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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

**9-15**

August 5, 1997

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

**From:** *for* General Manager

**Submitted by:** Debra C. Man, Chief  
Planning and Resources

*Edward J. Meas*  
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**Subject:** Update on Federal Endangered Species Act Activities

**RECOMMENDATION(S)**

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For information only.

**EXECUTIVE SUMMARY**

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Congressional activity on the federal Endangered Species Act (ESA) is gaining momentum. Bipartisan discussions in the Senate continue among Senators Dirk Kempthorne (R-ID), John Chafee (R-RI), Max Baucus (D-MT) and Harry Reid (D-NV), and participants are hopeful that a comprehensive ESA reauthorization bill will be introduced shortly. On June 12, 1997, Senator Kempthorne introduced S. 901, the "Endangered Species Habitat Protection Act of 1997", to encourage landowners through the use of tax incentives to create and preserve habitat for species listed under the ESA. In the House of Representatives, bipartisan ESA discussions involving Representatives Don Young (R-AK), Chairman of the Resources Committee, Richard Pombo (R-CA), Jim Saxton (R-NJ) and John Dingell (D-MI) have been initiated, and their intent is to develop ESA amendments that would attract a more centrist constituency. Meanwhile, Representative George Miller (D-CA) introduced H.R. 2351, the "Endangered Species Recovery Act of 1997", on July 31, 1997. H.R. 2351 is a fairly comprehensive ESA reauthorization bill which significantly increases regulatory requirements under the ESA and provides tax incentives to private landowners for habitat conservation measures.

**DETAILED REPORT**

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In April, 1997, staff reported that discussions on the reauthorization of the federal Endangered Species Act (ESA) had been initiated in the Senate and that Senator Kempthorne had released a discussion draft ESA bill with the support of Senator Chafee. At that time, your Board

expressed support for the Chafee-Kempthorne Endangered Species Reauthorization Act of 1997, if it is amended to expand the No Surprises provisions and include natural systems conservation planning provisions, and if it remains a moderate bill consistent with Metropolitan's ESA policy principles.

In the last several months, Congressional activity on the reauthorization of the ESA has gained momentum and two ESA bills have been introduced. Bipartisan discussions in the Senate continue among Senators Kempthorne, Chafee, Baucus and Reid, and participants are hopeful that a comprehensive ESA reauthorization bill will be introduced shortly. There is concern, however, that since the ESA negotiations are taking longer than originally anticipated, Senate negotiators may miss the opportunity to introduce a moderate bipartisan ESA reauthorization bill at a time when Congress is receptive to ESA reauthorization. Earlier this year, Metropolitan provided detailed comments to Senator Kempthorne on his discussion draft ESA bill, requesting that provisions for natural system conservation plans be included and that the No Surprises provisions be expanded. At this time, we understand that the bipartisan ESA bill will include No Surprises provisions and the concept of natural systems conservation planning, but we do not know the specific language for these provisions.

Interior Secretary Babbitt recently indicated that the Administration is supportive of moving forward with ESA reauthorization legislation this session, a change in the Administration's policy of the last several years. Secretary Babbitt has specifically expressed support for modifying the ESA to provide more flexibility and to focus species protection efforts on the preservation of their habitats. The Administration recently began participating in the Senate ESA negotiations and has expressed support for the efforts of the Senate negotiators to develop a moderate bipartisan ESA bill.

On June 12, 1997, Senator Kempthorne introduced S. 901, the "Endangered Species Habitat Protection Act of 1997", to encourage landowners through the use of tax incentives to create and preserve habitat for species listed under the ESA. The bill provides an enhanced deduction for the donation of a conservation easement, an exclusion from estate taxes for real property subject to an endangered species conservation agreement, and a partial exclusion for any gain from the sale of land to a conservation purchaser.

In the House of Representatives, bipartisan ESA discussions involving Representatives Young, Pombo, Saxton and Dingell have been initiated, and they are attempting to enlist other Democratic participants. These discussions have yet to produce a draft ESA bill, but negotiations are continuing and staff is meeting on a regular basis to develop language intended to attract a more centrist constituency to support an ESA reauthorization proposal.

On Thursday, July 31, 1997, Representative Miller introduced H.R. 2351, the "Endangered Species Recovery Act of 1997". The bill has 53 cosponsors in the House, including 50 Democrats, 2 Republicans and 1 Independent. H.R. 2351 is a fairly comprehensive ESA reauthorization bill which is intended to bring a substantial part of the environmental community

into active participation in the ESA reauthorization debate, and to push them as far as possible toward the center on some issues. The bill would shift the emphasis of the ESA to the "recovery" of listed species and would provide tax incentives and federal assistance for landowners to protect the habitat of listed species. However, this bill would also: 1) provide only very limited assurances for participants in habitat conservation plans, 2) require applicants to post a performance bond before issuance of an incidental take permit to insure compliance with the habitat conservation plan, 3) provide for the designation of "survival habitat" without the consideration of economic impacts, 4) expand the current regulatory requirements of the ESA to include candidate and proposed species in addition to officially listed endangered and threatened species, 5) require mitigation and reduction of "cumulative impacts" which are broadly defined in the bill, and 6) expand the existing ESA citizen suit provisions. These later provisions are very likely to draw opposition from the regulated community.

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