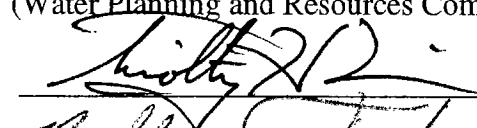
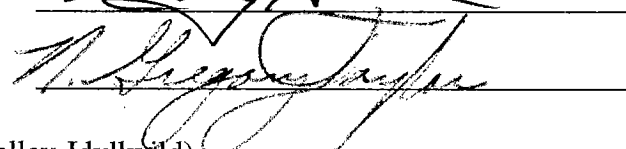




May 30, 1997

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

From: General Manager 
 General Counsel 

Subject: Senate Bill 1082 (Kelley-Idyllwild)

RECOMMENDATION:

It is recommended that the Board support SB 1082 (Kelley - Idyllwild) if amended to clarify the roles of the Director of the Department of Water Resources (DWR) and the Colorado River Board to ensure that California lives within its 4.4 million acre-foot entitlement.

EXECUTIVE SUMMARY:

In April 1997 the Board adopted a position in opposition to SB 1082, introduced by Senator David Kelley (Idyllwild). The Board opposed the bill because it would have adversely affected the authority of the Board to manage Metropolitan's facilities. In both the Senate Agriculture and Water Resources Committee and the Senate Appropriations Committee, amendments offered by Metropolitan were incorporated into the bill. SB 1082 now mirrors the current negotiation process between Metropolitan and the San Diego County Water Authority (the Authority) which is being informally mediated by the Director of DWR.

However, Senator Kelley also accepted an amendment to Section 1812.5(b) suggested by Senate Appropriations Committee staff that would change the role of the Director of DWR from one of assisting the Colorado River Board to one of developing, in consultation with the Colorado River Board and the California contractors, the plan to ensure that California lives within its 4.4 million acre-foot annual entitlement.

This amendment was not fully discussed or debated at the Senate Appropriations Committee hearing at which the bill was presented. Subsequent discussion among the California contractor general managers indicates that they too, have concerns about granting the Director the sole decision with respect to the plan. Therefore, staff recommends that Section 1812.5(b) be returned to the prior language authorizing the Director to "assist" the entire Colorado River Board and the California contractors in developing the plan.

DETAILED REPORT:

As initially introduced, SB 1082 would have amended existing "wheeling" legislation by ordering the Director of DWR to unilaterally declare the terms and conditions of the use of Metropolitan's facilities by the Authority with respect to its proposed transfer with the Imperial Irrigation District (IID), if Metropolitan and the Authority had not agreed on terms and conditions by July 1, 1997. Because of the potential impacts of the bill on the ability of Metropolitan's Board to manage its own facilities and on current negotiations between Metropolitan and the Authority, the Board voted to oppose SB 1082 at its April 1997 meeting.

Since that time, however, Metropolitan has been successful in amending the bill to remove the most objectionable aspects and to return the decision making authority to the entities involved. The bill now authorizes the Director of DWR to "issue a formal recommendation" with regard to the appropriate terms and conditions of the transfer and wheeling arrangement, rather than imposing those terms and conditions himself. That recommendation would occur only if the parties do not reach an agreement by August 15, 1997. If the parties do not reach agreement or accept the Director's recommendations, they may, upon agreement of both parties, request a formal mediation process. The bill now essentially mirrors the current negotiation process between Metropolitan and the Authority which is being informally mediated by the Director of DWR.

Amendments suggested by Metropolitan to require no cost shifting to other water users as a result of a wheeling transaction were also incorporated into the bill.

