



Division 9 / AB 1902 updates for RCDs (2022)

What:

CARCD is updating and modernizing Division 9 of the California Public Resource Code along with a coordinated ask for funding. We are pursuing revisions through a legislative bill sponsored by CARCD.

Background:

Other than a few small edits here and there, Division 9 has not been revised since the 1950s. It contains outdated language and concepts, and no longer reflects the breadth of RCD work. The existing language could be interpreted as limiting the RCD scope of work and has led to some confusion. For example, old language limits RCD's scope of work to soil and water issues. We would modernize the language to include the full breadth of work including habitat restoration, climate adaptation, forest health, community wildfire preparedness, groundwater management, and more.

To look at how Division 9 might be modernized, a small, diverse group of RCD representatives have been working on drafting revisions. The committee is composed of RCDs that are small and large, rural and urban, with baseline funding and without, and members and non-members in order to capture a broad set of perspectives. In the last year, the group picked through Division 9 word by word to make recommendations on new language. A big thank you to the team for all your diligence and hard work! Anyone who is interested in joining the team for any future work is welcome to do so.

CARCD is pursuing Division 9 revisions through a legislative bill in order to maximize benefits. Based on conversations with CARCD's legislative consultants Pacific Policy Group, this is the most advantageous route. Because the bill is sponsored by CARCD, we are able to introduce the bill language and have some control over the future of the language. We can also use this as an opportunity to make a \$10 million funding ask for RCDs. The bill will raise visibility around RCDs with the state legislature and make the case that RCDs are the best entities to address climate adaptation and resilience, forest health, community fire preparedness, and groundwater, which are currently hot topics.

Proposed Legislation for 2020:

1. A \$10 million budget ask spanning two years for capacity building through the DOC.
2. A separate but supporting revision to Division 9 would update and modernize language, reflecting the breadth of RCD work and creating clarity around contracting, permitting, and other activities with state agencies.

What are the benefits for RCDs?

1. **RCDs will be eligible for interagency agreements from state agencies to get paid in advance.** New language would be added to allow RCDs to enter into interagency agreements with state agencies, which is necessary to receive direct transfer of funds in advance of the work.

2. **RCDs will raise their profile as the go-to implementer for local conservation.** State agencies have given us feedback that they are confused about what RCDs are. When language is modernized, legislators and state agencies will be more likely to partner with us and write us into legislation.
3. **RCDs will see increased funding opportunities.** Legislators will have more confidence appropriating funding to RCDs. DOC will be able to provide capacity building funding. State agencies will want to partner with us outside of the grant funding cycle.
4. **RCDs are able to receive technical or capacity building support from DOC.** DOC's role would be more clearly established, including their ability to provide capacity building. It will reinforce RCD autonomy by removing outdated language for an advisory "Commission" within DOC. This is important because it removes a grey area in the current legislation that has support going through the now defunct commission.
5. **RCDs will receive technical support.** A watershed center will be established to provide technical support to RCDs.
6. **RCDs will be more likely to receive baseline funding in the future.** Clarifying the definition of RCDs and the unique role they play in the state is a crucial step in setting us up for baseline funding.

What are the risks?

Anytime legislation is opened, every citizen has the right to provide feedback. This could lead to unintended consequences. The author has the ability to accept changes from other sources. We may not like the changes and may or may not have the ability to influence the changes. However, because we are the bill sponsor we would be able to call off the bill entirely if it is in our interest to do so.

What do we need from you?

1. **Feedback:** Please let us know what you need so we can try our best to represent those needs in the bill. We may not be able to accommodate all changes. But we will try to resolve conflicts in the best interest of RCDs at large. This is still a work in progress, and we want your feedback to make sure it represents all RCDs.
2. **Local advocacy:** Please let your assemblymember/senator know that you support this bill. We will let you know how to do this.
3. **State-level advocacy:** If we are able to hold it as intended, please attend our Lobby Day in May so legislators can hear firsthand about the importance of RCDs and Division 9 revisions

When can I get more information?

We will hold a series of virtual town hall meetings (call in info will be sent out). The meetings will all be similar in format, so there is no need to attend all of them. We wanted to provide flexibility for everyone's schedules. Hopefully you can make one of them.

1. April 13th, 2022 1-3pm
2. April 26th, 2022 3-5pm
3. May 11th, 2022 1-pm

Please contact Karen Buhr (karen-buhr@CARCD.org) or Mark Fenstermaker (mark@pacificpolicygroup.com) with any questions or feedback.

CARCD is inviting you to a scheduled Zoom meeting.

