

Heber Public Utility District

Report to the Board of Directors

Date: August 20, 2020
From: Laura Fischer, General Manager
Subject: General Manager's Report to Board of Directors

HPUD ADMINISTRATION

Return to Work Practices.

Staff have all been given the return to work procedures and are following them. We take our temperature in the office every time we come in. We wear face masks, keep our distance from each other, and sanitize our work station and the office or shared work area daily. To date, we do not have anyone in the HPUD family sick or impacted by COVID.

Beginning August 24, 2020 all employees will be back working full time. We will continue to shift start times to ensure staff are not congregating at the time clocks. We will also continue our regular daily cleaning, but add a once per month disinfection of all areas in the breakroom and kitchen in the Water Treatment Plant and in the office at the Wastewater Plant and the HPUD office.

Heber Avenue street project.

The construction of Heber Avenue should start in September 2020.

Board Elections in December 2020.

I have attached the election ballot information for Heber Public Utility District.

HPUD PROJECT REPORT

- 1) Rec Center. The contractor is staging some building materials on site.
- 2) Shade at WTP Shop. We are waiting for contract documents to be forwarded back from the contractor, USA Shade. It is anticipated the contract documents will be received within a week or so. Steve Walker will need to review the insurance.
- 3) Children's Park. We have received the aerial survey for the project this week. Upon receipt the existing site plan and new site plan will be prepared. We suggest meeting after the initial site plans are prepared so we can have a substantive discussion.
- 4) Urban Flood Grant. Application is submitted. No information needed
- 5) Heberwood Development. 5A inspection completed, 5B & 5C engineering review completed. Heberwood 6, plans were conditionally approved per the attached letter dated 5/12/2020. Per the conditions, two (2) sets of wet signed plans (signed by the HPUD Engineer, County of Imperial Public Works Director and Design Engineer) are to be returned to The Holt Group for distribution to HPUD. The Design Engineer is to coordinate obtaining the signatures. To date, the wet signed plans have not been forwarded to The Holt Group.
Construction of homes has begun.

- 6) The Del Sol Apartments Plan Check review was completed on April 17th, 2020. Final Improvement Plans were approved and signed by the Design Engineer, Carlos Corrales and by myself (as the HPUD District Engineer). We are in possession of the approved wet signed final approved plans for this project.
- 7) Family Dollar. The plan check review for this project has been completed. We are awaiting the applicant (or applicant's engineer) to return the final approved plans for signature.

PLANNING REPORT

- 1) El Toro. See letter from George Galvan, Planner with The Holt Group for the latest information
- 2) ORMAT. See the most recent letter from HPUD to the planning department.

I have requested a meeting with LAFCO to discuss the possibility of annexing these two projects so we have a greater voice in their expansion projects. And how annexation could help us modify the settlement agreement with the County to include ORMAT in our property tax share area.

To: Laura Fischer, General Manager
Heber Public Utility District
Board of Directors

From: George Galvan, AICP, Principal Planner

Date: August 20, 2020

Re: El Toro Zone Change and Expansion

Summary

The County of Imperial Board of Supervisors approved a Mitigated Negative Declaration and a Zone Change allowing the expansion of the feed yard to double the capacity to a total of 34,000 head of cattle. The Board's decision is final and cannot be appealed.

Background

The El Toro has been in continuous operation as a feed yard near Heber since the 1965 predating a majority of the homes in the community. In the early 2000's the County updated its Zoning Code which left El Toro as the only feed yard in the County to be located in an A-2 Medium Agriculture zone. All other feed yards were zoned A-3 Heavy Agriculture. This, along with the addition of a composting facility, prompted an application for a zone change to A-3 Heavy Agriculture. As a Condition of Approval, no future growth was allowed, restricting the footprint of the feedlot operation to remain unchanged. El Toro Export (El Toro Land and Cattle) submitted an application to remove the "No Growth" condition.

Public Hearing Process

A Scoping Meeting was supposedly held in 2019 to introduce the project and to solicit input from the public and reviewing agencies regarding the scope of the environmental review. Additional comments were solicited in November 2019. Much of the issues brought up at the Scoping Meeting appeared to focus on air quality and odor.

