

APR 12 1994



MWD

Karen E. Dorf
EXECUTIVE SECRETARY
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 8, 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 does not apply directly 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. **The bill was further amended on April 5.**

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

*Recommendation changed to oppose AB 2673 unless amended.

(March 17th version, p. 6, lines 19-23 & p.7, lines 13-16) when a city or county general plan proposed new development outside of the area in which water service is currently being provided. Such findings indicate the 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's 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). EBMUD believes this decision would come too late in the process as it would involve the LAFCO annexation process and that it would allow the county Board of Supervisors to take over the water districts role if the water district asserts it cannot provide water.

Changes to AB 2673 as amended April 5, 1994

AB 2673 was amended again on April 5, 1994. The new amendments would: 1) Make mandatory the water supply information compiled pursuant to AB 455 (heightened will-serve) be incorporated as an element in a city or county's general plan, 2) Allow a city or county to override the findings of the water agency by identifying a source of water exists that is not part of the water agency's water supply, 3) Allow a city or county to approve a general plan amendment proposing new development if it identifies water system improvements or other measures which will result in adequate water supplies to meet the development requirements.

The amendments EBMUD presented in March limited the bill to areas, outside of the Water District's service area. The April amendments expand the bill to cover all activities to plan to provide water to a existing or new service area. EBMUD believes the closer involvement of local land use and water districts in understanding the constraints on obtaining reliable water supply development is essential. Metropolitan's current growth management legislative policy principles advocate better coordination so that the water district is able to plan to provide a reliable water supply, but does not agree with EBMUD's contention that either the water district should have the option to decline to provide water service or that the local government should have the ability to seek an alternative supply. (See Contra Costa Times 4/1/94).

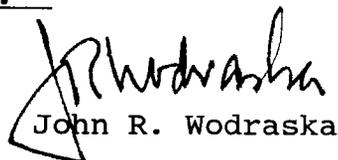
A hearing has been scheduled in Assembly Local Government Committee on April 13.

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

As it is early in legislative process. Remain neutral and monitor AB 2673 at the Assembly Local Government Committee. Continue to participate in ACWA local government and legislative committees as the water industry continues to discuss the relationship between local governments and water agencies. This will both heighten local governments understanding of the barriers to achieving a reliable water supply and improve the communication and planning processes as they relate to development and water supply.


John R. Wodraska

AEB/rlh

Att.: ACWA Principles
AB 2673 as amended March 17, 1994
Growth Management Policy Principles
AB 2673 as amended April 5, 1994
Contra Costa Times: Delta Water May flow to Homes in Dougherty (4/1/94)

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).

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).

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 (1) adequate existing water supplies; or (11) 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—1983-84 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 these 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*

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

- 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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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.

* 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.

AMENDED IN ASSEMBLY APRIL 5, 1994
 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, Cannella,
 Gotch, Hauser, and Isenberg)
 (Coauthors: Senators Kelley, Petris, and Presley)

February 3, 1994

An act to amend ~~Section 65352~~ Sections 65302, 65352, and 65352.5 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.

Existing law requires a city or county to prepare and adopt a general plan for its jurisdiction that includes certain mandatory elements, including a land use element. 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 *that the land use*

element of the general plan include specified information concerning water supply availability. It would also 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, before the agency may act on the general plan or amendment.

This bill would add to a public water system's duties with respect to a proposed general plan adoption or amendment proposing new development, 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, and the circumstances under which the proposed action on the general plan or amendment may be taken. 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.

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

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

15 (d) Because of the diminishing water supplies
16 available to most water agencies today, and a need to
17 meet an ever increasing water demand, all water
18 agencies must plan carefully to ensure that they can meet
19 the needs of their customers through periods of drought
20 with minimal disruption to residential, commercial, and
21 industrial activities within their service areas.

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

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

29 (g) In order for retail water agencies to do the best
30 possible job in planning for meeting the future water
31 needs associated with the growth plans of their cities and
32 counties, they must closely link their water supply
33 planning process to the city and county's general
34 planning process to clearly understand the projections for
35 growth within and adjacent to the water agencies'

1 existing service area and sphere of influence.

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

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

17 (1) Existing customers within the existing service area
18 of retail water agency.

19 (2) Future expected customers associated with new
20 development within an existing service area of a retail
21 water agency.

22 (3) Future expected customers associated with new
23 development outside of the existing service area, but
24 within the sphere of influence, of a retail water agency.

25 (4) Future expected customers associated with new
26 development outside of the sphere of influence of a retail
27 agency.

