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MEMORANDUM

TO: BKS PUBLIC AGENCY CLIENTS

DATE: JANUARY 12, 2024

RE: ANNUAL NEW LAWS UPDATE – 2024

This memorandum summarizes a number of important new laws enacted this year. Except as noted, these new laws took effect on January 1, 2024. If your agency has any questions about the new laws discussed in this memorandum or would like help implementing any of their requirements, please contact your primary BKS attorney.

Water

AB 779 – Groundwater: Adjudication

This new law updates how the adjudication of rights to groundwater will be handled in light of the Sustainable Groundwater Management Act ("SGMA"). It requires a civil court, in a groundwater sustainability plan ("GSP") adjudication action, to appoint one party to forward all case management orders, judgments, and interlocutory orders to the groundwater sustainability agency ("GSA") within 10 business days of their issuance. All costs associated with this duty will be allocated by the court to the GSA and the parties in an equitable amount and a manner. The GSA must then post the documents on its website within 20 business days of the receipt of the documents.

Under existing provisions in SGMA, GSAs must evaluate GSPs annually in order to report specified information about the groundwater basin to the Department of Water Resources ("DWR"). AB 779 requires GSAs to continue to monitor and report such information to the court throughout the duration of the adjudication proceeding. Further, this bill requires GSAs, upon receiving notice that an adjudication has commenced in its basin, to host a public meeting to explain the adjudication process and the status of the adjudication to water users within the basin and the public. A recording or summary of the meeting must be posted to either the GSA's or the basin's watermaster's website. This law only applies to basins in which a comprehensive adjudication has not been commenced by January 1, 2024.

AB 1572 – Potable Water: Nonfunctional Turf

This new law declares the use of potable water to irrigate nonfunctional turf as wasteful and incompatible with California's state policy pertaining to climate change, water conservation, and reduced reliance on the Sacramento-San Joaquin Delta ecosystem.

Therefore, all state agencies are directed to encourage and support the elimination of irrigation of nonfunctional turf with potable water.

Under existing law, the Integrated Regional Water Management Planning Act authorizes regional water management groups to prepare and adopt integrated regional water management plans that identify and consider water-related needs of disadvantaged communities in the area within the boundaries of the plan. This bill requires these plans to include the removal and replacement of nonfunctional turf.

Existing law imposes various water use reduction requirements on urban retail water suppliers and includes a requirement that the state achieve a 20% reduction in urban per capita water use by December 31, 2020. AB 1572 imposes further reduction requirements by prohibiting the use of potable water for the irrigation of nonfunctional turf located on commercial, industrial, and institutional properties. Exceptions include cemeteries, properties of homeowners' associations, common interest developments, and community service organizations or similar entities. Implementation of such practices shall begin no earlier than January 1, 2027. Under this bill, the State Water Resources Control Board ("Water Board") may require the owners of covered properties to certify their compliance with these provisions.

AB 755 – Water: Public Entity: Cost-of-Service Analysis

Under existing law, water suppliers that supply water at retail or wholesale cost within their service areas are authorized to adopt and enforce water conservation programs. AB 755 requires water suppliers to conduct a water usage demand analysis prior to completing a cost-of-service analysis to set fees and charges for water service. Within this analysis, water suppliers are required to identify the average annual volume of water delivered to high water users and the resulting costs to the entity in supplying that water. The information regarding high water users must be posted in the suppliers' cost-of-service analyses.

SB 48 – Water and Energy Savings Act

Existing law requires the State Energy Resources Conservation and Development Commission (the "Energy Commission") to adopt regulations that require the owners of buildings, with 17 or more residential utility accounts, to collect and deliver energy usage information to the Energy Commission. Utility entities must maintain energy usage data records of all covered buildings for at least 12 months and provide that information to the owners of each applicable building. Qualifying owners must then publicly disclose such information, in addition to providing it to the Energy Commission.

SB 48 establishes the Building Energy Savings Act and states that the owners of buildings with less than 50,000 square feet of gross floor space are not required to collect or disclose energy usage information. Further, this bill requires the Energy Commission, in collaboration with the State Air Resources Board, Public Utilities Commission, and Department of Housing and Community Development, on or before July 1, 2026, to develop a strategy to track and manage the energy usage and emissions of greenhouse gases of covered buildings in order to achieve the state's goals, targets, and standards for energy usage and emissions. The Energy Commission must submit the strategy to the Legislature on or before August 1, 2026.

