

APPROVED  
By the Board of Directors of  
The Metropolitan Water District  
of Southern California  
at its meeting held

MAR 12 1996



**MWD**  
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

*Dawn Chan*  
for EXECUTIVE SECRETARY

8-8

February 22, 1996

**To:** Board of Directors (Water Planning and Resources Committee--Action)  
 (Committee on Legislation--Action)

**From:** General Manager *William Stone*

**Submitted by:** Gary M. Snyder  
 Chief of Engineer *Gary M. Snyder*

**Subject:** Assembly Bills 2332 and 3034 (Thompson - Fallbrook)  
 Eastside Reservoir Groundwater Mitigation

**RECOMMENDATION(S)**

It is recommended that the Board adopt a position opposing AB 2332 and AB 3034.

**EXECUTIVE SUMMARY**

AB 2332, introduced by Assemblyman Bruce Thompson (Fallbrook) and co-authored by Senator Ray Haynes (Murietta), and AB 3034 introduced by Assemblyman Thompson alone, address the issues of groundwater mitigation for the Eastside Reservoir Project. These Bills could halt construction of the Project until groundwater issues are resolved to the satisfaction of the downstream property owners. The Bills would also grant the State Water Resources Control Board ("SWRCB" or "State Board") authority over Metropolitan's mitigation plan preempting CEQA. The State Board currently has no jurisdiction over issues of groundwater pumping unrelated to water quality. The precedent these Bills would establish of interfering with CEQA and traditional State Board jurisdiction for a local dispute would have far reaching impacts on Metropolitan and projects throughout the State.

**DETAILED REPORT**

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**Overview of Provisions.** Assembly Bills 2332 and 3034 would amend the Metropolitan Water District Act adding new sections to the Act. The principle provisions of both bills are as follows:

1. § 560 - Definitions of terms.
2. § 561 - Establishes SWRCB jurisdiction over Metropolitan's mitigation plan; halts dam construction until SWRCB approves mitigation plan.
3. § 562 - Makes findings regarding current groundwater conditions and water available that are favorable to property owners and not based on fact; requires Metropolitan's mitigation plan to be based on these findings.
4. § 563 - Requires the following of Metropolitan:
  - (a) Annual report on water issues to the SWRCB;
  - (b) Presentation of evidence to the SWRCB that Metropolitan is not "appropriating" precipitation in the reservoir;
  - (c) Construction of injection and monitoring wells at specified locations with monitoring wells to be close to Domenigoni's pumping wells;
  - (d) Establishment of potable water connections to all landowners;
  - (e) Maintenance of groundwater level of 1400 feet above sea level in wet years and 1360 feet above sea level in all other years at the specified monitoring wells;
  - (f) Free provision of potable water to certain property owners if groundwater level drops below these levels; if groundwater level drops below 126 feet, Metropolitan must provide free potable water to a larger class of property owners.
5. § 564 - Requires Metropolitan to file an application with the SWRCB for "appropriation" of any water used for export or to offset evaporation losses.

6. § 565 - Establishes a rebuttable presumption that the Eastside Reservoir Project is responsible for any impact on groundwater levels in the area and mandates that the SWRCB is to require Metropolitan to immediately mitigate any groundwater impacts.
7. § 566 - Requires Metropolitan to reimburse SWRCB for its staff time and costs spent on monitoring and oversight of Metropolitan's mitigation plan.

AB 3034 is virtually identical in all respects to AB 2332 making some minor changes to the findings regarding average groundwater flows but AB 3034 does contain an urgency clause. This is important because the impact of AB 3034 could be to halt construction as soon as enacted if an acceptable mitigation plan were not adopted. AB 2332 would not become law until January 1, 1997. As an urgency statute, passage of AB 3034 requires a 2/3 vote while AB 2332 requires a majority vote.

Metropolitan has already proposed a groundwater mitigation plan that will result in the elimination of all groundwater impacts caused by the Project. Metropolitan's plan will provide maintenance of groundwater levels for the downstream users through injection wells as proposed in both Bills and the plan obviates any real need for the legislation. Metropolitan's plan ensures that with regards to groundwater availability the downstream groundwater users will be in the same position, if not better, that they were in before the Project.

These Bills would pose difficulties for Metropolitan in administering a groundwater mitigation program and would add great expense to the Project. The Bills also would establish a precedent that would create significant legal problems for Metropolitan and other agencies in the future.

