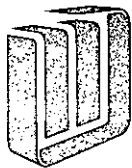


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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Karen E. Duff
EXECUTIVE SECRETARY

8-4

February 12, 1992

Board of Directors (Executive Committee--Action)
(Water Problems Committee--Action)
(Special Comm. on Legislation--Action)

General Manager

Metropolitan's Position on the Proper Role of Federal and State
Authority in Regulating Streamflow Under the Clean Water Act

Report

The District has been participating in the national legislative debate over proposed revisions to the federal Clean Water Act (Act), which is scheduled for reauthorization this year. As outlined to the Board in the General Manager's letter dated May 28, 1991, staff has developed a position paper proposing amendments to the Act to address protection of public drinking water supplies. This policy paper has been shared with other water supply groups and with members of Congress and their staff.

To date, the District policy has focused specifically on increased protection of drinking water quality. However, because of a number of recent developments, staff believes the District also should have a policy on the broader issue of the scope of the Act and the United States Environmental Protection Agency's (EPA) authority under the Act.

The primary focus of the Act has been the regulation and control of point and non-point source discharges of pollutants which impair the nation's waters. Regulation of other water-related activities such as diversion, storage and use of water for public water supplies and the provision of instream flows for environmental purposes traditionally has been dealt with at the state level, through state water law and resource protection programs which allow the balancing of an array of important factors, rather than under the Act, which focuses narrowly on biochemical parameters. This Congressional deference to the more flexible state law with regard to the allocation and administration of water resources is expressly stated in Section 101(g) of the Act (known as the Wallop Amendment), which provides, in part, that "It is the policy of Congress that the authority of each State to allocate

quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act."

Recently, however, there have been attempts to expand the federal role under the Act into these traditional questions of state water rights. EPA has proposed issuing federal guidance under the Act requiring states to adopt instream flow standards it considers necessary to protect instream uses. In fact, EPA recently rejected the State Water Resources Control Board's (SWRCB) Water Quality Control Plan for Salinity in the Bay/Delta estuary because it did not include instream flow standards, despite the fact that SWRCB is currently moving to establish instream flow requirements under its state water rights/allocation authority. Additionally, S.1081 (Baucus), the current vehicle for amending the Act, contains language that could be interpreted to expand EPA's role beyond the protection of "clean water" to the regulation of all factors that could affect the "ecological integrity" of waterbodies, including the allocation of water resources.

It is universally recognized that the use of water resources for public water supplies must be balanced with the need to protect the environment. For at least 125 years, however, Congress also has recognized that this balance should be reached at the state level, where local conditions, needs, law and custom can be integrated to provide a proper balance between consumptive and instream uses of water. Staff recommends that this Congressional policy, favoring state control over water rights and water resources regulation, be retained in the Act and, where appropriate, strengthened.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because of its responsibility for legislation affecting the District pursuant to Administrative Code Section 2417(a);

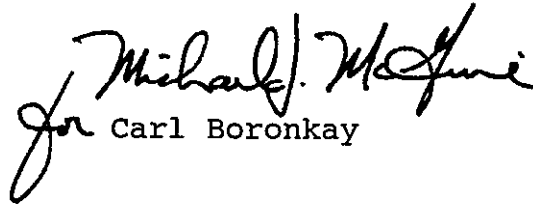
The Water Problems Committee because of its responsibility for policies, sources and means of importing water required by the District pursuant to Administrative Code Section 2481(a); and

The Special Committee on Legislation because of its responsibility to review staff recommendations for positions on legislation that may affect the District pursuant to Administrative Code Section 2581(b).

Recommendation

**EXECUTIVE COMMITTEE, WATER PROBLEMS COMMITTEE AND SPECIAL
COMMITTEE ON LEGISLATION FOR ACTION.**

It is recommended that the General Manager be authorized to do all things necessary and appropriate to retain and strengthen the states' primary authority under the Clean Water Act to allocate and regulate quantities of water within their jurisdiction.


for Carl Boronkay

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