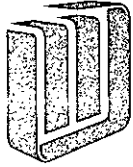


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MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Harold E. Dorf
EXECUTIVE SECRETARY

8-7

April 7, 1992

To: Board of Directors (Executive Committee--Action)
(Legal and Claims Committee--Action)
(Special Committee on Legislation--Action)
From: General Manager and General Counsel
Subject: Support, if Amended, of Assembly Bill 573 (Kelley--Riverside County)

Report

By action at its meeting on August 20, 1991, the Board voted to oppose AB 21X which would expand Metropolitan's purposes and powers to serve water for all beneficial uses, thus authorizing service of water for agricultural purposes whether or not surplus water exists. At their March meetings, the Board and its Committees deferred action on AB 573 which, as currently pending before the Legislature, would enable Metropolitan to purchase reclaimed water and resell it within the District for any beneficial use, which, of course, would include agricultural uses. AB 573 would also enable Metropolitan to participate in projects of public and private entities designed to reduce water demands, and would thereby provide a statutory foundation for such programs as the Conservation Credits Program.

In the intervening time, discussions have taken place among Metropolitan's member agencies which suggest that there is an interest in having your Board support AB 21X if it were amended to provide that water sold by Metropolitan for agricultural use is sold at the same rate as water placed to municipal or domestic use in the same class of service.

Because AB 21X would amend some of the same provisions of the Metropolitan Water District Act as AB 573, it would be desirable to combine all desired amendments in one bill so that the possibility of statutory conflict is avoided. Accordingly, this letter suggests amendments to AB 573 that would incorporate the desired changes to AB 21X. Additional changes to AB 573, proposed in the General Manager's and General Counsel's letter of February 19, 1992, are no longer appropriate since they were intended to limit Metropolitan's participation in local programs to those that would produce additional water to serve municipal and domestic purposes within Metropolitan. It is expected that AB 21X would be dropped from further consideration.

One change that is proposed is to change Metropolitan's powers and purposes to serve all reasonable and beneficial uses. Beneficial uses, of course, include municipal, domestic, and agricultural uses, but may also include such uses as environmental or recreational uses. The propriety of making water available for such uses would, in the first instance, be left for determination by your Board. Under the proposed language, that determination would have to be based on the reasonableness of the proposed beneficial use, taking into consideration such factors as the water supply and competing demands. Thus a service that may be reasonable in years of ample supply may be deemed unreasonable in years of shortage, even though such service would still be devoted to a beneficial use. This intent is reflective of the principle long ago articulated in Tulare Dist. v. Lindsay-Strathmore Dist. (1935) 3 Cal.2d 489, 567, where the court said:

"What is a beneficial use, of course, depends upon the facts and circumstances of each case. What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time."

This principle was recently echoed in the Racanelli decision as follows:

"[W]hat is a reasonable use of water depends on the circumstances of each case, such an inquiry cannot be resolved in vacuo from statewide considerations of transcendent importance." (United States v. State Water Resources Control Board (1986) 182 Cal.App.3d 82, 130.)

Under the current rate structure, the effect of enactment of AB 573, as it is proposed to be amended, would be that all water sold as non-interruptible service would carry the same rate, regardless of use; and similarly all water sold as interruptible service would be sold at the same rate, regardless of use. Seasonal storage service as a class of service would be available on the same basis to all agencies, regardless of end use.

If AB 573, as amended by the changes in Attachment A, is enacted, all users of water for beneficial purposes would generally have an equal right to water service

from Metropolitan, except that the preferential rights provision of the Act (§ 135), which would remain unchanged, would apply if a statutory allocation of water became necessary. Section 135 provides for an allocation to meet domestic and municipal uses only, and makes no provision for allocation to other beneficial uses. Arguments, as yet untested judicially, have been presented why Section 135 might not apply either in whole or in part under specific shortage scenarios. Suffice it to say here that even if the water shortage emergency provisions beginning at Section 350 of the Water Code were to be invoked and be deemed to supersede Section 135, priority of service would be accorded to human consumption, sanitation, and fire protection. As the Board is aware, Section 135 has never been invoked and even in times of shortage, as in the recent five-year period, the Board has found means of allocating the available water supply without resort to the Section 135 formula.