Topic: Division 9 Working Session

Time: This is a recurring meeting Meet anytime

Join Zoom Meeting

<https://us02web.zoom.us/j/86097477805>

Meeting ID: 860 9747 7805

One tap mobile

+16699006833,,86097477805# US (San Jose)

+13462487799,,86097477805# US (Houston)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 860 9747 7805



AB 1902 (Aguiar-Curry) Q&A

1. Why is CARCD proposing this bill?

CARCD has been engaged in an effort to update Division 9 for over five years as part of our long-term strategy for baseline funding and capacity funding. The proposed changes in AB 1902 have been driven by conversations with RCDs and we have engaged partners like DOC, CSDA, and CALAFCD.

The last meaningful update to Division 9 took place over 30 years ago and revisions to the scope of our work haven't been made since the 1970s. RCDs have evolved quite a bit since that time and are pushing the envelope on activities RCDs are undertaking regarding their statutory authority. While small changes have been made over the years, no major revisions have been made and the code is antiquated in how it refers to our work siloing us mostly as working on soil erosion and water delivery. This has been called out by the LAFCO in San Diego and was a main reason why the LAFCO paused their Municipal Service Review of the San Diego County based RCDs.

More important than responding to LAFCOs, this has also been called out by legislators and legislative staff. RCDs are often passed up by legislators or questioned as to whether we are the right entity to be included in legislation after legislators read our outdated code. We are missing out on opportunities. The proposed updates in AB 1902 clearly spell out the role of RCDs in achieving the state's conservation goals and responding to the natural resource challenges facing California, principally addressing climate, habitat, drought and other critical challenges.

2. Where is the bill in the process?

The bill is just starting out and is scheduled to be heard in the Assembly Local Government Committee, which is chaired by Assemblymember Aguilar-Curry, the author of the bill. Should the bill pass the Local Government Committee, the bill would then likely be heard in Assembly Appropriations Committee sometime in May and then on the Assembly Floor at the end of May.

From there the bill would head to the Senate where it would be heard in the Senate Governance & Finance Committee sometime in June, Senate Appropriations Committee in early to mid-August and then on the Senate Floor in the latter half of August.

This is the first step in a long process.

3. Is this hearing the only opportunity for my RCD to weigh in?

No! As noted above, AB 1902 is at the first step of the legislative process. There is time to continue working on the language and vet new amendments to the language in print or other sections of Division 9.

Further, positions by individual RCDs can be taken later in the process if more time is needed for board input.

It is very common and expected in the legislative process for language amendments to happen throughout the process.

4. How does the bill change Department of Conservation's authorities?

Sections 1 & 2 of the bill:

Current state requires the department to undertake several activities including:

- providing soil conservation advisory services to local governments, RCDs, landowners, farmers and ranchers
- Be a state level liaison to RCDs
- Review CEQA documents

AB 1902 would change this from a mandate on DOC to a permission, but more importantly provides new authorities to DOC to provide a range of assistance to RCDs, such as financial, technical, organization and capacity.

Further, the bill updates the role of DOC in providing advice and coordination on activities of conservation importance across the state.

Sections 3 & 4 of the bill

AB 1902 would explicitly authorize DOC to provide advance payments to RCDs and create a new mechanism to provide grants or local assistance to RCDs so that PRC 9084 is no longer the only pathway in statute for DOC to provide grants to RCDs.

In addition, the bill authorizes DOC to enter into interagency agreements with RCDs. We are working on amendments to explicitly authorize RCDs to enter into interagency agreements with any department/agency of the state. While this power currently exists, the language is outdated and refers to contracting. Some agencies have interpreted the language to mean that RCDs have to follow State contracting rules not that we are eligible to contract with the State. It is important that we clarify this.

It also authorizes DOC to provide a broad suite of support to RCDs. Currently this isn't authorized. DOC can provide funding, but isn't specifically authorized to provide technical support. Each administration has interpreted that differently. Without the authorization, some administrations have provided the support such as strategic planning, answering RCD questions on a broad range of topics including RCD authority, providing trainings on board function etc.

Others have said that it would open them up to a lawsuit if these services are not specifically authorized. This bill authorizes those services.

5. Does the bill create an unfunded mandate on RCDs?

No! The changes proposed to PRC 9413 (Section 9 of the bill) do not create an unfunded mandate as the language is still permissive as to RCDs creating long-range and annual work plans as well as annual reports. The language does not require RCDs to create those documents.

The amendments do require those plans and reports to meet certain requirements should an RCD create them.

6. What other changes are proposed to Division 9?

There are several changes proposed, the following breaks down the changes section by section.

