



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-13

March 31, 1998

To: Board of Directors (Committee on Legislation--Action)

From: *for* General Manager

for General Counsel

Edward J. Merritt
Jarvis Oley

Subject: Senate Bill 2062 (Johnson-Irvine) as amended March 24, 1998

RECOMMENDATION(S)

It is recommended that the Board take a position in opposition to Senate Bill 2062 (Johnson-Irvine) as amended March 24, 1998.

EXECUTIVE SUMMARY

SB 2062 (Johnson) would require Metropolitan to reimburse a member agency under specified conditions for Metropolitan's litigation costs paid from fees or charges for water sales to that member agency. Reimbursement would be required if the member agency protested an action by Metropolitan and subsequently was a prevailing party in any litigation over the action. The statute would apply to any litigation pending on or after February 20, 1998. The only member agency to which the bill could apply at this time is the San Diego County Water Authority, as a result of its role in the wheeling validation litigation which is currently on appeal. (At the present time, San Diego County Water Authority also is seeking reimbursement under existing law for its legal fees pursuant to Code of Civil Procedure § 1021.5.)

DETAILED REPORT

Senator Ross Johnson (Fullerton) has introduced SB 2062, which would require Metropolitan to reimburse a "qualified member public agency" for Metropolitan's litigation costs paid from revenues derived from fees or charges for water sales to the member public agency.

A "qualified member public agency" is defined as a member agency that: (1) has protested an action by Metropolitan; and (2) is a prevailing party in any subsequent litigation over Metropolitan's action affecting the public interest, whether or not the member agency initiated the litigation. Litigation costs subject to the reimbursement include Metropolitan's own costs plus any attorney's fees awarded against Metropolitan in favor of an adverse party who is not a member agency. Metropolitan could choose to reimburse the qualified member public agency either through a lump sum payment, a credit against future fees and charges for the purchase of water or, with the consent of the member agency, make reimbursement payments over a period of up to five years.

The statute would apply to any litigation pending on or after February 20, 1998. Currently, the only litigation to which the statute would apply is the wheeling validation case (Metropolitan Water District v. All Persons) which is on appeal from judgment of the trial court. As you will recall, the San Diego County Water Authority joined in that litigation in opposition to validation of Metropolitan's wheeling rates, and, if it prevails, could qualify for reimbursement under this bill.

The general rule in California is to prevent the shifting of litigation costs to other litigants by requiring that each party to litigation is responsible for its own attorney's fees. (See California Code of Civil Procedure § 1021.) This special interest bill would single out one public agency--Metropolitan--for different treatment for no compelling reason. Moreover, it would change the rules for that one party long after the litigation commenced, and subject most of its member agencies to an increased share of costs. It also would establish the bad public policy precedent of potentially encouraging members of multiple agency boards to litigate differences with fellow members rather than resolving them through the agency's normal governing structure. Ultimately, public agency governing bodies could be discouraged from pursuing innovative ways to achieve their public purposes or from making decisions on controversial issues in the absence of unanimity for fear that dissenting members will attempt to overturn majority decisions in court and impose increased litigation costs on the majority members.

For all of these reasons staff, recommends that the Board take a position in opposition to SB 2062.

JFR:mg
#9637

Attachment(s)

AS AMENDED IN SENATE MARCH 24, 1998

SENATE BILL No. 2062

Introduced by Senator Johnson

February 20, 1998

~~An act to amend Section 10004 of the Water Code, relating to water.~~ *An act to add Section 161.5 to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to metropolitan water districts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2062, as amended, Johnson. ~~The California Water Plan Metropolitan water districts: litigation costs: indemnification.~~

(1) The Metropolitan Water District Act authorizes the formation of metropolitan water districts and specifies the powers and purposes of a district, including the power to impose rates or charges for the sale and delivery of water to member public agencies. Under the act, all claims for money or damages against a district are governed by specified existing law relating to claims and actions against public entities, except as otherwise provided in statute or regulation.

