

- Board of Directors
Executive Committee

May 17, 2000 Board Meeting

10-4

Subject

Report on Senate Bill 1973 (Senator Perata; Amended in Senate May 1, 2000)

Description

Senate Bill 1973 (SB 1973), as amended in the Senate on May 1, 2000 (copy attached), amends the existing wheeling legislation found in Water Code Sections 1810-1814 to give the Public Utilities Commission (“Commission”) jurisdiction to review determinations as to how much the state and public agency owners of water facilities are to be reimbursed for usage of their facilities by bona fide water transferors. Among other matters, Water Code Sections 1810-1814 entitle the state and such public agencies to determine and receive “fair compensation” for usage of their facilities. The meaning and application of this term is the subject of the pending Court of Appeal decision in regard to Metropolitan’s appeal from the trial court’s refusal to validate Metropolitan’s wheeling rates.

SB 1973 would require the Commission to conduct a proceeding to establish guidelines on the meaning of “fair compensation” which are to be completed on or before December 31, 2001. Once the guidelines were established, the Commission would be empowered to adjudicate complaints brought by bona fide transferors concerning state and public agency determinations as to “fair compensation” for usage of their water conveyance facilities. The Commission would be empowered to remand such cases back to the state and such public agencies for re-determination of the amount of fair compensation if it found that the original determination was not consistent with Commission guidelines. If the Commission determined that a remand could cause a delay that would impair the public interest, it would be empowered to determine the amount of fair compensation based on the evidence in the complaint record.

The May 1, 2000 amendment to the bill contains findings and declarations dealing with access to water conveyance facilities and stating objectives with regard to voluntary water markets and the need to ensure reasonable wheeling charges for unused capacity. At the May 1, 2000 Senate Agriculture and Water hearing, the author indicated that he would remove the findings and declarations from the bill.

At its April meeting, the Board opposed SB 1973. Concerns expressed included the redefinition of “fair compensation” and the Commission obtaining jurisdiction over determinations of “fair compensation.” Although SB 1973 no longer effectively redefines the term “fair compensation” by forbidding system-wide cost recovery, it still impairs the authority of the state and public agencies to determine such compensation and empowers the Commission to do so in certain cases. By vesting such authority in the Commission, the bill would impact the “fair compensation” determination authority of Metropolitan and other owners of such facilities and could also effectively reduce judicial oversight as to the reasonableness of such determinations, whether by the Commission or the owners of such facilities.

Staff is analyzing the feasibility of amendments to address these issues as well as the desirability of amendments to clarify that all Commission actions have to be in conformity with Water Code Sections 1810-1814 as well as expansion of the legislation to include private water companies.

General Manager

Date

BOARD LETTER ROUTING SLIP

Board Meeting Date _____

Board Letter Subject

Required Approvals

Author		
Name _____	Signature _____	
Group Name _____	MetNet Number _____	
FOR CONTENT REVIEW:		
ROUTE TO	DATE SIGNED	COMMENTS
1. _____	_____	_____
2. _____	_____	_____
3. Karen Tachiki	_____	_____
4. Greg Taylor	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. Gil Ivey	_____	_____
10. Joe Tait	_____	_____
11. Ron Gastelum	_____	_____
12. _____	_____	_____

SUBMIT BOARD LETTERS FOR REVIEW TO THE OUTLOOK FOLDER IN THE FOLLOWING ORDER:

Outreach (Editorial)

Legal (Legal)

Publishing Services (Formatting)

Group Manager _____

Name _____ Signature _____

Audit Review



Audit _____

Name _____ Signature _____

Board Letter Coordinator

Name _____ MetNet Number _____

AMENDED IN SENATE MAY 1, 2000
AMENDED IN SENATE APRIL 13, 2000

SENATE BILL

No. 1973

Introduced by Senator Perata

February 25, 2000

An act to add Chapter 8.3 (commencing with Section 1450) to Part 1 of Division 1 of the Public Utilities Code, *and to add Section 1811.5 to the Water Code*, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1973, as amended, Perata. Public Utilities Commission: water conveyance: fair compensation.

Existing law prohibits the state or a regional or local public agency from denying a bona fide transferor of water, as defined, from using a water conveyance facility that has unused capacity for the period of time for which that capacity is available, if fair compensation is paid for that use and other requirements are met. Existing law defines "fair compensation" to mean the reasonable charges incurred by the owner of the conveyance system, as specified.

This bill would authorize any bona fide transferor to file a petition with the Public Utilities Commission for a ~~determination of the fair compensation that a state, regional, or local public agency that owns a water conveyance facility may charge for the bona fide transferor's proposed use of unused capacity in the facility. The bill would give the commission exclusive authority to determine the fair compensation applicable to the proposed use of unused~~

~~capacity, as prescribed~~ *an adjudication of whether the determination of the amount of fair compensation, as defined, made by a state, regional, or local public agency for the proposed use of unused capacity in a water conveyance facility is consistent with a specified definition and guidelines. The bill would require the commission to remand the case to the state, regional, or local public agency, unless the commission determines that the public interest would be impaired by a delay. In that case, the commission would determine the amount of fair compensation, as prescribed.*