The County Environmental Evaluation Committee (EEC) held a public hearing in February 2020 but was continued due to insufficient information regarding the air quality analysis. Written comments were submitted to the EEC prior to the meeting. Many of the written comments were from County agencies including the Air Pollution Control District, County Public Works, and the IID. Mr. Tony Sandoval submitted a comment letter as a Heber Resident. Mr. Sandoval's letter expressed concerns regarding dust, noise, traffic, and unknown impacts. Another resident submitted an email opposing the project but did not indicate whether he was a resident of Heber, and no reasons were given regarding the opposition.

The Holt Group prepared a letter on behalf of HPUD on February 27, 2020. The letter appears to have been signed on March 19, 2020 but was not received by the County until July 29, 2020. The letter outlined deficiencies in the Air Quality Report with regards to inaccuracies related to distance from existing Heber residences and the Heber Elementary School. The letter also identified the need to examine the cumulative impacts of the proposed expansion, as opposed to stating that the proposed expansion is consistent with surrounding uses because the expansion is next to an existing feed yard. Noise, traffic, and environmental justice issues were also brought up in the letter. The EEC subsequently took action on the project without the benefit of the letter and recommend the approval of a Mitigated Negative Declaration.

The County Planning Commission held its public hearing on June 24, 2020. The Project Report did not contain HPUD's letter. The Air Quality Study and Mitigated Negative Declaration (MND) still did not address the issues identified in HPUD's letter. The Planning Commission adopted a recommendation to approve the MND and to recommend approval of the Zone Change thereby removing the "No Growth" condition.

Board of Supervisors Public Hearing – August 11, 2020

Prior to the Board of Supervisors' meeting, The Holt Group requested copies of the Project Report in order to review public information and prepare comments on behalf of HPUD. County Staff was resistant in providing information. County Staff suggested submitting a Public Information Request which could take several days and involves the payment of fees. It was not until a request was made to the Planning Director that the Project Report was provided to The Holt Group. A letter was prepared on behalf of HPUD outlining the same deficiencies that were not address from the March 2020 letter.

The Public Hearing started promptly at 11:00 AM. Chairman Plancarte and Supervisor Ryan Kelley were physically present at the hearing, while Supervisors Michael Kelly, Castillo, and Escobar were virtually present.

Written comments were included in the board packet but were not read out loud. Written comments include HPUD's letter and a letter from one Heber resident in opposition of the project. Other written comments include three letters from Heber residents supporting the expansion. An adjacent land owner, farmer, Brandt Beef, and Steven Birdsall (former County Agriculture Commissioner) also wrote letters in support of the proposed expansion.

Planning Director Jim Minnick provided a very brief overview of the project, followed by Tom Dubose of Dubose Design Group and then by Bill Plourd of El Toro Export.

Steve Scaroni and his sister Linda Scaroni appeared via teleconference and outlined their opposition to the project. The Scaronis' attorney (former County Counsel) Katherine Turner presented additional arguments outlining the County's improper noticing and inadequate analysis to support approval of the proposed expansion. The Scaronis suggested that the process was being fast-tracked bypassing public scrutiny of the project. In the end, Mr. Scaroni threatened legal action against the County if the expansion is approved.

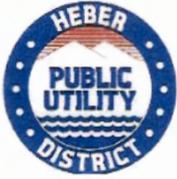
Ms. Turner also presented an email from former Board of Supervisor Gary Wyatt providing his recollection of the 2007 action to limit the growth at El Toro. Records from the 2007 meeting are unavailable along with other digital records from a 3-year period. Mr. Wyatt's email suggested that the condition on the project was to limit the footprint of the cattle feedlot operation, but Mr. Bill Plourd stated that the limit was only placed on the composting facility.

Public comments were overwhelmingly in support of the proposed expansion. Representatives from several local feed yard operations spoke in support of the project. Brandt Beef also spoke in support of cattle operations in the supporting the County's economy. Mr. Alex Cardenas (IID Board) speaking as a County resident warned the Board of Supervisors not to be intimidated by Mr. Scaroni's threat of legal action.

