

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

October 4, 1994

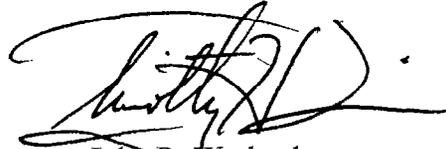
To: Committee on Legislation -- Information

From: General Manager

Subject: Issue Papers under Committee Items on October 1994 Agenda

Herein please find attached three Issue Papers included in the October 1994 Committee on Legislation Agenda under Committee Items (a), (b), and (c), entitled:

- Water Transfer Legislation
- State Water Project Financing
- Water Availability and Land Use Planning



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for

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Attachments

COMMITTEE ITEM 6.(a)

WATER TRANSFER LEGISLATION

Issue

California's system of laws and institutions governing water transfers currently impedes California's ability to shift valuable water resources to higher value economic and environmental uses. As indicated by Metropolitan's Integrated Resources Planning process, meeting the region's reliability goals in a cost-effective manner will require reliance on voluntary water transfers. In recent years, the California Legislature has enacted several statutes to facilitate voluntary water transfers. This first generation of water transfer legislation, combined with passage of the federal Central Valley Project Improvement Act (CVPIA), markedly improved the ability to transfer water. However, experience to date has highlighted limitations in California's developing water market. Additional water transfer legislation is needed to further facilitate a water market in California.

Existing Legal Situation

Existing State water law, in combination with local water politics, effectively prevents individual water users from transferring water. Current State water law allows voluntary water transfers by districts. However, individual water users within agricultural districts that want to transfer water are often not permitted to do so by the agricultural water district. The rationale for this opposition is based on a fear of the impact water transfers could have on the agricultural community.

The CVPIA is an important exception because it allows individual water users to transfer up to 20 percent of an agricultural district's consumptively-used CVP water supply without the agricultural district's approval. However, those interests that oppose water transfers believe the CVPIA requires district approval and other requirements to be consistent with State law. New State legislation would clarify any inconsistencies between the CVPIA and State water transfer law.

The lack of a clear water transfer mechanism under State law for water users with pre-1914, riparian, or groundwater water rights also hampers development of an effective water market. To date, State legislation addressing these issues has not found sufficient support.

Legislative History

In recent years, several bills were introduced in the State Legislature to facilitate voluntary water transfers. The Costa-Isenburg Water Transfer Act of 1986 requires State agencies assist in facilitating voluntary water transfers and protect the transferor's water right when water is temporarily transferred. The act also requires that the Department of Water Resources (DWR) facilitate voluntary water transfers and implement water transfer laws with respect to "already developed" or "conserved" water.

In 1986 the State Legislature passed the Water Transfer: Conveyance Facility Use bill introduced by Assembly Member Richard Katz. The Katz bill requires any State, regional, or public agency to allow a transferor to use up to 70 percent of any unused capacity in a water conveyance facility if fair compensation is provided. The bill protects the rights of those already using the conveyance facility and addresses water quality concerns by providing that water quality in the conveyance facility can not be diminished.

In 1992 Congress passed the CVPIA, which authorizes the U.S. Bureau of Reclamation to operate the Central Valley Project to include protection of fish and wildlife and to increase water management-related benefits through water transfers outside the CVP service area. The CVPIA facilitates creation of a voluntary water market by allowing individual water users to transfer up to 20 percent of a district's consumptively-used CVP water supply without district approval. The CVPIA also provides protections for third party economic impacts, impacts to groundwater, and other issues of concern to agricultural districts.

Assembly Bill 97 was introduced in 1993 by Assembly Member Dominic Cortese. Similar to the CVPIA, AB 97 attempted to promote a voluntary water transfer market by reaching consensus among agricultural, environmental, and urban interests on water transfer issues unresolved by previous State legislation. The major issues included allowing user-initiated transfers without approval by the agricultural district, imposing transfer fees to fund environmental restoration activities, providing protections for third party economic impacts, allowing right-of-first-refusal for others in the transferor's district, and protecting the permit holder's water right. After months of consensus building and compromise, conflicts among various factions of the agricultural community could not be overcome and AB 97 was abandoned. The inability to reach consensus on water transfer legislation has left California with a cumbersome water market.