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

1 (k) Given each of the above principles, any general
2 planning by cities or counties for growth outside of
3 existing water agency service areas must be conditioned
4 upon findings by the water agency of either adequate
5 existing water supplies or firm future water supplies to
6 meet the water needs through periods of drought of
7 customers in categories (1), (2), and (3) before a growth
8 plan outside of the existing service area, but within the
9 water agency's sphere of influence, is approved.
10 Furthermore, before a growth plan outside of both the
11 existing service area and the water agency's sphere of
12 influence is approved, the water agency must find that
13 either adequate existing water supplies or firm future
14 water supplies exist to meet the water needs of customers
15 in the categories specified in paragraphs (1), (2), (3), and
16 (4) of subdivision (i).

17 SEC. 2. *Section 65302 of the Government Code is*
18 *amended to read:*

19 65302. The general plan shall consist of a statement of
20 development policies and shall include a diagram or
21 diagrams and text setting forth objectives, principles,
22 standards, and plan proposals. The plan shall include the
23 following elements:

24 (a) A land use element, which ~~designates~~ shall
25 designate the proposed general distribution and general
26 location and extent of the uses of the land for housing,
27 business, industry, open space, including agriculture,
28 natural resources, recreation, and enjoyment of scenic
29 beauty, education, public buildings and grounds, solid
30 and liquid waste disposal facilities, and other categories of
31 public and private uses of land. The land use element
32 shall include a statement of the standards of population
33 density and building intensity recommended for the
34 various districts and other territory covered by the plan.
35 The land use element shall identify areas covered by the
36 plan which are subject to flooding, and shall be reviewed
37 annually with respect to those areas. The land use
38 element shall designate, in a land use category that
39 provides for timber production, those parcels of real
40 property zoned for timberland production pursuant to

1 the California Timberland Productivity Act of 1982,
2 Chapter 6.7 (commencing with Section 51100) of Part 1
3 of Division 1 of Title 5, and shall include the information
4 relating to water supply availability provided pursuant to
5 Section 65352.5.

6 (b) A circulation element, consisting of the general
7 location and extent of existing and proposed major
8 thoroughfares, transportation routes, terminals, and
9 other local public utilities and facilities, all correlated
10 with the land use element of the plan.

11 (c) A housing element, as provided in Article 10.6
12 (commencing with Section 65580).

13 (d) A conservation element, for the conservation,
14 development, and utilization of natural resources
15 including water and its hydraulic force, forests, soils,
16 rivers and other waters, harbors, fisheries, wildlife,
17 minerals, and other natural resources. That portion of the
18 conservation element including waters shall be
19 developed in coordination with any countywide water
20 agency and with all district and city agencies which have
21 developed, served, controlled or conserved water for any
22 purpose for the county or city for which the plan is
23 prepared. The conservation element may also cover:

- 24 (1) The reclamation of land and waters.
- 25 (2) Prevention and control of the pollution of streams
26 and other waters.
- 27 (3) Regulation of the use of land in stream channels
28 and other areas required for the accomplishment of the
29 conservation plan.
- 30 (4) Prevention, control, and correction of the erosion
31 of soils, beaches, and shores.
- 32 (5) Protection of watersheds.
- 33 (6) The location, quantity and quality of the rock, sand
34 and gravel resources.
- 35 (7) Flood control.

36 The conservation element shall be prepared and
37 adopted no later than December 31, 1973.

38 (e) An open-space element, as provided in Article
39 10.5 (commencing with Section 65560).

40 (f) A noise element, which shall identify and appraise

1 noise problems in the community. The noise element
2 shall recognize the guidelines established by the Office of
3 Noise Control in the State Department of Health Services
4 and shall analyze and quantify, to the extent practicable,
5 as determined by the legislative body, current and
6 projected noise levels for all of the following sources:

- 7 (1) Highways and freeways.
- 8 (2) Primary arterials and major local streets.
- 9 (3) Passenger and freight on-line railroad operations
10 and ground rapid transit systems.
- 11 (4) Commercial, general aviation, heliport, helistop,
12 and military airport operations, aircraft overflights, jet
13 engine test stands, and all other ground facilities and
14 maintenance functions related to airport operation.
- 15 (5) Local industrial plants, including, but not limited
16 to, railroad classification yards.
- 17 (6) Other ground stationary noise sources identified
18 by local agencies as contributing to the community noise
19 environment.

20 Noise contours shall be shown for all of these sources
21 and stated in terms of community noise equivalent level
22 (CNEL) or day-night average level (L_{dn}). The noise
23 contours shall be prepared on the basis of noise
24 monitoring or following generally accepted noise
25 modeling techniques for the various sources identified in
26 paragraphs (1) to (6), inclusive.

