

STATE OF CALIFORNIA

Public Utilities CPUC
San Francisco

M e m o r a n d u m

Date: March 19, 2013

To: The CPUC
(Meeting of March 21, 2013)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) – Sacramento

**Subject: SB 489 (Fuller) – Water corporations: sewer system corporations:
appointment of receiver.
As introduced: February 21, 2013**

RECOMMENDED POSITION: SUPPORT AS SPONSOR

SUMMARY OF BILL

This bill would remove the requirement that the California Public Utilities (CPUC) petition the Superior Court in the county where an abandoned or neglected water system is located to have a receiver appointed to take over operation of the system. Instead, after conducting an investigation, the CPUC would have the authority to appoint an interim operator who would have the powers of a receiver without involving the Superior Court. The CPUC would still have the option of going to Superior Court to seek the appointment of a receiver.

CURRENT LAW

Current law requires that the CPUC conduct an investigation into whether a water system has been abandoned or the owner is not responsive to CPUC orders to determine if the owner is “fit” to continue operating the system. The investigation takes considerable time and effort and provides an opportunity for the respondent to present its case why he/she should be allowed to continue to operate the system. Once the investigation is concluded and the CPUC issues a decision making a finding that the system has been abandoned or the operator is not responsive to CPUC orders, the Legal Division has to prepare a petition for the appointment of receiver in the Superior Court in the county where the system is located. CPUC attorneys-- who are not-experienced in Superior Court litigation-- have to prepare a detailed notice, summons and complaint and other documents to commence the receivership litigation, all of which takes time and leaves the customers uncertain about the future of the water system. Moreover, CPUC attorneys must take the time to educate the Superior Court Judges in the details of public utility regulation and how the CPUC operates. Docket congestion and the severe state budget cuts to the Superior Court system have exacerbated the

problem of getting meaningful relief for the customers of these systems in a timely manner.

Section 855 of the Pub. Util. Code does not allow the CPUC to pursue receiverships for these systems cavalierly. Instead the CPUC's investigation affords the existing owners ample opportunities to demonstrate their ability to continue to operate these systems safely. Thus, the existing investigation process affords water system owners and operators considerable due process protections and CPUC decisions are subject to applications for rehearings, petitions for modifications and/or appeals up to the state Supreme Court. If the CPUC completes an investigation and concludes that the appointment of a receiver is necessary, the receiver is charged with managing the system and attempting to find a responsible owner willing to acquire and operate the system. Under the existing statutory structure, a receiver is accountable to the local Superior Court for actions he/she takes with regard to the water or sewer utility, however, if a new purchaser is found, the receiver must obtain CPUC approval of the acquisition of the water company by a new operator. The CPUC's review of an application to purchase one of these water companies includes a determination if the new owner is "fit" to operate the system. The fitness review includes an assessment of the new owner's financial, managerial and technical capabilities.

AUTHOR'S PURPOSE

The existing system is extremely time consuming, delays resolution of the problem, is redundant, provides more due process protections than are required, and unnecessarily ties up significant CPUC and Superior Court resources. At times, it has taken several months to in excess of a year to complete the Superior Court process. This delay is likely to become more severe in the wake of state budget cuts to the Superior Courts. In the interim, necessary repairs and equipment upgrades to the water system cannot be made except on an emergency basis. The bill would significantly shorten the amount of time required to get a receiver appointed to take over ownership of failing or abandoned water systems thereby protecting customers from what may be unsatisfactory or unhealthful conditions in their water system.

The CPUC has spent over seven years attempting to get a satisfactory resolution to performance problems with the Yermo Water System in San Bernardino County. Not all of this delay is attributable to the requirement to go to Superior Court to have a receiver appointed, but significant delays have been associated with that process. In the interim, customers have had to put up with an absentee owner (who lives in Florida) whose health problems led to repeated delays in necessary Superior Court proceedings. During these past seven years they have had to contend with inadequate water pressure, significant fire safety issues, and despite the presence of a viable purchaser, a wholesale unwillingness on the part of the owner to cooperate in the process of selling the utility to a responsible community-based organization. In a 2007 investigation into Yermo, the CPUC found that the owner had let the system run dry for a week period during August of 2006, thus forcing his customers to do without water during a period where temperatures routinely exceeded 100 degrees.

