

(Letter replaced by a revised one dated
April 8, 1994)

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**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 4, 1994

To: Board of Directors (Legislative Committee--Information)
From: General Manager
Subject: Assembly Bill 2673 (Cortese-San Jose) Status Report

Background

Current law requires that a public water system, upon receiving notification of a city or county's proposed action to adopt or substantially amend its general plan, submit information regarding its current and future water supplies. That law, however, does not appear to apply to a wholesaler-like water system but applies to public water systems with 3,000 or more service connections. While AB 2673 has not applied to Metropolitan, it does apply to many of Metropolitan's member agencies and virtually all subagencies.

AB 2673 is sponsored by the East Bay Municipal Utility District (EBMUD). At the March Board meeting, East Bay MUD's legislative representative presented some proposed amendments that would clarify the interpretation of the consistency provisions. The Board decided to remain neutral on AB 2673 and instructed staff to forward information on the legislation to member agencies for their consideration and to continue to monitor the bill.

Subsequent to the March Board meeting, EBMUD staff has met with the ACWA's Local Government Committee, CSAC, and the League of California Cities to discuss their concerns. The ACWA Local Government Committee adopted a set of policy principles regarding the issue of land use and water supply service. These principles have been incorporated into declaratory findings in the March 17 amendment to AB 2673. These findings are in conflict with Metropolitan's adopted legislative growth management policy principles.

Proposed Process Change by AB 2673 as amended 3/17/94

AB 2673 would add to a public water system's duties by requiring the public water system to make specified findings of fact concerning its ability to provide water service to meet the

reasonable needs, consistent with the provisions of the Urban Water Management Plan adopted by the public water system through periods of forecasted drought to certain customers within and outside the public water system's existing service area. The bill would provide procedures to be followed by the public water system if it finds that it cannot provide water service sufficient to meet these reasonable needs. The bill would also prescribe the duties of the affected city or county with respect to the public water systems' findings.

One Possible Alternative Proposal to AB 2673

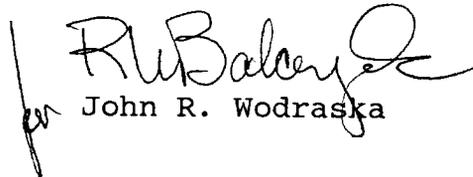
AB 2673 proposes a statewide legal change and new planning/decision making process to address a local EBMUD situation. Another alternative would be to propose an amendment to the Water Code providing that a water district may not be required to provide service outside of its boundaries without the consent of its own Board of Directors. This would correspond to the present law on LAFCO annexations to a district, where the district may disapprove the proposed annexation of new territory. Government Code Section 57079.5(b)(1).

Board Committee Assignment

The letter is referred for information to the Committee on Legislation because it involves legislation which may affect the District, pursuant to Administrative Code Section 2491, subdivision (a).

Recommendation

For information only.


for John R. Wodraska

AEB/rlh

Att.: ACWA Principles
AB 2673 as amended March 17, 1994
Growth Management Policy Principles

ATTACHMENT A

AB 2673 as amended March 17, 1994

SECTION 1: Declarations:

a) California's overall water delivery system has become less reliable over the last 20 years because demand for water has continued to grow while supplies available for consumptive uses have diminished.

b) More and more often, California's water agencies are required to impose water rationing on their residential and business customers during this state's frequent and severe periods of drought.

c) Water supply planning to meet future growth needs has become more critical than ever, and will become an increasingly important water utility activity as we approach the 21st century.

d) Because of the diminishing water supplies available to most water agencies today, and a need to meet an ever increasingly water demand, all water agencies must plan carefully to ensure that they can meet the needs of their customers through periods of drought with minimal disruption to residential, commercial, and industrial activities within their service area.

e) Approval and construction of major new water supply facilities to maintain a reliable water delivery system has become increasingly costly, complex, and requires longer lead time in today's climate.

f) The basic and fundamental decisions concerning growth within a community should be made by cities and counties, the general land use authority at a local level.

g) In order for retail water agencies to do the best possible job in planning for meeting the future water needs associated with the growth plans of their cities and counties, they must closely link their water supply planning process to the city and county's general planning process to clearly understand the projections for growth within and adjacent to the water agencies' existing service area and sphere of influence.

h) In order for cities and counties to properly plan the timing, location, and density of new development within their jurisdiction, they must fully understand the proximate water agency's current ability to meet the water needs of its existing and potential future customers, through periods of drought.

i) In assessing the ability of water agencies to serve customers through periods of drought, cities and counties must recognize the hierarchy of categories of customers or potential customer along a continuum, with differing degrees of legitimacy to their claim to water service. These categories, ranked from highest degree of legitimacy to lowest degree of legitimacy in their expectation that water service must be provided to them upon demand, are as follows:

