



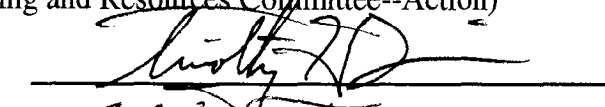
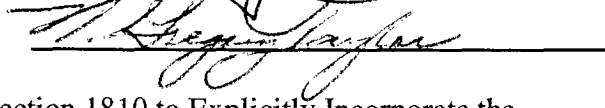
**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-1

March 17, 1998

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

**From:** ~~To~~ General Manager   
General Counsel 

**Subject:** Proposal to Amend Water Code Section 1810 to Explicitly Incorporate the Requirement that no Wheeling Transaction Should Cause Injury or Shift Costs to other Customers of the Wheeling System

**RECOMMENDATION(S)**

It is recommended that the General Manager be authorized to pursue, and take all actions necessary to obtain, amendment of the wheeling provisions of the Water Code to explicitly prohibit injury or cost shifting to other users of a conveyance facility involved in a wheeling transaction, if such cost shifts are not mitigated.

**EXECUTIVE SUMMARY**

At its February 10, 1998 meeting, your Board directed the General Manager and General Counsel to explore the introduction of legislation which would explicitly require all water transfers involving wheeling to comply with Water Code Section 1812.5(d). That section was part of Senator David Kelley's SB 1082, which, in part, directed Department of Water Resources Director David Kennedy to recommend appropriate terms and conditions on the use of Metropolitan's facilities for wheeling as part of the proposed water transfer between San Diego County Water Authority and Imperial Irrigation District. Section 1812.5(d) provides that no action taken pursuant to the section "shall injure any legal user of water, and there shall be no shifting of costs for actions taken pursuant to this section to water users in any county in the State of California." Section 1812.5, in its entirety, is subject to automatic repeal on January 1, 1999. Staff therefore has drafted proposed legislation, a copy of which is attached to this letter, intended to incorporate the appropriate language from Section 1812.5(d) into Section 1810, the operative provision of the permanent wheeling statute. Staff proposes to work with others to introduce and pursue enactment of the attached language, or other language which the General Manager and General Counsel determine will accomplish the same purpose.

**DETAILED REPORT**

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Water Code Sections 1810-1814 require a public agency to allow a party seeking to move transferred water access to unused capacity in the public agency's water conveyance facility, subject to certain conditions, including the payment of "fair compensation" and the requirement that the use of the conveyance facility shall not injure any legal user of water. The calculation of "fair compensation" and whether existing customers of the conveyance system owner should be required to bear additional costs because of the wheeling transaction are issues of some dispute. As you will recall, the trial court in The Metropolitan Water District of Southern California v. All Persons Interested took a very narrow view of the costs that can be recovered in a wheeling rate, and found that existing language protecting "any legal user of water" from injury from use of the conveyance facility does not protect customers of the owner of the conveyance facility. The court's decision has been appealed.

The no injury concept also is contained in Senator David Kelley's SB 1082, which was enacted in 1997 as Section 1812.5 of the Water Code. In part, that section directed Department of Water Resources Director David Kennedy to assist in the development of a California Plan and to recommend appropriate terms and conditions on the use of Metropolitan's facilities for wheeling as part of the proposed water transfer between San Diego County Water Authority and Imperial Irrigation District. Subsection (d) of Section 1812.5 requires that:

"No action taken pursuant to this section shall injure any legal user of water, and there shall be no shifting of costs for actions taken pursuant to this section to water users in any county in the State of California."

Water Code Section 1812.5, including sub-section (d), automatically will be repealed as of January 1, 1999.

At its meeting of February 10, 1998, your Board directed staff to explore the introduction of appropriate legislation which would explicitly require that all water transfers involving wheeling comply with the no injury, no cost-shifting requirement of Section 1812.5(d), unless any injury or cost-shift is mitigated. Proposed language incorporating the no injury/no cost-shift concept is attached to this letter. Since Section 1812.5 is scheduled to sunset as of January 1, 1999, the proposed language would amend Water Code Section 1810, which is the provision of the permanent wheeling statute requiring that available capacity be made available and stating the conditions which may be imposed on such use. Staff recommends that the General Manager and General Counsel be authorized to work with others to obtain enactment of the attached language, or similar language which the General Manager and General Counsel determine will accomplish the same purpose.

Attachment

JFR:mg  
#9365

## POTENTIAL AMENDMENT TO WATER CODE

### SECTION 1810

Water Code Section 1810 is amended as follows:

1810. Notwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use, including any costs necessary to mitigate for impacts identified in subsection (d), subject to the following:

(a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor.

(b) The commingling of transferred water does not result in a diminution of the beneficial uses or quality of the water in the facility, except that the transferor may, at the transferor's own expense, provide for treatment to prevent the diminution, and the transferred water is of substantially the same quality as the water in the facility.

(c) Any person or public agency that has a water service contract with or the right to receive water from the owner of the conveyance facility who has an emergency need may utilize the unused capacity that was made available pursuant to this section for the duration of the emergency.

(d) This use of a water conveyance facility is to be made (i) without injuring any legal user of water in any county of the State of California, including without shifting costs to any other users of the conveyance facility, unless the injury or shifting of costs can be mitigated to the reasonable satisfaction of the injured party or party to whom costs would be shifted, (ii) without unreasonably affecting fish, wildlife, or other instream beneficial uses and (iii) without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.