Recently, the spouse of the owner of Yermo Water Company, Charlene Walker, filed an opposition in Superior Court to the appointment of a receiver to operate the water company. Among her other claims was the contention she had an independent community property right to the assets of the water company, that because the CPUC's action was against a "water company" and not the "water corporation" listed in the state statute (despite the fact section 204 of the Pub. Util. Code defines "Corporation" to include a "company") and that the CPUC's pleading was defective because it was a "strictly in rem" proceeding and thus was improperly identified in the pleading. On March 6, 2013, presiding Court Commissioner Mahlum ruled against, Ms. Walker's Opposition, nonetheless the CPUC had to devote considerable time and effort, write a responsive pleading and participate in two paid "court call" appearances to defeat this latest challenge to its jurisdiction.

The CPUC is the appropriate agency to manage receiverships and deal with the problem of unresponsive or abandoned water systems because we have full regulatory authority over these utilities. Legislation is necessary, because the existing statute requires that the CPUC engage in what is essentially a dual litigation process to resolve a single issue.

DIVISION ANALYSIS

This bill would make it easier for the CPUC to remove recalcitrant, incompetent, and absentee owners of water utilities who have refused to cooperate with the CPUC's regulatory oversight. Instead of a cumbersome two-step process to have a receiver appointed to take over operations of these companies, the revised statute would allow the CPUC itself to find and appoint an interim operator who would have the powers of a receiver. The CPUC would be in a position to directly monitor the activities of the interim operator and the operator would not have to seek the Superior Court's approval (in addition to the CPUC's) to make major decisions about the management of the water utility.

Several commentators have contended that this approach is fatally flawed in that both the existing and proposed statute would allow a single agency (the CPUC) to be the "judge, jury and executioner" of one of these water systems. This criticism fails to recognize the built-in due process protections that the existing and proposed systems would provide: 1) before taking any steps towards the appointment of a receiver the CPUC must perform an investigation through the auspices of its Division of Water and Audits to determine if a utility has in fact been abandoned, is no longer responsive to CPUC orders, or is providing inadequate and/or water service that threatens public health and safety—this would not change with the new legislation, although in the situation where an imminent threat exists the new legislation would allow the CPUC itself to appoint an interim operator to protect public health and safety; 2) the respondent utility has an opportunity to participate and respond to the CPUC's investigation and submit testimony that demonstrates its financial, managerial and technical capability to continue operating as a water utility; 3) evidentiary hearings are

generally held before a proposed decision to appoint a receiver is rendered by a presiding administrative law judge; 4) the respondent utility has an opportunity to submit opening and reply comments on the proposed decision before the CPUC votes on the matter; 5) if the respondent disagrees with the CPUC's final decision in the case, within thirty days the respondent utility has an opportunity to submit an application for rehearing of the CPUC's decision and the respondent has a year period to submit a petition for modification of the CPUC's decision; 6) if the respondent is unsuccessful with his/her application for rehearing, the respondent may ask for a writ of review of the CPUC's decision at the California Supreme Court.

Section 1759(a) of the Pub. Util. Code essentially prohibits California's Superior Courts from modifying CPUC decisions, thus once the CPUC has issued a final decision (that has not been appealed, and is not the subject of an application for rehearing or a petition for modification) ordering staff to seek the appointment of a receiver in Superior Court, the individual Superior Court does not have discretion to modify the CPUC's conclusion that a receiver must be appointed. Thus, under the existing statute, the Superior Court is serving largely in an administrative/ministerial capacity with regard to the receivership. Water system owners cannot currently avail themselves of the Superior Court to prevent the appointment of a receiver although some have attempted to do so. Thus, despite the critique that the roles of "judge, jury and executioner" have been concentrated in a single decision-making body, the CPUC's OII process already affords substantial due process protections to water utility operators before any decision to "execute" is made. Moreover, CPUC decisions are subject to both internal review and modification and may be the subject of writs of review to the California Supreme Court. Finally, any decision to approve a new owner taking over a water system is subject to a distinct CPUC application process that could be challenged by the former owner.

Existing law requires the aforementioned two-step process for the appointment of a receiver. A single process that would usually be confined to the CPUC would expedite the appointment of an interim operator and potential receiver, saving both time and money and precious CPUC resources, and would provide ensure that a responsible operator will be appointed in a relatively brief amount of time to take control of the water system.