Finally, SB 1082 has been amended to include findings regarding the importance of developing a plan to allow California to live within its basic Colorado River entitlement and of ensuring that the Colorado River Aqueduct continues to operate at its full capacity. In order to implement those findings, Section 1812.5(b) of the prior version of the bill (May 8, 1997) authorized the Director of DWR to "assist" the Colorado River Board and the California contractors in developing the plan. However, Senator Kelley accepted a Senate Appropriations Committee staff amendment to Section 1812.5(b) which gave the director himself the authority to develop the plan, requiring him only to "consult" with the Colorado River Board and contractors. This amendment was not fully discussed

or debated at the Senate Appropriations Committee hearing at which it was presented. Subsequent discussion among the California contractor general managers indicates that they have concerns about granting one member of the Colorado River Board--the Director of Water Resources--the sole discretion to make the decision on the plan effecting all members. Therefore, staff recommends that Section 1812.5(b) in the May 21 version of the bill be amended back to the language specified in the May 8 version of the bill that had the Director assisting the Colorado River Board and the six California Agencies to develop a plan.

JFR:mg
Attachment
#5086

AMENDED IN SENATE MAY 21, 1997
 AMENDED IN SENATE MAY 8, 1997
 AMENDED IN SENATE MAY 1, 1997
 AMENDED IN SENATE APRIL 14, 1997
 AMENDED IN SENATE APRIL 7, 1997
 AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 1082

Introduced by Senator Kelley

February 28, 1997

An act to add Section 1812.5 to the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1082, as amended, Kelley. Water conveyance facilities: joint use of capacity.

(1) Existing law prohibits the state and any regional or local public agency from denying a bona fide transferor of water the use of a water conveyance facility under prescribed circumstances, and requires the state, regional, or local public agency that owns the facility to determine in a timely manner the amount and availability of unused capacity and the terms and conditions of use, as specified.

This bill, until January 1, 1999, would require the Director of Water Resources to ~~assist~~ *in consultation with* the Colorado River Board and the 6 California water agencies that derive

water from the Colorado River ~~in developing~~ *to develop* a plan to ensure that California can live within its entitlement of 4.4 million acre-feet of water annually and to ensure that the southern California coastal plain's needs for Colorado River water are met. The bill would require the director, with regard to a proposed transfer of conserved water from the Imperial Irrigation District to the San Diego County Water Authority, using the Metropolitan Water District of Southern California's water conveyance facilities, including the Colorado River Aqueduct, if the authority and the Metropolitan Water District of Southern California have not reached an agreement in principle on the terms and conditions of the transfer on or before August 15, 1997, to issue, within 30 days from that date, a formal recommendation with regard to the appropriate terms and conditions of that transfer, as specified. The bill would provide for a formal mediation process if the director's recommendations are unacceptable to either the authority or the Metropolitan Water District of Southern California.

The bill would make legislative findings and declarations as to the extraordinary nature of the measure and the necessity for a special statute.

(2) 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: no.

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

1 SECTION 1. Section 1812.5 is added to the Water
2 Code, to read:

3 1812.5. (a) The Legislature finds and declares all of
4 the following:

5 (1) This section is an extraordinary measure being
6 taken only because the proposed transfer of conserved
7 water from the Imperial Irrigation District to the San
8 Diego County Water Authority is a matter of statewide
9 interest in that it addresses a significant need for water in
10 the southern state through the conservation of water now
11 being consumed there. The Legislature further finds and

1 declares that this section is not to be regarded as setting
2 a precedent for any other legislative action.

3 (2) California's use of Colorado River water is limited
4 to its basic annual apportionment of 4.4 million acre-feet,
5 plus one-half of any excess or surplus water from the
6 Colorado River. However, California continues to use up
7 to 5.3 million acre-feet by relying on surpluses and
8 apportioned, but unused water within the Colorado River
9 Basin, which is not a reliable water supply. The Secretary
10 of the Interior has strongly urged California to develop a
11 plan to enable it to live within its basic apportionment of
12 4.4 million acre-feet from the Colorado River.

13 (3) It is of vital state interest that every effort be made
14 to ensure that the Colorado River Aqueduct continues to
15 operate at its full capacity at fair and reasonable terms in
16 order to minimize statewide disruptions from
17 diminishing Colorado River supplies.

