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APR 11 1995

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

EXECUTIVE SECRETARY

March 27, 1995

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

From: General Manager

Subject: Analysis of Legislation on Water Availability and Land Use

Background

Current law requires that a water agency, upon receiving notification of a city or county's proposed action to adopt or substantially amend its general plan, submit information regarding its current and future water supplies. That law, however, does not appear to apply to a wholesaler-like water system but applies to water agencies with 3,000 or more service connections.

In June 1994, the Board adopted updated legislative policy principles on water availability and land use which are intended to achieve closer coordination between land use planning by cities and counties, and water resource and facility planning by water agencies.

This Legislative session five bills have been identified which address the subject of water availability and land use: AB 96 (Hannigan), AB 584 (Rainey), AB 1332 (Sweeney), SB 901 (Costa), and AB 1005 (Cortese).

Report

The attached chart lists the adopted legislative policy principles on water availability and land use and briefly indicates whether the bills address them. None of the bills attempt to deal with all of the adopted principles.

AB 96 and AB 584 are not given further consideration herein since neither bill imposes any additional obligations on water agencies. AB 96 would prohibit cities and counties from approving development unless a demonstrated method exists for financing necessary roads, schools, water and sewer facilities, and other public facilities and services. AB 584 would require a city or county, upon the next review of its general plan

after February 1, 1966, to consider and include in the administrative record the specified information regarding water supply availability that water agencies currently must provide under existing law.

The significant provisions of AB 1005 (Cortese), AB 1332 (Sweeney), and SB 901 (Costa) are summarized and compared below.

Closer coordination.

Each of the three bills attempts to encourage closer coordination between land use planning jurisdictions and water agencies. They require the land use agencies to ask water agencies for information concerning water resource plans, to consider that information in the planning process, and to include such information in the record of the decision-making process.

Only AB 1005 expressly requires the water agency to advise the land use agency of what changes in the current water resource plan would be required to accommodate the proposed change in the general plan. AB 1005 also makes the water agency responsible for any errors or omissions in the information supplied to the land use agency.

When and how coordination is required.

AB 1332 requires staff-level consultation by the land use agency with the water agency under the California Environmental Quality Act (CEQA) for every "project" on whether a negative declaration or environmental impact report (EIR) is required and on the project's effect on the water agency's ability to serve water. It also provides that the water agency is to be treated as if it is a responsible agency. This means that if a water agency believes the environmental review process or documentation of the land use agency is deficient, it must challenge the EIR or Negative Declaration of the land use agency, or be bound by it. The water agency may reopen the CEQA process later only if there are substantially changed conditions or new information previously unavailable emerges when the project reaches the water agency for action.

AB 1005 requires inclusion of information about water service in the land use element or certain other elements of a general plan, and also requires any general plan amendment which "proposes new developments" or which "substantially" amends a general plan to include information on water service.

"Findings of fact" must be made by the water agency when new development is proposed by a general plan amendment "outside the area in which water service is being provided by any public water system." No definition of "area" of "service" is provided.

Under AB 1005 an adverse finding by a water agency on water supply availability triggers a requirement that, before approving the development, the land use agency must find that the project will be consistent with the findings of the water agency, or that other sources of water can be made available to the project. The land use agency can also seek mediation with the water agency, although the mediation does not relieve the land use agency from having to make the specified findings. Water agencies are expressly precluded from vetoing any land use approval.

SB 901 requires a water agency to conduct an "assessment" of water supply conditions, and to hold a public meeting on its adoption only when the land use agency has determined that a general plan amendment requires preparation of an EIR. A finding by the water agency that its supplies will be insufficient to meet "reasonable needs," is treated as a significant environmental effect. In order to approve the project, land use agency will be required to find another source of water, adopt mitigation measures (which would be very difficult), or adopt a statement that overriding economic or social considerations allow the project to go forward. It is unclear whether a new "assessment" is required for each such project. It also appears that an assessment must be provided even when an EIR is required to address only a single issue, such as noise or seismic safety issues.

Impact on ability to deny or alter service.

During the last drought and historically, water agencies have successfully defended their decisions to refuse to provide new water service connections and to implement water rates encouraging conservation. To the extent that new legislation requires water agencies to commit to providing future water service or particular levels of service, their rights to deny new developments water service or to alter terms and conditions of existing water service among classes of customers may be undermined. There is concern that statements made by water agencies in the record of approval for particular project or developments could be used against them in litigation during times of shortage or allocation of supplies.

