



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Supplemental  
7-16

August 17, 1993

To: Board of Directors (Executive Committee--Action)  
Board of Directors (Water Problems Committee--Action)  
From: General Manager  
Subject: Assembly Bill 1222 (Cortese-San Jose)

Report

The staff recommendation to support AB 1222, if amended per the August 3, 1993 Board letter was discussed at the meeting of the Special Committee on Legislation on August 10, 1993.

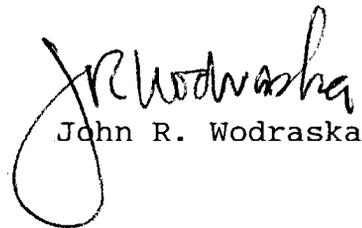
Recommendation

**EXECUTIVE AND WATER PROBLEMS COMMITTEES FOR ACTION.**

After discussing the staff recommendation to support AB 1222 if amended, the Special Committee on Legislation voted to recommend urging the bill's sponsor to change AB 1222 into a two-year bill. This would allow the necessary time to study the complicated nature of the bill, and address a number of desired amendments. I concur with the Committee's recommendation.

WWH:dlc

Attachment

  
John R. Wodraska

AMENDED IN SENATE JULY 15, 1993  
AMENDED IN SENATE JULY 1, 1993  
AMENDED IN ASSEMBLY APRIL 12, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1222**

**Introduced by Assembly Member Cortese**

March 2, 1993

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An act to amend Section 2786 of the Fish and Game Code, to amend Section 10002 of the Public Resources Code, to amend Sections 386 and 1243 of, and to add ~~Chapters~~ Chapter 10.3 (commencing with Section 1710) and ~~10.4 (commencing with Section 1720)~~ to Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1222, as amended, Cortese. Water transfers: instream flows.

(1) Under existing law, the California Wildlife Protection Act of 1990, an initiative measure, there is the Habitat Conservation Fund, which is required to be used for, among other purposes, the acquisition, restoration, or enhancement of aquatic habitat for spawning and rearing anadromous salmonids and trout resources. The act generally requires a  $\frac{2}{3}$  vote for amendment, which amendment is required to be consistent with, and further the purposes of, the act.

This bill would include the purchase of water to augment streamflows as a means of acquisition, restoration, or enhancement.

(2) Existing law requires the beneficial use of water, including, under specific circumstances, the reservation of water to instream uses to preserve and enhance fish and

wildlife resources. Existing law requires the Director of Fish and Game, in consultation with specified persons, to prepare proposed streamflow requirements for each stream or watercourse for which minimum flow levels need to be established to protect stream-related fish and wildlife resources. Existing law authorizes the State Water Resources Control Board to approve any change associated with a water transfer, as specified, only if the board finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial uses.

The bill would require the board to establish and maintain a Registry of Instream Flow Reservations and Dedications to list all instream reservations and dedications, as specified. The bill would require the board to establish a procedure, as specified, to allow any interested party to challenge the board's determination to make, or fail to make, an entry into the registry. The bill would require the director, in developing the requirements for each stream or watercourse, and the board, in making a finding whether a water transfer will unreasonably affect fish, wildlife, or other instream beneficial uses, to take into account the sufficiency of streamflow for each stream or watercourse as reflected in the registry.

~~(3) Under existing law, the board issues and enforces the terms of all water right permits and licenses under its authority.~~

~~The bill would require the board to amend all existing water right permits and licenses, and include in all new permits and licenses, a term that conditions water use on the permittee's or licensee's compliance with the reservations and dedications entered in the registry. The bill would require the board to impose flow quantification and reporting requirements on permittees and licensees, as specified.~~

~~(4) Existing law authorizes permittees and licensees to transfer water under specified circumstances.~~

The bill would require the board, in consultation with specified state and federal agencies, to develop criteria for categories of water transfer appropriate for expedited approval, and establish a fast-track approval procedure, as specified.

(5) Existing law authorizes state agencies to cooperate, in various capacities, with federal agencies.

The bill would require the Governor to request the appropriate federal agencies to form, with the appropriate state agencies, a joint environmental water management authority to develop water for the protection and restoration of aquatic habitat, environmental enhancement, and other purposes.

Vote:  $\frac{1}{5}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares that  
2 a system to account for water reserved for, and dedicated  
3 to, instream flows is necessary to ensure that water that  
4 is voluntarily transferred for restoration of aquatic  
5 resources will actually augment instream flows otherwise  
6 required by state or federal law.

