



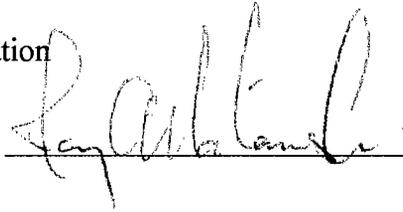
MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

November 21, 1997

To: Committee on Legislation--Information

From: ^{FER:} General Manager



Subject: Issue Papers

RECOMMENDATION

For information only.

EXECUTIVE SUMMARY

In October, your Committee began the process of addressing anticipated legislative issues for 1998 and considering proposed legislative policy principles. To continue this discussion, three issue papers are submitted for the Committee's consideration in December:

- MTBE Impacts in Surface Water
- Water Quality Protection - Perchlorate
- California Environmental Quality Act

The issue papers for discussion at the January Committee meeting will include Implementation of Farm Bill Conservation Programs (EQIP), Expanded Use of Recycled Water and MWD Board Governance.

Attachments

MTBE IMPACTS ON SURFACE WATER

Background

Methyl tert-butyl ether (MTBE) is an oxygenate which has become a major component of gasoline used in California. Use of oxygenates are mandated by the United States Environmental Protection Agency (USEPA) and the California Air Resources Control Board to reduce air pollution emissions. The use of MTBE in gasoline is reported to have improved air quality, but MTBE's unique properties make it a contamination threat to drinking water supplies. Because MTBE is highly soluble in water, does not absorb well onto soil particles, does not readily biodegrade and moves at rates similar to water, it can percolate through the ground into groundwater aquifers.

Extensive shallow groundwater and some deep drinking water wells (including some owned by the city of Santa Monica) have been contaminated with MTBE at relatively high levels by leaks from underground gasoline storage tanks and/or pipelines. Sampling of drinking water surface supplies, including Metropolitan's reservoirs, has shown widespread occurrence of MTBE contamination at lower but still potentially significant concentrations.

Analysis

New State legislation was passed in 1997 which addresses a number of health and environmental concerns about the use of MTBE. While this legislation focused primarily on groundwater protection, new drinking water standards were mandated that will affect all sources including groundwater and surface water. Also, major evaluations of MTBE and alternative gasoline oxygenates are required to be conducted by various State agencies and the University of California.

It is expected that additional legislation related to MTBE will be introduced in the State legislature and possibly in Congress. Some measures may deal primarily with surface water including the use and control of motorized recreational watercraft.

Metropolitan Position

Metropolitan's Board of Directors previously adopted the following two principles related to source water quality protection:

- Protection of public drinking water supplies. Support Clean Water Act amendments to explicitly include protection of public drinking water supplies as a goal of the Clean Water Act. (Adopted 10-16-92)

- Source water protection. Support legislation establishing partnership-based and/or regulatory-based source water protection programs, that are implemented in addition to existing water quality control requirements for point source and nonpoint source discharges, in order to facilitate resolution of source water quality problems. Support for cooperative source protection programs does not preclude support for regulatory-based programs in cases where cooperative programs are unsuccessful. (Adopted 6-14-94)

Recommended Policy Principles

It is recommended that Metropolitan adopt the following additional principles on source water quality protection to address MTBE contamination:

- Support legislation that provides adequate controls on motorized recreational watercraft and fueling operations that may contribute to surface water contamination by MTBE.
- Support federal legislation for better regulation of interstate pipelines to prevent MTBE contamination of drinking water sources.
- Support legislation to provide adequate funding for research, occurrence, treatment, health effects and environmental clean-up related to MTBE contamination of drinking water sources.

WATER QUALITY PROTECTION -- PERCHLORATE

Background

Recently the chemical perchlorate has been found in drinking water supplies in northern and southern California. Perchlorate (as ammonium perchlorate) is used in solid rocket propellants and has been found in areas where aerospace material development and testing has occurred. Because perchlorate has not previously been considered a common drinking water contaminant, no federal or state drinking water standards exist. However, the California Department of Health Services (CDHS) has recently adopted a provisional action level for perchlorate in drinking water of 18 parts per billion (ppb).

Information on the extent of perchlorate contamination of drinking water supplies within California is only now emerging. Perchlorate has been detected in 69 out of 232 wells tested in California, including 24 wells with levels above the CDHS action level. Eleven water systems have been affected by well closures. Several communities have been forced to use bottled water to avoid consumption of water containing perchlorate above the State's provisional action level. A number of Metropolitan member agencies and subagencies have wells contaminated with perchlorate.

Perchlorate has also been detected in Colorado River water including Lake Havasu and Lake Mead but not in the State Water Project.. Metropolitan's extensive sampling program demonstrated that the perchlorate in the Colorado River was entering Lake Mead from the Las Vegas Wash. Further investigation by the State of Nevada indicate that perchlorate production facilities in Henderson, NV are the source of contamination.

Analysis

It is expected that perchlorate will become an important issue for the rest of the country as additional occurrence data is obtained. Better health effects data and research on cost-effective methods for perchlorate removal is also needed. Existing laws and regulations do not specifically address water protection of surface water and groundwater drinking water supplies from perchlorate contamination.

The United States House of Representatives Appropriations Committee recently included \$2 million in the United States Environmental Protection Agency's appropriation for fiscal 1998 for critical perchlorate treatment research and earmarked the funds for East Valley Water District (EVWD), which is near San Bernardino (There is significant perchlorate contamination in the San Bernardino-Redlands area, and EVWD is in the district represented by Congressman Jerry Lewis). Metropolitan and its member

agencies actively supported inclusion of the funding in the appropriations bill for VA-HUD and Independent Agencies (including USEPA) which was recently signed by the President. Additional funding will be needed for research on occurrence, treatment and health effects.