Only AB 1005, directly addresses these issues. AB 1005 contains uncodified provisions that, "[n]othing in this act is intended to create a right or entitlement to water service" and also that "[n]othing in this act is intended to change existing law concerning a public water system's obligation to provide water service to future customers." Codification of these provisions is desirable.

However, other sections in AB 1005 appear to undermine these uncodified statements of intent. First, AB 1005 describes a hierarchy of categories of customers and potential customers which may or may not be consistent with the legal situation that pertains in any given water agency, or with its actions during periods of shortage. Second, AB 1005 suggests that water agencies are obligated to "undertake the necessary actions ... to develop additional water supplies ... to support future growth .... " Third, AB 1005 provides that water agencies "shall be responsible for the contents of [their report to the land use agency], including any errors or omissions contained therein." This suggests potential liability to those who rely on the report. Fourth, if the water agency finds it cannot provide "water service sufficient to meet the reasonable needs" of customers, it must report to the land use agency periodically on its efforts to augment service. Finally, the process of findings and counter findings by the land use agency and water agency, followed by the requirement that no project be approved without "agreements and financing for supplemental water supplies" being in place, suggests that a commitment must be made to provide water supplies for any new development.

Using regional population forecasts.

Although the intent of these three bills is apparently to require water service availability to be addressed systematically in planning for future development, none expressly embrace the principle that water agencies should develop water resource or capital improvement plans based upon regionally-adopted population forecasts or local general plans. In most counties, such forecasts are prepared by or in cooperation with regional government organizations, such as the Southern California Association of Governments and the San Diego Association of Governments.

Proposed amendments.

In keeping with the adopted legislative policy principles, staff will seek amendments to AB 1332 (Sweeney), SB 901 (Costa) and AB 1005 (Cortese) to:

Rely upon the CEQA process to increase coordination between land use and water agencies, but mandate its use only for projects which may result in significant increases in projected population forecasts under existing general plans and regionally-adopted population projections.

Include provisions that state legislation does not grant any water user or potential water user any right to service, nor grant any water agency authority to veto a land use approval. (Only AB 1005 currently contains such provisions.)

Address water supply and water facilities issues. (SB 901 is currently silent on facilities.)

Use a standard definition of water agency, and clarify that water agencies may rely on plans of wholesalers.

Eliminate provisions which imply a right to water service for any class of water users or potential users (e.g., statutory hierarchies.)

Acceptance of these amendments by the author of one of the three bills would allow staff to convey a Metropolitan position of support for that bill.

Recommendation

For information only.

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General Manager

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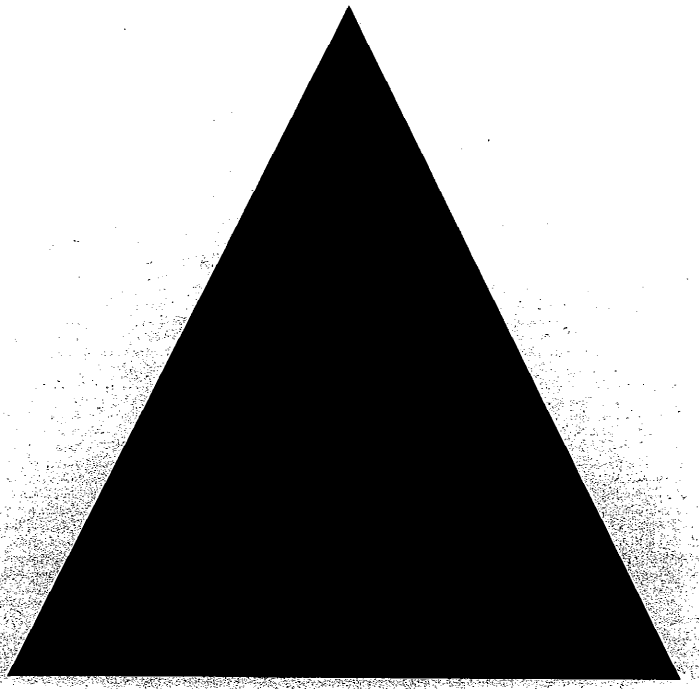

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