall be relieved of all obligations under this division at the time the ownership and control of the bay area regional water system are transferred to that district.

73510. Notwithstanding Section 116500 of the Health and Safety Code, the State Department of Health Services shall ensure that the bay area regional water system is operated in compliance with the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code) and the guidelines established by the United States Environmental Protection Agency for the purposes of administering the comparable provisions of the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.).



73511. A special district composed of some or all of the bay area wholesale customers may receive state funds for the purpose of protecting the bay area regional water system against seismic risk, without regard to whether the city is a member of that district.

73512. A regional wholesale water supplier shall reimburse the state for all costs incurred by the State Department of Health Services or the Seismic Safety Commission in carrying out the duties imposed by this division. The bay area wholesale customers shall reimburse the city for their share of those costs as provided in the master water sales contract. The wholesale customers of regional wholesale water suppliers other than the city are responsible for reimbursing the regional wholesale water supplier for their proportionate share of those costs, through the imposition of water charges.

73513. Nothing in this division affects the rights and obligations of the city, the Modesto Irrigation District, or the Turlock Irrigation District, as between themselves, whether arising from statute or contract.

73513.5. Nothing in this division changes the governance, control, or ownership of the bay area regional water system.

73514. This division shall become inoperative on the earlier of either of the following dates, and on January 1 immediately following that earlier date, is repealed:

- (a) The date on which the State Director of Health Services notifies, in writing, the Chairperson of the Joint Legislative Audit Committee and certifies that the city has awarded contracts for construction of each of the projects described in subdivision (b) of Section 73502.
- (b) December 31, 2010.

SEC. 3. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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