Existing section 855 of the Pub. Util. Code would be modified by this proposed statute to remove the requirement that the CPUC petition the local Superior Court to have a receiver appointed. Instead, the CPUC-- after affording the owner an opportunity to defend his/her management of the water system in as part of the CPUC's investigation-- would be able to directly appoint and oversee an interim operator to take over management of the water company.

Over the past twelve years, the CPUC has had to employ the receivership process (or something comparable to it) for the following small water and sewer companies: Mineral City Water Company, Ponderosa Sky Ranch Water Company, Strawberry Water Company, Golden Hills Sewer Company, Arrowhead Manor Water Company, Yermo Water Company, and Live Oaks Springs Water Company. Major problems have arisen

in recent years with the Keene Water Company, Idlywild Water Company, and the Grand Oaks Water Company although the CPUC has not initiated formal investigations into any of them.

These companies are located variously in Tehama, Tuolumne, Kern, San Bernardino and San Diego Counties. (see 'Attachment 1' for locations). Administering and seeking appointment of these receiverships in Superior Court, has entailed extensive travel, expensive court appearances, an appellate oral argument and a full trial, and the use of extensive Superior Court pleadings. Receivership applications require a huge commitment of both attorney and staff resources because of the complexities and length of the process involving proceedings both at the CPUC and in Superior Court.

It should be noted that Superior Court rules and procedures differ markedly from the CPUC's own rules and procedures. In particular, notice requirements are quite different and motion practice is much more formal. CPUC attorneys are typically not experienced with local and state court rules, and thus must spend time becoming familiar with the intricacies of each county's individual rules as well as state-wide procedures. This represents another drain on CPUC resources. In addition, Superior Courts typically require the payments of various fees for using the resources of the court. These fees have risen substantially in recent years because the state has significantly cut the budgetary support it has provided to the Superior Court system. While the CPUC typically is able to get the filing fee waived, it still must pay to participate in "Court Call" hearings and if a personal appearance is required must pay for the travel expenses associated with that travel.

It should further be noted that the solution being proposed in this bill is largely similar to what is currently employed by the Department of Toxic Substances Control (DTSC). DTSC has broad authority to take actions to enjoin and abate nuisances related to matters within its jurisdiction that are dangerous to health under Health and Safety Code 58009(b). Generally the Department acts by making findings in-house and holding a public meeting and a hearing. The statutes don't explicitly mention receiverships, but what they're authorized to do is akin to what a receiver can do. They do have an opportunity for an alternative settlement procedure and there is a procedure involving an arbitration panel before the Director of Environmental Health Hazard Assessment. The notification process entails informing the applicable city/county and the owner. Somebody called a responsible person is appointed and under 25398.2 they can "take necessary response actions". Under 25398.2 they can contain or eliminate interim endangerment to the public. This all takes place within the agency, although a hearing is held at some point. The alacrity with which the responsible person acts is a function of how imminent the hazard is.

SAFETY IMPACT

This bill should enhance the safety of California citizens since the CPUC will be able to act much more quickly to appoint receivers to assume ownership of companies that are not being responsibly or safely managed.

The CPUC's recent history with receiverships

Total number of CPUC initiated receiverships since 2000: eight (8).

Arrowhead Manor Water Company: Located in the San Bernardino Mountains in Southern California (San Bernardino County). The investigation ("OII") initiated on March 16, 2000, I.00-03-016. Problems that led to the initiation of an OII: Abandonment by owner (widow of former owner), inability to comply with safe drinking water requirements. The owner of Arrowhead Manor Water Company attempted to sell the water utility out of her husband's probate estate. One of the CPUC's staff counsels had to intervene in the probate court proceeding to prevent the sale since under section 851 utilities cannot be sold to new owners without the CPUC's approval. Once the probate sale was stymied, the CPUC voted out D.02-07-009 that authorized the CPUC to seek the appointment of a receiver in San Bernardino County's Superior Court. It took approximately three years from the initiation of the OII until a receiver was appointed to take over operation of the water system.