SB 389 – State Water Resources Control Board: Determination of Water Right

Under existing law, the Water Board is authorized to investigate bodies of water and to take testimony in regard to any rights to water or the use of water in determining if water has been appropriated lawfully. Upon a finding of unauthorized use of appropriated water, the Water Board may bring a trespass action.

SB 389 authorizes the Water Board to investigate and determine if a water right claim is valid. Further, the bill authorizes the Water Board to issue an information order to generate additional information for the Water Board's investigation. The information order may be issued to a diverter or user of water to provide information concerning that diverter's prior diversion or use, including direct diversions and diversions to storage, or identification of the person or holder claiming the right under which the water was diverted or used. Under the bill, a diversion or use of water that is determined to be unauthorized may be enforced as a trespass under Water Code Section 1052.

SB 659 – Groundwater Recharge: Minimum Requirement

Under existing law, DWR is required to update the California Water Plan every five years to properly coordinate the control, protection, conservation, development, and use of the state's water resources. Further, DWR is required to maintain an advisory committee, composed of representatives of agricultural and urban water suppliers, local government, business, production agriculture, and environmental interests, and other interested parties, for input in the updating of the California Water Plan.

SB 659 establishes the California Water Supply Solutions Act of 2023, to be implemented in 2028, which will provide actionable recommendations to increase groundwater recharge opportunities within the state's groundwater basins. DWR will be required to consult with the Water Board, the nine regional water quality control boards, and the above-mentioned advisory committee. The recommendations must identify immediate opportunities and potential long-term solutions to increase the state's groundwater supply, and include, among other things, best practices to advance all benefits of groundwater recharge.

AB 1216 – Wastewater Treatment Plants: Monitoring of Air Pollutants

AB 1216 requires the owner or operator of wastewater treatment facilities, with original design capacities of at least 425,000,000 gallons per day and which are located within 1,500 feet of a residential area, to install and operate a wastewater treatment-related fence-line monitoring system. The monitoring system must be approved by the local air quality management district and include equipment capable of measuring pollutants emitted into the atmosphere that the air district deems necessary for monitoring.

Further, this bill requires the owner or operator of the facilities to collect real-time data from the monitoring system, to maintain records of that data for at least three years, and to transmit that data to the Air District. If feasible, the data should also be provided in a publicly accessible format that provides a real-time data display. The owner or operator of the facilities will be responsible for the costs related to the implementation and operation of the monitoring system, all costs incurred by the air district relating to the monitoring system, and any cost associated with providing the required data to the air district and the public. These changes must be implemented by January 1, 2027.

Brown Act

AB 557 – Emergency Remote Meeting Procedures

The Brown Act allows local agencies to hold public meetings via teleconference, but generally requires that the agencies publish the teleconference location of each governing board member that will be participating in the public meeting and to ensure that a quorum of the board participates from locations within the boundaries of that agency's jurisdiction. Further, each teleconference location must be publicly accessible and allow for members of the public to address the meeting at each teleconference location.

As a result of the Covid-19 pandemic, the Brown Act was updated to allow local agencies to utilize teleconferencing without complying with the above specified teleconferencing requirements during declared emergencies. Those declared emergencies circumstances are when (1) state or local officials have imposed or recommended measures to promote social distancing, (2) the legislative body is meeting for the purpose of determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, or (3) the legislative body has previously made that determination. During these circumstances, the legislative body must make findings that such emergency is in effect no later than 30 days after the first teleconferenced meeting and every 30 days thereafter in order to continue to meet under the modified teleconferencing procedures. These emergency provisions were set to sunset on January 1, 2024.

AB 557 extends the emergency remote meeting rules described above until January 1, 2026. Furthermore, this bill extends the period for the legislative body to make their required findings from 30 to 45 days.

Construction and Public Works

AB 334 – Independent Contractor: Multiple Phases of a Project

Government Code section 1090 prohibits members of the Legislature and state, county, district, judicial district, and city officers or employees from being financially interested in any contract made within their official capacity, or by any board or body of which they are members of. A violation of Section 1090 may lead to civil or criminal liability.

AB 334 establishes that an independent contractor, who has performed one phase of a project, and seeks to enter into a subsequent contract with the public agency, will not be considered to have a prohibited conflict of interest if the independent contractor's duties and services related to the initial contract did not include engaging in or advising on public contracting on behalf of that public agency. Under these circumstances, it would not be a violation of Section 1090 if the public agency were to enter into a subsequent contract with that independent contractor for a later phase of the same project, if the independent contractor did not engage in or advise on the making of the subsequent contract during their performance of the initial contract.