Metropolitan's Position

Metropolitan's Board of Directors adopted a water transfer policy in 1991. Consistent with that policy, staff supported passage of the federal CVPIA and participated in developing State water transfer legislation. Metropolitan's current water transfer policy is based on principles intended to promote a full range of voluntary water transfers that protect, and where feasible, enhance environmental resources. These principles prohibit creating or contributing to long-term groundwater overdraft, seek to avoid unreasonable operational and financial impacts on the agricultural community, and encourage developing strategies to address the community impacts of water transfers. Metropolitan's water transfer policy principles are intended to ensure that water transfers are a viable alternative for meeting Metropolitan's supply reliability goals while protecting agricultural communities and the environment. Metropolitan has participated in efforts to pass water transfer legislation consistent with these principles.

Currently there is an effort being spearheaded by the California Business Roundtable Water Task Force to promote development of a second generation of water transfer legislation. The Roundtable includes business and agricultural groups working to

develop consensus on a variety of California water issues including water transfers. Support of the roundtable effort by Metropolitan would be consistent with its established principles and previous efforts to reach consensus on water transfer legislation.

Recommended Policy Principles

Staff recommends maintaining Metropolitan's current water transfer policy (see attachment) and participating in efforts to build consensus on water transfer issues among agricultural, environmental and urban interests. The principles of Metropolitan's current water transfer policy provide adequate direction to allow staff to address water transfer issues. Staff recommends maintaining Metropolitan's water transfer policy in its current form.

WATER TRANSFER POLICY STATEMENT

of the

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

The Metropolitan Water District of Southern California (Metropolitan) is responsible for the imported water supply that serves the \$400 billion regional economy of Southern California and helps assure the quality of life for more than 15 million people. During recent decades, the policy environment in which Metropolitan seeks to achieve its objectives has changed markedly, and the strategies employed to secure reliable water service for the region must adjust accordingly.

Over the past quarter century, the urban economy of California, north and south, has grown at about twice the average rate of growth of the national economy, and the underlying economic factors supporting this growth are expected to continue in the future. Despite the implementation of aggressive conservation, additional supplemental water supplies will be essential for the continued health of the Southern California regional economy. At the same time, the availability of water from traditional supply sources has diminished, significantly. As a result, additional sources of supplemental water supply for Metropolitan's service area must be sought in part from other existing water uses, primarily agriculture, which uses more than 80 percent of the developed water supplies in California.

Along with water conservation, reclamation and reuse, and infrastructure improvements especially in the Sacramento-San Joaquin Delta, water transfers from agricultural uses to urban uses will be a critical element of comprehensive plans by Metropolitan to restore and maintain water supply reliability. As defined here, water transfers are interpreted broadly to include the acquisition of short- and long-term supplies, agreements with water districts and individuals, and initiatives involving water management actions and market transactions to purchase water, water rights, or land to increase Metropolitan's water supplies.

COMMITTEE ITEM 6.(b)

STATE WATER PROJECT FINANCING

Issue

Certain agricultural interests are soliciting relief from financial obligations imposed in their contracts for State Project water. They point to high per acre-foot costs for this water resulting from: (1) delays in building out the State Water Project (SWP); (2) recent supply shortages resulting from inadequate facilities, drought, and regulatory constraints; and (3) fixed cost obligations which must be paid regardless of how much water is delivered.

The supply shortages of recent years have had adverse effects on both urban SWP contractors, who hold contracts for over two-thirds of total SWP entitlement, and agricultural contractors. The response of the urban contractors has generally been proactive, including: supporting Bay/Delta standards while developing alternatives to reduce the water costs of such standards; and supporting, financially and through other means, development of South-of-Delta storage facilities to increase SWP supplies. The response of the agricultural contractors has generally been an unwillingness to support or pay for additional SWP storage facilities, instead pressing for restructuring water allocations and financial relief.