Comite Civico del Valle provided the only verbal comment opposing the project.

Supervisor Michael Kelley was concerned about the original condition restricting growth and suggested that the matter be kicked back to the Planning Commission to be able to examine original growth restriction further. Supervisor Castillo supported the suggestion. Supervisor Escobar disagreed and moved to approve the project. Chairman Plancarte clarified the motion to separate the vote into two separate actions. Supervisor Escobar moved approve the Mitigated Negative Declaration and seconded by Chairman Plancarte. Supervisor Ryan Kelley and Chairman Plancarte explained that the project has been on their radar screens for at least 6-7 years or more. The motion passed unanimously. Supervisor Escobar moved to approve the Zone Change which was seconded by Ryan Kelley. The motion also passed unanimously.

The Board of Supervisor's approval is final and cannot be appealed. There are no additional discretionary actions necessary. El Toro can now submit for building permit for the proposed expansion.



Heber Public Utility District

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Mr. David Black, Planner IV
Imperial County Planning and Development Services
801 Main Street
El Centro, CA 92243

RE: COMMENT LETTER REGARDING CONDITIONAL USE PERMIT (CUP) #19-0017 HEBER II PROJECT

Dear Mr. Black:

Thank you for allowing us the opportunity to provide comments regarding the above-referenced project. The District understands the proposed amendment for the existing CUP #06-0006 to allow the installation of two (2) new water-cooled ORMAT Energy Converters and three (3) additional Isopentane above ground Storage Tanks. The proposed project is located within Heber Public Utility District's Sphere of Influence. The following comments are offered:

1. **Hazard Assessment:** The project description on the Request for Review and Comment Letter identifies the installation of three (3) additional isopentane storage tanks to be located adjacent to the existing two (2) isopentane storage tanks at 10,000 gallons each. The Hazard Assessment in the Mitigated Declaration is based on the release of a single 10,000-gallon isopentane tank. This same report states that the potential catastrophic failure of one of three 10,000-gallon isopentane tanks would have an impact of 0.3 miles, or 1,584 feet. There are residential units located within 3,500 feet to the northeast of the isopentane tanks. Please clarify how the release of three (3) additional isopentane tanks would affect the other adjacent tanks causing additional release and the impact that would occur.
2. **Miscellaneous:** ORMAT's internal pipelines are located within close proximity to Heber Public Utility District's (HPUD) domestic water pipeline along Dogwood Road, directly east of the project site. It is important to note that hot water running through ORMAT's pipeline has caused one of our pipelines, located on Pitzer Road, to burst. We encourage measures to be implemented for the proposed project to ensure protection for HPUD's domestic water pipeline.
3. **Annexation:** HPUD encourages and recommends the annexation of said property to be incorporated in HPUD's Boundary.

Once again, we thank you for the opportunity to comment. Should you have any questions, please feel free to contact me at (760)482-2440 or via email at lfischer@heber.ca.gov.

Sincerely,

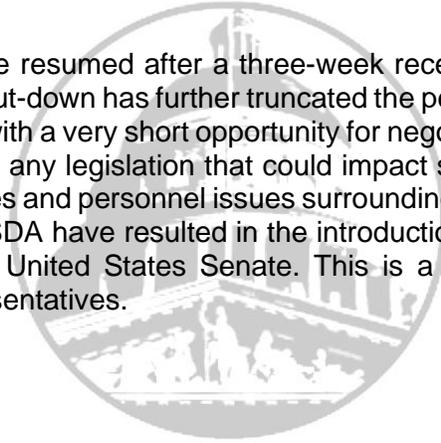
A handwritten signature in blue ink that reads "Laura Fischer". The signature is fluid and cursive, with a small blue mark above the "i" in "Fischer".