**Conclusion.** It is recommended that the Board adopt an oppose position to both Bills.

**ASSEMBLY BILL****No. 2332**

**Introduced by Assembly Member Thompson**  
(Principal coauthor: Senator Haynes)

February 15, 1996

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An act to add Part 9 (commencing with Section 560) to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to water.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2332, as introduced, B. Thompson. Metropolitan Water District of Southern California: Eastside Reservoir Project: groundwater: mitigation.

(1) The Metropolitan Water District Act confers authority, and imposes duties, on metropolitan water districts, including the Metropolitan Water District of Southern California.

Under other existing law, the State Water Resources Control Board exercises jurisdiction over water rights and water quality.

This bill would require the Metropolitan Water District of Southern California to develop and implement a plan to mitigate the adverse effects of the district's Eastside Reservoir Project on groundwater resources in the vicinity of the project's west dam, as prescribed, thereby imposing a state-mandated local program. The bill would require the state board to exercise jurisdiction over those mitigation activities, as specified.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs

mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

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

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

1 SECTION 1. Part 9 (commencing with Section 560)  
2 is added to the Metropolitan Water District Act (Chapter  
3 209 of the Statutes of 1969), to read:

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## PART 9. GROUNDWATER

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### CHAPTER 1. EASTSIDE RESERVOIR PROJECT

8

9 560. Unless the context otherwise requires, the  
10 following definitions govern the construction of this  
11 chapter:

12 (a) "District" means the Metropolitan Water District  
13 of Southern California.

14 (b) "Eastside Reservoir Project" or "project" means  
15 the Eastside Reservoir Project constructed by the  
16 Metropolitan Water District of Southern California in the  
17 Domenigoni Valley, including all dams and other related  
18 facilities.

19 (c) "State board" means the State Water Resources  
20 Control Board.

21 (d) "West dam" means the embankment dam that  
22 forms the western boundary of the Eastside Reservoir  
23 Project.

1 561. (a) The district, in accordance with this chapter,  
2 shall develop and implement a plan to mitigate the  
3 adverse effects of the district's Eastside Reservoir Project  
4 on groundwater resources in the vicinity of the west dam.

5 (b) The state board shall exercise jurisdiction over the  
6 district's development and implementation of that plan.

7 (c) The district shall not commence construction of  
8 the west dam until the mitigation plan is submitted to,  
9 and receives final approval from, the state board.

10 562. (a) For the purposes of this chapter, the  
11 Legislature finds all of the following facts:

12 (1) The average quantity of precipitation that  
13 originates upstream of the west dam is 7,000 acre-feet per  
14 year, based on daily precipitation records from 1941 to  
15 1987, inclusive.

16 (2) The average quantity of precipitation lost to  
17 evapotranspiration and other natural consumptive uses  
18 within the drainage area above the project site and east  
19 of the proposed west dam is 2650 acre-feet per year,  
20 leaving 4350 acre-feet of water from precipitation  
21 available to replenish groundwater supplies below the  
22 west dam.

23 (3) The "Memorandum of Understanding and  
24 Agreement on Operation of the Domenigoni Valley  
25 Reservoir (Agreement No. 4671)," dated November 21,  
26 1994, requires the district to release an unspecified  
27 amount of surface water to water rights holders specified  
28 in the agreement, but which amount is about 500  
29 acre-feet.

30 (4) The average quantity of water available to  
31 recharge the groundwater basin downstream of the west  
32 dam is 3850 acre-feet per year.

33 (b) The mitigation plan shall be based on the factual  
34 findings in subdivision (a).

35 563. (a) Mitigation activities shall include all of the  
36 following:

37 (1) The district shall prepare and file an annual report  
38 with the state board to account for the water stored in the  
39 project. The report shall include all of the following:

1 (A) Evidence that the project is not capturing any  
2 amount of water for export outside the watershed that,  
3 absent the project, would have been available to recharge  
4 the groundwater basin downstream of the west dam.

5 (B) Evidence that the district is not using water  
6 supplies that, absent the project, would have been  
7 available to recharge the groundwater basin downstream  
8 of the west dam to account for the evaporation losses of  
9 the project.

10 (2) The district shall construct, maintain, and operate  
11 injection wells on the west side of the project and  
12 adjacent to the San Diego Canal to meet the injection  
13 requirements imposed by paragraph (5).

14 (3) The district shall install and monitor new  
15 observation wells along Winchester Road, west of the  
16 project, at the following locations:

17 (A) The intersection of Holland Road and Winchester  
18 Road. The well at this location shall replace the existing  
19 well at that intersection identified by the district as  
20 "MO-3."

21 (B) One-quarter mile north of Holland Road.