27 The noise contours shall be used as a guide for
28 establishing a pattern of land uses in the land use element
29 that minimizes the exposure of community residents to
30 excessive noise.

31 The noise element shall include implementation
32 measures and possible solutions that address existing and
33 foreseeable noise problems, if any. The adopted noise
34 element shall serve as a guideline for compliance with the
35 state's noise insulation standards.

36 (g) A safety element, for the protection of the
37 community from any unreasonable risks associated with
38 the effects of seismically induced surface rupture, ground
39 shaking, ground failure, tsunami, seiche, and dam failure;
40 slope instability leading to mudslides and landslides;

1 subsidence, liquefaction and other seismic hazards
 2 identified pursuant to Chapter 7.8 (commencing with
 3 Section 2690) of the Public Resources Code, and other
 4 geologic hazards known to the legislative body; flooding;
 5 and wild land and urban fires. The safety element shall
 6 include mapping of known seismic and other geologic
 7 hazards. It shall also address evacuation routes, peakload
 8 water supply requirements, and minimum road widths
 9 and clearances around structures, as those items relate to
 10 identified fire and geologic hazards. Prior to the periodic
 11 review of its general plan and prior to preparing or
 12 revising its safety element, each city and county shall
 13 consult the Division of Mines and Geology of the
 14 Department of Conservation and the Office of
 15 Emergency Services for the purpose of including
 16 information known by and available to the department
 17 and the office required by this subdivision.

18 To the extent that a county's safety element is
 19 sufficiently detailed and contains appropriate policies
 20 and programs for adoption by a city, a city may adopt that
 21 portion of the county's safety element that pertains to the
 22 city's planning area in satisfaction of the requirement
 23 imposed by this subdivision.

24 At least 45 days prior to adoption or amendment of the
 25 safety element, each county and city shall submit to the
 26 Division of Mines and Geology of the Department of
 27 Conservation one copy of a draft of the safety element or
 28 amendment and any technical studies used for
 29 developing the safety element. The division may review
 30 drafts submitted to it to determine whether they
 31 incorporate known seismic and other geologic hazard
 32 information, and report its findings to the planning
 33 agency within 30 days of receipt of the draft of the safety
 34 element or amendment pursuant to this subdivision. The
 35 legislative body shall consider the division's findings prior
 36 to final adoption of the safety element or amendment
 37 unless the division's findings are not available within the
 38 above prescribed time limits or unless the division has
 39 indicated to the city or county that the division will not
 40 review the safety element. If the division's findings are

1 not available within those prescribed time limits, the
 2 legislative body may take the division's findings into
 3 consideration at the time it considers future amendments
 4 to the safety element. Each county and city shall provide
 5 the division with a copy of its adopted safety element or
 6 amendments. The division may review adopted safety
 7 elements or amendments and report its findings. All
 8 findings made by the division shall be advisory to the
 9 planning agency and legislative body.

10 SEC. 3. Section 65352 of the Government Code is
 11 amended to read:

12 65352. (a) Prior to action by a legislative body to
 13 adopt or substantially amend a general plan, the planning
 14 agency shall refer the proposed action to all of the
 15 following entities:

16 (1) Any city or county, within or abutting the area
 17 covered by the proposal, and any special district which
 18 may be significantly affected by the proposed action, as
 19 determined by the planning agency.

20 (2) Any elementary, high school, or unified school
 21 district within the area covered by the proposed action.

22 (3) The local agency formation commission.

23 (4) Any areawide planning agency whose operations
 24 may be significantly affected by the proposed action, as
 25 determined by the planning agency.

26 (5) Any federal agency if its operations or lands within
 27 its jurisdiction may be significantly affected by the
 28 proposed action, as determined by the planning agency.

29 (6) Any public water system, as defined in Section
 30 4010.1 of the Health and Safety Code, with 3,000 or more
 31 service connections, that serves water to customers
 32 within the area covered by the proposal. The public
 33 water system shall have at least 45 days to comment on
 34 the proposed plan, in accordance with subdivision (b),
 35 and to provide the planning agency with the information
 36 set forth in Section 65958.1. If the area covered by the
 37 proposed general plan adoption or amendment is outside
 38 the area in which water service is currently being
 39 provided by any public water system, the city or county
 40 shall identify the likely public water system to provide

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1 water to this area, and refer the proposed action to that
2 entity for its review, pursuant to Sections 65352.5 and
3 65352.6.

4 (7) The Bay Area Air Quality Management District for
5 a proposed action within the boundaries of the district.