Laura Fischer
General Manager



August 2020

On July 27th, the State Legislature resumed after a three-week recess due to a COVID-19 outbreak at the Capitol. This second legislative shut-down has further truncated the period for bills to be considered, spawning a flood of new “gut-and-amends” with a very short opportunity for negotiating substantive amendments. CSDA has been diligently monitoring the any legislation that could impact special districts, including CEQA reform and a multitude of human resources and personnel issues surrounding COVID-19. Perhaps most significantly, national coalition efforts led by CSDA have resulted in the introduction of special districts’ federal COVID-19 relief legislation, S. 4308, in the United States Senate. This is a companion bill to HR 7073 previously introduced in the House of Representatives.



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Contact a local CSDA representative near you!

Chris Norden
 Dane Wadlé
 Colleen Haley
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➤ REVENUE, FINANCES, AND TAXATION

CSDA's long range policy priority on revenue, finances, and taxation is to ensure adequate funding for special districts' safe and reliable core local service delivery. Protect special districts' resources from the shift or diversion of revenues without the consent of the affected districts. Promote the financial independence of special districts and afford them access to revenue opportunities equal to that of other types of local agencies.

Special Districts' Federal COVID-19 Relief Efforts Gain Bicameral Momentum

Special districts' federal COVID-19 relief legislation pushed by CSDA has found a place in the U.S. Senate. On July 23, Senator Kyrsten Sinema (D-Ariz.) and Senator John Cornyn (R-Texas) introduced [S. 4308, the Special Districts Provide Essential Services Act](#).

The bipartisan bill is a Senate companion to [H.R. 7073](#). The deal was reached after weeks of discussions and negotiations between CSDA, the National Special Districts Coalition and the senators' offices. Since the bill's introduction, Senator Dianne Feinstein and Senator Martha McSally (R-Ariz.) have co-sponsored the legislation. Senator Kamala Harris is an original cosponsor of S. 4308.

"As the COVID-19 pandemic continues to affect communities in California and across the nation, we must ensure that special districts, which can provide critical services such as firefighting, energy and water, healthcare, transportation, and recreation, have access to coronavirus relief funding," Senator Harris said in a [joint press release](#) with Senators Sinema and Cornyn. "I'm proud to join my colleagues in introducing the Special Districts Provide Essential Services Act—our bill will give special districts the federal assistance they need to provide critical services to their communities during this uncertain time."

The bill uses text of H.R. 7073, but adds greater flexibility for states with less reliance on special districts within their communities and offers states guidance on how to distribute Coronavirus Relief Fund appropriations. Overall, the bill would:

- Require states to distribute five percent of future Coronavirus Relief Fund allocations to special districts within 60 days of receiving funds from the U.S. Treasury. Special districts applying for funding would submit information to their state demonstrating the degree to which they have experienced or anticipate they will experience COVID-19-related revenue loss, grant/inter-governmental revenue loss, or increased COVID-19-related expenditures.
- Provide flexibility for states with excess funds reserved for special districts that make a good faith effort to distribute funds to districts within the state.
- Direct the U.S. Department of Treasury to consider special districts as eligible issuers to take advantage of the Municipal Liquidity Facility, as established in the [CARES Act](#), for access to capital during the current financial downturn.

[Download a Sample Letter to Send to Federal Representatives for S.4308](#)

CSDA Advocacy resources regarding COVID-19 are found on our [Take Action](#) page devoted to topic to help districts stay up to date. For questions or concerns on Federal COVID-19 advocacy, contact Cole Karr at colek@csda.net.



➤ GOVERNANCE AND ACCOUNTABILITY

CSDA's long range policy priority on governance and accountability is to enhance special districts' ability to govern as independent, local government bodies in an open and accessible manner. Encourage best practices that avoid burdensome, costly, redundant, or one-size-fits all approaches. Protect meaningful public participation in local agency formations, dissolutions, and reorganizations, and ensure local services meet the unique needs, priorities, and preference of each community

CSDA Requests Emergency Waiver for Park Districts' Childcare Programs

Recreation and Park districts are seeking a statewide temporary waiver for public entities that already provide youth programming in an effort to support their communities and working parents as schools move to distance learning. There is a need in many communities to offer more youth programs beyond the current hours of operation to support working families whose situations are not compatible with distance learning.

