

Attorney General Weighs in on Retroactivity of SB 1439 For Elected Local Officials

California Special Districts Association, 10/31/23

The California Attorney General has declared that the campaign contribution rules of SB 1439 (2022) apply prospectively only to contributions received after January 1, 2023. The bill amended Government Code Section 84308 in the Political Reform Act to require local officials to disclose and recuse based on campaign contributions over \$250 received in the 12 months prior to a governmental decision in which the contributor is a party, participant, or an agent.

Based on the Fair Political Practices Commission's (FPPC's) Kendrick Opinion issued last December, RWG advised public officials that SB 1439 does not apply retroactively to contributions received in 2022. The bill's author, State Senator Steven Glazer, disagreed with the FPPC opinion and requested an analysis from the Attorney General.

Last Thursday, the Attorney General opined that the disclosure, recusal, and cure provisions of SB 1439 do not apply retroactively to political contributions made before January 1, 2023. Although Attorney General opinions are not binding precedent, courts typically give such opinions "great weight." If the 12-month "lookback" provisions applied retroactively, some local officials who lawfully accepted contributions of more than \$250 in 2022 could have been deemed to violate the Political Reform Act if they participated in a 2023 governmental proceeding that involved the contributor.

To demonstrate the potentially detrimental consequences of retroactively applying SB 1439, the Attorney General cited an issue related to achieving quorum raised in RWG attorney Natalie Kalbakian's comment letter. The opinion further noted that a statute that is unclear about retroactive application must be construed as "unambiguously prospective."

The Attorney General's Opinion No. 23-101 was issued on October 19, 2023.

This article was contributed by Craig Steele and Natalie Kalbakian of CSDA business affiliate RWG.

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State Water Board's Delta Plan Is No Fix for Fish and Hurts Farms

California Farm Water Coalition, 10/25/23

In announcing its new Bay-Delta Water Quality plan, the California State Water Resources Control Board said it wanted to “change the channel” on California’s water debate.

We completely agree it’s time to move away from outdated thinking and embrace new, collaborative, science-based solutions and therefore are puzzled that the board is stubbornly clinging to the same failed approach of the past.

In a stated attempt to help endangered fish populations, the “new” plan dramatically increases the amount of water that must remain in the San Joaquin, Stanislaus, Tuolumne and Merced rivers, which significantly decreases the amount available for farms, cities, schools and others.

The problem is that flushing water through the system and out to sea is exactly what officials have done for more than 25 years to no effect – fish have continued to decline. All the board is doing is doubling down on the same unsuccessful strategy.

There’s no question fish need water. However, what scientists have learned is that rather than focusing on the total amount of water in the river, we should pursue “functional flows” that release water when, where and how it makes sense from a biological perspective. We’ve also learned that fish continue to decline for a host of reasons, in addition to water. Their numbers are affected by an increase in predators, loss of habitat and a decrease in food supply, which is why scientists now recommend a holistic approach to policy that addresses multiple factors, instead of just one.

And these are not just studies. Locally driven projects throughout California have had success increasing fish populations by employing these tactics. Just one of many examples is the Butte Creek salmon recovery project. Through the efforts of agricultural, urban and environmental communities working together to address multiple factors, more than 10,000 spring-run salmon return on average to Butte Creek each year, up from fewer than 100 in some years as recent as the mid-1990s.

We also need to examine this policy from the other side of the ledger. Not only does doubling the amount of water left in the rivers fail to help fish, it causes serious harm to the people deprived of that water. The proposed policy would strip farms and communities of almost 350,000 acre-feet of additional water from February to June during dry years – enough to irrigate 100,000 acres of farmland or meet the domestic needs of more than 2 million people for an entire year.

There’s no doubt that the farms Californians count on to deliver fresh food to their families would be devastated. This plan will leave thousands of acres of farmland with zero surface supply in certain water years, stripping the Central Valley of over 6,500 jobs and \$1.6

billion in economic output, according to Turlock and Modesto irrigation districts.

However, it's important to note that the damage doesn't stop with farms. During the past several years, as this policy has been considered, people throughout the state have written the board, asking that their voices be heard: Education officials are concerned about water supplies for schools, water experts worry this will stall groundwater replenishment, health officials are troubled by potential impacts on sanitation, cities large and small don't know how they will replace the lost supply, Bay Area experts are alarmed by potential cuts to water supply, lost jobs and lost economic activity ... the list goes on and on.

Despite dozens of meetings and hearings, as well as thousands of letters and pieces of testimony from cities, farms, school districts, water experts and scientists, the board has not adjusted the policy at all.

Changing the channel works only if you have the sound turned on.