A. Section 5 of the Bill

AB 1902 proposes to delete PRC 9084, the current grant program DOC can use to provide funds to RCDs. We have heard loud and clear that 9084 is problematic due to the local match requirement in (b)(3). This section requires that any RCD receiving a grant from DOC has a 25% local match requirement- even for capacity building funds to underfunded RCDs. The 25% match was codified when the original watershed coordinator program was created in the 1990s in a compromise to assure previous DOC administrations that only well-funded, high-capacity RCDs would and only applies to the program. This holds smaller RCDs back. It only applies to DOC. After consultation with DOC, we have learned that DOC is providing Prop 68 grants through PRC 9084, so we will be bringing this section back but deleting the local match requirement.

B. Section 6 of the Bill

PRC 9151 states that RCDs may be formed for the control of runoff, the prevention or control of soil erosion, the development and distribution of water, and the improvement of land capabilities. This language was last updated in 1975 and does not reflect all the important work RCDs are doing on the ground.

Our understanding is that many RCD activities can be covered under “improvement of land capabilities” a broad and vague statement. New activities may not be covered by even this language, such as home-hardening for wildfire resilience. Equally important, the updates and additional language stake a claim as to the role of RCDs and put in statute that RCDs are the on the ground leaders the state should turn to for this work.

C. Section 7 of the Bill

Aligns the purposes of what lands may be included in a district to the new language in 9151.

D. Section 8 of the Bill

Simplifies the statute to say that lands in a district do not need to be contiguous.

E. Section 9 of the Bill

See the answer to question 5.

F. Section 10 of the Bill

Clarifying language for adding lands to a district

7. Funding ask

We are submitting a \$10m ask for funding in association with this bill. The \$10m would be similar to the \$2.5 of capacity funding secured about 5 years back. Those grants were evenly distributed amongst all the RCDs that applied in roughly the amount of \$55,000 and \$10,000 for districts not in compliance with tier 1 of the vision and standards. RCDs used the grants for a multitude of purposes including developing business plans for fee for service programs, strategic plans, paying fees for consolidations, paying legal fees for acquiring a conservation easement, purchasing equipment, training and outreach plans to community members. The funding would be rolled out through DOC in a grant program open to all RCDs.

8. Was this reviewed by RCDs?

Yes, for nearly 5 years, CARCD has been working with RCDs to craft this language after hearing from multiple members that changes were needed. This started as an ongoing conversation among multiple people at board meetings, regional meetings, and in smaller conversations. Once CARCD realized that change was important, they brought together a group of people to go through Division 9 line by line and make suggestions. 15 people were asked to serve on the committee to represent a broad diversity of districts including urban and rural, member and non-member, large and small, tax base and no tax base, and regional diversity. A broad call was then made to ask anyone else interested to join the group. 2 more members came forward. The group met monthly for about a year with the participation of the CARCD board. These are the suggestions that were made and deemed politically feasible.

Once the legislation was drafted, it was again sent out to the larger listserves, discussed at regional meetings, discussed at CARCD board meetings, and individual people that had not engaged were sought out to provide feedback. Was this exhaustive? No, every single person associated with an RCD was not asked their specific opinion. In order to create a product, we needed the ability to work in a small group that was interested in reading code. However, everyone was made aware and participation was available to anyone that wanted to participate and still is. The draft was circulated in multiple venues at multiple times to provide for input and feedback. If districts or any individual wants to provide comments, suggest revisions, or engage in any topic, they are more than able too. Please engage and let us know.

Pros

- Clarifies and codifies the great work RCDs do outside soil erosion and water delivery
- Removes the 25% match required for grants to RCDs in DOC code
- Authorizes advanced payments of 10% on DOC grants to RCDs
- Clarifies that RCDs can contract with state agencies- the language is currently outdated
- Is packaged with a \$10m ask for capacity funds through Department of Conservation
- Facilitates RCDs being written into bills as service providers in funding for things like climate, forestry and restoration
- Authorizes DOC to provide technical support to RCDs
- Changes current DOC mandates of RCD oversight into a permission rather than a mandate
- Allows LAFCOs to complete their municipal service reviews of RCDs on the great work we are doing which some LAFCOs currently feel is limited by the code

Cons

- Opens Division 9 which means that people in opposition or competition to the RCD mission could try to make edits to the code
- Unintended consequences of legislation are always a possibility



Timeline for the creation of the Division 9 legislation

2015-2018: Growing awareness of the problem

- The issues were brought up by multiple RCDs at multiple times in regional meetings, other meetings, and individual conversations
- Legislators brought up the issues in multiple meetings with the lobbying team