7 SEC. 2. Section 2786 of the Fish and Game Code is  
8 amended to read:

9 2786. Except as otherwise expressly provided in  
10 paragraph (3) of subdivision (a) of Section 2787, the  
11 money in the Habitat Conservation Fund, which is  
12 hereby created, shall be used for the following purposes:

13 (a) The acquisition of habitat, including native oak  
14 woodlands, necessary to protect deer and mountain lions.

15 (b) The acquisition of habitat to protect rare,  
16 endangered, threatened, or fully protected species.

17 (c) The acquisition of habitat to further implement  
18 the Habitat Conservation Program pursuant to Article 2  
19 (commencing with Section 2721) excepting Section 2722  
20 and subdivision (a) of Section 2723, and Sections 2724 and  
21 2729.

22 (d) The acquisition, enhancement, or restoration of  
23 wetlands.

24 (e) The acquisition, restoration, or enhancement of  
25 aquatic habitat, including the purchase of water to  
26 augment streamflows, for the spawning and rearing of  
27 anadromous salmonids and trout resources.

1 (f) The acquisition, restoration, or enhancement of  
2 riparian habitat.

3 SEC. 3. Section 10002 of the Public Resources Code is  
4 amended to read:

5 10002. The Director of Fish and Game shall prepare  
6 proposed streamflow requirements, which shall be  
7 specified in terms of cubic feet of water per second, for  
8 each stream or watercourse identified pursuant to  
9 Section 10001. In developing the requirements for each  
10 stream or watercourse, the director shall take into  
11 account the sufficiency of streamflow for each stream or  
12 watercourse as reflected in the Registry of Instream Flow  
13 Reservations and Dedications created pursuant to Article  
14 2 (commencing with Section 1713) of Chapter 10.3 of  
15 Part 2 of Division 2 of the Water Code. In developing the  
16 requirements for each stream, the director shall consult  
17 with the Director of Water Resources, the Director of  
18 Boating and Waterways, the Director of Parks and  
19 Recreation and with all affected local governments. The  
20 Director of Fish and Game may also consult with any  
21 private individuals, groups, or organizations as the  
22 director deems advisable. Upon completion of the  
23 proposed streamflow requirements for any individual  
24 stream or watercourse, the Director of Fish and Game  
25 shall transmit these proposed requirements to the State  
26 Water Resources Control Board. The State Water  
27 Resources Control Board shall consider these  
28 requirements within a stream or watercourse as set forth  
29 in Section 1257.5 of the Water Code. The Director of Fish  
30 and Game shall complete the preparation of proposed  
31 requirements for the initial streams or watercourses not  
32 later than July 1, 1989.

33 The Department of Fish and Game may contract for  
34 temporary services for purposes of preparing the  
35 proposed streamflow requirements.

36 SEC. 4. Section 386 of the Water Code is amended to  
37 read:

38 386. (a) The board may approve any change  
39 associated with a transfer pursuant to this chapter only if  
40 it finds that the change may be made without injuring

1 any legal user of the water and without unreasonably  
2 affecting fish, wildlife, or other instream beneficial uses  
3 and does not unreasonably affect the overall economy of  
4 the area from which the water is being transferred.

5 (b) A petitioner requesting a change that is subject to  
6 this section shall pay to the board a fee that shall be in an  
7 amount determined by the board to cover the reasonable  
8 costs of the board in evaluating and processing the  
9 petition.

10 (c) In considering whether a change may  
11 unreasonably affect fish, wildlife, or other instream  
12 beneficial uses, the board shall take into account the  
13 instream flow reservations and dedications in the  
14 Registry of Instream Flow Reservation and Dedications  
15 created pursuant to Article 2 (commencing with Section  
16 1713) of Chapter 10.3 of Part 2 of Division 2.

17 SEC. 5. Section 1243 of the Water Code is amended to  
18 read:

19 1243. The use of water for recreation and  
20 preservation and enhancement of fish and wildlife  
21 resources is a beneficial use of water. In determining the  
22 amount of water available for appropriation for other  
23 beneficial uses, the board shall take into account,  
24 whenever it is in the public interest, the amounts of water  
25 required for recreation and the preservation and  
26 enhancement of fish and wildlife resources, including the  
27 instream flow reservations and dedications in the  
28 Registry of Instream Flow Reservations and Dedications  
29 created pursuant to Article 2 (commencing with Section  
30 1713) of Chapter 10.3.

