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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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EXECUTIVE SECRETARY

April 28, 1994

To: Board of Directors (Committee on Legislation--Action)
From: General Counsel
Subject: Senate Bill 1534 (Johnston)--Eminent Domain Provisions of the
Williamson Act

Report

The Williamson Act (Government Code section 51200, et seq.) authorizes counties and cities to create agricultural reserves by contracting with landowners to restrict land use to agricultural purposes. The Act prohibits the acquisition of land for public improvements within a reserve if the primary consideration is the lower cost of the land, and further prohibits the acquisition of prime agricultural land within a reserve if there is other land on which it is reasonably feasible to locate the public improvement.

The restrictions on land acquisition are enforceable "only by mandamus proceedings by the local body administering the agricultural preserve or the Director of Conservation." Government Code section 51294. However, in some circumstances, a condemnee may challenge the condemning agency's resolution of necessity by raising the failure to comply with these Williamson Act restrictions. In such cases, the condemnor is entitled to a presumption affecting the burden of producing evidence that it has complied with the Act.

The Williamson Act also discourages acquisition of reserve lands for public use by requiring that such lands must be valued as if unencumbered by the agricultural use restriction. This generally results in an increased land value which must be paid by the public agency acquiring the property.

Senate Bill 1534, introduced by Patrick Johnston, would require that an agency acquiring reserve lands make specific written findings that no non-prime agricultural lands were available and suitable for the public improvement. Such findings would have to be supported by "substantial evidence."

The bill also requires the public agency, in the event it "changes" the "intended" public improvement, to notify the local governing body and Director of Conservation of the new purpose, and consider any comments the body or Director may make. It appears that this requirement is applicable even if the property has already been acquired for public use.

Finally, the bill would prohibit the return of reserve lands to private ownership unless the lands were re-enrolled in a Williamson Act contract for a term of ten years. There is no exception in the bill for lands which have remained in public hands for so long that the agricultural reserve is no longer in existence.

The California Environmental Quality Act already requires that a public agency consider the impact of a project on prime agricultural land. California's Eminent Domain Law also requires a finding in the resolution of necessity that the project is located in the manner most compatible with the greatest public good and least private injury. The addition of "findings" and "substantial evidence" requirements in the Williamson Act will create confusion and invite litigation over whether compliance with CEQA and the Eminent Domain Law is sufficient to meet these requirements, and what standard of review should be used by the courts.

The provision of the bill requiring notice of a change in the "intended" public improvement is similarly confusing. It is unclear what kinds of changes would require compliance, or when, if ever, the need for compliance would cease. Under CEQA, only changes which cause a substantial impact on the environment require further compliance with the statute, and then only to the extent of the impact caused by the change. Senate Bill 1534 has no similar limitations.

Finally, the bill could have a substantial economic impact on public agencies. When acquiring reserve lands, agencies must pay full value for the lands as if they are unencumbered by a Williamson Act contract. By requiring the lands to be put back under contract before they are returned to private ownership, the bill would cause a significant loss to public agencies when they dispose of surplus lands.

For these reasons, it is recommended that the Board of Directors express their opposition to Senate Bill 1534.

Board Committee Assignments

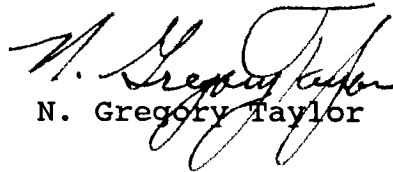
This letter is referred for action to:

The Special Committee on Legislation because of its authority to review and make recommendations regarding legislation pursuant to Administrative Code section 2571(a) and (b).

Recommendation

COMMITTEE ON LEGISLATION FOR ACTION.

It is recommended that the Board of Directors express their opposition to Senate Bill 1534.


N. Gregory Taylor

SENATE BILL

No. 1534

Introduced by Senator Johnston

February 16, 1994

An act to amend Sections 51291, 51292, and 51295 of, and to add Section 51290.5 to, the Government Code, relating to land conservation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1534, as introduced, Johnston. Land conservation.

Existing provisions of the Williamson Act authorize any city or county to enter into contracts to limit the use of agricultural lands for the purpose of preserving those lands. Existing law requires a public agency that intends to consider the location of a public improvement within an agricultural preserve established by contract under the act to advise the Director of Conservation and the local governing body responsible for administration of the preserve.

This bill would require the public agency to summarize substantial evidence supporting findings that no noncontracted or contracted nonprime lands were available and suitable for the proposed acquisition and would define public improvement. The bill would also require the public agency to notify the Director of Conservation and the local governing body administering the preserve of changes in the intended public improvement, as specified.

Existing law provides that when land under contract in an agricultural preserve is taken by a public agency by condemnation or other proceedings the contract is null and void as to the land actually taken.

This bill would provide that if, after acquisition, the acquiring public agency determines that it will not for any reason actually locate on that land the public improvement for which the land was acquired, the land shall be reenrolled in a contract for a term of at least 10 years before the land can

be returned to private ownership.

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

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

1 SECTION 1. Section 51290.5 is added to the
2 Government Code, to read:

3 51290.5. As used in this chapter “public
4 improvement” means publicly owned facilities or
5 interests in real property.

6 SEC. 2. Section 51291 of the Government Code is
7 amended to read:

8 51291. (a) As used in this section, Section 51292, and
9 Section 51295 “public agency” means the state, or any
10 department or agency thereof, and any county, city,
11 school district, or other local public district, agency, or
12 entity; and “person” means any person authorized to
13 acquire property by eminent domain.