It should be noted that Section 132(b) contained in AB 573 is proposed for deletion; it should further be noted that amended Section 132 contemplates that water is surplus and available for sale outside the district if it cannot be placed to reasonable and beneficial uses within the district. The reason why Section 132(b) is thought to be inappropriate is that while generally Metropolitan may not participate in reclamation projects solely to produce reclaimed water for service outside Metropolitan, there may be times when there is temporarily surplus water from such projects that can only be marketed outside Metropolitan. Under the proposed Section 132(b), Metropolitan would have been barred from selling such water as surplus.

The proposed statutory changes are shown in Attachment A. Copies of AB 21X and AB 573 are also attached to this letter.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because of its responsibility to study, advise, and make recommendations with regard to legislation sponsored by Metropolitan or in any way affecting Metropolitan, pursuant to Administrative Code Section 2417(a);

The Legal and Claims Committee because of its responsibility to study, advise, and make recommendations with regard to proposed amendments of the Metropolitan Water

April 7, 1992

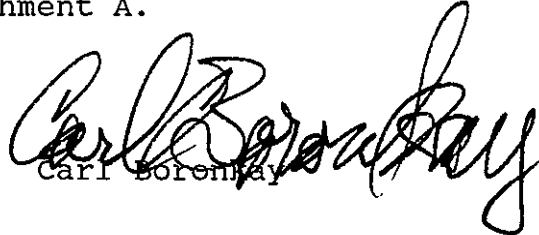
District Act, pursuant to Administrative Code Section 2461(f);
and

The Special Committee on Legislation because of its responsibility to review staff's recommendations for position on legislation, pursuant to Administrative Code Section 2581(b).

Recommendation

EXECUTIVE COMMITTEE, LEGAL AND CLAIMS COMMITTEE, AND SPECIAL COMMITTEE ON LEGISLATION FOR ACTION.

It is recommended that the Board support AB 573 if it is amended to include the changes substantially as provided in Attachment A.


Carl Borenkay


Fred Vendig

FV:gm/gld
AB573.new

Attachments

ATTACHMENT A¹

1. Amend Section 25 to provide as follows:

"(a) Metropolitan water districts may be organized for the purpose of developing, storing, and distributing water for ~~domestic and municipal~~ reasonable and beneficial purposes and for the purposes authorized by Section 130.

"(b) A district may provide, generate, and deliver electric power within or without the state for the purpose of developing, storing, and distributing water for that district."

2. Amend Section 130 to provide as follows:

"A district may do all of the following:

"(a) Acquire water and water rights within or without the state.

"(b) Develop, store, and transport water.

"(c) Provide, sell, and deliver water at wholesale for ~~municipal and domestic~~ reasonable and beneficial uses and purposes. For the purposes of this Act, beneficial uses shall include, but not be limited to, domestic, municipal and agricultural uses.

"(d) Fix the rates for water, and the amount of any water standby availability service charge or assessment. Any water standby availability service charge or assessment shall be deemed to be amounts paid by the member public agency to the district on tax assessments.

"(e) Purchase reclaimed water and resell the water for any reasonable and beneficial purpose and participate in projects of public or private entities intended to reduce demands for water service in the district.

¹ Underlining and strikeover shown below in MWD Act Sections 25, 130, and 132 show changes from language contained in AB 573. Underlining and strikeover in Sections 133 and 134 show changes in the existing text of those sections.

"(f) Acquire, construct, operate, and maintain any and all works, facilities, improvements, and property necessary or convenient to the exercise of the powers granted by this section."

3. Amend Section 132 to provide as follows:

~~"(a)~~ A district may provide, sell and deliver surplus water not needed or required for ~~domestic or municipal~~ reasonable and beneficial uses within the district for beneficial purposes outside the district, but shall give preference to uses within the district. The supplying of the surplus water shall in every case be subject to the paramount right of the district to discontinue the supply in whole or in part, and to take and hold, or to provide, sell and deliver, the water for ~~domestic or municipal~~ reasonable and beneficial uses within the district, upon one year's written notice to the purchaser or user of the surplus water. The notice shall be given by the board if the board determines by resolution adopted by a two-thirds vote of the board that the water is needed or required for ~~domestic or municipal~~ reasonable and beneficial uses within the district.