22 (C) One-quarter mile south of Holland Road.

23 (D) One-half mile south of Holland Road.

24 (E) One mile west of Winchester Road and one-half  
25 mile south of Holland Road. The well at this location shall  
26 be a "fail-safe" observation well.

27 (4) The district shall construct, operate, and maintain  
28 facilities to deliver treated potable water supplies to  
29 groundwater users pursuant to subparagraphs (D) and  
30 (E) of paragraph (5).

31 (5) (A) The average annual elevation of groundwater  
32 in the Domenigoni basin shall be determined by the  
33 average groundwater elevation in the observation wells  
34 installed pursuant to subparagraph (3).

35 (B) During years of precipitation greater than 120  
36 percent of normal, the district shall inject water from the  
37 reservoir to achieve groundwater elevation at or above  
38 1400 feet above mean sea level by May 1 of each year.

39 (C) During years of precipitation less than 120 percent  
40 of normal, the district shall inject water from the

1 reservoir to establish groundwater elevation at or above  
2 1360 feet above mean sea level by May 1 of each year.

3 (D) In any year that the district fails to establish  
4 groundwater elevation as required under subparagraphs  
5 (B) and (C), the district shall deliver potable water  
6 supplies to replace lost groundwater supplies to any  
7 groundwater user in Section 3, 4, 9, or 10 of Township 6  
8 South, Range 2 West, San Bernardino Base and Meridian  
9 that has filed a notice of extraction and diversion of water  
10 pursuant to Section 5001 of the Water Code and requests  
11 delivery under this subparagraph. The district shall  
12 continue delivery of potable water supplies under this  
13 subparagraph without interruption until groundwater  
14 elevation is restored as required under subparagraphs  
15 (B) and (C).

16 (E) In any year that the groundwater elevation in the  
17 fail-safe well required by subparagraph (E) of paragraph  
18 (3) falls below 1260 feet above mean sea level, the district  
19 shall deliver potable water supplies to replace lost  
20 groundwater supplies to any groundwater user in Section  
21 3, 4, 9, or 10 of Township 6 South, Range 2 West, San  
22 Bernardino Base and Meridian, that is located west of  
23 Winchester Road, has filed a notice of extraction and  
24 diversion of water pursuant to Section 5001 of the Water  
25 Code, and requests delivery under this subparagraph.  
26 The district shall continue delivery of potable water  
27 supplies under this subparagraph without interruption  
28 until groundwater elevation is restored to a level at or  
29 above 1260 feet above mean sea level.

30 564. The district shall file an application with the state  
31 board for the appropriation of any water for export or  
32 evaporation. Any permit or license issued to the district  
33 shall have a priority lower than the groundwater  
34 recharge requirement imposed by this chapter.

35 565. In exercising its jurisdiction under this part, the  
36 state board shall comply with both of the following:

37 (a) There is a rebuttable presumption that any  
38 adverse impact on groundwater resources in the vicinity  
39 of the west dam is caused by the project.

1 (b) The state board shall require the district to  
2 immediately mitigate any adverse impact of the project  
3 on groundwater resources wherever those impacts occur.

4 566. The district shall reimburse the state board for  
5 administrative costs incurred by the state board in  
6 approving the mitigation plan and processing any  
7 application to appropriate water under Section 564.

8 SEC. 2. No reimbursement shall be made from the  
9 State Mandates Claims Fund pursuant to Part 7  
10 (commencing with Section 17500) of Division 4 of Title  
11 2 of the Government Code for costs mandated by the  
12 state pursuant to this act. It is recognized, however, that  
13 a local agency or school district may pursue any remedies  
14 to obtain reimbursement available to it under Part 7  
15 (commencing with Section 17500) and any other  
16 provisions of law.

17 Notwithstanding Section 17580 of the Government  
18 Code, unless otherwise specified, the provisions of this act  
19 shall become operative on the same date that the act  
20 takes effect pursuant to the California Constitution.

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3034**

Introduced by Assembly Member Thompson

February 23, 1996

An act to add Part 9 (commencing with Section 560) to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 3034, as introduced, B. Thompson. Metropolitan Water District of Southern California: Eastside Reservoir Project: groundwater: mitigation.

(1) The Metropolitan Water District Act confers authority, and imposes duties, on metropolitan water districts, including the Metropolitan Water District of Southern California.

Under other existing law, the State Water Resources Control Board exercises jurisdiction over water rights and water quality.