14 (b) Whenever it appears that land within an
15 agricultural preserve may be required by a public agency
16 or person for a public use, the public agency or person
17 shall advise the Director of Conservation and the local
18 governing body responsible for the administration of the
19 preserve of the intention to consider the location of a
20 public improvement within the preserve. *The notice*
21 *shall summarize substantial evidence supporting findings*
22 *that no noncontracted, or contracted nonprime lands*
23 *were available and suitable for the proposed acquisition.*
24 The Director of Conservation shall forward to the
25 Director of Food and Agriculture a copy of any material
26 received from the public agency or person relating to the
27 proposed acquisition.

28 Within 30 days thereafter the Director of Conservation
29 and the local governing body shall forward to the public
30 agency or person concerned their comments with
31 respect to the effect of the location of the public
32 improvement on the land within the agricultural
33 preserve and those comments shall be considered by the
34 public agency or person. In preparing those comments,

1 the Director of Conservation shall consider issues related
2 to agricultural land use, including, but not limited to,
3 matters related to the effects of the proposal on the
4 conversion of adjacent or nearby agricultural land to
5 nonagricultural uses, and shall consult with, and
6 incorporate the comments of, the Director of Food and
7 Agriculture on any other matters related to agricultural
8 operations. Failure of any public agency or person to
9 comply with the requirements of this section shall not
10 invalidate any action by the agency or person to locate a
11 public improvement within an agricultural preserve.
12 However, the failure by any person or any public agency
13 other than a state agency shall be admissible in evidence
14 in any litigation for the acquisition of that land or
15 involving the allocation of funds or the construction of
16 the public improvement. This subdivision does not apply
17 to the erection, construction, alteration, or maintenance
18 of gas, electric, water, or communication utility facilities
19 within an agricultural preserve if that preserve was
20 established after submission of the location of those
21 facilities to the city or county for review or approval.

22 *(c) If the intended public improvement reported*
23 *under subdivision (b) changes, the public agency, within*
24 *30 days of the adoption of the change, shall notify the*
25 *Director of Conservation and the local governing body*
26 *responsible for the administration of the preserve of the*
27 *new purpose. Within 30 days thereafter, the Director of*
28 *Conservation and the local governing body shall forward*
29 *to the public agency or person concerned their*
30 *comments with respect to the effect of the location of the*
31 *public improvement on the land within the agricultural*
32 *preserve and those comments shall be considered by the*
33 *public agency or person.*

34 SEC. 3. Section 51292 of the Government Code is
35 amended to read:

36 51292. (a) No public agency or person shall locate a
37 public improvement within an agricultural preserve
38 based primarily on a consideration of the lower cost of
39 acquiring land in an agricultural preserve.

40 (b) No public agency or person shall acquire prime

1 agricultural land covered under a contract pursuant to
2 this chapter for any public improvement if there is other
3 land within or outside the preserve on which it is
4 reasonably feasible to locate the public improvement.

5 (c) *The findings required by this section shall be based*
6 *on substantial evidence.*

7 SEC. 4. Section 51295 of the Government Code is
8 amended to read:

9 51295. When any action in eminent domain for the
10 condemnation of the fee title of an entire parcel of land
11 subject to a contract is filed or when that land is acquired
12 in lieu of eminent domain for a public improvement by
13 a public agency or person or whenever there is any action
14 or acquisition by the federal government or any person,
15 instrumentality or agency acting under authority or
16 power of the federal government, the contract shall be
17 deemed null and void as to the land actually being
18 condemned or so acquired as of the date the action is filed
19 and for the purposes of establishing the value of the land,
20 the contract shall be deemed never to have existed.

21 Upon the termination of the proceeding, the contract
22 shall be null and void for all land actually taken or
23 acquired.

24 When an action to condemn or acquire less than all of
25 a parcel of land subject to a contract is commenced, the
26 contract shall be deemed null and void as to the land
27 actually condemned or acquired and shall be disregarded
28 in the valuation process only as to the land actually being
29 taken, unless the remaining land subject to contract will
30 be adversely affected by the condemnation, in which case
31 the value of that damage shall be computed without
32 regard to the contract.

33 When an action to condemn or acquire an interest
34 which is less than the fee title of an entire parcel or any
35 portion thereof, of land subject to a contract is
36 commenced, the contract shall be deemed null and void
37 as to that interest and for the purpose of establishing the
38 value of that interest only shall be deemed never to have
39 existed, unless the remaining interests in any of the land
40 subject to the contract will be adversely affected, in

1 which case the value of that damage shall be computed
2 without regard to the contract.

3 The land actually taken shall be removed from the
4 contract. Under no circumstances shall land be removed
5 that is not actually taken *for a public improvement*,
6 except that when only a portion of the land or less than
7 a fee interest in the land is taken or acquired, the contract
8 may be canceled with respect to the remaining portion
9 or interest upon petition of either party and pursuant to
10 the provisions of Article 5 (commencing with Section
11 51280).

12 For the purposes of this section, a finding by the board
13 or council that no authorized use may be made of the
14 land if the contract is continued on the remaining portion
15 or interest in the land may satisfy the requirements of
16 subdivision (a) of Section 51282.

17 *If, after acquisition, the acquiring public agency*
18 *determines that it will not for any reason actually locate*
19 *on that land the public improvement for which the land*
20 *was acquired, before returning the land to private*
21 *ownership the land shall be reenrolled in a contract for*
22 *a term of at least 10 years.*

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