- 1) Existing customers within the existing service area of retail water agency.
- 2) Future expected customers associated with new development within an existing service area of a retail water agency.
- 3) Future expected customers associated with new development outside of the existing service area, but within the sphere of influence, of a retail water agency.
- 4) Future expected customers associated with new development outside of the sphere of influence of a retail agency.

j) Absent a hierarchy of the degree of legitimacy of claims upon water service, the basic concept of a water agency's service area would be rendered meaningless. In California's current era of water scarcity, if this hierarchy of water claims were not in effect, water agencies would be compelled to serve the "first development in time" rather than first serving those within their service area. Planned business and prospective home buyers within urbanized areas would have absolutely no assurance that they would receive a water hookup when their plant or home is built and ready for occupancy. This kind of uncertainty would devastate the current local planning process upon which proper growth is based.

k) Given each of the above principles, any general planning by cities and counties for growth outside of existing water agency service areas must be conditioned upon findings by the water agency of either adequate existing water supplies or firm future water supplies to meet the water needs through

periods of drought of customers in categories (1), (2), and (3) before a growth plan outside of the existing service area, but within the water agency's sphere of influence is approved. Furthermore, before a growth plan outside of both the existing service area and the water agency's sphere of influence is approved, the water agency must find that either adequate existing water supplies or firm future water supplies exist to meet the water needs of customers in the categories specified in paragraphs (1), (2), (3) and (4) of subdivision (i).

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To	Co.	
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**AB 2673 PRINCIPLES
AS MODIFIED BY ACWA LOCAL GOVERNMENT COMMITTEE
MARCH 10, 1994**

Situational Background

1. Some of California's water delivery system has become less reliable over the last 20 years because demand has continued to grow while supplies available for consumptive uses have diminished.
2. More and more often, California's water agencies are required to impose rationing on their residential and business customers during our frequent and severe periods of drought.
3. Water supply planning to meet future needs has become more critical than ever and will become an increasingly important water utility activity as we approach the 21st Century.

Principles

1. Because of the diminishing water supplies available to most water agencies today and a need to meet an ever-increasing water demand, all water agencies must plan carefully to ensure they can meet the needs of their customers through periods of drought, with minimal disruption to residential, commercial, and industrial activities within their service areas. This is being done, or should be done, through the urban water management plan process. ACWA should make sure that AB 2673 appropriately cross-references the urban water management plan, as the current bill does, and integrate AB 2673 with those plans.
2. AB 2673 should apply only to urban water suppliers as defined in Section 10617 of the Water Code, and only to extension of service outside their existing service territories.
3. The process created by AB 2673 should be limited, as the bill now generally is, to the general plan adoption or amendment process, and should only apply to developments if they are part of one of those two proceedings.
4. Approval and construction of major, new water supply facilities to maintain a reliable water delivery system has become increasingly costly, complex, and requires longer lead times in today's climate.
5. The basic and fundamental decisions concerning growth within a community should be made by cities and counties, the general land use authority at a local level.
6. In order for retail water agencies to do the best possible job in planning for meeting the future water needs associated with the growth plans of their cities and counties, they must

closely link their water supply planning process to the city's or county's general planning process to clearly understand the projections for growth within and adjacent to the water agencies' existing service areas and spheres of influence.

7. In order for cities and counties to properly plan the timing, locations, and density of new development within their jurisdictions, they must have a comprehensive understanding of the proximate water agency's current ability to serve its existing customers as well as potential future customers, through periods of drought.

8. In assessing the ability of water agencies to serve customers through periods of drought, cities and counties must recognize that there exists a hierarchy of categories of customers or potential customers along a continuum, with differing degrees of legitimacy to their claim to water service. These categories are ranked from highest degree of legitimacy to lowest degree of legitimacy in their expectation that water service must be provided to them, upon demand:

(a) existing customers within the existing service area of a retail water agency;

(b) future, expected customers associated with new development within an existing service area of a retail water agency;

(c) future, expected customers associated with new development outside of the existing service area, but within the sphere of influence of a retail water agency;

(d) future, expected customers associated with new development outside of the sphere of influence of a retail agency.

9. If there did not exist a hierarchy of the degree of legitimacy of claims upon water service, the basic concept of a water agency's service area would be rendered without meaning. In California's current era of water scarcity, if the hierarchy of water claims were not in effect, water agencies would be compelled to serve the "first development in time", rather than first serving those within their service area. Planned businesses and prospective home buyers within urbanized areas would have absolutely no assurance that they would receive a water hook-up when their plant or home is built and ready for occupancy. This kind of uncertainty would devastate the current local planning process upon which proper growth is based.