Metropolitan Position

Metropolitan's Board of Directors previously adopted the following two principles related to source water quality protection:

- Protection of public drinking water supplies. Support Clean Water Act amendments to explicitly include protection of public drinking water supplies as a goal of the Clean Water Act. (Adopted 10-16-92)
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Recommended Policy Principles

It is recommended that Metropolitan adopt the following additional principles on source water quality protection to address perchlorate contamination:

- Support legislation to assure effective remediation and clean-up of perchlorate contamination in groundwater and surface water.
- Support legislation to provide additional funding for research on perchlorate including occurrence, treatment and health effects.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Background

The California Environmental Quality Act (CEQA) was enacted in 1970 shortly after the passage of the National Environmental Policy Act in 1969. The goals of CEQA are to: (1) inform public decision-makers of potential adverse environmental impacts of projects to be approved by them, (2) identify and require the implementation of feasible alternatives and mitigation measures to reduce or avoid adverse environmental impacts, and (3) provide for public participation in the environmental review process. Over time, the practice and interpretation of the requirements of CEQA have resulted in reviews and recommendations for improving and reforming CEQA, as well as on-going legislative efforts to amend CEQA and rulemaking procedures to update the CEQA Guidelines to reflect legislative changes and case law.

In January 1995, the CEQA Review Committee, Environmental Law Section of the State Bar of California published recommendations for CEQA amendments. The recommendations support the established purpose, principles, and general procedures of CEQA, and focus on clarification where there has been ambiguity in the law, guidelines, or case law. Recommendations address: (1) clarifying the timing of CEQA compliance with respect to project planning and commitments, (2) facilitation of master and tiered EIRs, (3) disclosure of significance thresholds in CEQA documents, (4) guidance on disclosure of varying levels of detail of mitigation measures and commitments, and (5) revised requirements for addressing cumulative impacts.

In November 1995, the Little Hoover Commission published, "Making Land Use Work: Rules to Reach our Goals" which focused in large part on CEQA reform in support of better land use decision making. The Commission found that the project-by-project reviews mandated by CEQA have failed to improve overall environmental quality. It further found that CEQA compliance has become overly costly as agencies attempt to bullet proof documents for potential litigation. Commission recommendations include: (1) substantial integration of regulatory decision making within the CEQA process to streamline project approvals, (2) provisions for formal dispute resolution between agencies, (3) provisions to encourage regional planning, and (4) requirements for infrastructure planning.

Also in 1995, the California Policy Seminar, a joint program of the University of California and State government, issued a report entitled, "Fixing CEQA: Options and Opportunities for Reforming CEQA". This report included CEQA reform recommendations in the following five areas: (1) improved State and regional agencies' CEQA review process for local projects, (2) increased certainty and consistency within

jurisdictions' CEQA review process, (3) improved mitigation and monitoring of cumulative impacts, (4) improved alternatives analysis to make it more useful, and (5) the creation of consistency and predictability in judicial review of CEQA-related legal actions.

In March 1997, the State Legislative Analyst's Office issued a policy brief, "CEQA: Making it Work Better" which recommended measures to improve the efficiency of the CEQA process, improve the cost-effectiveness of mitigation required by CEQA, and improve the resolution of CEQA disputes. Also proceeding in 1997 and 1998 are rulemakings to update the CEQA Guidelines. While the purpose of the rulemakings is to cause the Guidelines to reflect legislative changes to CEQA and judicial interpretations of the substantive and procedural requirements of the law, such efforts are commonly subject to further controversial interpretations as a result of the effort itself.

Activity of the California Legislature with respect to CEQA has tended to address issues individually rather than to propose comprehensive reform. In the 1995-96 session, eleven CEQA-related bills were introduced. Of these bills, Metropolitan took a support position on nine and opposed two. Three of the bills were signed into law, including SB 901, which provides for integration of water supply considerations into land use planning efforts of city and county governments. In 1997, seven CEQA-related bills were introduced and remain to be acted upon in 1998. Metropolitan has taken a "watch" position thus far on these bills.

Metropolitan Position

Metropolitan has no adopted policy principles for CEQA, and has worked within existing CEQA compliance requirements to approve its own projects. To date, Metropolitan's CEQA legislative strategy has been reactive-- Metropolitan has supported or opposed proposals advocated by others, but has not advocated any reforms itself. Support of legislation has relied upon Metropolitan's adopted policy principles in other areas, such as permit streamlining, to react to legislation as it has emerged in discussions in Sacramento.

Recommended Policy Principles

It is recommended that Metropolitan adopt the six CEQA policy principles listed below. These principles provide for streamlining of CEQA and other regulatory procedures to improve efficiency without loss of environmental protections, and for clarifications which reduce the potential for litigation.

1. Advocate/support provisions to improve integration of permitting within the CEQA process.

2. Support measures that provide CEQA exemptions for minor activities subject to exceptions for special circumstances, including extension of such existing exemptions to water supply facilities.
3. Support amendments that clarify CEQA requirements without significantly reducing environmental protections or opportunity for public involvement.
4. Oppose amendments that are ambiguous or contradict other code provisions and that are likely to increase the potential for CEQA litigation.
5. Oppose amendments that would significantly modify the threshold test for determining whether an environmental impact report (EIR) is required for a particular project.
6. Oppose amendments that would significantly reduce the ability of CEQA to protect the environment.

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