2019: Division 9 committee(s)

- About 20 people representing geographic, size, and focus diversity as well as dues and non-paying dues members.
- Met monthly throughout the year
- Read and discussed every word of division 9
- Broke into 3 groups to discuss different aspects of the code

2019-2020: Bill moved forward for the first time

- CARCD found an author, drafted language and introduced a bill.
- Held 2 listening sessions with over 30 people at each
- Regional meeting discussions of the bill
- Individual conversations with multiple people
- Because of COVID, the legislative session was severely limited and legislators were asked to reduce their bill load including our bill
- Discussed the bill at the end of the year leg update call with 40+ people
- Late 2020 San Diego LAFCO raised concerns that they felt they couldn't complete a municipal service review because the code was outdated and said they were going to run a bill to update the code

2020-2021: Continued to work on the bill

- Discussed the progress at all regional meetings
- Tried to run the bill again in 2021 but again the bill list was incredibly limited
- Discussed the bill at the end of the year leg update call with 40+ RCDs

2022: Re-introduced the bill

- CARCD worked with Aguiar-Currey's office to re-run the bill
- The bill was re-introduced in January
- CARCD is holding listening sessions to get additional input
- If the bill makes it through both houses, RCDs have until at least the end of June to weigh in on the final bill

Timeline going forward for the legislation:

April 20, 2022: Assembly Local Government Hearing (all bills must be heard in a policy committee by April 29)

May 20, 2022: Bill must pass Assembly Appropriations.

Appropriations purview is the potential fiscal impact to the state of proposed legislation. AB 1902 should not pose much fiscal impact.

May 27, 2022: The bill must pass the Assembly. If it passes, then the bill goes to the Senate.

July 1, 2022: The bill must pass a Senate policy committee. The hearing date could be June 2, 16 or 30.

July 1 to August 1, 2022: Legislature is on Summer Recess

August 12, 2022: The bill must pass the Senate Appropriations Committee.

August 31, 2022: The bill must pass the Senate Floor. If it passes, then the bill goes to the Governor for signature or veto.

October 1, 2022: The bill must be signed by Gov. Newsom.

January 1, 2023: The bill takes effect.



April __, 2022

The Honorable Cecilia Aguiar-Curry
Chair, Assembly Local Government Committee
1021 O St., Ste. 6350
Sacramento, CA 95814

RE: AB 1902 (Aguiar-Curry) - SUPPORT

Dear Assemblymember Aguiar-Curry:

On behalf of the undersigned Resource Conservation Districts (RCDs), we write to express our strong support of your bill, AB 1902, which seeks to make needed updates to Division 9 of the Public Resources Code, the enabling statute for our districts.

RCDs are special districts created in the 1930s to serve as the local connection to state and federal conservation programs in response to the dust bowl. Over the decades since, we have evolved into a network of 95 districts across the state to meet the natural resource needs of rural, urban, and suburban communities. As California's natural resource challenges have changed, so has the role of RCDs. Today, RCDs implement programs and projects on and provide technical assistance and education to landowners of public and private natural, working, and urban lands to achieve California's climate, conservation, and environmental goals.

California's environment continues to endure detrimental impacts from natural disasters and human behavior requiring the implementation of projects and practices that promote conservation, protection, resilience, adaptation, and enhancement. Since the turn of the century, California has better understood the science of climate change and over the past decade experienced devastating wildfires, increased temperatures, whiplash from extreme drought to extreme precipitation and proliferation of invasive species. As these impacts take greater hold, RCDs are being looked to more and more as on the ground responders and project implementers. However, the last meaningful update to Division 9 occurred in the 1970s, and the statute currently does not reflect the types of projects that RCDs undertake to assist the state in meeting California's conservation needs.

AB 1902 updates Division 9 to align the RCDs' enabling statute with the activities the state is contracting with RCDs to implement. RCDs are looked to for their expertise to protect people, communities, and ecosystems from wildfire, drought and other disasters exacerbated by climate change to providing technical assistance to landowners to enhance the landowners' knowledge on topics such as drought resilience practices and habitat enhancement projects. Further, AB 1902 will enhance the relationship between RCDs and the Department of Conservation as the bill will provide the DOC with new tools to assist RCDs in meeting their missions.

RCDs are playing a critical role in helping the state and communities respond and adapt to climate change and it's time for the RCD enabling statute to reflect what RCDs are doing in practice. We are proud to support AB 1902 and thankful to you for authoring this important measure and your support of RCDs.

Sincerely,

Signatures

Signatures

Signatures

cc: The Honorable Members of the Assembly Local Government Committee