



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-1

March 25, 1997

**To:** Board of Directors (Committee on Legislation--Action)  
**From:** General Manager *Edw. S. Meese*  
**Submitted by:** Debra C. Man, Chief *Debra C. Man*  
Planning and Resources  
**Subject:** Endorsement of Chafee-Kempthorne Endangered Species Act Legislation

---

### RECOMMENDATION

---

It is recommended that your Board support the Chafee-Kempthorne Endangered Species Reauthorization Act of 1997 if it is amended to expand its No Surprises provisions and to include natural systems conservation planning provisions, and if it remains a moderate bill consistent with Metropolitan's endangered species policy principles.

---

### EXECUTIVE SUMMARY

---

Progress on reauthorization of the Endangered Species Act in the 105th Congress will be initiated in the Senate during 1997. The Administration has indicated that it will participate with the Senate bipartisan effort to produce legislation. Parallel discussions are expected to begin in the House of Representatives following successful efforts in the Senate.

Senator Dirk Kempthorne (R-ID), chair of the Senate Environment and Public Works Subcommittee on Drinking Water, Fisheries and Wildlife, has released a discussion draft bill with the blessing of Senator John Chafee (R-RI) to initiate discussions for reauthorization of the Endangered Species Act. Overall, it is a very moderate bill that avoids the polarizing issues that were evident in the 104th Congress. Key provisions of the bill address "no surprises", recovery planning, multiple species habitat conservation plans and pre-listing agreements, regulatory streamlining, greater non-federal involvement, and water rights.

The discussion draft bill currently fails to include provisions for natural systems conservation plans and includes only narrow "no surprises" provisions. Both of these areas need improvement to support Bay-Delta and Colorado River endangered species negotiations. There is also concern that the water rights provisions will become a major stumbling block to gaining sufficient consensus on the bill to allow its passage.

Early conditional support of the discussion draft bill will be helpful to Metropolitan's efforts to seek passage of a moderate endangered species bill that includes satisfactory "no surprises" and natural systems conservation planning provisions. Should the situation change and bill

provisions become unacceptable to Metropolitan, appropriate recommendations will be made to your Board to modify Metropolitan's position on the bill.

## **DETAILED REPORT**

---

Progress on reauthorization of the Endangered Species Act in the 105th Congress will be initiated in the Senate during 1997. The Administration has indicated that it will participate with the Senate bipartisan effort to produce legislation. Parallel discussions are expected to begin in the House of Representatives following successful efforts in the Senate.

Senator Kempthorne, chair of the Senate Environment and Public Works Subcommittee on Drinking Water, Fisheries and Wildlife, has released a discussion draft bill with the blessing of Senator Chafee to initiate discussions for reauthorization of the Endangered Species Act. Overall, it is a very moderate bill that avoids the polarizing issues that were evident in the 104th Congress.

Key provisions of the bill address "no surprises", recovery planning, multiple species habitat conservation plans and pre-listing agreements, regulatory streamlining, greater non-federal involvement, and water rights. The "no surprises" provisions, while very helpful, focus on habitat conservation planning and need to be expanded to provide regulatory assurances to conservation achieved pursuant to Section 7 consultations and negotiated recovery plans. The provisions for recovery planning greatly expand its role in the law, and would give priority to multiple species recovery plans, require participation of States and local parties in the development of the plans, and would identify critical habitat. Regulatory streamlining provisions would expedite permitting for activities with minimal impacts on protected species. Incentives would also be provided to encourage voluntary conservation on non-federal lands. Direct involvement in Section 7 consultations would also be afforded to affected non-federal parties. Lastly, the bill's water rights language is problematic in that it does not seem to clarify the conflict between endangered species and water rights and is of concern to the environmental community. Discussions are on-going regarding water rights, but it is not clear how the issue will be resolved.

Of particular concern to Metropolitan, are the failures of the draft bill to include provisions for natural systems conservation plans and broad "no surprises". Both of these areas need improvement to support Bay-Delta and Colorado River endangered species negotiations. There is also concern that the water rights provisions will become a major stumbling block to gaining sufficient consensus on the bill to allow its passage.

Early conditional support of the discussion draft bill will be helpful to Metropolitan's efforts to seek passage of a moderate endangered species bill that includes satisfactory "no surprises" and natural systems conservation planning provisions. Should the situation change and bill provisions become unacceptable to Metropolitan, appropriate recommendations will be made to your Board to modify Metropolitan's position on the bill.

KMK:cl

o:\clustr11\mm\board\esa-kemp.kmk