Therefore, given each of the above principles, any general planning by cities or counties for growth outside of existing water agency service areas must be consistent with findings by the water agency that it has (i) adequate existing water supplies; or (ii) firm future water supplies to meet the water

needs through periods of drought of categories (8) (a) and (b) before a growth plan outside of the existing service area, but within the agency's sphere of influence (category 8 (c)) is approved, and that before a growth plan is approved that is outside of categories 8 (a), (b) and (c), that the water agency has (i) adequate existing water supplies or (ii) firm future water supplies to meet the water needs through drought of all 4 categories.

10. The city or county should be given the right to override the water agency's findings, based upon substantial evidence in the record, but if the city or county does so, the water agency is not to be obligated to extend service into the area outside the service area of the water agency in a manner inconsistent with the water agency's own findings.

Drafting Issues Which Need to Be Addressed:

1. The retailer-wholesaler interface
2. Definition of service area (refer first to definition of "urban water supplier", and determine whether this covers the question, or we need to expand from there)

AMENDED IN ASSEMBLY MARCH 17, 1994

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 2673

Introduced by Assembly Member Cortese
 (Principal coauthor: Assembly Member Campbell)
 (Principal coauthor: Senator McCorquodale)
 (Coauthors: Assembly Members Bronshvag, Gotch,
 Hauser, and Isenberg)
 (Coauthors: Senators Kelley and Petris), Petris, and
 Presley)

February 3, 1994

An act to amend Section 65352 of, and to add Section 65352.6 to, the Government Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2673, as amended, Cortese. Local public water systems: service needs: findings of fact.

Under existing law, when a city or county proposes to adopt or substantially amend a general plan, a public water system, as defined, must provide the city's or county's planning agency with specified information relating to the availability and use of existing and planned future water supplies. Existing law requires a planning agency to refer the proposed action to several entities, including and affected public water system, as specified.

This bill would make legislative findings and declarations with respect to the relationship between future growth and water provision. The bill would require a city or county to refer a proposed general plan adoption or amendment to the appropriate public water system, when the area covered by the proposed action is outside the area in which water service is currently being provided, as specified.

This bill would add to ~~those duties~~ a public water system's duties by requiring the public water system to make specified findings of fact concerning its ability to provide water service to meet the reasonable needs, consistent with the provisions of the urban water management plan adopted by the public water system, through periods of forecasted drought, of certain customers within and outside the public water system's existing service area. The bill would provide procedures to be followed by the public water system if it finds that it cannot provide water service sufficient to meet these reasonable needs. The bill would also prescribe the duties of the affected city or county with respect to the public water system's findings. Because it would require cities and counties to perform new local planning duties under certain circumstances, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

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

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

1 SECTION 1. *The Legislature finds and declares the*
2 *following:*

3 (a) *California's overall water delivery system has*
4 *become less reliable over the last 20 years because*
5 *demand for water has continued to grow while supplies*
6 *available for consumptive uses have diminished.*

1 (b) *More and more often, California's water agencies*
2 *are required to impose water rationing on their*
3 *residential and business customers during this state's*
4 *frequent and severe periods of drought.*

5 (c) *Water supply planning to meet future growth*
6 *needs has become more critical than ever, and will*
7 *become an increasingly important water utility activity*
8 *as we approach the 21st century.*

9 (d) *Because of the diminishing water supplies*
10 *available to most water agencies today, and a need to*
11 *meet an ever increasing water demand, all water*
12 *agencies must plan carefully to ensure that they can meet*
13 *the needs of their customers through periods of drought*
14 *with minimal disruption to residential, commercial, and*
15 *industrial activities within their service areas.*

16 (e) *Approval and construction of major new water*
17 *supply facilities to maintain a reliable water delivery*
18 *system has become increasingly costly, complex, and*
19 *requires longer lead times in today's climate.*

20 (f) *The basic and fundamental decisions concerning*
21 *growth within a community should be made by cities and*
22 *counties, the general land use authority at a local level.*

23 (g) *In order for retail water agencies to do the best*
24 *possible job in planning for meeting the future water*
25 *needs associated with the growth plans of their cities and*
26 *counties, they must closely link their water supply*
27 *planning process to the city and county's general*
28 *planning process to clearly understand the projections for*
29 *growth within and adjacent to the water agencies'*
30 *existing service area and sphere of influence.*