Ponderosa Sky Ranch Water Company, Located in the foothills of the Cascade Mountains in Tehama County (nearest substantial city: Red Bluff). The CPUC opened the OII in this case March 21, 2002, I.02-03-023. Among the problems that led to the initiation of an OII: abandonment, inability to comply with CPUC requirements, and an unpaid PG&E bill of \$17,000—P&GE threatened to terminate service on the account unless it was paid and the CPUC's Executive Director had to intervene with PG&E to prevent the power from being shut off. Moreover, the system had geysers of water spewing from the major supply line and its pump was running continuously because of these leaks. It took approximately 18 months to get a receiver appointed in this case.

The owner of Ponderosa Sky Ranch, Orville Figgs, refused to cooperate with CPUC staff and the receiver and illegally sold an easement to a third party. The effect of this sale was to prevent the receiver and his employees from gaining necessary access to perform meter reading. Mr. Tim Taylor has been a long-time operator at Ponderosa Sky Ranch Water Company and has struggled over the years with Mr. Figgs' lack of cooperation with the receiver.

Mr. Figgs subsequently appealed the CPUC's decision to appoint a receiver to the Court of Appeals arguing that the receiver had improperly interfered with his use of certain real property in the vicinity of the water company. CPUC staff had to prepare a response and make an appearance in the Court of Appeals.

Mineral City Water Company: This case never went to a formal receivership, but came close to requiring one. During the winter of 2000-2001, the primary tank that supplies this company developed a leak. A significant amount of snow was on the ground and repairing the tank was challenging. The widow of the former owner of this company decided that as an alternative to repairing the tank, she would place a pump in a local creek and serve untreated creek water to her customers. This violates numerous state and federal water quality requirements and presented an imminent

threat to public health and safety. In previous years, the owner had also used untreated creek water as a water source and was cited by the Department of Health for doing so. A test of Mineral City's water in late 1999 revealed that the water had an excessive level of lead, however, Mineral City failed to properly notify the Department of Health of this lab result. Because of these and various other problems, the CPUC initiated an investigation into Mineral City Water Company, issuing I.01-10-003 on October 10, 2001

Similar to Ponderosa Sky Ranch, Mineral City is located in Tehama County. It is nearby Mount Lassen.

The CPUC voted out an investigation of Mineral City and concluded that a receiver should be appointed to take over the system. The CPUC prepared a petition for receivership for Mineral City, however, during the initial hearing on its request a community-based buyer emerged that agreed to assume ownership of the system and pay a nominal value for the remaining physical plant. Estimated time to resolution: nine months.

Conlin-Strawberry Water Company: This case was initiated with an OII on October 16, 2003, I.03-10-038. Several factors led the CPUC to seek the appointment of a receiver including the lack of water service during a one-week period during the winter when the owner was unavailable by phone (abandonment), surcharges that were imposed on Conlin's ratepayers that were allegedly being used to repay a state revolving fund loan but were actually diverted into the owner's affiliated logging company. A decision appointing a receiver was issued in November 2005, D.05-07-010, however, because a settlement was reached and another buyer was found, a receiver was never actually appointed in this case, although several days of Superior Court proceedings did take place. This case required extensive attorney time and a staff-audit of Conlin-Strawberry's books.

Yermo Water Company: The initial investigation into Yermo began in 2007 after several years in which the owner, Donald Walker, refused to file annual reports and otherwise respond to CPUC orders. During the summer of 2006, the primary water tank serving this system developed a leak and customers were without water for a week in this small community near Barstow, where temperatures exceeded 100 degrees every day. The owner, Mr. Walker, had moved to Florida and was unreachable by his customers during this period. In addition, in violation of applicable Department of Health requirements, Mr. Walker did not have a licensed operator available to operate the system. The investigation into Mr. Walker's operations was opened April 24, 2008, with I.08-04-032.

A decision to pursue the appointment of a receiver was issued in May of 2009, D.09-05-022, however, because a community-based prospective buyer had surfaced, it appeared that a sale of the system was possible. After over two years of negotiations, Mr. Walker refused to inform the prospective buyer how much he owed in back taxes and fines to the Department of Health. As a result the sale became impossible.

In fall of 2012, the CPUC determined that a receiver should be appointed to acquire Yermo, and a petition appointing a receiver to assume operational control of Yermo was issued by the San Bernardino County Superior Court in November 2012. Altogether, it has taken over four years from when investigation was opened until a receiver was finally appointed.

