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The Metropolitan Water District  
of Southern California  
at its meeting held

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**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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EXECUTIVE SECRETARY

October 18, 1994

To: Board of Directors (Committee on Legislation--Information)

From: General Counsel

Subject: Legislative Reform of the California Environmental Quality Act

Report

Two bills which contain significant amendments to the California Environmental Quality Act (CEQA), AB 314 (Sher) and SB 749 (Thompson) have been enacted into law and are in effect now as urgency measures. The changes to CEQA resulting from the enactment of these two bills include the following:

- . The definition of "project" is clarified to mean an activity which might either cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. This arguably slightly narrows the definition of "project".
- . Mitigation measures in draft mitigated negative declarations may be substituted as long as the lead agency determines that the new measures provide equal or greater mitigation. This provision is quite beneficial to Metropolitan since it allows minor changes in mitigation measures without requiring the mitigated negative declaration to be recirculated for public comment.
- . An EIR is no longer required to describe the relationship between short-term uses of the environment and maintenance of long-term productivity. This section has not been a source of litigation and has been viewed as "fluff".
- . The policy is restated that an EIR should focus only on potential significant environmental effects and should limit its discussion of other effects to only a brief explanation as to why they are not potentially significant.

- . Effective January 1, 1995, the existing provision not requiring consideration of new information regarding cumulative impacts which becomes available after a draft EIR was completed is deleted. This provision may complicate the EIR preparation process.
- . The requirements that mitigation measures must be enforceable and that lead agencies must adopt detailed findings for each significant project impact are clarified.
- . A Master EIR may not be used for follow-up approvals if its adequacy is affected by new projects, not described in the Master EIR, which have been approved in the interim. This will make follow-up approvals more difficult and subject to legal challenge than previously where the Master EIR could be used safely for follow-up project approvals for a period of five years.
- . A Master EIR may now be used for transportation and congestion management plans.
- . The thirty and thirty-five day statutes of limitations for commencing CEQA lawsuits do not commence until the public agency has deposited a copy of its notice of determination or notice of exemption in the mail to any person who has made a written request for such notice. Accordingly, it is critical that staff closely monitors the receipt of written requests for a notice of determination and mails a copy to any person requesting it so as to not extend the statute of limitations.
- . The content of the administrative record to be reviewed by the court in a CEQA lawsuit is now specified and includes all project-related documents. Metropolitan should benefit from a broader record in defending against CEQA challenges.
- . The public agency, rather than the petitioner is required to lodge a copy of the administrative record with the court.
- . Each party to a CEQA lawsuit is required to file and serve on the other parties a statement of any issues which that party intends to raise in any brief or any hearing or trial. The existing provisions regarding

presettlement and joint settlement statements have been deleted. This does not appear to be a very significant change.

- . Any party to a CEQA lawsuit may require the court to set an expedited briefing schedule which, in the absence of good cause, would result in completion of all briefing within 90 days of the request for the briefing schedule and the hearing to be held within 30 days thereafter. Although the law already provided that CEQA lawsuits are entitled to civil trial preference, this provision is very beneficial to Metropolitan in that it can obtain a hearing on the merits 210 days after a CEQA lawsuit is filed, subject to feasibility and extensions for good cause.



N. Gregory Taylor