31 The board shall notify the Department of Fish and  
32 Game of any application for a permit to appropriate  
33 water. The Department of Fish and Game shall  
34 recommend the amounts of water, if any, required for the  
35 preservation and enhancement of fish and wildlife  
36 resources and shall report its findings to the board.

37 This section shall not be construed to affect riparian  
38 rights.

39 SEC. 6. Chapter 10.3 is added to Part 2 of Division 2  
40 of the Water Code, to read:

1  
2 CHAPTER 10.3. REGISTRY OF INSTREAM FLOW  
3 RESERVATIONS AND DEDICATIONS  
4

5 Article 1. Definitions  
6

7 1710. "Instream flow dedication" means water stored  
8 or released for fish and wildlife resources or aquatic biota  
9 by any legal water user pursuant to transfers approved by  
10 the board pursuant to Section 1707, permitted  
11 appropriations, or other means.

12 1711. (a) "Instream flow reservation" means any  
13 final state or federal administrative or judicial action that  
14 requires a legal user of water to allow, maintain, or  
15 release a specified volume of water flow for a specified  
16 period from a particular diversion point, gauging station,  
17 or impoundment, or that requires a user to store water or  
18 maintain a specified storage level in a reservoir, for the  
19 benefit of fish, wildlife, or aquatic biota. Actions include,  
20 but are not limited to, all of the following:

21 (1) The reservation of water for instream purposes  
22 under Section 1243 or 1243.5, in connection with the  
23 issuance of permits and licenses to use water by the  
24 board.

25 (2) Determinations made by the board or a state court  
26 pursuant to Sections 100, 275, or 1242.5, the public trust  
27 doctrine, or Section 2 of Article X of the State  
28 Constitution.

29 (3) Terms and conditions imposed by the board on a  
30 water transfer during the term of the transfer.

31 (4) Determinations made pursuant to Section 1601,  
32 1603, 5937, 5946, or 5947 of the Fish and Game Code.

33 (5) Terms and conditions respecting streamflow  
34 requirements contained in permits and licenses issued by  
35 the Federal Energy Regulatory Commission under the  
36 Federal Power Act (16 U.S.C. Section 791a, et seq.).

37 (6) Terms and conditions respecting streamflow  
38 requirements contained in special use permits issued by  
39 the United States Forest Service or the United States  
40 Bureau of Land Management.

1 (7) Rights exercised by federal agencies or federally  
2 recognized tribal governments to reserve water for  
3 maintenance of fish and wildlife.

4 (8) Terms and conditions respecting streamflow  
5 requirements contained in permits issued by the United  
6 States Army Corps of Engineers under the Clean Water  
7 Act (33 U.S.C. Section 1251, et seq.) or the Rivers and  
8 Harbors Appropriation Act of 1899 (33 U.S.C. Section 403,  
9 et seq.).

10 (9) Streamflows dedicated to fish and wildlife  
11 restoration pursuant to Title 34 of the Central Valley  
12 Project Improvement Act (P.L. 102-575).

13 (10) Streamflows dedicated to instream purposes  
14 pursuant to interstate compacts.

15 (11) Instream flows established by a court of  
16 competent jurisdiction.

17 (12) Instream flows established by contract or  
18 stipulation.

19 (b) The term includes water quality standards  
20 promulgated under the Porter-Cologne Water Quality  
21 Control Act (Division 7 (commencing with Section  
22 13000)) or the federal Clean Water Act, and  
23 requirements imposed under the federal Endangered  
24 Species Act (16 U.S.C. Sec. 1531 et seq.) or the California  
25 Endangered Species Act (Chapter 1.5 (commencing  
26 with Section 2050) of Division 3 of the Fish and Game  
27 Code) to the extent that the board determines that the  
28 streamflow requirements associated with meeting the  
29 standards or requirements can be quantified sufficiently  
30 to constitute an instream flow reservation, as defined.

31 1712. "Registry" means the Registry of Instream Flow  
32 Reservations and Dedications.

33

34 Article 2. Registry of Instream Flow Requirements

35

36 1713. (a) The board shall, within one year of the  
37 enactment of this section, establish and thereafter  
38 maintain a Registry of Instream Flow Reservations and  
39 Dedications. The registry shall list all instream  
40 reservations made by authorized administrative bodies or

1 courts and instream dedications approved pursuant to  
2 Section 1707, regarding waters of the state.