These forces have in part led to the introduction of SB 1924. Concurrently, intense negotiations are underway among the urban contractors, the agricultural contractors, and the Department of Water Resources (DWR) which have some possibility of resolving this issue by the end of this year. However, legislation in 1995 is still possible.

Existing Legal Situation

The SWP's financial underpinnings are created by the California Water Resources Development Bond Act, Water Code Sections 12930 et seq., which is commonly referred to as the Burns-Porter Act and was approved by the voters. This Act provides for issuance of some 1.75 billion dollars in general obligation bonds as well as authorizing usage of revenue bonds issued pursuant to the State's Central Valley Project Act, Water Code Section 11100 et seq. Both types of bonds are to be repaid from the revenues obtained under the state water contracts. The California Constitution and the Burns-Porter Act each forbid any legislative impairment of these contracts. The contracts collectively require the State to exercise all reasonable efforts to complete SWP facilities necessary to obtain, transport, and deliver the nearly 4,230,000 acre feet of entitlements.

The allocation of SWP water supply shortages is provided for in Article 18 of the state water contracts with the State. Article 18(a) identifies how shortages due to drought or other temporary cause are to be allocated among the contractors. It provides that deliveries of entitlement to agricultural contractors are first to be reduced, up to 50 percent in any one year or a total of 100 percent in any seven consecutive years, and

shortages exceeding that are to be shared among all contractors proportionately. Article 18(b) provides a mechanism in the event of threat of permanent shortage for all contractors entitlements to SWP water to be proportionately reduced.

DWR and the agricultural and urban contractors have been negotiating revisions to Article 18, as part of a package with other issues, for the last year and a half. To help reach resolution, the parties have agreed to hire, and have recently selected, a mediator. DWR and the agricultural and urban contractors have committed to set aside the month of November for intensive negotiations, with the hope that this change in process will help reach closure by the end of this year.

Legislative History

Senator McCorquodale, representing Modesto, introduced SB 1924 on February 25, 1994. Among other provisions, this bill would have amended Water Code provisions relating to the SWP by: forbidding construction of additional water development facilities under the existing state water contract; seeking to accomplish a refund of outstanding bonds used to finance the SWP; and creating the California Water Plan for the 21st Century Planning Commission to develop a comprehensive plan for the future development of the State's water resources. This measure, if validly enacted, would have effectively terminated any efforts at SWP completion under the existing state water contracts.

The Senate Committee on Agriculture and Water Resources, chaired by Senator McCorquodale, has held two hearings on SWP financing. The first hearing was on "The State Water Project: Supply, Demand and Financing," and was held on January 31, 1994, in Sacramento. The second hearing was on "Options for Financing California's Water Projects," and was held on August 1, 1994, in Fresno. While SB 1924 was not enacted this year, Senator McCorquodale has indicated he will reintroduce SB 1924, or a similar bill, in 1995.

Metropolitan Position

Metropolitan opposes any change in the financial structure of the SWP except as part of a package amendment to the state water contracts negotiated among the SWP contractors and DWR. This package would continue to recognize, and equitably distribute, the overall benefits of the SWP. The State should focus on how to increase SWP supplies and supply reliability, which would have the effect of relieving financial difficulties, rather than focusing on how to divide up an incomplete project.

Technical Analysis

At the August 1 hearing, both DWR and the urban contractors emphasized some of the severe legal and practical problems that passage of SB 1924 would entail. These problems include: provisions in the California Constitution and the Burns-Porter

Act which forbid the legislature from impairing repayment obligations to SWP bondholders; complexities of the existing trade-offs that have been negotiated in the state water contracts between the agricultural and urban contractors; and the potential for creating inequities among contractors in both costs and water supply.