This bill would require a district, notwithstanding any other provision of law, to reimburse a qualified member public agency, as defined, for specified litigation costs of the district paid directly or indirectly from fees or charges for the purchase of water paid by the qualified member public agency to the district, as prescribed, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs

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mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Under existing law, a plan for the control, protection, conservation, development, and utilization of the water resources of the state, set forth and described in specified documents, is known as "The California Water Plan." Existing law requires the plan to be updated as prescribed.~~

~~This bill would make technical, nonsubstantive changes in those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

1 ~~SECTION 1. Section 10004 of the Water Code is~~
2 SECTION 1. Section 161.5 is added to the
3 Metropolitan Water District Act (Chapter 209 of the
4 Statutes of 1969), to read:
5 161.5. (a) For the purpose of this section, the
6 following terms have the following meanings:
7 (1) "Qualified member public agency" is any member
8 public agency that, with respect to a case or controversy,
9 meets both of the following qualifications:
10 (A) The member public agency protested the action
11 of the district that gives rise to the case or controversy
12 before the action was taken, or if the action was not taken
13 at a meeting of the board of directors of the district for
14 which notice was given pursuant to this act, the protest
15 was made within 60 days from the date that the action was
16 taken.
17 (B) The member public agency is a prevailing party in
18 any litigation affecting the public interest, including

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1 *litigation to enforce a provision of law, that results from*
2 *the action of the district, regardless of whether the*
3 *member public agency initiated the litigation. As used in*
4 *this section, "prevailing party" means a member public*
5 *agency that recovers any relief against the district in a*
6 *final judgment rendered by a court.*

7 (2) *"Litigation costs of the district" includes all direct*
8 *and indirect costs to the district incurred with respect to*
9 *litigation arising from an action of the district, from the*
10 *date that the action was taken, including, but not limited*
11 *to, defense costs, expenses, and any attorney's fees*
12 *awarded to an adverse party other than a member public*
13 *agency.*

14 (b) *Notwithstanding any other provision of law, a*
15 *district shall reimburse a qualified member public agency*
16 *for those litigation costs of the district paid directly or*
17 *indirectly from the fees or charges for the purchase of*
18 *water paid by the qualified member public agency to the*
19 *district.*

20 (c) (1) *The district shall reimburse a qualifying*
21 *member public agency by one of the following methods,*
22 *as determined by the district:*

23 (A) *A lump-sum payment to the qualifying member*
24 *public agency.*

25 (B) *A credit against future fees and charges for the*
26 *purchase of water to be paid to the district by the*
27 *qualifying member public agency.*

28 (2) *With the consent of the qualifying member public*
29 *agency, the district may make reimbursement payments*
30 *over a period not to exceed five years.*

31 (d) *This section is applicable to any litigation that is*
32 *pending in any court on or after February 20, 1998.*

33 SEC. 2. *Notwithstanding Section 17610 of the*
34 *Government Code, if the Commission on State Mandates*
35 *determines that this act contains costs mandated by the*
36 *state, reimbursement to local agencies and school*
37 *districts for those costs shall be made pursuant to Part 7*
38 *(commencing with Section 17500) of Division 4 of Title*
39 *2 of the Government Code. If the statewide cost of the*
40 *claim for reimbursement does not exceed one million*

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1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.
7 amended to read:
8 10004. (a) ~~The plan for the orderly and coordinated~~
9 ~~control, protection, conservation, development, and~~
10 ~~utilization of the water resources of the state, which is set~~
11 ~~forth and described in Bulletin No. 1 of the State Water~~
12 ~~Resources Board entitled "Water Resources of~~
13 ~~California," Bulletin No. 2 of the State Water Resources~~
14 ~~Board entitled, "Water Utilization and Requirements of~~
15 ~~California," and Bulletin No. 3 of the department~~
16 ~~entitled, "The California Water Plan," with any necessary~~
17 ~~amendments, supplements, and additions to the plan,~~
18 ~~shall be known as "The California Water Plan."~~
19 (b) (1) ~~The department shall update The California~~
20 ~~Water Plan every five years. The department shall report~~
21 ~~the amendments, supplements, and additions included in~~
22 ~~the updates of The California Water Plan, together with~~
23 ~~a summary of the department's conclusions and~~
24 ~~recommendations, to the Legislature in the session in~~
25 ~~which the updated plan is issued.~~
26 (2) ~~The department shall release a preliminary draft~~
27 ~~of The California Water Plan, as updated, upon request,~~
28 ~~to interested persons and entities throughout the state for~~
29 ~~their review and comments. The department shall~~
30 ~~provide those persons and entities an opportunity to~~
31 ~~present written or oral comments on the preliminary~~
32 ~~draft. The department shall consider these comments in~~
33 ~~the preparation of the final publication of The California~~
34 ~~Water Plan, as updated.~~