3 (b) The board shall, when it lists an instream  
4 reservation in the registry, reflect accurately the  
5 regulatory judgment of the administrative or judicial  
6 authority from which the reservation derives. Compiling  
7 and updating the registry are ministerial, not  
8 discretionary, actions within the meaning of the  
9 California Environmental Quality Act (Division 13  
10 (commencing with Section 21000) of the Public  
11 Resources Code).

12 (c) To the extent that a cumulative accounting is  
13 consistent with federal determinations under the Federal  
14 Power Act, or the intent of any contracts on which the  
15 dedication or reservation may be based, the registry shall  
16 account for dedications and reservations of instream  
17 flows that affect the same reach of a stream or  
18 watercourse as cumulative.

19 (d) To the extent consistent with this section, the  
20 registry shall incorporate DWR Bulletin 216 (December  
21 1982) and shall be integrated into any information system  
22 or database regarding water rights that the board may  
23 subsequently establish and maintain.

24 (e) The registry shall specify the following  
25 requirements for each affected reach of a stream or  
26 watercourse:

27 (1) The volume and timing of flow required to be  
28 allowed or maintained past, or through, specified  
29 diversion points, gauging stations, or dams.

30 (2) The manner and extent to which each instream  
31 flow requirement affects existing water rights.

32 (f) The board and any other state agency that  
33 requires, or enters into, a contract for an instream flow  
34 reservation shall, within 30 days after it becomes final,  
35 report the action to the board for inclusion in the registry.

36 (g) The board shall monitor all actions by appropriate  
37 federal and state regulatory and water management  
38 agencies and courts and incorporate into the registry,  
39 within 30 days after final adoption, unless stayed by a  
40 court of competent jurisdiction, all actions directly or

1 indirectly affecting instream flows.

2 (h) Any interested party may petition the board to  
3 include information regarding an instream reservation or  
4 dedication in the registry. The board shall incorporate  
5 the information if it determines that the information in  
6 the petition accurately reflects an underlying action by  
7 an authorized state or federal agency or a court of  
8 competent jurisdiction, or a contract.

9

10 Article 3. Challenge of Registry Entries

11

12 1714. (a) The board shall establish a challenge  
13 procedure to allow any interested party to challenge the  
14 board's determination to make an entry, or fail to make  
15 an entry, into the registry. A challenge shall be limited to  
16 the question whether the board, in making, or failing to  
17 make, an entry in the registry, accurately and correctly  
18 interpreted the underlying administrative or judicial  
19 action that created the reservation of instream flows, and  
20 shall not extend to the merits of that regulatory or judicial  
21 decision. The issues the challenge procedure may resolve  
22 include, but are not limited to, all of the following:

23 (1) The appropriate measuring point for bypass flow.

24 (2) The reach of the stream or watercourse that is  
25 subject to the reservation or dedication of flows.

26 (3) The water rights affected by the reservation or  
27 dedication, and the manner and extent to which those  
28 rights are affected.

29 1715. As the board deems necessary or desirable to  
30 resolve issues raised by a challenge pursuant to Section  
31 1714, the board may conduct evidentiary proceedings  
32 pursuant to Title 23 of the California Code of Regulations  
33 or may refer issues to the appropriate state or federal  
34 agency with a request for clarification. State agencies  
35 receiving such a request from the board shall respond to  
36 the request within sixty days of its receipt.

1 Article 4. Amendment of Water Right Permits and  
2 Licenses  
3

4 1716. (a) The board shall, by July 1, 1994, adopt  
5 regulations that do all of the following:

6 (1) Amend all existing water right permits and  
7 licenses under the authority of the board to include, and  
8 include in all new permits and licenses, a term that  
9 conditions water use on the permittee's or licensee's  
10 compliance with the reservations and dedications listed  
11 in the registry.

12 (2) Prescribe bypass flow measuring, monitoring, and  
13 reporting requirements, including frequency and format,  
14 to be implemented by water rights permittees and  
15 licensees, as the board deems necessary or useful to fulfill  
16 the purposes of the registry.