31 (h) *In order for cities and counties to properly plan*
32 *the timing, location, and density of new development*
33 *within their jurisdiction, they must fully understand the*
34 *proximate water agency's current ability to meet the*
35 *water needs of its existing and potential future customers,*
36 *through periods of drought.*

37 (i) *In assessing the ability of water agencies to serve*
38 *customers through periods of drought, cities and counties*
39 *must recognize the hierarchy of categories of customers*
40 *or potential customers along a continuum, with differing*

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1 degrees of legitimacy to their claim to water service.
 2 These categories, ranked from highest degree of
 3 legitimacy to lowest degree of legitimacy in their
 4 expectation that water service must be provided to them
 5 upon demand, are as follows:
 6 (1) Existing customers within the existing service area
 7 of retail water agency.
 8 (2) Future expected customers associated with new
 9 development within an existing service area of a retail
 10 water agency.
 11 (3) Future expected customers associated with new
 12 development outside of the existing service area, but
 13 within the sphere of influence, of a retail water agency.
 14 (4) Future expected customers associated with new
 15 development outside of the sphere of influence of a retail
 16 agency.
 17 (j) Absent a hierarchy of the degree of legitimacy of
 18 claims upon water service, the basic concept of a water
 19 agency's service area would be rendered meaningless. In
 20 California's current era of water scarcity, if this hierarchy
 21 of water claims were not in effect, water agencies would
 22 be compelled to serve the "first development in time"
 23 rather than first serving those within their service area.
 24 Planned businesses and prospective home buyers within
 25 urbanized areas would have absolutely no assurance that
 26 they would receive a water hookup when their plant or
 27 home is built and ready for occupancy. This kind of
 28 uncertainty would devastate the current local planning
 29 process upon which proper growth is based.
 30 (k) Given each of the above principles, any general
 31 planning by cities or counties for growth outside of
 32 existing water agency service areas must be conditioned
 33 upon findings by the water agency of either adequate
 34 existing water supplies or firm future water supplies to
 35 meet the water needs through periods of drought of
 36 customers in categories (1), (2), and (3) before a growth
 37 plan outside of the existing service area, but within the
 38 water agency's sphere of influence, is approved.
 39 Furthermore, before a growth plan outside of both the
 40 existing service area and the water agency's sphere of

1 influence is approved, the water agency must find that
 2 either adequate existing water supplies or firm future
 3 water supplies exist to meet the water needs of customers
 4 in the categories specified in paragraphs (1), (2), (3), and
 5 (4) of subdivision (i).
 6 SEC. 2. Section 65352 of the Government Code is
 7 amended to read:
 8 65352. (a) Prior to action by a legislative body to
 9 adopt or substantially amend a general plan, the planning
 10 agency shall refer the proposed action to all of the
 11 following entities:
 12 (1) Any city or county, within or abutting the area
 13 covered by the proposal, and any special district which
 14 may be significantly affected by the proposed action, as
 15 determined by the planning agency.
 16 (2) Any elementary, high school, or unified school
 17 district within the area covered by the proposed action.
 18 (3) The local agency formation commission.
 19 (4) Any areawide planning agency whose operations
 20 may be significantly affected by the proposed action, as
 21 determined by the planning agency.
 22 (5) Any federal agency if its operations or lands within
 23 its jurisdiction may be significantly affected by the
 24 proposed action, as determined by the planning agency.
 25 (6) Any public water system, as defined in Section
 26 4010.1 of the Health and Safety Code, with 3,000 or more
 27 service connections, that serves water to customers
 28 within the area covered by the proposal. The public
 29 water system shall have at least 45 days to comment on
 30 the proposed plan, in accordance with subdivision (b),
 31 and to provide the planning agency with the information
 32 set forth in Section 65958.1. *If the area covered by the*
 33 *proposed general plan adoption or amendment is outside*
 34 *the area in which water service is currently being*
 35 *provided by any public water system, the city or county*
 36 *shall identify the likely public water system to provide*
 37 *water to this area, and refer the proposed action to that*
 38 *entity for its review, pursuant to Sections 65352.5 and*
 39 *65352.6.*
 40 (7) The Bay Area Air Quality Management District for

1 a proposed action within the boundaries of the district.

2 (b) Each entity receiving a proposed general plan or
3 amendment of a general plan pursuant to this section
4 shall have 45 days from the date the referring agency
5 mails it or delivers it in which to comment unless a longer
6 period is specified by the planning agency.

7 (c) (1) This section is directory, not mandatory, and
8 the failure to refer a proposed action to the other entities
9 specified in this section does not affect the validity of the
10 action, if adopted.

11 (2) To the extent that the requirements of this section
12 conflict with the requirements of Chapter 4.4
13 (commencing with Section 65919), the requirements of
14 Chapter 4.4 shall prevail.