A receiver has subsequently been appointed to take control over Yermo. Nonetheless, Mr. Walker's family continues to contest the CPUC's action. Specifically, soon after a receiver was appointed to assume operational control of Yermo Water Company, Mr. Walker's wife, Charlene, filed an opposition to the appointment of a receiver over Yermo. Her opposition raised a number of specious claims and fortunately, on March 6, 2013, the Superior Court denied Charlene's claim that her due process community property rights in Yermo Walker Company had been denied when the CPUC moved for the appointment of a receiver in this case. This case is now approximately six years old. We appear to be near a resolution of this case-- at least until the next court challenge is filed.

Golden Hills Sanitation Company: The operators of this utility filed a notice with their customers in March of 2012 stating that they intended to cease providing sewer service in two weeks. Kern County became aware of this situation and stated they would "red tag" the entire mobile home park that Golden Hills serves if they abandoned service. The CPUC hurriedly initiated an OII because of the imminent threat that the owner would abandon his customers and render their homes uninhabitable. Investigation 12-03-008 was initiated on March 8, 2012, and I.12-03-008 was issued on March 16, 2012. This was only possible because of extraordinary efforts by the assigned counsel and presiding administrative law judge. Kern County appointed a receiver to take over the Sewer System on March 29, 2012, or 29 days after the CPUC initiated its action in this case.

The owners of Golden Hills claimed financial insolvency and stated that they would be losing a great deal of money by continuing to operate the sewer utility, however, the owners hid from the CPUC the fact that they had a \$35 million probate estate in adjudication in San Diego County.

Golden Hills Sanitation Company has filed an application for rehearing of the CPUC's decision and a petition for modification of the initial decision.

Live Oak Springs Water Company: This case came to the CPUC's attention in June of 2012, when we learned that Live Oak Springs Water Company was the subject of a foreclosure action in San Diego County's Superior Court pertaining to a \$1.5 million bank loan they had taken out in 2006 and had failed to repay. The CPUC wrote a "friend of the court" letter to the Superior Court judge informing the court that sections 818, 825 and 851 of the Pub. Util.Code, make these type of loans void unless the CPUC has approved the loan in advance. In one of its ruling on the matter, the Superior Court did not acknowledge the CPUC's authority over these types of loans.

Nonetheless, the Court has subsequently stayed the bank from foreclosing on utility assets even though water rights were (improperly) pledged as collateral for this loan.

On August 2, 2012 the CPUC issued Investigation 12-08-004 into the operations of Live Oak Springs Water Company and named both the bank and a receiver appointed by the San Diego County Superior Court as respondents in the CPUC's investigation. Subsequent discovery has uncovered a considerable complexity in the corporate holding company structure that has been used to operate both the water utility and some other commercial enterprises on the surrounding property. Two attorneys have been assigned to this case. They presented the CPUC's case in two days of hearings that were held in San Diego, California. During the hearings the CPUC learned that Live Oak Springs Water Company has been fined on numerous occasions for failure to perform required testing, failure to pay various permit fees and other violations by the San Diego County Department of the Environment. Some water quality issues have been noted as well including possible contamination. Moreover, the operator of the utility has made numerous bulk water sales from his water source to various purchasers in an area with limited water supplies. This case is currently being briefed by parties and will likely be the subject of a CPUC decision and/or vote sometime this summer.

RELIABILITY IMPACT

Since problems with utilities facing receivership will be more quickly resolved, service reliability should be enhanced. Examples such as those cited above illustrate the public safety threat associated with protracted delays in conjunction with Superior Court proceedings.

RATE IMPACT

This bill would lower the cost of water service to customers, by reducing the number of hours that a receiver would have to devote to obtaining Court approval to manage, operate and ultimately find a new owner for troubled water systems.

FISCAL IMPACT

This bill should somewhat reduce the CPUC's workload—particularly that of attorneys. It should not change any reporting requirements.

ECONOMIC IMPACT

This bill is likely to have an essentially *de minimus* effect on businesses. It will slightly lighten the burden of affect Superior Courts. As for the regulated community and their customers the bill should lessen the costs faced by owners of small water systems, since they will only have to pay for regulatory expenses associated with a single proceeding instead of the successive CPUC and then County proceedings. It will not likely have an effect on local community except that it may make the affected service territory a more attractive place to do business because once a receiver is appointed,

the water customers will see their service improved more quickly than if the existing two-step approval process is used. Moreover, because the services of receivers are quite expensive, having a more expedited process for the appointment of receivers should lower overall costs for water utility customers.