Recreation and parks districts often work with local school and community partners to offer youth day and after school programs, however, their ability to fully serve the needs of our communities and working parents is severely limited by the restrictions on the hours of operation of our public recreation programs.

CSDA and its local government partners representing recreation and parks districts and departments throughout the state have requested that the Department of Social Services use their emergency authority under the Governor's March 4, 2020 proclamation to temporarily suspend the limitation on recreation and park programs to only operate outside of traditional school hours, and the limitations on total hours per week and the programs length.

By providing a broad, statewide temporary waiver for public entities that are already provide programming and facilities and informing all recreation and parks service providers of such a waiver, recreation and park districts can expand their programming to meet the moment during this crisis and support essential workers throughout the state.

Share your experience with child supervision and recreation programs

Please email anthonyt@csda.net your input and questions regarding your district's work with schools and regional offices of the Department of Social Services.

AB 992: Board Members, Social Media, and the Brown Act

Assembly Bill 992 by Assembly Member Mullin (D-South San Francisco) related to local government social media usage has continued to move through the Legislature while most other governance related bills have been held for the year. AB 992 would allow a majority of a local agency's legislative body members to participate in social media platforms, like Facebook, so long as governing members do not partake in discussion amongst themselves or reply directly to each other regarding business within their jurisdiction. Essentially, it would ensure that if one district board member posted something on Facebook and the other district board members "liked" the post, those actions wouldn't be a violation of the Brown Act.

CSDA is supporting AB 992 along with the League of California Cities and the California State Association of Counties. The bill will be heard next by the full State Senate, then it will go back the Assembly for a concurrence vote regarding Senate amendments before heading to the Governor's desk for his signature into law. For any questions about this bill, please contact CSDA's Senior legislative Representative, Dillon Gibbons, at Dillong@csda.net.



➤ INFRASTRUCTURE, INNOVATION, AND INVESTMENT

CSDA's long range policy principal regarding infrastructure, innovation, and investment is to encourage prudent planning for investment and maintenance of innovative long-term infrastructure. CSDA supports the development of fiscal tools and incentives to assist special districts in their efforts to meet California's changing demands, ensuring the efficient and effective delivery of core local services.

CSDA Concerns Removed from Potentially Onerous CEQA Legislation

July brought flurry of substantial amendments to bills, even as the Legislature's Summer Recess fluctuated in duration due to the pandemic. Many of the most significant legislative actions took place in the form of "gut- and-amends" whereby an existing bill's text is completely replaced by an entirely new proposal. Moreover, many of these changes were then post-dated to July 27. This abridged process limited the opportunity for the public to obtain language for amendments before policy hearings. Among these bills, significant CEQA reform efforts re-emerged.

CEQA Judicial and Administrative Process: [SB 950 \(Jackson\)](#) and [SB 55 \(Jackson\)](#)

SB 950 (Jackson) would have made significant amendments to the judicial and administrative processes and placed additional cost burdens on special districts and other local agencies. CSDA and local government stakeholders worked extensively with the author's office to address these concerns and ultimately the bill failed in its policy committee just weeks before the July recess. However, this effort was reborn as SB 55 (Jackson) over the break.

While some of the more onerous provisions of SB 950 were excluded from the SB 55 gut-and-amend, such as mandatory translation of CEQA documents, the bill continued to include provisions that would have placed undue burden on special districts with CEQA exposure, including:

- Export of a CEQA case in a small county to another county
- Diminishing local control and oversight over issues of significant local importance
- Expansion of the list of disclosable records to internal staff/consultant/agency emails

CSDA was able to work with the author's staff, along with local government counterparts, and obtain agreement to adopt our proposed amendments to remove our concerns, should the bill move and have the opportunity for amendment. Due to the nature of this year's session, the amendments would have needed to occur in policy committee and, while the new language was in circulation internally, the language never made it to print publicly. SB 55 is not yet scheduled for hearing and may not move forward given the current restrictions on bill count and internal strife between houses as they barter for hearings.