~~"(b) For purposes of this section, surplus water does not include water acquired by the district pursuant to subdivision (e) of Section 130."~~

4. Amend Section 133 to provide as follows:

"The board shall fix the rate or rates at which water shall be sold, which rate or rates shall not differ by reason of the beneficial use of the water. Such rates, in the discretion of the board, may differ with reference to different sources from which water shall be obtained by the district. The board, under conditions and on terms found and determined by the board to be equitable, may fix rates for the sale and delivery to member public agencies of water obtained by the district from one source of supply in substitution for water obtained by the district from another and different source of supply, and may charge for such substitute water at

the rate fixed for the water for which it is so substituted."

5. Amend Section 134 to provide as follows:

"The Board, so far as practicable, shall fix such rate or rates for water as will result in revenue which, together with revenue from any water stand-by or availability service charge or assessment, will pay the operating expenses of the district, provide for repairs and maintenance, provide for payment of the purchase price or other charges for property or services or other rights acquired by the district, and provide for the payment of the interest and principal of the bonded debt subject to the applicable provisions of this act authorizing the issuance and retirement of the bonds. Those rates, subject to the provisions of this chapter, shall be uniform for like classes of service throughout the district, regardless of the beneficial use of the water."

AMENDED IN ASSEMBLY AUGUST 22, 1991

CALIFORNIA LEGISLATURE—1991-92 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL**No. 21**

Introduced by Assembly Member Kelley

July 3, 1991

An act to amend Sections 25, 130, and 132 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to metropolitan water districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 21, as amended, Kelley. Metropolitan water districts.

(1) Under the Metropolitan Water District Act, a metropolitan water district may be organized for the purpose of developing, storing, and distributing water for domestic and municipal purposes.

This bill would; ~~in addition,~~ authorize a metropolitan water district to be organized for *domestic, municipal, or other beneficial water purposes.*

(2) Under the act, a metropolitan water district may provide, sell, and deliver water at wholesale for municipal and domestic uses and purposes.

This bill would; ~~instead,~~ authorize a metropolitan water district to provide, sell, and deliver that water for *domestic, municipal, or other beneficial uses and purposes.*

(3) Under the act, a metropolitan water district may provide, sell, and deliver surplus water not needed or required for domestic or municipal uses within the district.

This bill would; ~~instead,~~ authorize a metropolitan water district to provide, sell, and deliver surplus water not needed or required for *domestic, municipal, or other beneficial uses within the district.*

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

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

1 SECTION 1. Section 25 of the Metropolitan Water
2 District Act (Chapter 209 of the Statutes of 1969) is
3 amended to read:

4 Sec. 25. A metropolitan water district may be organized
5 for the purpose of developing, storing, and distributing
6 water for domestic, municipal, ~~and~~ or other beneficial
7 purposes and may provide, generate, and deliver electric
8 power within or without the state for the purpose of
9 developing, storing, and distributing water for that
10 district.

11 SEC. 2. Section 130 of the Metropolitan Water
12 District Act (Chapter 209 of the Statutes of 1969) is
13 amended to read:

14 Sec. 130. A district may do all of the following:

15 (a) Acquire water and water rights within or without
16 the state.

17 (b) Develop, store, and transport water.

18 (c) Provide, sell, and deliver water at wholesale for
19 *domestic, municipal, or other* beneficial uses and
20 purposes.

21 (d) Fix the rates for water, and the amount of any
22 water standby or availability service charge or
23 assessment. Any water standby or availability service
24 charge or assessment shall be deemed to be amounts paid
25 by the member public agency to the district on tax
26 assessments.

27 (e) Acquire, construct, operate, and maintain any and
28 all works, facilities, improvements, and property
29 necessary or convenient to the exercise of the powers
30 granted by this section.