Even if the Legislature could validly undo this financial structure, the potential for significant inequities would be created. Cost inequities could result from the greater use of project financing by agricultural agencies in payments made for transportation facilities. In addition, a shift in water supply from urban to agricultural contractors could occur, due to: a reduction in the size of the initial agricultural deficiencies taken in shortage years, resulting from the proportionate reduction of annual entitlements to the yield of existing facilities; and the possible consideration of supply available in excess of this reduced entitlement as surplus water, which favors agriculture contractors in both allocation of supply and in cost.

Proposal

Settlement of the ongoing Article 18 negotiations by the end of this year would reduce the likelihood of the need to address SB 1924 next year. However, a plan to deal with this legislation should be prepared in case resolution of these issues is not reached in a timely manner. The key to a successful political strategy will be urban contractor solidarity.

Recommended Policy Principles

The SWP urban contractors, including Metropolitan, testified jointly at McCorquodale's hearings on SWP financing, and submitted a briefing book at each hearing identifying the urban contractors' views. The urban contractors' testimony and briefing books should be the basis for policy principles for addressing SWP financing issues. The key principles are as follows:

- Since the underlying cause of current SWP financial problems is limited water supplies, the situation should be addressed by an aggressive program to enhance SWP supplies in a manner that is cost effective and protective of environmental resources.
- While the SWP currently faces significant challenges, these challenges are solvable.
- Any solution must comply with the State's contractual obligations with SWP contractors, and must respect the contractual rights of the contractors.
- Use of subsidies, either by taxpayers or among contractors, is not supported.
- The role of the Legislature in changing SWP financing is limited. The Legislature should defer to the Article 18 negotiations among the contractors and DWR.

COMMITTEE ITEM 6.(c)

WATER AVAILABILITY AND LAND USE PLANNING

Issue

There is growing concern among State legislators that development is being approved without the necessary infrastructure projects in place, e.g. schools, roads, sewer and water. The chairmen of both water policy committees in the Senate and Assembly believe there must be a stronger link between approval of new development and water availability. Through their efforts on AB 2673 (Cortese - San Jose) this past year, both chairmen have demonstrated their commitment to protecting existing customers during water shortages. Late in the legislative session, a veteran member of the Senate Education Committee amended SB 854, although it failed to pass committee, which would have mandated that no development occur until essential infrastructure projects were funded.

Existing Legal Situation

Existing law requires a city or county to adopt a general plan with the following seven mandated elements: land use, circulation, housing, conservation, open space, noise and safety.

The city or county local planning agency may refer a proposed general plan or substantial general plan amendment to certain entities, including public water entities with 3,000 or more service connections serving water to customers within the area covered by the proposal, prior to action on the general plan or plan amendment. Those entities have 45 days to comment on the proposed action. If the proposed action is referred to a public water entity, the water agency must provide certain information. The general plan or subsequent amendment can be adopted without referral to the impacted water provider.

Legislative History

1991 - Assemblyman Dominic Cortese (San Jose) introduced AB 455, envisioned as an effort to coordinate planning activities between counties, cities and water systems in order to "ensure rational planning as we grow." The bill as originally introduced simply stated that "no lead agency shall approve a development project unless the applicant identifies a long-term, reliable supply of water to serve the proposed project."

The California Building Industry Association (CBIA) insisted that in California "there does not exist a reliable, long-term supply of water . . . what we have here is a series of binges and purges." The CBIA, among others, fought the bill declaring it to be "one of the most potentially damaging" bills before the Legislature. AB 455 was

subsequently amended to remove any direct linkage between development and water supply and put in place the permissive process explained above under existing law.

1994 - Assemblyman Dominic Cortese introduced AB 2673 in another attempt to define a process that includes water supply considerations in local land use decision making. As introduced, AB 2673 proposed a hierarchy to determine a public water entity's obligation to provide service: first, existing customers within the existing service area; second, forecasted customers within the existing service area; third, forecasted new customers outside the existing service area but within the public water agency's sphere of influence; and fourth, forecasted customers outside the existing service area and outside its sphere of influence.