This bill would require the Metropolitan Water District of Southern California to develop and implement a plan to mitigate the adverse effects of the district's Eastside Reservoir Project on groundwater resources in the vicinity of the project's west dam, as prescribed, thereby imposing a state-mandated local program. The bill would require the state board to exercise jurisdiction over those mitigation activities, as specified.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs

mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Part 9 (commencing with Section 560)  
2 is added to the Metropolitan Water District Act (Chapter  
3 209 of the Statutes of 1969), to read:

4  
5 PART 9. GROUNDWATER

6  
7 CHAPTER 1. EASTSIDE RESERVOIR PROJECT

8  
9 560. Unless the context otherwise requires, the  
10 following definitions govern the construction of this  
11 chapter:

12 (a) "District" means the Metropolitan Water District  
13 of Southern California.

14 (b) "Eastside Reservoir Project" or "project" means  
15 the Eastside Reservoir Project constructed by the  
16 Metropolitan Water District of Southern California in the  
17 Domenigoni Valley, including all dams and other related  
18 facilities.

19 (c) "Local water" means all water within the  
20 boundary of the Eastside Reservoir Project, excluding  
21 water imported to the project from other watersheds by  
22 the Metropolitan Water District of Southern California.

1 (d) "State board" means the State Water Resources  
2 Control Board.

3 (e) "West dam" means the embankment dam that  
4 forms the western boundary of the Eastside Reservoir  
5 Project.

6 561. (a) The district, in accordance with this chapter,  
7 shall develop and implement a plan to mitigate the  
8 adverse effects of the district's Eastside Reservoir Project  
9 on groundwater resources in the vicinity of the west dam.

10 (b) The state board shall exercise jurisdiction over the  
11 district's development and implementation of that plan.

12 (c) The district shall not commence construction of  
13 the west dam until the mitigation plan is submitted to,  
14 and receives final approval from, the state board.

15 562. (a) Before submitting the mitigation plan to the  
16 state board for approval, the district shall submit to the  
17 state board a report on the estimated allocation of the  
18 average annual precipitation that originates upstream of  
19 the west dam. For the purposes of this chapter, the  
20 Legislature finds that the annual precipitation upstream  
21 of the west dam is estimated to be 7,000 acre-feet per year,  
22 based on daily precipitation records from 1941 to 1987,  
23 inclusive.

24 (b) The district's report to the state board pursuant to  
25 subdivision (a) shall include an estimate of all of the  
26 following:

27 (1) The average annual water losses that result from  
28 natural consumptive uses, including runoff and  
29 evapotranspiration, within the drainage area above the  
30 project site and east of the west dam, excluding  
31 evaporation losses from the project.

32 (2) The average quantity of water necessary to  
33 recharge the Domenigoni groundwater basin to supply  
34 all current and future beneficial uses of the groundwater  
35 by the overlying users of the basin.

36 (3) The average quantity of surface water releases to  
37 be made by the district at the west dam to certain surface  
38 water rights holders downstream of the west dam  
39 pursuant to the "Memorandum of Understanding and  
40 Agreement on Operation of the Domenigoni Valley

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1 Reservoir (Agreement No. 4671)," dated November 21,  
2 1994.

3 (c) The state board shall analyze the estimates  
4 required pursuant to subdivision (b). The state board  
5 shall not give final approval to the mitigation plan  
6 required pursuant to Section 561 until the state board  
7 determines, after notice to, and a hearing for,  
8 groundwater users in the vicinity of the west dam,  
9 regarding the estimates, that the estimates in the report  
10 are reasonable. The district may submit amended  
11 estimates with the state board if the state board  
12 determines that the submitted estimates are  
13 unreasonable.

14 563. (a) Mitigation activities shall include all of the  
15 following:

16 (1) The district shall prepare and file an annual report  
17 with the state board to account for the water stored in the  
18 project. The report shall include all of the following:

19 (A) Evidence that the project is not capturing any  
20 amount of local water for export outside the watershed,  
21 except as authorized by the state board pursuant to  
22 Section 564.

23 (B) Evidence that the district is not using local water  
24 supplies to account for the evaporation losses of the  
25 project, except as authorized by the state board pursuant  
26 to Section 564.

27 (2) The district shall construct, maintain, and operate  
28 injection wells on the west side of the project and  
29 adjacent to the San Diego Canal to meet the injection  
30 requirements imposed by paragraph (5).

31 (3) The district shall install and monitor new  
32 observation wells along Winchester Road, west of the  
33 project, at the following locations:

34 (A) The intersection of Holland Road and Winchester  
35 Road. The well at this location shall replace the existing  
36 well at that intersection identified by the district as  
37 "MO-3."