17 (b) Regulations adopted pursuant to this section shall  
18 not be subject to Article 6 (commencing with Section  
19 11349) of Chapter 3.5 of the Government Code.  
20

21 Article 6. Fast/Track Approval Process for Water  
22 Transfers for the Environment and Other Purposes  
23

24 1717. (a) By July 1, 1994, the board, in consultation  
25 with the Department of Fish and Game, the department,  
26 and the United States Department of the Interior, shall  
27 commence a rulemaking proceeding to develop criteria  
28 for categories of water transfer appropriate for expedited  
29 approval, including transfers of water to environmental  
30 purposes pursuant to Section 1707, and establish a  
31 fast/track approval procedure. Under the fast/track  
32 approval process, the board may approve a petition  
33 expeditiously if it satisfies all applicable requirements of  
34 law without the preparation of an environmental impact  
35 report pursuant to the California Environmental Quality  
36 Act (Division 13 (commencing with Section 21000) of the  
37 Public Resources Code), other than the programmatic  
38 environmental impact report required in paragraph (c).

39 (b) The rules shall do all of the following:

40 (1) Prescribe the information that must be included in

1 a petition for fast/track approval.

2 ~~(2)~~ Require simultaneous submission of a petition for  
3 fast/track approval to both the Department of Fish and  
4 Game and the board.

5 ~~(3)~~ Provide that the board shall, within 30 days after it  
6 determines that a petition is complete, do all of the  
7 following:

8 ~~(A)~~ Publish public notice of the completed petition.

9 ~~(B)~~ Evaluate the petition to determine whether it  
10 contains the information required pursuant to paragraph  
11 ~~(1)~~.

12 ~~(c)~~ Regulations adopted pursuant to this section shall  
13 not be subject to Article 6 (commencing with Section  
14 11349) of Chapter 3.5 of the Government Code.

15 ~~(d)~~ The board, upon determining that a petition for  
16 fast/track approval satisfies the rules promulgated  
17 pursuant to subdivision ~~(a)~~, shall approve the petition  
18 without hearing or other proceeding, unless a protest is  
19 filed by any interested party or by the board staff within  
20 30 days of the publication of notice by the board. In the  
21 event of a protest, the protesting party shall have the  
22 burden of demonstrating that the transfer as proposed is  
23 not consistent with legal requirements.

24 ~~(e)~~ The board shall issue a programmatic  
25 environmental impact report in connection with the  
26 rulemaking procedure and the development of the  
27 criteria for the categories of petition appropriate for  
28 fast/track approval. The board may develop the fast/track  
29 approval criteria and procedures and conduct the  
30 environmental review jointly with the federal  
31 Department of the Interior and the department.

32

33 **CHAPTER 10.4. CREATION OF A JOINT**  
34 **STATE/FEDERAL ENTITY TO MANAGE AND DEVELOP**  
35 **WATER FOR ENVIRONMENTAL PURPOSES**

36

37 1720. ~~(a)~~ The Legislature finds and declares that, in  
38 the interests of coordination, efficiency, and consistency,  
39 state and federal programs to protect and restore aquatic  
40 habitat through the purchase and voluntary transfer of

1 water need to be managed by a joint state and federal  
2 entity. The Legislature further finds and declares that the  
3 joint management agency should be empowered to enter  
4 into arrangements with other water users for the joint  
5 development of, and the sharing of the yield from, water  
6 development projects that augment available water  
7 supplies.

8 (b) The Governor shall request the United States  
9 Department of the Interior and other appropriate federal  
10 agencies to participate with the appropriate state  
11 agencies to create and administer a joint federal and state  
12 environmental water management authority.

13 (c) The joint authority may perform any or all of the  
14 following functions:

15 (1) Take custody of the funds authorized by Title 34 of  
16 the Central Valley Project Improvement Act (Public  
17 Law 102/575).

18 (2) Use the funds specified in paragraph (1) to acquire  
19 and hold interests in water for the protection and  
20 restoration of aquatic habitat consistent with the  
21 determinations made by the Director of Fish and Game  
22 pursuant to Division 10 (commencing with Section  
23 10000) of the Public Resources Code.

24 (3) Enter into agreements, including funding  
25 agreements, with governmental and nongovernmental  
26 agencies for the joint development of water development  
27 projects. A percentage of the water yield from the joint  
28 water development projects shall be dedicated to  
29 environmental enhancement. Joint water development  
30 projects may include, but are not limited to, all of the  
31 following:

32 (A) Water conservation.

33 (B) Water transfers.

34 (C) Conjunctive use projects.

35 (D) Water banking.

36 (E) Purchase of water.

37 (F) Purchase and fallowing of agricultural land.

38 (G) Purchase of water rights.