CEQA Administrative Record and Judicial Process: [AB 3279 \(Freidman\)](#)

This measure included provisions that would have required lead agencies to concurrently prepare the administrative record, working on the assumption that litigation would be advanced, which would have been costly and burdensome to local agencies. It additionally included provisions pertaining to interlocutory remand orders, which is a judicial process that intervenes between the beginning and the end of a proceeding to decide a particular point or matter that is not the final issue of the lawsuit and are only occasionally used by courts in CEQA matters. Through the extended break, CSDA and its coalition partners were able to successfully negotiate amendments from the author's office to remove both provisions. This bill is also not scheduled for hearing at this time and is not likely to move forward.

CSDA will continue to remain vigilant on these and other issues as the final weeks of session produce last minute gut and amendments. For questions or to provide CSDA input on these measures please contact Legislative Representative Alyssa Silhi at alyssas@cdda.net.



➤ HUMAN RESOURCES AND PERSONNEL

CSDA's long range policy priority on human resources and personnel is to promote policies related to hiring, management, and benefits and retirement that afford flexibility, contain costs, and enhance the ability to recruit and retain highly qualified, career-minded employees to public service. As public agency employers, support policies that foster productive relationships between management and employees, both represented and non-represented.

Spate of Human Resources and Personnel Bills Set for August Hearings

Over the next month, the California State Legislature will hear a number of bills that could make significant and lasting changes to employment law. Each of the bills are tied in some way to the COVID-19 virus, though some are more loosely tied than others. Below are a few of the bills that will cover public agencies as well as private employers:

SB 1159 (Hill) – Workers Compensation – Oppose

This is a workers' compensation presumption bill related to COVID-19 split into three parts.

Part 1 - Codifies the policy contained in Executive Order N-62-20, which was issued by Governor Newsom on May 6, 2020. This Executive Order and this section of the bill are only effective from March 19, 2020 through July 5, 2020 and creates a rebuttable presumption that employees that worked outside their homes at the direction of their employers that are diagnosed with COVID-19 got sick from their employment and are eligible for workers' compensation.

Part 2 - Establishes a rebuttable presumption for COVID-19 for some classifications of police, fire, and care workers. The presumption maintains many of the provisions that were included in the executive order, including a 30-day decision-making window, a requirement to test positive, and more. Part 2 is effective July 6, 2020 and sunsets on July 1, 2024.

Part 3 - Creates a rebuttable presumption for COVID-19 for all employees and places of employment that are not covered by Part 1 or Part 2 of the bill. The presumption would not always be applicable. Instead, the law would trigger a presumption when there is a cluster of positive tests at any "specific place of employment". The size of the cluster needed to trigger the presumption is different based on the size of the specific place of employment. For employers with fewer than five employees no presumption is applicable. For employers with 6-100 employees a presumption is triggered when five employees test positive for COVID-19 at the specific place of employment within any 14-day period. For employers with over 100 employees the presumption is triggered when five percent of the employees test positive for COVID-19 at the specific place of employment within any 14-day period. Part 3 would also be effective July 6, 2020 through July 1, 2024.

AB 685 (Reyes) – Illness Reporting Requirements – Oppose

The bill would require employers to take all of the following actions within 24 hours after the employer knew or reasonably should have known of COVID-19 exposure to the employee (including police, fire and healthcare districts):

1. Provide a notice to all employees at the worksite where the exposure occurred that they may have been exposed to COVID-19. This notification shall be, at a minimum, in writing in both English and the language understood by the majority of the employees. Employers shall also make every reasonable effort necessary to notify workers verbally.
2. Notify the exclusive representative, if any. This notification shall be, at a minimum, in writing in both English and the language understood by the majority of the employees. Employers shall also make every reasonable effort necessary to notify the exclusive representative verbally.



3. Notify all employees and the exclusive representative, if any, of options for exposed employees including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions.
4. Notify all employees and the exclusive representative, if any, on the cleaning and disinfecting plan that the employer plans to implement prior to resuming work.
5. Notify the Division of Occupational Safety and Health, pursuant to subdivision (b) of Section 6409.1, of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related.
6. Notify the California Department of Public Health and the appropriate local public health agency of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related.