38 (B) One-quarter mile north of Holland Road.

39 (C) One-quarter mile south of Holland Road.

40 (D) One-half mile south of Holland Road.

1 (E) One mile west of Winchester Road and one-half  
2 mile south of Holland Road. The well at this location shall  
3 be a "fail-safe" observation well.

4 (4) The district shall construct, operate, and maintain  
5 facilities to deliver treated potable water supplies to  
6 groundwater users pursuant to subparagraphs (D) and  
7 (E) of paragraph (5).

8 (5) (A) The average annual elevation of groundwater  
9 in the Domenigoni basin shall be determined by the  
10 average groundwater elevation in the observation wells  
11 installed pursuant to subparagraph (3).

12 (B) During years of precipitation greater than 120  
13 percent of normal, the district shall inject water from the  
14 reservoir to achieve groundwater elevation at or above  
15 1400 feet above mean sea level by May 1 of each year.

16 (C) During years of precipitation less than 120 percent  
17 of normal, the district shall inject water from the  
18 reservoir to establish groundwater elevation at or above  
19 1360 feet above mean sea level by May 1 of each year.

20 (D) In any year that the district fails to establish  
21 groundwater elevation as required under subparagraphs  
22 (B) and (C), the district shall deliver potable water  
23 supplies to replace lost groundwater supplies to any  
24 groundwater user in Section 3, 4, 9, or 10 of Township 6  
25 South, Range 2 West, San Bernardino Base and Meridian  
26 that has filed a notice of extraction and diversion of water  
27 pursuant to Section 5001 of the Water Code and requests  
28 delivery under this subparagraph. The district shall  
29 continue delivery of potable water supplies under this  
30 subparagraph without interruption until groundwater  
31 elevation is restored as required under subparagraphs  
32 (B) and (C).

33 (E) In any year that the groundwater elevation in the  
34 fail-safe well required by subparagraph (E) of paragraph  
35 (3) falls below 1260 feet above mean sea level, the district  
36 shall deliver potable water supplies to replace lost  
37 groundwater supplies to any groundwater user in Section  
38 3, 4, 9, or 10 of Township 6 South, Range 2 West, San  
39 Bernardino Base and Meridian, that is located west of  
40 Winchester Road, has filed a notice of extraction and

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1 diversion of water pursuant to Section 5001 of the Water  
2 Code, and requests delivery under this subparagraph.  
3 The district shall continue delivery of potable water  
4 supplies under this subparagraph without interruption  
5 until groundwater elevation is restored to a level at or  
6 above 1260 feet above mean sea level.

7 564. The district shall file an application with the state  
8 board for the appropriation of any water for export or  
9 evaporation. Any permit or license issued to the district  
10 shall have a priority lower than the groundwater  
11 recharge requirement imposed by this chapter.

12 565. In exercising its jurisdiction under this part, the  
13 state board shall comply with both of the following:

14 (a) There is a rebuttable presumption that any  
15 adverse impact on groundwater resources in the vicinity  
16 of the west dam is caused by the project.

17 (b) The state board shall require the district to  
18 immediately mitigate any adverse impact of the project  
19 on groundwater resources wherever those impacts occur.

20 566. The district shall reimburse the state board for  
21 administrative costs incurred by the state board in  
22 approving the mitigation plan and processing any  
23 application to appropriate water under Section 564.

24 SEC. 2. No reimbursement shall be made from the  
25 State Mandates Claims Fund pursuant to Part 7  
26 (commencing with Section 17500) of Division 4 of Title  
27 2 of the Government Code for costs mandated by the  
28 state pursuant to this act. It is recognized, however, that  
29 a local agency or school district may pursue any remedies  
30 to obtain reimbursement available to it under Part 7  
31 (commencing with Section 17500) and any other  
32 provisions of law.

33 Notwithstanding Section 17580 of the Government  
34 Code, unless otherwise specified, the provisions of this act  
35 shall become operative on the same date that the act  
36 takes effect pursuant to the California Constitution.

37 SEC. 3. This act is an urgency statute necessary for the  
38 immediate preservation of the public peace, health, or  
39 safety within the meaning of Article IV of the

1 Constitution and shall go into immediate effect. The facts  
2 constituting the necessity are:

3 In order to ensure that a mitigation plan for the adverse  
4 effects of the Eastside Reservoir Project on local  
5 groundwater resources is developed and implemented  
6 before the Metropolitan Water District of Southern  
7 California commences construction on that project, it is  
8 necessary that this act take effect immediately.

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