As introduced, AB 2673 in essence gave the water supplier authority to veto any proposed new development unless the water supplier determined it could do so without diminishing service to existing customers. The bill was amended another four times. Eventually the outright veto authority was deleted from the bill by allowing a city or county to approve the new development if it identified water system improvements or other measures to guarantee an adequate water supply to serve the development. Attachment "A" outlines the final version of AB 2673 when it died in the Senate.

Metropolitan Positions

March 1994 - After a presentation by the East Bay Municipal Utility District's (EBMUD) Legislative Representative, Metropolitan's Board voted to take no position on AB 2673 but would keep its member agencies informed as the bill progressed.

April 1994 - voted to oppose AB 2673 unless it was amended to apply to only EBMUD as the amended bill conflicted with Board-adopted policy principles and in light of the district-wide planning process under the Integrated Resources Plan (IRP).

June 1994 - voted to continue to oppose unless the bill was amended to conform with a set of principles that had been adopted by the Board of Directors for Metropolitan and the San Diego County Water Authority to guide Metropolitan's staff in crafting amendments to AB 2673. Those principles are outlined on Attachment "B."

July 1994 - amendments to AB 2673 were crafted by Metropolitan staff and several Member Agency representatives pursuant to the principles adopted by Metropolitan's Board in June. The amendments were presented to Assemblyman Cortese's staff and proponents of AB 2673 (EBMUD, California Farm Bureau Federation, production agriculture, a coalition of environmental organizations and the California Manufacturers Association). The only significant concern raised by the proponents with respect to our amendments related to the ability of a city or county to override the water supplier's findings due to social, economic or other reasons which the city/county believed should allow the development to proceed.

The opponents of AB 2673 (counties, cities, California Chamber of Commerce, California Association of Realtors, California Building Industry Association, Associated General Contractors, California State Council of Laborers, among others) rejected our proposed amendments because they were convinced they were in control of the bill at that time.

Policy Principles

At their June meeting, Metropolitan's Board adopted policy principles relating to the linkage of water availability and land use, a copy of which are attached as Attachment "B."

Political Analysis

AB 2673 was initially sponsored by EBMUD in reaction to efforts by Shapell Industries, a developer in Contra Costa County, to force it to provide water service to a development located mostly outside its service area. EBMUD believed that enactment of AB 2673 would protect it from such outside pressures and thereby enable it, in a time of an increasingly less reliable water supply, to meet the needs of the customers within its service area for an adequate supply of water.

EBMUD was successful in persuading a court that a county cannot approve a new development without a thorough analysis of the availability of water supplies under CEQA and which the county's own ordinance required.

Assemblyman Cortese was adamant that he was not carrying AB 2673 to address the EBMUD issue but believed strongly that "there is a need to more closely link land use planning with water supply planning in order to ensure an adequate water supply to support new growth and development." He has announced his intentions to reintroduce the bill next year.

The majority of the membership of the Association of California Water Agencies indicated they did not want veto authority over local development but would want more input into the planning process. There is a difference of opinion as to when water availability should be considered in the general plan or general plan amendment process. Most general plans, upon adoption, lack the specifics for development, and when the development plans are eventually finalized and adopted by the local planning agency, it may be too late to consider available water supply to serve that new development.

The Boards of Directors for Three Valleys MWD and Las Virgenes MWD were added to the list of supporters for AB 2673.

The Assembly Republican caucus voted to "oppose" AB 2673. There was a substantial number of "no" votes for the bill in the Assembly. Assemblyman Cortese was able to maneuver the bill out of the Assembly on the assurance he would not move it out of the Senate policy committee until the bill was in a form that could satisfy opponents. The bill subsequently died when the Senate Rules Committee denied a waiver of the policy committee deadline.

