

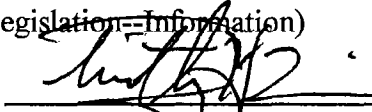



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-17

September 30, 1997

To: Board of Directors (Committee on Legislation ~~Information~~)
From: *for* General Manager 
Submitted by: Debra C. Man, Chief 
Planning and Resources
Subject: Update on Reauthorization of the Federal Endangered Species Act

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

The Senate bipartisan Endangered Species Act reauthorization bill, S. 1180, was introduced on September 16, 1997 by Senators Kempthorne, Chafee, Baucus and Reid. As anticipated, the bill did not include provisions for natural systems conservation plans and for broadened "no surprises" assurances sought by Metropolitan. Staff, along with the Western Urban Water Coalition and the Association of California Water Agencies, are actively working with California's senators to obtain these provisions as amendments during committee markup or on the Senate floor. The detailed report provides a summary of the major provisions of S. 1180.

DETAILED REPORT

S. 1180, titled the Endangered Species Recovery Act of 1997, was introduced on September 16, 1997 by Senators Kempthorne (R-ID), Chafee (R-RI), Baucus (D-MT), and Reid (D-NV). As anticipated, the bill did not include provisions for natural systems conservation plans and for broadened "no surprises" assurances sought by Metropolitan. Staff, along with the Western Urban Water Coalition and the Association of California Water Agencies, are actively working with California's senators to obtain these provisions as amendments during committee markup or on the Senate floor. An update on the status of the bill and these amendments will be provided orally. A summary of major provisions of S. 1180 follows.

S. 1180 provides a moderate reform of the Endangered Species Act that greatly increases emphasis on recovery of species, aims to improve listing and de-listing decisions, increases the role of States in listing and recovery processes, increases opportunities for non-federal conservation, provides "no surprises" to non-federal conservation efforts, and modifies section 7 consultation procedures. Water rights provisions have not been included in the bill.

Recovery planning is a central theme in S. 1180. The bill would require preparation of recovery plans by broad-based recovery teams unless this is determined to be inappropriate and is so noticed. Further, such recovery planning would be required to be practical in that recovery goals must be objective and measurable and sufficient to delist species, and plans must balance effectiveness, social and economic factors, and implementation considerations. Federal agencies would be required to implement recovery plans and non-federal parties would be encouraged to do so through section 10 conservation plans.

Listing and de-listing decision making would be improved as a result of peer review requirements that would help to ensure "sound science." States would be given an opportunity to provide an assessment of petitions to list and de-list species. States would also be given the opportunity to lead the recovery planning efforts. In addition, State and local government and other persons and organizations would be given a significant role on recovery teams.

Opportunities for non-federal conservation planning would be substantially increased. Multiple species conservation plans addressing listed and unlisted species are expressly allowed. The bill includes safe harbor provisions allowing incidental take to baseline levels in exchange for maintaining and improving habitat for threatened and endangered species. Candidate conservation agreements and habitat reserve agreements providing variations on the non-federal conservation theme are new provisions. "No surprises" assurances would be granted to participants in non-federal conservation plans. Such assurances specify that no additional mitigation measures for covered species would be required if such measures would require payment of additional money or additional restrictions on use of land, waters, or water-related rights without the consent of the permittee. However, S. 1180 would appear to increase conservation requirements for candidate species to require a conservation benefit in exchange for pre-listing assurances. Currently, the law requires that impacts be mitigated.

Lastly, section 7 consultation procedures, applicable to federal actions, would be streamlined. The bill allows federal action agencies to determine for themselves if their actions would have an adverse effect on listed species or designated critical habitat with review by the U.S. Fish and Wildlife Service or National Marine Fisheries Service, as appropriate. S. 1180 also allows section 7 consultations to be consolidated if the same species are affected within a specific geographic area. Non-federal permit applicants involved in section 7 consultations would be allowed to participate in consultations affecting their actions thereby improving the likelihood that endangered species conditions restricting their activities would be acceptable and workable.

S. 1181 was introduced by Senator Kempthorne to parallel S. 1180. The provisions of S. 1181 provide federal tax incentives to private owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat. This bill would also provide compensation for diminished property values as a result of Endangered Species Act restrictions.

KMK:cl