31 SEC. 3. Section 132 of the Metropolitan Water District
32 Act (Chapter 209 of the Statutes of 1969) is amended to
33 read:

34 Sec. 132. A district may provide, sell, and deliver
35 surplus water not needed or required for *domestic,*
36 *municipal, or other* beneficial uses within the district for

1 beneficial purposes, but shall give preference to uses
2 within the district. The supplying of surplus water shall
3 in every case be subject to the paramount right of the
4 district to discontinue the supply, in whole or in part, and
5 to take and hold, or to provide, sell, and deliver, the water
6 *for domestic, municipal, or other beneficial uses within*
7 *the district, upon one year's written notice to the*
8 *purchaser or user of the surplus water. The notice shall*
9 *be given by the board whenever it shall be determined*
10 *and declared by resolution adopted by a two-thirds vote*
11 *of the board that the water is needed or required for*
12 *domestic, municipal, or other beneficial uses within the*
13 *district.*

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ASSEMBLY BILL**No. 573****Introduced by Assembly Member Kelley**

February 15, 1991

An act to amend Sections 25, 130, and 132 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 573, as introduced, Kelley. Metropolitan water districts.

(1) Existing law authorizes metropolitan water districts to be organized for the purpose of developing, storing, and distributing water for domestic and municipal purposes. Existing law authorizes a metropolitan water district to take prescribed actions.

This bill would specify that a metropolitan water district may be organized for taking the prescribed actions. The bill would include within the prescribed actions the authority to purchase reclaimed water for resale within the district for beneficial purposes and to participate in projects of public or private entities to reduce demands for water service in the district.

(2) Existing law authorizes a metropolitan water district to provide, sell, and deliver surplus water not needed or required for domestic or municipal uses within the district for beneficial purposes.

This bill would specify that, for purposes of that provision, surplus water does not include reclaimed water acquired by the district pursuant to (1).

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

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

1 SECTION 1. Section 25 of the Metropolitan Water
2 District Act (Chapter 209 of the Statutes of 1969) is
3 amended to read:

4 Sec. 25. (a) Metropolitan water districts may be
5 organized for the purpose of developing, storing, and
6 distributing water for domestic and municipal purposes
7 and *for the purposes authorized by Section 130.*

8 (b) *A district may provide, generate, and deliver*
9 *electric power within or without the state for the purpose*
10 *of developing, storing, and distributing water for ~~such~~*
11 *that district.*

12 SEC. 2. Section 130 of the Metropolitan Water
13 District Act (Chapter 209 of the Statutes of 1969) is
14 amended to read:

15 Sec. 130. A district may do all of the following:

16 (a) Acquire water and water rights within or without
17 the state.

18 (b) Develop, store, and transport waters.

19 (c) Provide, sell, and deliver water at wholesale for
20 municipal and domestic uses and purposes.

21 (d) Fix the rates for water, and the amount of any
22 water standby or availability service charge or
23 assessment. Any ~~such~~ water standby or availability
24 service charge or assessment shall be deemed to be
25 amounts paid by the member public agency to the
26 district on tax assessments.

27 (e) *Purchase reclaimed water and resell the water*
28 *within the district for any beneficial purpose and*
29 *participate in projects of public or private entities*
30 *intended to reduce demands for water service in the*
31 *district.*

32 (f) Acquire, construct, operate, and maintain any and
33 all works, facilities, improvements, and property
34 necessary or convenient to the exercise of the powers
35 granted by this section.

36 SEC. 3. Section 132 of the Metropolitan Water
37 District Act (Chapter 209 of the Statutes of 1969) is
38 amended to read:

1 Sec. 132. (a) A district may provide, sell, and
2 deliver surplus water not needed or required for
3 domestic or ~~municipal~~ *municipal* uses within the district
4 for beneficial purposes, but shall give preference to uses
5 within the district. The supplying of ~~such the~~ surplus
6 water shall in every case be subject to the paramount
7 right of the district to discontinue ~~such the~~ supply in
8 whole or in part, and to take and hold, or to provide, sell,
9 and deliver, ~~such the~~ water for domestic or municipal
10 uses within the district, upon one year's written notice to
11 the purchaser or user of ~~such the~~ surplus water. ~~Such~~ The
12 notice shall be given by the board ~~whenever it shall be~~
13 ~~determined and declared if the board determines and~~
14 ~~declares~~ by resolution, adopted by a two-thirds vote of
15 the board, that ~~such the~~ water is needed or required for
16 domestic or municipal uses within the district.

17 (b) *For purposes of this section, surplus water does not*
18 *include water acquired by the district pursuant to*
19 *subdivision (e) of Section 130.*

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