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

11 (c) (1) *This section is Except with regard to referrals*
12 *to a public water system, as set forth in paragraph (6) of*
13 *subdivision (a), the provisions of this section are*
14 *directory, not mandatory, and the failure to refer a*
15 *proposed action to the other entities specified in this*
16 *section does not affect the validity of the action, if*
17 *adopted. If the public water system does not respond to*
18 *a referral made pursuant to this section within the 45-day*
19 *time period set forth in paragraph (6) of subdivision (a),*
20 *or within any longer period as may be designated by the*
21 *agency, the referring agency may act on the general plan*
22 *or amendment.*

23 (2) To the extent that the requirements of this section
24 conflict with the requirements of Chapter 4.4
25 (commencing with Section 65919), the requirements of
26 Chapter 4.4 shall prevail.

27 **SEC. 3.**

28 **SEC. 4.** *Section 65352.5 of the Government Code is*
29 *amended to read:*

30 65352.5. (a) The Legislature finds and declares that it
31 is vital that there be close coordination and consultation
32 between California's water supply agencies and
33 California's land use approval agencies to ensure that
34 proper water supply planning occurs in order to
35 accommodate projects that will result in increased
36 demands on water supplies.

37 (b) It is, therefore, the intent of the Legislature to
38 provide a standardized process for determining the
39 adequacy of existing and planned future water supplies to
40 meet existing and planned future demands on these

1 water supplies.

2 (c) Upon receiving, pursuant to Section 65352,
3 notification of a city's or a county's proposed action to
4 adopt or substantially amend a general plan, or upon
5 receiving a request from a city or county in the process
6 of preparing a general plan or general plan amendment,
7 a public water system, as defined in Section 4010.1 of the
8 Health and Safety Code, with 3,000 or more service
9 connections, shall provide the planning agency with the
10 following information, as is appropriate and relevant:

11 (1) The current version of its urban water
12 management plan, adopted pursuant to Part 2.6
13 (commencing with Section 10610) of Division 6 of the
14 Water Code.

15 (2) The current version of its capital improvement
16 program or plan, as reported pursuant to Section 31144.73
17 or the Water Code.

18 (3) A description of the source or sources of the total
19 water supply currently available to the water supplier by
20 water right or contract, taking into account historical
21 data concerning wet, normal, and dry runoff years.

22 (4) A description of the quantity of surface water that
23 was purveyed by the water supplier in each of the
24 previous five years.

25 (5) A description of the quantity of groundwater that
26 was purveyed by the water supplier in each of the
27 previous five years.

28 (6) A description of all proposed additional sources of
29 water supplies for the water supplier, including the
30 estimated dates by which these additional sources should
31 be available and the quantities of additional water
32 supplies that are being proposed.

33 (7) A description of the total number of customers
34 currently served by the water supplier, as identified by
35 the following categories and by the amount of water
36 served to each category:

37 (A) Agricultural users.

38 (B) Commercial users.

39 (C) Industrial users.

40 (D) Residential users.

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1 (8) Quantification of the expected reduction in total
2 water demand, identified by each customer category set
3 forth in paragraph (7), associated with future
4 implementation of water use reduction measures
5 identified in the water supplier's urban water
6 management plan.

7 (9) Any additional information that is relevant to
8 determining the adequacy of existing and planned future
9 water supplies to meet existing and planned future
10 demands on these water supplies.

11 **SEC. 5.** Section 65352.6 is added to the Government
12 Code, to read:

13 65352.6. (a) If the proposed general plan adoption or
14 amendment proposes new development in areas outside
15 the area in which water service is being provided by any
16 public water system, the public water system shall make
17 findings of fact pursuant to the provisions of Section
18 65352.5 concerning its ability to provide water service to
19 meet the reasonable needs, consistent with the provisions
20 of the urban water management plan adopted by the
21 public water system, through periods of forecasted
22 drought, of the following types of customers:

23 (1) Existing customers within the existing service area
24 of the public water system.

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

27 (3) Forecasted new customers outside the existing
28 service area of the public water system, but within that
29 agency's sphere of influence, including those associated
30 with new development according to the proposed
31 general plan amendments.

32 (4) Forecasted new customers outside the existing
33 service area of the public water system and outside of its
34 sphere of influence, including those associated with the
35 new development, according to the proposed general
36 plan amendment.

37 (b) If the public water system finds that it cannot
38 provide water service sufficient to meet the reasonable
39 needs of all four categories of customers identified in
40 subdivision (a) through periods of forecasted droughts,

1 the public water system shall identify the improvements
2 that would be required to its water system, and the
3 projected timeframe for implementing these
4 improvements, as set forth in Section 65352.5, necessary
5 to meet the water needs of the three four categories of
6 customers identified in subdivision (a).

