



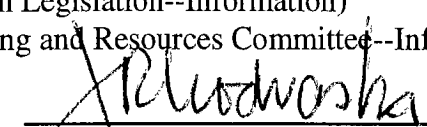
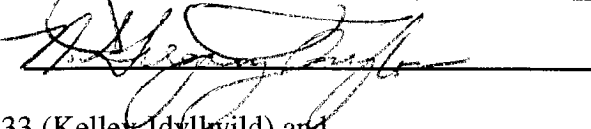
**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-9

March 23, 1998

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

**From:** General Manager   
General Counsel 

**Subject:** Report on Proposed Senate Bill 1833 (Kelley-Idyllwild) and  
Assembly Bill 2027 (Machado-Linden)

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## **RECOMMENDATION**

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For information only.

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## **EXECUTIVE SUMMARY**

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Two bills have been introduced that could have an impact on potential water transfer transactions, especially with respect to transfers of Colorado River water. The first bill, SB 1833 (Kelley-Idyllwild) would provide that it is state policy to support efficient use of Colorado River water; to satisfy a portion of Southern California's needs by facilitating the San Diego County Water Authority-Imperial Irrigation District water transfer; and to reduce environmental impacts on the Bay/Delta caused by additional export of water in the absence of voluntary transfers of Colorado River water. The second bill, AB 2027 (Machado-Linden) would make certain legislative findings regarding the recovery of "excess profits" or the imposition of "excess costs" in water transfer agreements, and would authorize the Director of the Department of Water Resources to prohibit a water transfer that would include such profits or costs.

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## **DETAILED REPORT**

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Two bills have been introduced in the State Legislature which could impact water transfers, especially transfers involving Colorado River water.

### **SB 1833 (Kelley-Idyllwild)**

Senator David Kelley has introduced SB 1833, which would make certain policy statements regarding the transfer of Colorado River water. These are that it is state policy to:

- (a) Support and encourage efficient use of Colorado River water;
- (b) Satisfy a portion of Southern California's needs by facilitating the San Diego County Water Authority-Imperial Irrigation District water transfer; and

- (c) Reduce potential environmental impacts on the Bay/Delta that may result from additional export of water to Southern California in the absence of efficient use and transfers of Colorado River water.

Metropolitan has long encouraged efficient use of all waters of the state, which includes water transfers and exchanges. In particular, Metropolitan supports an appropriate SDCWA-IID water transfer arrangement which is structured to benefit the entire region. That support has been manifested through the Board's endorsement of the Framework for Agreement proposed by Department of Water Resources (DWR) Director David Kennedy. Thus, at present staff believes that the best way to secure such an arrangement is through negotiation among the parties in the current process being mediated by DWR Director David Kennedy.

Legislation that would facilitate water transfers and other improvements in water use efficiency throughout the state would be welcome. However, there are several issues left unresolved in the proposed SB 1833. First, rather than focusing on special interest legislation involving a single proposed transaction, any legislation should encourage exploration of all transfer and other water use and management improvements that would satisfy Southern California's needs for Colorado River water. Moreover, with respect to the specific transaction identified in the legislation, the parties already are involved in Director Kennedy's mediated process. That process has been approved by the Legislature in Water Code Section 1812.5, last year's SB 1082 (Kelley). Any Legislation focused on that particular transaction could impair or pre-judge that process. Finally, tying the use of Colorado River water to increased exports from the Bay/Delta is misleading: Metropolitan's Integrated Resource Plan already assumes continued maximum use of Colorado River water in Southern California (irrespective of whether Metropolitan or its member agencies "own" the water.) Southern California's need for water from the Bay/Delta will continue into the future, although water supply reliability will be increased through continued utilization of a full Colorado River Aqueduct.

The California Municipal Utilities Association has tentatively voted to oppose SB 1833 and the Coachella Valley Water District also is opposed. Staff will continue to monitor the bill and report to the Board.

#### **AB 2027 (Machado-Linden)**

This bill would make legislative findings regarding, and enact prohibitions against, recovery of "excess profits" or the imposition of "excess costs" in water transfer agreements.

AB 2027 finds that water is a public resource, in which the public has invested billions of dollars, and that it is not the intent of the Legislature to encourage the sale of public water resources "at an excess profit or excess cost to the public." Neither excess profit nor excess cost to the public are defined. However, the Director of DWR is granted the authority to determine whether a proposed transfer would result in excess profit or cost, and to prohibit a transfer that does. Specific criteria which the director must consider are the recent cost of water to both the seller and buyer; the effect of the proposed transfer on customers of the parties or others who share the water; the benefits of the transfer to the parties; potential adverse economic or

environmental consequences of the transfer; statewide water conditions; and whether the transfer is consistent with Article X, Section 2 of the California Constitution.