The bill defines “Exposed to COVID-19” as exposure to a person with any of the following:

- A positive COVID-19 test.
- A positive COVID-19 diagnosis from a licensed health provider.
- A COVID-19-related order to quarantine from a licensed health provider.
- A fatality that was or could have been caused by COVID-19.

SB 1383 (Jackson) – Additional Leave Eligibility – Oppose

Existing law prohibits an employer who employs 25 or more employees working at the same location from discharging or discriminating against an employee who is a parent of a child of the age to attend a licensed child care provider or in kindergarten or grades 1 to 12 for taking off up to 40 hours each year to find, enroll, or reenroll their child in a school, to participate in school activities, or address emergency situations at school, subject to specified conditions. Employees may be required to use vacation or other paid time off when taking time off under these provisions and authorizes the use of unpaid time off, to the extent made available by the employer.

This bill would apply these provisions to employers with five or more employees and would authorize an employee to take off time in excess of 40 hours in the case of a school closure due to an emergency declaration by a federal, state, or local government agency, up to the duration of the emergency.

While CSDA can appreciate the intended goals of each of the pieces of legislation listed above the implementation and application of the measures will have a negative impact on special districts’ operations and essential services to their communities. CSDA advocates that these measures should be amended or reworked to not apply to public agencies.

For questions or to provide CSDA input on these measures please contact Senior Legislative Representative Dillon Gibbons at dillong@csda.net.



➤ LEGAL ADVOCACY

CSDA is the leading legal advocacy voice for all special districts regarding public policy in California and actively tracks and reviews cases of significance affecting special districts in state and federal courts. Under the guidance of CSDA's Legal Advisory Working Group, CSDA files amicus briefs and opines on court cases when appropriate.

Groundbreaking Court Victory for Local Agency with At-Large Election System

For the first time since the passage of the California Voting Rights Act (CVRA) in 2003, a local government with an at-large voting system successfully defended a substantive legal challenge to its election method. The ruling last week from the Second District Court of Appeal in [Pico Neighborhood Association, et al. v. City of Santa Monica](#) held that “the legislature required litigants to prove both dilution *and* racially polarized voting in order to establish a claim, to have a remedy, and to recover fees.” A rehearing petition has been filed by the plaintiffs, and the decision is likely to be appealed to the California Supreme Court, but it nonetheless represents a positive development for any local government facing the threat of litigation to an at-large voting method.

In recent years special districts throughout the state have begun to face legal challenges to their voting systems, and many have sought guidance on switching from an “at-large” to “by-district” voting method to comply with the CVRA. The CVRA prohibits any political subdivision from using an at-large method of election that “impairs the ability of a protected class to elect candidates of its choice or influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class[.]” Prior to the decision in this case, plaintiffs usually prevailed on CVRA claims simply by presenting evidence of the existence of racially polarized voting without also showing dilution of the vote.

In this case, the City argued evidence at trial that demonstrated Santa Monica’s at-large election system for City Council members is fair and inclusive and does not dilute the voting power of protected classes. The City pointed to the fact that Santa Monica has a history of electing minority people of color to a variety of local positions. Moreover, the evidence at trial showed that under the at-large election system, between 2002 and 2016, candidates preferred by Latinx voters won at least 70% of the time in Santa Monica city council races.

On February 18, 2020 [CSDA joined](#) the League of California Cities to file an [amicus brief](#) in support of Santa Monica, authored by Derek Cole from municipal law firm [Cole Huber](#).

The Court of Appeal reversed, ruling that “it is incorrect to read the [CVRA] to say a mere showing of racially polarized voting necessitates a finding a city has misapplied at-large voting. Under the [CVRA], racially polarized voting is a necessary but not sufficient element. Dilution also is an independent and necessary element.” The court went on to state that a finding of dilution requires “a showing, not of a merely marginal percentage increase in a proposed district, but evidence the change is likely to make a difference in what counts in a democracy: electoral results.” In a separate portion of the opinion addressing the plaintiff’s equal protection claims under the California Constitution, the court held that the City did not act with a racially discriminatory purpose and therefore the plaintiff’s equal protection claims failed.