18 (4) Negotiations assisted by the director are underway
19 in 1997 between the Metropolitan Water District of
20 Southern California and the San Diego County Water
21 Authority for the development of a long-term wheeling
22 agreement whereby the San Diego County Water
23 Authority would use the Colorado River Aqueduct to
24 wheel conserved water from the Imperial Irrigation
25 District.

26 (b) The director ~~shall assist~~ *in consultation with* the
27 Colorado River Board and the six California water
28 agencies that derive water from the Colorado River ~~in~~
29 ~~developing~~ *shall develop* a plan to ensure that California
30 can live within its entitlement of 4.4 million acre-feet of
31 water annually and to ensure that the needs of southern
32 California for Colorado River water are met. *The director*
33 *shall pay for the cost of developing the plan with*
34 *non-General Fund money.*

35 (c) (1) Notwithstanding any other provision of law,
36 with regard to the proposed transfer of conserved water
37 from the Imperial Irrigation District to the San Diego
38 County Water Authority, using the Metropolitan Water
39 District of Southern California's water conveyance
40 facilities, including the Colorado River Aqueduct, if the

1 San Diego County Water Authority and the Metropolitan
 2 Water District of Southern California have not reached
 3 an agreement in principle on the terms and conditions of
 4 the transfer of conserved water using the Metropolitan
 5 Water District of Southern California's water conveyance
 6 facilities on or before August 15, 1997, the director shall
 7 issue a formal recommendation within 30 days from that
 8 date, with regard to the appropriate terms and conditions
 9 of the transfer.

10 (2) The director, in issuing a recommendation
 11 regarding appropriate terms and conditions of the
 12 transfer, shall make those determinations prescribed by
 13 Section 1812.

14 (3) If the director's recommendations prescribed by
 15 Section 1812 are unacceptable to either the San Diego
 16 County Water Authority or the Metropolitan Water
 17 District of Southern California, that party may request a
 18 formal mediation process. If both parties agree to
 19 participate in the formal mediation process, the parties
 20 shall commence mediation within one month after the
 21 mediation request is made. If the parties cannot agree on
 22 a mediator, the director shall appoint a mediator or the
 23 director may serve as mediator. *The San Diego County
 24 Water Authority and the Metropolitan Water District of
 25 Southern California shall reimburse the state for any
 26 General Fund money used in mediation entered into
 27 pursuant to this paragraph.*

28 (d) No action taken pursuant to this section shall
 29 ~~adversely affect the current water supply or current costs~~
 30 ~~of providing water to the state water contractors. injure~~
 31 ~~any legal user of water, and there shall be no shifting of~~
 32 ~~costs for actions taken pursuant to this section to water~~
 33 ~~users in any county in the State of California.~~

34 (e) This section shall remain in effect only until
 35 January 1, 1999, and as of that date is repealed, unless a
 36 later enacted statute, that is enacted before January 1,
 37 1999, deletes or extends that date.

38 SEC. 2. The Legislature finds and declares that a
 39 special statute is necessary and that a general statute
 40 cannot be made applicable, within the meaning of

1 Section 16 of Article IV of the California Constitution,
 2 because of unique circumstances applicable to the
 3 transfer of conserved water from the Imperial Irrigation
 4 District to the San Diego County Water Authority, using
 5 the Metropolitan Water District of Southern California's
 6 water conveyance facilities. In order to ensure that the
 7 transfer is concluded in a timely manner, thereby
 8 providing necessary water to the San Diego area, a special
 9 statute is needed and a general statute cannot be made
 10 applicable.

11 SEC. 3. This act is an urgency statute necessary for the
 12 immediate preservation of the public peace, health, or
 13 safety within the meaning of Article IV of the
 14 Constitution and shall go into immediate effect. The facts
 15 constituting the necessity are:

16 In order to facilitate, on or before August 15, 1997, an
 17 agreement to transfer conserved water from the Imperial
 18 Irrigation District to the San Diego County Water
 19 Authority, using the Metropolitan Water District of
 20 Southern California's facility, the Colorado River
 21 Aqueduct, thereby assuring an efficient redistribution of
 22 water resources, it is necessary that this act take effect
 23 immediately.