APPROVED
by the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

EXECUTIVE SECRETARY

January 30, 1996

To: Board of Directors (Committee on Legislation--Action)

From: ~~General~~ Manager

Submitted by: Debra C. Man, Chief
Planning and Resources

Subject: Adopt Additional Policy Principles for the California Endangered Species Act

RECOMMENDATION(S)

It is recommended that your Board amend its policy principles for the California Endangered Species Act (CESA) to add principles that will parallel those adopted for the federal Endangered Species Act and will address issues that have been raised in CESA reform negotiations. These additional principles recommended for adoption are:

- Proactively pursue inclusion of a voluntary natural systems management approach as an alternate track to single species protection.
- Support provisions for appropriate mitigation banking where it promotes conservation of natural systems.
- Support provisions for improved linkages between CESA and the California Environmental Quality Act to streamline regulatory processes.
- Support general provisions for public agencies to foster responsible management of the State's ecological resources in a manner consistent with the agencies' primary mission(s) in lieu of proposed provisions that would differentiate mitigation responsibilities for project impacts between State and non-State public agencies and the private sector.
- Support provisions that would require case-by-case application of CESA protections to candidate species for the one-year period each species is reviewed to determine whether listing is warranted.
- Continue to support a moderate approach to amending the CESA that improves its workability and ability to meet goals.

EXECUTIVE SUMMARY

Your Board adopted policy principles for the California Endangered Species Act (CESA) in May 1994 and in June 1995. These policy principles are:

- Support protection of declining species on a comprehensive, multiple species basis.
- Support continuation of prelisting provisions provided in Section 2800 of the Fish and Game Code.
- Seek legislative clarification of the Code to ensure validity of take granted in connection with projects.
- Support provisions decriminalizing accidental take of protected species that occurs in the course of otherwise lawful activities.

Updating of CESA policy principles is recommended at this time to parallel principles adopted for the federal Endangered Species Act (ESA) and to address issues that have been raised in CESA reform negotiations.

Consistency with Federal ESA Principles. Policy principles were adopted by your Board in March 1995 for the federal ESA in support of voluntary natural systems management, mitigation banking, and a moderate approach to amendments. It is appropriate to ensure consistency between the State and federal laws, and is of particular importance that both laws include provisions for a natural systems management approach to achieve incidental take approvals.

Regulatory Streamlining. Improved integration of CESA requirements with the California Environmental Quality Act (CEQA) will promote regulatory streamlining. When a project requires a CEQA document (negative declaration or environmental impact report) and an incidental take permit pursuant to CESA, the mitigation requirements should be determined and disclosed in the CEQA document thereby allowing simultaneous compliance, avoidance of redundancies and potential for inconsistencies, and improving regulatory efficiency. This is consistent with other adopted regulatory streamlining policy principles.

Responsible Management of State's Ecological Resources. CESA negotiations have addressed a concept that would set differing levels of responsibility for mitigation of endangered species impacts for State agencies, non-State public agencies, and the private sector. Staff is concerned that this proposal confuses the purpose of mitigation-- to compensate for significant impacts in order to achieve parity-- with private property rights issues and the State's trustee responsibilities for its natural resources. This confusion would likely result in complication of relatively straightforward mitigation discussions for individual projects and activities, resulting in delays and increased mitigation burdens for public projects. In lieu of this, staff recommends that Metropolitan support general provisions of legislative intent in the CESA calling for public

agencies to foster responsible management of ecological resources consistent with the agencies' primary mission(s).

Species Candidacy Protections. Existing law requires that species elevated to candidacy for listing receive full protections of CESA. Thus, protection is given to species that have passed an initial screening but are still subject to a one year review by the Department of Fish and Game to determine if listing as threatened or endangered should be proposed. This early protection was to ensure that knowledge of the Department's CESA reviews by property owners would not result in destruction of unprotected species. However, this is inconsistent with federal law which protects species only when they have been proposed for listing. Negotiations have resulted in a proposal that would replace automatic protections at the candidacy stage with case-by-case application of the protections as warranted. This proposal is midway between existing State and federal requirements, and appears positive.

DETAILED REPORT

Legislative Background. In California, the regulated community has mounted a reform effort of the California Endangered Species Act (CESA) that has paralleled the timing of similar discussions regarding the federal Endangered Species Act (ESA). Participants in this debate have included timber, mining, oil, agricultural, water, utilities, real estate, and environmental interests. The Association of California Water Agencies (ACWA) has requested that Metropolitan assist them in these negotiations. In 1995, the negotiations came fairly close to reaching consensus.

Legislation introduced in 1995 includes SB 131 (Maddy) which proposed the Administration's comprehensive reworking of CESA, and which has been withdrawn; SB 1177 (Killea) which Metropolitan opposed unless amended due to language that would undermine defense of the authority of the Department of Fish and Game to authorize incidental take; SB 1120 (Costa) which proposes that accidental take of listed species be de-criminalized and which Metropolitan supports; and AB 350 (Bustamante) and AB 137 (Olberg) which propose substantive and procedural revisions to species listing and de-listing. AB 137 also proposes compensation for reduction of property values, on which Metropolitan took a watch position.

Senator Hayden, Chair of the Senate Committee on Natural Resources, indicated in July 1995 that he would introduce a CESA reform bill in 1996 on the basis of testimony presented in 1995 at three joint hearings of his Senate committee and the Assembly Water, Parks, and Wildlife Committee. It is not clear at this time whether Senator Hayden will introduce a CESA bill.

The regulated and environmental communities negotiated in 1995 to nearly reach a rough consensus on a set of CESA reforms. In January 1996, participants reviewed the results of the 1995 effort, and are watching the political process before beginning negotiations again in earnest. The near consensus was based on a set of trade-offs that are only partially in Metropolitan's interest.

Policy Principles. Your Board adopted policy principles for CESA in May 1994 and in June 1995. These policy principles are:

- Support protection of declining species on a comprehensive, multiple species basis.
- Support continuation of prelisting provisions provided in section 2800 of the Fish and Game Code.
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Regulatory Streamlining. Improved integration of CESA requirements with the California Environmental Quality Act (CEQA) will further regulatory streamlining. When a project requires a CEQA document (negative declaration or environmental impact report) and an incidental take permit pursuant to CESA, the mitigation requirements should be determined and disclosed in the CEQA document thereby allowing simultaneous compliance, avoid of redundancies and potential for inconsistencies, and improving regulatory efficiency. This is consistent with other adopted regulatory streamlining policy principles.

Responsible Management of the State's Ecological Resources. Negotiations focused on a proposed provision that was termed "proportionality". As proposed by economic interests, proportionality of mitigation would require that endangered species impacts by private parties be mitigated where feasible and in rough proportion to the impacts, that non-State public agencies would mitigate to the fullest extent feasible consistent with powers conferred by law (i.e. condemnation), and that State agencies have an obligation to conserve, protect, restore and enhance listed species and would presumably mitigate projects and activities in a manner that enhances the State's resources.

Staff is concerned that this proposal confuses the purpose of mitigation-- to compensate for significant impacts in order to achieve parity-- with private property rights issues and the State's trustee responsibilities for its natural resources. This confusion would likely result in complication of relatively straightforward mitigation discussions for individual projects and

activities, resulting in delays and increased mitigation burdens for public projects. In lieu of this, staff recommends that Metropolitan support general provisions of legislative intent in the CESA calling for public agencies to foster responsible management of ecological resources consistent with the agencies' primary mission(s).

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