For More Information on the Voting Rights Act, redistricting in 2021, and this court decision, sign up for the upcoming CSDA Webinar on August 27th: [“Voting Rights Act and Redistricting Update.”](#) presented by David A. Soldani from AALRR and Douglas Johnson from National Demographics Corporation.



Supreme Court Upholds PEPRA Modifications Without Reexamining “CA Rule”

In July 30, the California Supreme Court ruled against public agency employee unions seeking to overturn central elements of the Public Employees’ Pension Reform Act (PEPRA) of 2012, while still leaving the so-called “California Rule” intact. This decision is a positive development for public employers because the Supreme Court’s decision approves a modification to existing pension benefits without requiring offsetting benefits. The narrow ruling did not address the issue of strictly cost-saving measures.

Under the “California Rule,” pension benefits promised to an employee may be reduced only if accompanied by comparable new advantages. According to the court, any modification must “bear some material relation to the theory of a pension system and its successful operation.”

Alameda County Deputy Sheriff’s Assn. v. Alameda County Employees’ Retirement Assn. (Alameda) was filed in 2012 by the Alameda County Deputy Sheriff’s Association, challenging changes made by PEPRA to the County Employees Retirement Law of 1937 (CERL). In particular, PEPRA excluded certain forms of compensation from the calculation of retirement benefits that had been used by employees for many years, including elimination of overtime pay, on-call pay, call-back pay, vacation and sick leave sold back, recruitment bonuses, and other items from pension calculations (e.g., so-called “pension spiking”).

The Alameda County employees filed suit to try to keep those types of pay as pensionable, arguing that PEPRA violates the vested rights of employees protected by the contracts clauses of the state and federal constitution and failed to provide alternative benefits to make employees whole for the reductions. Public employee groups from Contra Costa and Merced counties also filed lawsuits challenging PEPRA that were in the appellate stage; the California Supreme Court combined those suits with the Alameda case.

The Supreme Court held that PEPRA’s changes did not violate contracts by amending CERL, and that PEPRA was enacted for the constitutionally permissible purpose of clarifying existing rules and closing loopholes. Notwithstanding the fact that PEPRA reduced benefits, the Court held that there was no requirement to provide employees with alternative advantages because doing so would defeat the constitutionally proper objectives of the pension system. Even if the modification is based on a legitimate purpose, a decision “to impose financial disadvantages on public employees without providing comparable advantages will be upheld under the contract clause only if providing comparable advantages would undermine, or would otherwise be inconsistent with, the modification’s constitutionally permissible purpose.”

Notably, the Court clearly stated “[b]ecause we conclude that PEPRA’s amendment of CERL did not violate the contract clause under a proper application of the California Rule, however, we have no jurisprudential reason to undertake a fundamental reexamination of the rule.”

For questions about these decisions and their impact on your district, contact CSDA Deputy General Counsel Mustafa Hessabi at mustafah@csla.net.



➤ OTHER WAYS TO TAKE ACTION

Learn More

Update: 2020 Special District Leadership Academy (SDLA) Conferences Cancelled

Due to the ongoing concerns around COVID-19 as well as some district travel restrictions we have made the difficult decision to cancel the two Special District Leadership Academy Conferences for 2020 (August in Lake Tahoe and November in San Diego). All registrants have been notified and we are working with the hotels to secure dates for 2021!

If you are interested in receiving governance training in a virtual environment, we do have all four modules coming up as virtual workshops. The first session, SDLA Module 1: Governance Foundations, will be held on August 25 and 26 from 9:00 a.m. – 12:00 p.m. each day.

Register Here: <https://members.csdanet/imis1/EventDetail?EventKey=WORKGOVFDN>

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In addition to the many ways you can **TAKE ACTION** with CSDA's advocacy efforts, CSDA offers a variety of tools to keep you up-to-date and assist you in your district's legislative and public outreach. Make sure you're reading these resources:

- CSDA's weekly e-Newsletter
- Districts in the News
- CSDA's CA Special District Magazine

Email updates@csdanet for help accessing these additional member resources.