To the extent the bill would reduce the costs of water transfers, it would reduce Metropolitan's costs to meet its water supply and reliability goals. However, the determination of just what level of profit or cost is "excessive" would be extremely difficult to reduce to objective factors, especially considering the variety of hydrologic conditions, water rights, methods of making transfer water available, and supply needs in the state.

Staff continues to analyze the bill to determine how its underlying concept can be implemented, while still encouraging a healthy voluntary water transfer market.

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Attachments

**SENATE BILL**

**No. 1833**

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**Introduced by Senator Kelley**

February 19, 1998

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An act to add Section 106.8 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1833, as introduced, Kelley. Colorado River: water transfers.

Existing law makes various declarations with regard to the general water policy of this state.

This bill would declare it to be state policy to support and encourage the efficient use of the state entitlement to water from the Colorado River, to satisfy a portion of projected increases in urban southern California water demands by facilitating the voluntary transfer of conserved water from the Imperial Irrigation District to the San Diego County Water Authority, and to reduce the potential adverse environmental impacts on the San Francisco Bay/Sacramento-San Joaquin Delta Estuary that may result from the export of additional water supplies from northern California to southern California in the absence of the more efficient use, and the voluntary transfer, of water from the Colorado River in southern California.

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

SB 1833

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*The people of the State of California do enact as follows:*

1 SECTION 1. Section 106.8 is added to the Water  
2 Code, to read:  
3 106.8. It is the policy of this state to do all of the  
4 following:  
5 (a) Support and encourage the efficient use of the  
6 state entitlement to water from the Colorado River.  
7 (b) Satisfy a portion of projected increases in urban  
8 southern California water demands by facilitating the  
9 voluntary transfer of conserved water from the Imperial  
10 Irrigation District to the San Diego County Water  
11 Authority.  
12 (c) Reduce the potential adverse environmental  
13 impacts on the San Francisco Bay/Sacramento-San  
14 Joaquin Delta Estuary that may result from the export of  
15 additional water supplies from northern California to  
16 southern California in the absence of the more efficient  
17 use, and the voluntary transfer, of water from the  
18 Colorado River in southern California.

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CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2027**

**Introduced by Assembly Member Machado**

February 18, 1998

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An act to add Chapter 3.8 (commencing with Section 390) to Division 1 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2027, as introduced, Machado. Water transfers.

Existing law regulates water transfers.

This bill would make a legislative finding and declaration that water, that is the subject of a proposed transfer, should not be sold by or to a public water district at an excess profit or excess cost to the public. The bill would make a statement of legislative intent to grant to the Director of Water Resources the authority, on the basis of specified criteria, to determine whether water that is the subject of a proposed transfer, is proposed to be sold at an excess profit or excess cost to the public and, if so, to require the director to prohibit that transfer. The bill would make related findings and declarations.

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

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of
- 2 the following:
- 3 (a) Water is a public resource.

AB 2027

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1 (b) The public has invested billions of tax dollars to  
2 develop California's water resources for beneficial uses.

3 (c) Although water transfers between willing  
4 purchasers and sellers can help to promote the most  
5 efficient use of water, it is not the intent of the Legislature  
6 to encourage the sale of our public water resources at an  
7 excess profit or excess cost to the public.

8 SEC. 2. Chapter 3.8 (commencing with Section 390)  
9 is added to Division 1 of the Water Code, to read:

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11 CHAPTER 3.8. PROHIBITION ON EXCESS PROFITS

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13 390. The Legislature finds and declares that water,  
14 that is the subject of a proposed transfer, should not be  
15 sold by or to a public water district at an excess profit or  
16 excess cost to the public.

17 390.2. It is the intention of the Legislature to grant to  
18 the director the authority to determine whether water,  
19 that is the subject of a proposed transfer, is proposed to  
20 be sold at an excess profit or excess cost to the public and,  
21 if so, to require the director to prohibit that transfer.

22 390.4. Upon the director being granted the authority  
23 described in Section 390.2, it is the intention of the  
24 Legislature that the director, in exercising that authority,  
25 consider all of the following:

26 (a) The cost of water paid by the seller and the  
27 purchaser during the preceding 12 months.

28 (b) The effect of the proposed transfer on the price of  
29 water for other water users who share or otherwise rely  
30 on the water resources of the purchaser or the seller.

31 (c) The benefits of the proposed transfer to the  
32 purchaser and the seller.

33 (d) The adverse economic or environmental  
34 consequences of the proposed transfer that may affect the  
35 area from which the water is proposed to be transferred,  
36 the area through which the water is proposed to be  
37 transferred, and the area to which the water is proposed  
38 to be transferred.

39 (e) Statewide water conditions.

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AB 2027

1 (f) Whether the proposed transfer, if undertaken,  
2 would violate Section 2 of Article X of the California  
3 Constitution.

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