LEGAL IMPACT

The bill should have no legal impact. The role of the Superior Courts is purely an administrative function in response to the CPUC's petition for the appointment of a receiver. The Superior Courts do not have the authority to substantively review the CPUC's determination on the need for the appointment of a receiver. The CPUC's existing due process requirements, including the role for hearings and the right to appeal a CPUC decision, are not impacted by this bill. Adding an administrative requirement to this process by having the CPUC petition the Superior Court for the appointment of a receiver does nothing to enhance utilities' due process rights that are already codified in the Public Utilities Code.

LEGISLATIVE HISTORY

Unknown. It is likely that this statute was initially passed because state Superior Courts handle all types of receiverships and water utilities receiverships were considered to simply be another variation on this theme. Certainly Superior Courts have the capability to manage receiverships; it is part of their normal function as courts of general jurisdiction. Public utility regulation is a highly technical and specialized endeavor that goes beyond the ken of most other forms of receiverships. In addition to having a specialized vocabulary and regulatory structure, public utility operations represent a type of public trust that encompasses the "regulatory compact" and includes such concepts as the "obligation to serve" and the opportunity to earn an authorized rate of return on one's investments. Unlike most other businesses, utilities are not free to set their own rates, thus, experience gained by Superior Courts in managing other types of receiverships is not as applicable to the public utilities.

PROGRAM BACKGROUND

This is largely detailed in the explanation above about how the bill will affect programs, practice and safety. Existing policy requires the CPUC to periodically audit and annually monitor small water companies. This bill will not change those practices.

Once the CPUC has become aware of non-compliance with CPUC orders, preemptive abandonment, or significant contamination or other permit issues, it begins an investigation and possibly an audit of the target utility. The Legal Division is contacted to have an attorney appointed to coordinate the investigation and begin preparing a formal order instituting an investigation for CPUC consideration. Eliminating the requirement to go to superior court would have expedited the receivership process by several years in the case of the Yermo Water Company.

OTHER STATES' INFORMATION

The Nevada Commission has developed a more aggressive staff-based function for handling small water systems that allows the staff essentially to set rates by default if a responsible owner has either abandoned or is unwilling to manage a water system. Because water systems are state regulated, federal examples are not applicable. Arizona has employed a case-by-case approach that may involve the appointment of a receiver, although this is not a mandatory step. Missouri's statute is quite similar to the Commission's and requires the appointment of a receiver by the county court.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

This bill should be sponsored for the following reason(s):

- (1) It would reduce the amount of time it takes to get a receiver appointed to assume operational responsibility for a troubled or abandoned water system;
- (2) It would reduce Commission, ratepayer, and Superior Court costs associated with the appointment of a receiver;
- (3) It would ensure that customers receiving substandard service from an existing water company receive more timely, and less expensive improvements in water service;
- (4) It would allow for a more rapid correction to conditions that represent threats to public safety from low water pressure, and water that has not passed applicable purity tests.

SUMMARY OF SUGGESTED AMENDMENTS

The bill should be amended to conform with the language in 'Attachment 2'.

STATUS

SB 489 is pending hearing in the Senate Energy, Utilities and Communications Committee.

SUPPORT/OPPOSITION

None on file.

