



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-11

February 25, 1993

To: Board of Directors (Executive Committee--Action)  
(Special Committee on Legislation--Action)  
(Water Problems Committee--Action)

From: General Manager

Subject: Assembly Bill 144 (Richter--Chico) Water: Leases

Report

Assembly Bill 144 (AB 144) introduced by Assemblyman Richter on January 14, 1993, adds restrictions to the use of surface water leases, authorized by Water Code Sections 1020-1030 (Assembly Bill 1605--Costa, 1991), if the surface water leased is replaced by pumping of groundwater by the lessor. Such a transaction is generally referred to as "groundwater-substitution." Assemblyman Richter is from the upper Sacramento Valley, an area with abundant water supply with high potential for developing conjunctive use programs of benefit to the local area and areas of export. This bill would provide water districts a reason to refuse to enter into such transfers, thereby discouraging or preventing the utilization of groundwater to replace leased surface water.

The impact on groundwater basins is a legitimate public policy concern. However, the appropriate forum for addressing such concerns is through compliance with the California Environmental Quality Act when a water transfer is proposed.

Specifically, AB 144 provides that a water user may not replace the leased water with groundwater unless the groundwater use is either of the following:

(a) "Consistent with a groundwater management plan adopted pursuant to state law for the affected area."

(b) "Approved by the water supplier from whose service area the water is to be leased, and that water supplier, if a groundwater management plan has not been adopted, determines that the lease will not create, or contribute to, condition of long-term overdraft in the affected groundwater basin."

Implications of AB 144

Uncertain Premise. AB 144 appears to assume a water user has the right to lease water under existing law. In fact, the right to lease water belongs to the possessor of the appropriative right, e.g., the district to which the water user belongs.

Groundwater Management Plan. A water district could refuse to enter into a lease which entails groundwater-substitution if a groundwater management plan has not been adopted for the affected area and the district determines that the lease will create or contribute to long-term overdraft. Even if a management plan has been adopted, the district could refuse to enter into a lease based on its determination that the lease is inconsistent with the plan. Obviously, this would frustrate the ability of water users within the district to participate in a water lease. At the present time, water districts are a realistic barrier to approval of a water lease. Staff believes that few, if any, plans have been adopted in the water-rich areas north of the Delta, and there is no requirement in the law to prepare plans.

District Approval. As stated earlier, a district could arbitrarily refuse to allow a water user to participate in leasing water. It is possible that a district could stop a water user (or another district) from leasing water even if the district serves no water to the water user, merely because the water user is within the "service area" boundaries of the district.

Long-term Overdraft. Your Board's Water Transfer Policy includes reasonable protection of groundwater basins. However, even if AB 144 language could be modified to be consistent with Metropolitan policy, such changes to state law should not be made piecemeal; they should be part of a comprehensive bill on water transfers.

AB 144 is not consistent with your Board's Water Transfer Policy to promote conjunctive use of water as a means of increasing water supply while minimizing third-party impacts. Also AB 144 gives water districts an additional means to refuse to enter into water leases, contrary to your Board's policy of seeking legislation to provide more flexibility in the water-transfer institutional system.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because it involves legislation which may affect the District, pursuant to Administrative Code Section 2417, subdivision (a);

The Special Committee on Legislation because it involves a legislative matter that may affect the District, pursuant to Administrative Code Section 2581, subdivision (a); and

The Water Problems Committee because of its authority to study, advise, and make recommendations with regard to policies, sources, and means of importing water required by Metropolitan, pursuant to Administrative Code Section 248(a).

Recommendation

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

It is recommended that the Board take a position in opposition to AB 144.

  
for Carl Boronkay

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