Furthermore, this bill establishes that a qualifying person who acts in good faith reliance on the provisions added under this bill will not be subject to criminal, civil, or administrative enforcement if the initial contract includes specified language, as detailed in Section 1097.6 of the Government Code, and the independent contractor is not in breach of those terms. An attempt to follow such requirements, in good faith, will result in a complete

defense in any criminal, civil, or administrative proceeding if the contract fails to include the specified language in the initial contract.

The rules regarding Section 1090 violations are complicated and can have serious consequences for the public agency and contractor. Please consult with your primary BKS attorney should your agency be interested in using AB 334.

AB 338 – Wildfire Fuel Reduction Work Contracts

AB 338 provides that wildfire fuel reduction work completed under contract, paid for in whole or in part out of public funds, as an action that requires the payment of prevailing wages. Work completed on private lands and projects carried out solely by a public agency's own forces are exempt from this requirement. Projects fully funded by federal agencies are held to federal prevailing wage standards. Failure to comply with Division 47 of the Public Resources Code, as implemented by this bill, may result in the Labor Commissioner of the Department of Industrial Relations bringing an action to enforce the payment of prevailing wages.

This bill only applies to contracts in excess of $500,000 and becomes operative on July 1, 2026. It does not apply retroactively to contracts executed prior to the operative date.

SB 706 – Public Contracts: Progressive Design-Build

Existing law authorizes the use of the progressive design-build procurement process for the construction of up to three capital projects. "Progressive design-build" is a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. Until January 1, 2029, local agencies are authorized to use the progressive design-build process for up to 15 public works projects, each in excess of $5,000,000. To do so, such agencies must submit a report on the use of the progressive design-build process to the appropriate committees of the Legislature by January 1, 2028.

SB 706 allows cities, counties, and special districts to use the progressive design-build process for up to ten public works, each in excess of $5,000,000, by January 1, 2030. To do so, they must submit a report on the use of the progressive design-build process to the appropriate committees of the Legislature by December 31, 2028 and any contemplated project cannot pertain to state-owned or state-operated facilities.

Housing and Development

AB 480 and SB 747 – Surplus Land Act Updates

The Surplus Land Act requires the legislative body of a local agency to declare land owned in fee simple to be surplus and not necessary for the "agency's use" at a public meeting in order to dispose of the property. An "agency's use" is defined as land that is being used or is planned to be used pursuant to a written plan.

AB 480 defines the term "dispose" to include the sale of or a lease term of at least 15 years of a surplus property. Dispose will not include entering into a lease for which no development or demolition will occur, regardless of the term of the lease. Further, this bill exempts local agencies, in certain instances, from making declarations at a public meeting for land that is "exempt surplus land" if the local agencies identify the land in a notice that is published and available for public comment at least 30 days before the exemption takes effect. This bill includes within the definition of "exempt surplus land" surplus land totaling

10 or more acres, consisting of a single parcel, or of 2 or more adjacent or nonadjacent parcels totaling 10 or more acres, combined for disposition to one or more buyers pursuant to a plan or ordinance adopted by the legislative body of a local agency, or a state statute. Further, any disposition of land, pursuant to the Surplus Land Act, must be done through a disposition and development agreement containing provisions specified in the Act. Certain land that is disposed of, by local agencies, will be required to be transferred with a covenant or restriction recorded against the land at the time of sale that will leave violators of certain provisions open to claims for violations of the Act.

SB 747 further amends the Act to add three new categories of surplus land that include: (1) land that is owned by a California public-use airport on which residential uses are prohibited; (2) surplus land owned by a local agency, whose purpose is to supply the public with a transportation system, that is developed for commercial, or industrial uses or activities, for the sole purpose of investment if certain conditions are met; and (3) land transferred to a community land trust. Further, this bill implements a penalty for 30% of the applicable disposition value for an agency's violation of certain provisions of the Surplus Land Act, rather than 30% of the final sale price of the land, as is the standard under existing law.