Recommendation

Staff recommends that Metropolitan convene a Member Agency land use and water availability work group to review the Board-adopted principles and the amendments crafted in July by Metropolitan and Member Agency representatives. Staff further recommends that the work group meet with the supporters and opponents to determine the acceptability of a proposal crafted by the work group which conforms with the Board-adopted principles. A progress report on the work group's efforts will be made to the Board Legislative Committee in November.

AB 2673 (CORTESE), AS AMENDED JUNE 1, 1994

- Requires a water agency to pursue water system improvements and other measures to meet the water needs associated with the city or county's proposed general plan amendments for new development.
- Requires the city or county referral of general plan amendments to a water agency for review **ONLY WHEN DEVELOPMENT IS PROPOSED IN THOSE AREAS CURRENTLY NOT RECEIVING WATER SERVICE.**
- Requires that before a city or county can adopt a general plan amendment proposing development in those areas currently not receiving water service, the city or county must either:
 - (a) be consistent with findings of a water agency concerning its ability to meet the water needs of 1) existing customers; 2) future expected customers within an existing service area; as well as 3) future expected customers outside of the service area, through periods of forecasted drought;
 - or-
 - (b) identify its own source of water for the proposed development in those areas currently not receiving water service.
- Requires that when the city or county approves the general plan amendment proposing new development in those areas currently not receiving water service, the actual development project shall not be approved until all agreements and financing for supplemental water supplies are in place and construction of the water supply improvements has commenced.
- Requires a water agency to submit periodic reports to its city or county identifying its progress on augmenting its water supplies to meet the water needs associated with new development plans of the city or county. These reports must identify all of the water supply options which are being pursued, as well as the various regulatory, financial, and physical requirements which must be met to augment its water supplies.
- Does not change existing law concerning a water agency's duty to serve water once a development project is approved.

General Principles

- a) Water agencies exist to provide water service and shall plan and execute all reasonable means to provide water service at a specified level of reliability to existing customers and such future customers as may be expected based upon local general plans or regionally adopted population forecasts.
- b) Water agencies must adopt a minimum level of service objective for their customers as a whole or by class of service.
- c) Approval for general plans and general plan amendments should not be provided unless reasonable assurance, in the form of water resource and capital improvement programs, can be given that all expected customers of the subject water agency can be served within the adopted reliability goal of the water agency.
- d) Where a water agency finds it cannot reasonably meet its reliability objective and provide service to potential future customers, it shall continue to have the discretion to deny future service.

The Land Use Planning Process - General Plans

Obligations of the Land Use Planning Agencies:

- e) Prior to the adoption of a general plan or amendment to a general plan which allows for development in an area not currently served by a public water agency, local land use agencies shall identify the water agency which will likely provide service and request that agency assess whether the proposed adoption or amendment can be reasonably accommodated within the scope of its water resource and capital program.
- f) Land use planning agencies shall consider the response of the water agency in considering the general plan adoption or amendment.
- g) If the water agency's water resource plans and capital improvement programs cannot reasonably accommodate the level of development posed in the proposed general plan or general plan amendment, these limitations shall be made a part of the general plan decision record of the land use planning agency.

Obligations of the Water Agency:

- h) Water agencies shall maintain a water resource plan and capital improvement program which identify and provide for water management and infrastructure needs which will provide reasonable assurance that the agency's adopted reliability objective can be met for all current and expected future customers. These plans may rely on actions beyond the direct control of the agencies. Retail water agencies whose reliability is dependent upon the water supply plans of a wholesaling water agency may rely on the plans of that agency to provide assurance of future reliability. Water agencies shall provide a current copy of these plans to local land use jurisdictions which they serve.
- i) Upon request of a land use planning jurisdiction to review a general plan adoption or amendment, water agencies shall assess whether the adoption or amendment can be reasonably accommodated based upon their adopted water resource plan and capital program. If the adoption or amendment cannot be reasonably accommodated, the agency shall indicate what reasonable modifications to the water resource plan or capital program would be necessary to accommodate the adoption or amendment.