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

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

1 SECTION 1. Chapter 8.3 (commencing with Section
2 1450) is added to Part 1 of Division 1 of the Public Utilities
3 Code, to read:

4
5 CHAPTER 8.3. DETERMINATION OF FAIR COMPENSATION
6 FOR JOINT USE OF CAPACITY IN WATER CONVEYANCE
7 FACILITIES

8
9 1450. The Legislature finds and declares all of the
10 following:

11 (a) In 1986, the Legislature enacted Article 4
12 (commencing with Section 1810) of Chapter 10.5 of Part
13 2 of Division 2 of the Water Code, commonly referred to
14 as the wheeling statutes, declaring at that time that it was
15 the policy of the state to facilitate the voluntary sale, lease,
16 and exchange of water and to allow open access to water
17 conveyance facilities where there is unused capacity, if
18 fair compensation is paid.

19 (b) The purpose of a voluntary water market is to
20 create greater efficiencies and meet increasing demands
21 for additional water supplies while creating relatively
22 equal opportunities for all market participants.

23 (c) A functioning wholesale water market, which
24 necessarily includes the assurance of reasonable wheeling
25 charges for unused capacity, should provide voluntary

1 sellers of water with the opportunity to sell to more than
2 one buyer, and should provide voluntary buyers of water
3 with the opportunity to buy from more than one seller.
4 By contrast, without the assurance of reasonable
5 wheeling charges, competition among voluntary buyers
6 and sellers of water will be reduced or eliminated. In
7 addition, wholesale water customers should benefit from
8 the assurance of reasonable wheeling charges because it
9 should facilitate cost-effective options for locating
10 additional water supplies.

11 (d) It is the intent of the Legislature, that upon the
12 filing of a petition by a bona fide transferor, the
13 commission have the exclusive authority to determine
14 the amount of fair compensation that a state, regional, or
15 local public agency that owns a water conveyance facility
16 may charge for the transferor's use of unused capacity in
17 the facility.

18 1451. (a) As used in this section, the terms "bona fide
19 transferor," "fair compensation," and "unused capacity"
20 have the same meanings as defined in Section 1811 of the
21 Water Code.

22 ~~(b) Notwithstanding Section 1812 of the Water Code,~~
23 ~~any bona fide transferor may file a petition with the~~
24 ~~commission for a determination of the amount of fair~~
25 ~~compensation that a state, regional, or local public agency~~
26 ~~that owns a water conveyance facility may charge for a~~
27 ~~bona fide transferor's proposed use of unused capacity in~~
28 ~~the facility.~~

29 ~~(c) The commission, upon the filing of a petition~~
30 ~~pursuant to subdivision (b), shall have the exclusive~~
31 ~~authority to determine and set the amount of fair~~
32 ~~compensation applicable to the proposed use of unused~~
33 ~~capacity.~~

34 ~~(d) The commission shall cause a copy of the petition~~
35 ~~to be served upon the affected public water conveyance~~
36 ~~facility owner.~~

37 ~~(e) The commission shall immediately commence~~
38 ~~hearing proceedings in accordance with Chapter 9~~
39 ~~(commencing with Section 1701).~~

1 (b) (1) Any bona fide transferor may file a complaint
2 with the commission concerning the determination of the
3 amount of fair compensation for the proposed use of
4 unused capacity in a water conveyance facility that a
5 state, regional, or local public agency establishes pursuant
6 to Section 1812 of the Water Code.

7 (2) The commission may adjudicate complaints filed
8 pursuant to paragraph (1) as soon as the commission
9 establishes and publishes the guidelines on the meaning
10 of “fair compensation” required by Section 1452.

11 (c) (1) The commission, upon the filing of a
12 complaint pursuant to subdivision (b), has the exclusive
13 authority to adjudicate whether the determination of the
14 amount of fair compensation is consistent with the
15 definition of “fair compensation” as interpreted by the
16 guidelines established pursuant to Section 1452. If the
17 commission finds that the amount of fair compensation is
18 not consistent with the definition of “fair compensation”
19 as interpreted by the guidelines established pursuant to
20 Section 1452, the commission shall remand the case back
21 to the state, regional, or local public agency for a
22 redetermination of the amount of fair compensation.

23 (2) If the commission finds that remanding the case
24 pursuant to paragraph (1) would cause a delay that would
25 impair the public interest, the commission may
26 determine the amount of fair compensation based on the
27 evidence in the complaint record.

28 1452. The commission shall open a proceeding to
29 establish guidelines on the meaning of “fair
30 compensation” as defined in Section 1811 of the Water
31 Code. This proceeding shall be opened on or before
32 January 31, 2001, and shall be completed on or before
33 December 31, 2001.

34 SEC. 2. Section 1811.5 is added to the Water Code, to
35 read:

36 1811.5. (a) Pursuant to Section 1452 of the Public
37 Utilities Code, on or before December 31, 2001, the Public
38 Utilities Commission shall establish guidelines on the
39 meaning of “fair compensation” as defined in Section
40 1811.

1 ***(b) Any complaint as to a determination by a state,***
2 ***regional, or local public agency with regard to fair***
3 ***compensation is subject to Chapter 8.3 (commencing***
4 ***with Section 1450) of Part 1 of Division 1 of the Public***
5 ***Utilities.***