15 SEC. 3. Section 65352.6 is added to the Government
16 Code, to read:

17 65352.6. (a) Pursuant to the provisions of Section
18 ~~65352.5~~, the public water system shall make findings of
19 fact *If the proposed general plan adoption or amendment*
20 *proposes new development in areas outside the area in*
21 *which water service is being provided by any public*
22 *water system, the public water system shall make*
23 *findings of fact pursuant to the provisions of Section*
24 *65352.5 concerning its ability to provide water service to*
25 *meet the reasonable needs, consistent with the provisions*
26 *of the urban water management plan adopted by the*
27 *public water system, through periods of forecasted*
28 *drought, of the following types of customers:*

29 (1) Existing customers within the existing service area
30 of the public water system.

31 (2) Forecasted new customers within the existing
32 service area of the public water system.

33 (3) Forecasted new customers outside the existing
34 service area of the public water system, *but within that*
35 *agency's sphere of influence*, including those associated
36 with new development according to the proposed
37 general plan amendments.

38 (4) Forecasted new customers outside the existing
39 service area of the public water system and outside of its
40 sphere of influence, including those associated with the

1 *new development, according to the proposed general*
2 *plan amendment.*

3 (b) If the public water system finds that it cannot
4 provide water service sufficient to meet the reasonable
5 needs of all ~~three~~ *four* categories of customers identified
6 in subdivision (a) through periods of forecasted droughts,
7 the public water system shall identify the improvements
8 that would be required to its water system, and the
9 projected timeframe for implementing these
10 improvements, as set forth in Section 65352.5, necessary
11 to meet the water needs of the three categories of
12 customers identified in subdivision (a).

13 (c) ~~The~~ *If the general plan adoption or amendment*
14 *proposes new development outside areas in which water*
15 *service is currently being provided by any public water*
16 *system, the city or county shall not adopt or amend its*
17 *general plan until the findings of fact of the public water*
18 *system pursuant to subdivision (a) have been transmitted*
19 *to the city or county and have been made part of the*
20 *record. If the public water system made findings of fact*
21 *that it cannot provide water service sufficient to meet the*
22 *reasonable needs of all three four categories of customers*
23 *identified in subdivision (a) through periods of*
24 *forecasted drought, the city or county shall not adopt the*
25 *general plan or its amendments, unless the general plan*
26 *or amendments, including those provisions identifying*
27 *the location, intensity, and timing of any new*
28 *development, are consistent with the findings of the*
29 *public water system.*

30 SEC. 2. Notwithstanding Section 17610 of the
31 Government Code, if the Commission on State Mandates
32 determines that this act contains costs mandated by the
33 state, reimbursement to local agencies and school
34 districts for those costs shall be made pursuant to Part 7
35 (commencing with Section 17500) of Division 4 of Title
36 2 of the Government Code. If the statewide cost of the
37 claim for reimbursement does not exceed one million
38 dollars (\$1,000,000), reimbursement shall be made from
39 the State Mandates Claims Fund. Notwithstanding
40 Section 17580 of the Government Code, unless otherwise

AB 2673

— 8 —

- 1 specified in this act, the provisions of this act shall become
- 2 operative on the same date that the act takes effect
- 3 pursuant to the California Constitution.

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Approved By
N.G. - Jaylan
2/20/94

Policy Principles for Growth Management

Adopted by Metropolitan Water District
of Southern California on April 13, 1993

Infrastructure Planning Coordination

* Water supply is not a reason in and of itself to limit or control growth in California. There are sufficient water resources to accommodate continued population and economic growth through better management, including conservation, voluntary transfers and additional storage and conveyance facilities. Water supply for urban, agricultural and environmental uses will be adequate and reliable.

} delete!

* Growth management and the allocation and direction of development should be the responsibility of general purpose government. Utilities, including water purveyors, should provide adequate facilities to serve the projected growth at the state, regional and local level.

* For planning and infrastructure purposes water supply should be treated as a utility not required to be a general purpose government plan element. However, water purveyors at the state, regional and local level should be a member of any proposed infrastructure planning structure to ensure optimum coordination and infrastructure resource investment.

Infrastructure Financing

* Financing mechanisms should be developed for general purpose and special district governments to develop adequate facilities to serve the projected growth.

* Infrastructure financing programs should provide for new growth to pay "fair-share" relative to total infrastructure program.

* Market mechanisms to improve the efficiency in use of natural resources and public facilities such as water transfers should be encouraged.

Any legislation to integrate infrastructure planning and to address the financing of facilities to fund growth and new development will be brought to the Board.