7 (c) If the general plan adoption or amendment
8 proposes new development outside areas in which water
9 service is currently being provided by any public water
10 system, the city or county shall not adopt or amend its
11 general plan until the findings of fact of the public water
12 system pursuant to subdivision (a) have been transmitted
13 to the city or county and have been made part of the
14 record. If the public water system made findings of fact
15 that it cannot provide water service sufficient to meet the
16 reasonable needs of all four categories of customers
17 identified in subdivision (a) through periods of
18 forecasted drought, the city or county shall not adopt the
19 general plan or its amendments, ~~unless the~~ unless either
20 of the following occurs:

21 (1) The general plan or amendments, including those
22 provisions identifying the location, intensity, and timing
23 of any new development, are consistent with the findings
24 of the public water system.

25 (2) The city or county makes findings, based upon
26 substantial evidence in the record, that a water supply,
27 which is not a part of the commenting public water
28 system's water supply, will be available to service that
29 new development, and the city or county identifies the
30 source of that water supply.

31 (d) A general plan identifying proposed new
32 development outside areas where water service is
33 currently being provided may be approved if either the
34 findings made by the public water system, or the general
35 plan itself, pursuant to subdivision (c), identify planned
36 improvements, or other measures, which will result in
37 adequate water supplies to meet the reasonable needs of
38 the four categories of customers identified in subdivision
39 (a). However, if the public water system finds that these
40 improvements and measures have not yet been

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1 completed, the general plan shall require that a
2 development project shall not be approved until the
3 water supply improvements and measures are
4 completed.

5 **SEC. 2.**

6 **SEC. 6.** Notwithstanding Section 17610 of the
7 Government Code, if the Commission on State Mandates
8 determines that this act contains costs mandated by the
9 state, reimbursement to local agencies and school
10 districts for those costs shall be made pursuant to Part 7
11 (commencing with Section 17500) of Division 4 of Title
12 2 of the Government Code. If the statewide cost of the
13 claim for reimbursement does not exceed one million
14 dollars (\$1,000,000), reimbursement shall be made from
15 the State Mandates Claims Fund. Notwithstanding
16 Section 17580 of the Government Code, unless otherwise
17 specified in this act, the provisions of this act shall become
18 operative on the same date that the act takes effect
19 pursuant to the California Constitution.

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Delta water may flow to homes in Dougherty

By ARIEL AMBRUSTER
Staff writer

SAN RAMON — Future Dougherty Valley residents may be able to thank a handful of Bakersfield-area pistachio farmers for their drinking water.

The Berrenda Mesa Water District in Kern County has signed a preliminary agreement to sell the water rights needed to develop the 5,170-unit Windemere project in the Dougherty Valley east of San Ramon.

A final pact may be reached in 30 to 60 days, allowing Windemere to draw part of the Southern California irrigation district's share from the Delta.

One of the biggest barriers to developing the Dougherty Valley has been the question of water.

The environmentalist-dominated board of the East Bay Municipal Utility District doesn't want to provide water for the 11,000-home project and has sued Contra Costa County over the matter. And the only other nearby water district, the Dublin-San Ramon Services District, doesn't have enough water.

But now, after a year of looking, the Dublin-San Ramon district may have found a willing water seller on a remote stretch of farmland about 50 miles northwest of Bakersfield, near the town of Blackwells Corner.

The Dublin-San Ramon district has signed an "agreement to agree" with Berrenda Mesa, said Bert Michalczyk, the district's technical services manager.

"We took a pretty global look at water transfers, everything from the north Sacramento valley to Kern County," he said. "This seemed to fit our needs best. . . . I have a positive feeling about it. I think the district down there wants to make it happen."

"I think it looks very good," agreed Tom McCormick, a Dublin-San Ramon district board member.

"If the district is focusing on one source, it's probably a good idea. That's actually good to hear," said Dan Coleman, Windemere's water consultant.

Even an EBMUD leader appears happy with the deal. "I think it's very encouraging," said Director Stuart Flashman. "I wish the county had thought about these things early on; it would have saved everybody a hell of a lot of litigation costs."

The water would go only to the Windemere project, which is planned for 2,379 acres of the 5,000-acre Dougherty Valley. The other Dougherty Valley developer, Shappell Industries, is still hoping for EBMUD water.

Under the agreement, the Dublin-San Ramon district would buy part of Berrenda Mesa's entitlement to State Water Project water for a one-time cost of \$1,000 an acre-foot. The district would then pay the state each year for the water. Windemere, which would reimburse the district, would need about 2,500 acre-feet to serve roughly 14,000 expected residents. An acre-foot amounts to about 326,000 gallons.