VOTES

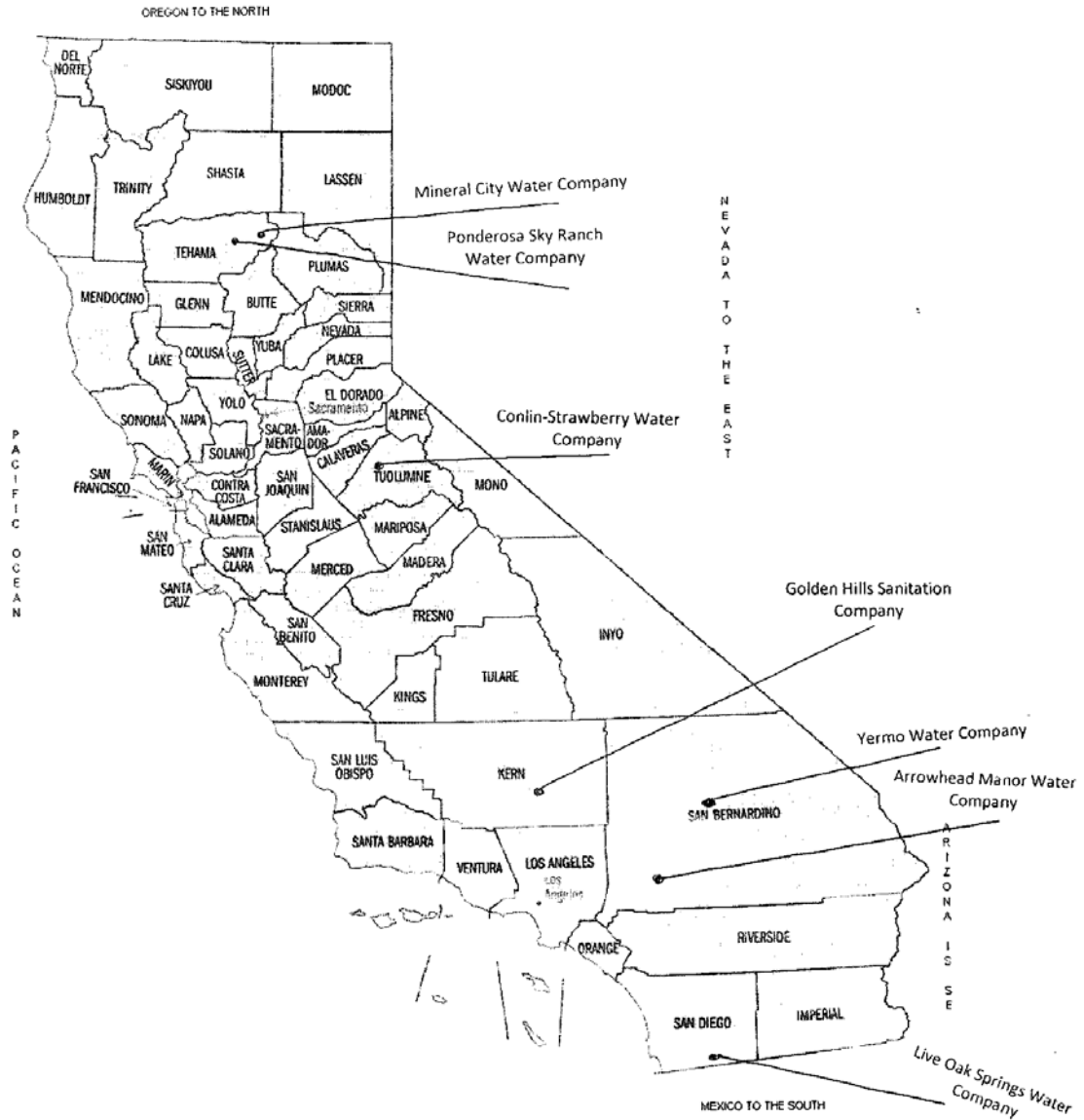
Not applicable.

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ATTACHMENT 1



California Counties ● [County Finder](#)

- **Alameda County**
[1878 Atlas with landowner maps](#)
[1914 County Map](#)
- **Alpine County**
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- **Amador County**
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- **Butte County**
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- **San Joaquin County**
- **San Luis Obispo County**
- **San Mateo County**
[1914 County Map](#)
- **Santa Barbara County**
- **Santa Clara County**
[1781 Map of Pueblo of San Jose](#)
[1866 Pueblo Lands of San Jose](#)
[1872 San Jose Map](#)
[1876 Atlas Maps identifying landowners](#)

ATTACHMENT 2

SECTION 1.

Section 564 of the Code of Civil Procedure is amended to read:

564.

(a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge ~~thereof,~~ *of that court*, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds ~~thereof,~~ *of the property or fund*, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) Where a corporation has been dissolved, as provided in Section 565.

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(7) In an action of unlawful detainer.

(8) At the request of the Public Utilities Commission pursuant to Section ~~855 or~~ *subdivision (a) of Section 855 or* 5259.5 of the Public Utilities Code.

(9) In all other cases where necessary to preserve the property or rights of any party.

(10) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. The appointment may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage or to collect rents therefrom while a pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage is being completed.

(12) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means any of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in Section 4095, 4100, and 4185 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 2.

Section 855 of the Public Utilities Code is amended to read:

855.