AB 1033 – Accessory Dwelling Units: Local Ordinances: Separate Sale or Conveyance

Existing law allows land use authorities like cities and counties, by ordinance or ministerial approval, to authorize the creation of accessory dwelling units ("ADU") in areas zoned for residential use. In doing so, the ordinance must specify standards that apply to the ADUs, including a prohibition on the sale, or any other conveyance, of an ADU separate from that of the primary residence.

AB 1033 authorizes land use authorities to adopt an ordinance that allows the conveyance of ADUs separate from that of the primary residences.

Financial

SB 882 – Investment of Special District Funds

SB 882, the budget omnibus bill, updated the requirements for the investment of funds by local agencies. Existing law establishes that local agencies may invest funds, that are not required for their immediate needs, in a sinking fund or in their treasury to invest in a mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond, which are constrained by defined limitations. This bill exempts from the limitations investments in securities issued or guaranteed by certain federal agencies or issuers. Agencies should consider updating their investment policies to reflect this change.

California Environmental Quality Act

SB 69 – Filing of Notices of Determination or Exemptions

The California Environmental Quality Act requires lead agencies to prepare and certify an environmental impact report for any project that they propose to complete or approve that may result in a significant effect on the environment. Under the Act, lead agencies must provide a notice of determination, indicating that the final environmental impact report is available for review, or a notice of exemption, indicating that the project is

exempt from the Act, to the public. Either notice must be filed with the county clerk of each county in which the project will be located.

SB 69 expands the notice requirements of local agencies to include the filing of a notice of determination or notice of exemption to the State Clearinghouse in the Office of Planning and Research in addition to the county clerk of each county in which the project will be located. The Office of Planning and Research and each county that receives notice must post the notice in their office and on their website within 24 hours of the receipt of the notice.

Labor

AB 520 – Unpaid Wages

Existing law holds any individual or business entity, that contracts for services in the property services or long-term care industries, jointly and severally liable for any unpaid wages, including interest, when provided notice that a proceeding or investigation by the Labor Commissioner found them liable for those unpaid wages. AB 520 extends this liability to public entities that are found liable for unpaid wages under the same circumstances.

SB 553 – Restraining Orders and Workplace Violence Prevention Plan

Existing law authorizes employers, whose employee has suffered unlawful violence or a credible threat of violence at the workplace, to seek a temporary restraining order and an order after hearing on behalf of the employee.

Operative January 1, 2025, SB 553 authorizes collective bargaining representatives to seek such orders on behalf of an employee, who has experienced the same acts. This bill requires employers to maintain and train its employees on a workplace violence prevention plan. Employers must include the workplace violence prevention plan as part of their effective injury prevention program to avoid facing a misdemeanor violation. Further, employers are required to maintain records pertaining to any reported workplace violence incidents and workplace violence hazard identification, evaluation, correction, and trainings.

SB 616 – Paid Sick Day Accrual and Use

The Healthy Workplaces, Healthy Families Act establishes requirements relating to paid sick days and paid sick leave, but excludes certain employees from its requirements. In summation, the Act entitles employees to accumulate sick leave if they work 30 days for an employer in a calendar year. Further, paid sick leave must be accessible within 90 days of the commencement of the employment and leave must accumulate at no less than one hour every 30 hours worked.

SB 616 states that, if employers choose to employ an alternative sick leave accrual method, the plan must allow employees to accrue 40 hours of paid sick leave by the 200th calendar day of employment, in each calendar year, or in each 12-month period. Further, the bill increases the limit that employers can place on yearly carryover sick leave to 40 hours or 5 days each year. If employers have a paid leave or paid time off policy, employees must be eligible to earn at least 5 days or 40 hours of sick leave or paid time off within 6 months of

employment. Finally, the bill increases the threshold for an employee's total accrual of paid sick leave to 80 hours or 10 days.

SB 497 – Protected Employee Conduct

Labor Code section 98.6 prohibits the discharge of, discrimination of, retaliation against, or the taking of an adverse action against an employee or applicant who has engaged in protected conduct, as defined in the Labor Code. Section 1102.5 prohibits employers from adopting any rule, regulation or policy to prevent employees from disclosing information pertaining to a believed violation of a law. Further, section 1197.5 bars employers from prohibiting employees from disclosing their own wages and cannot base wages on an employee's gender.

SB 497 creates a rebuttable presumption in favor of the employee's claim if, within 90 days of a protected activity, an employer acts in violation of Labor Code sections 98.6 or 1197.5. Further, the bill establishes that employers are liable for civil penalties of up $10,000 per employee for each violation of section 1102.5.