(a) Whenever the commission determines, after notice and *evidentiary* hearing, *pursuant to an order to show cause*, that any water or sewer system corporation is unable, ~~or~~ unwilling, *or has failed to provide safe and adequate service, as confirmed by the commission, or that the water or sewer system corporation to adequately serve its ratepayers or* has been actually or effectively abandoned by its owners, or is unresponsive to *or fails to comply with those* ~~the the~~ rules or orders of the commission *relating to an action taken by the water or sewer system corporation that compromises the provision of safe and adequate service*, the commission may ~~petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of~~ *petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of* ~~appoint~~ a receiver to assume possession of its property and to operate its system upon ~~such the~~ terms and conditions *as that* the ~~court~~ *court commission* shall prescribe. The ~~court~~ *court commission* may require, as a condition to the appointment of ~~such the~~ receiver, that a sufficient bond be given by the receiver and conditioned upon compliance with the orders of the ~~court and the~~ commission, and the protection of all property rights involved. The ~~court~~ *court commission* shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state. *The court shall presume that any finding, conclusion, or determination in a final decision or order of the commission pursuant to this section is true and correct. Pursuant to subdivision (a) of Section 1759, the superior court does not have authority to modify the commission's earlier determination as to the ability of the owner or operator to continue to operate the water or sewer system and provide safe and reliable service.*

(b) *The commission may, as an alternate to the appointment of a receiver pursuant to subdivision (a), enter into an agreement with another water or sewer system corporation, or other qualified entity, to serve as an interim operator of the water or sewer system. The commission shall issue those decisions and orders that it deems necessary and proper to permit the interim operator to abate any danger to the public health and safety and to provide adequate service to the customers of the water or sewer system corporation. The interim operator shall have the powers of a receiver and shall assist the commission in its search for a responsible owner or operator to purchase the water or sewer system, the sale of which is subject to the commission's approval. Before any sale is consummated, the commission may authorize the interim operator to obtain an independent*

valuation of the water or sewer system corporation in accordance with applicable law. The interim operator may assist the owner in the selection of the independent appraiser, subject to the commission's approval.

BILL LANGUAGE

BILL NUMBER: SB 489 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Fuller

FEBRUARY 21, 2013

An act to amend Section 564 of the Code of Civil Procedure, and to amend Section 855 of the Public Utilities Code, relating to water and sewer system corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 489, as introduced, Fuller. Water corporations: sewer system corporations: appointment of receiver.

Under existing law, the Public Utilities CPUC has regulatory authority over public utilities, including water corporations and sewer system corporations. Whenever the CPUC determines that a water corporation or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has actually or effectively been abandoned by its owners or is unresponsive to the rules or orders of the CPUC, existing law authorizes the CPUC to petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of the corporation's property and to operate its system upon such terms and conditions as the court prescribes.

This bill would instead authorize the CPUC to appoint a receiver to assume possession of the corporation's property and to operate its system upon such terms and conditions as the CPUC prescribes. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge ~~thereof~~ of that court, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the

plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds ~~thereof~~ of the property or fund, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) Where a corporation has been dissolved, as provided in Section 565.

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(7) In an action of unlawful detainer.

(8) At the request of the Public Utilities CPUC pursuant to Section ~~855 or~~ 5259.5 of the Public Utilities Code.

(9) In all other cases where necessary to preserve the property or rights of any party.

(10) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. The appointment may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage or to collect rents therefrom while a pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage is being completed.

(12) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is

impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means any of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in Section 4095, 4100, and 4185 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

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(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 2. Section 855 of the Public Utilities Code is amended to read:

855. Whenever the CPUC determines, after notice and hearing, that any water or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the ~~the~~ rules or orders of the CPUC, the CPUC may ~~petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of~~ appoint a receiver to assume possession of its property and to operate its system upon ~~such~~ the terms and conditions ~~as~~ that the ~~court~~

CPUC shall prescribe. The ~~court~~

CPUC may require, as a condition to the

appointment of ~~such~~ *the* receiver, that
a sufficient bond be given by the receiver and conditioned upon
compliance with the orders of the ~~court and the~~
CPUC, and the protection of all property rights involved. The
~~court~~ CPUC shall provide for
disposition of the facilities and system in like manner as any other
receivership proceeding in this state.