

- **Board of Directors**  
**Communications, Outreach and Legislation Committee**

March 13, 2001 Board Meeting

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9-12

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**Subject**

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Recommend Support of Assembly Bill 378 (Calderon - Montebello), Legislation Authorizing Regional Water Quality Control Boards to Contract with Water Districts for Services Related to Investigation of Threatened Groundwater Pollution

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**Description**

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Assembly Bill 378 (**Attachment 1**) expands existing state law which authorizes a regional water quality control board to investigate and clean up groundwater pollution, either on its own or with assistance from another governmental agency, and then seek recovery of its costs from the discharger of the waste. As drafted, the bill specifically authorizes a regional board to contract with any water district to perform, under its direction, investigation of threatened groundwater pollution and provides that the contracting water district's costs to perform such services are to be reimbursed by the regional board from funds obtained from cost recovery actions related to the site.

Additionally, after January 1, 2002, AB 378 would require a groundwater cleanup system which treats groundwater from an aquifer which is a source of drinking water, or has been a source since 1979, to treat the water to standards approved by the applicable regional board. The bill would further require the regional board to consult with the affected groundwater management entity, affected public water systems, and the state Department of Health Services in the process of setting such standards to ensure that the discharge of the treated water would not adversely affect the beneficial uses of any groundwater basin or surface water body that is, or may be, used by a public water system to provide drinking water.

Metropolitan and many of its member agencies rely on local groundwater basins as part of their overall water management plan. Preservation of the quality of the basins, and where applicable, preventing the potential degradation of other basins, including those basins which are currently undergoing cleanup activities, serves the mutual interests of Metropolitan and its member agencies. This bill encourages groundwater cleanup efforts and enables regional water quality control boards to seek assistance from other public agencies, including water districts, in its effort to protect groundwater basins.

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**Policy**

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None

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**Board Options/Fiscal Impacts**

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**Option #1**

Authorize Metropolitan to support Assembly Bill 378.

**Fiscal Impact:** None

**Option #2**

Do not authorize support of legislation.

**Fiscal Impact:** None

**Staff Recommendation**

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Option #1

  
\_\_\_\_\_  
Adán Ortega, Jr.  
Sr. Executive Assistant to the  
General Manager for External Affairs

3/8/2001  
Date

  
\_\_\_\_\_  
Ronald R. Foster  
General Manager

3/8/2001  
Date

**Attachment 1 – AB 378**

BLA #956

**ASSEMBLY BILL**

**No. 378**

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**Introduced by Assembly Member Calderon**

February 20, 2001

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An act to amend Section 13304 of, and to add Chapter 5.11 (commencing with Section 13399.70) to Division 7 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 378, as introduced, Calderon. Water quality: cleanup.

Existing law authorizes a California regional water quality control board, by itself or with the cooperation of any other governmental agency, to clean up or abate the effects of waste and provides that the person who discharges the waste is liable to that regional board or other governmental agency to the extent of reasonable costs actually incurred in cleaning up or abating the effects of the waste. Existing law provides that those costs are recoverable in a civil action and that the amount of those costs constitutes a lien on the affected property.

This bill would authorize the governmental agency to bring an action to foreclose a lien that has been recorded for the purpose of recovering those costs. The bill would authorize a regional board to contract with a water district to perform, under the direction of the regional board, investigations of threatened groundwater pollution or nuisance.

The bill would require a groundwater cleanup system that commences operation on or after January 1, 2002, and that draws groundwater from an aquifer that is currently being used, or has been used at any time since 1979, as a source of drinking water supply by the owner or operator of a public water system, and that discharges treated groundwater to surface water or groundwater from which a public water

system draws drinking water, to treat the groundwater to standards approved by the appropriate regional board, 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. The Legislature makes all of the following  
2 findings and declarations:

3 (a) Groundwater basins throughout the state are essential and  
4 invaluable sources of drinking water supplies.

5 (b) Drinking water pumped from groundwater basins  
6 throughout the state represents a vitally important component of  
7 the state’s water supplies.

8 (c) The preservation and restoration of contaminated  
9 groundwater basins is of critical importance to achieving the  
10 state’s objective of ensuring reliable supplies of drinking water for  
11 the people of the state without undue reliance on imported water  
12 supplies.

13 (d) The loss or diminishment of drinking water supplies from  
14 groundwater basins because of contamination or pollution  
15 constitutes waste of water.

16 SEC. 2. Section 13304 of the Water Code is amended to read:

17 13304. (a) Any person who has discharged or discharges  
18 waste into the waters of this state in violation of any waste  
19 discharge requirement or other order or prohibition issued by a  
20 regional board or the state board, or who has caused or permitted,  
21 causes or permits, or threatens to cause or permit any waste to be  
22 discharged or deposited where it is, or probably will be, discharged  
23 into the waters of the state and creates, or threatens to create, a  
24 condition of pollution or nuisance, shall upon order of the regional  
25 board, clean up the waste or abate the effects of the waste, or, in  
26 the case of threatened pollution or nuisance, take other necessary  
27 remedial action, including, but not limited to, overseeing cleanup  
28 and abatement efforts. Upon failure of any person to comply with  
29 the cleanup or abatement order, the Attorney General, at the  
30 request of the board, shall petition the superior court for that  
31 county for the issuance of an injunction requiring the person to  
32 comply with the order. In any such suit, the court shall have



1 jurisdiction to grant a prohibitory or mandatory injunction, either  
2 preliminary or permanent, as the facts may warrant.

3 (b) (1) The regional board may expend available money to  
4 perform any cleanup, abatement, or remedial work required under  
5 the circumstances set forth in subdivision (a), including, but not  
6 limited to, supervision of cleanup and abatement activities which,  
7 in its judgment, is required by the magnitude of endeavor or  
8 urgency of prompt action needed to prevent substantial pollution,  
9 nuisance, or injury to any waters of the state. The action may be  
10 taken in default of, or in addition to, remedial work by the waste  
11 discharger or other persons, and regardless of whether injunctive  
12 relief is being sought.

13 (2) The regional board may perform the work itself, or with the  
14 cooperation of any other governmental agency, and may use rented  
15 tools or equipment, either with operators furnished or unoperated.  
16 Notwithstanding any other provisions of law, the regional board  
17 may enter into oral contracts for the work, and the contracts,  
18 whether written or oral, may include provisions for equipment  
19 rental and in addition the furnishing of labor and materials  
20 necessary to accomplish the work. The contracts are ~~exempt from~~  
21 *not subject to* approval by the Department of General Services  
22 ~~pursuant to Section 14780 of the Government Code.~~

23 (3) The regional board shall be permitted reasonable access to  
24 the affected property as necessary to perform any cleanup,  
25 abatement, or other remedial work. The access shall be obtained  
26 with the consent of the owner or possessor of the property or, if the  
27 consent is withheld, with a warrant duly issued pursuant to the  
28 procedure described in Title 13 (commencing with Section  
29 1822.50) of Part 3 of the Code of Civil Procedure. However, in the  
30 event of an emergency affecting public health or safety, the  
31 regional board may enter the property without consent or the  
32 issuance of a warrant.

33 (4) *The regional board may contract with a water district to*  
34 *perform, under the direction of the regional board, investigations*  
35 *of threatened groundwater pollution or nuisance. The district's*  
36 *cost to perform the contracted services shall be reimbursed by the*  
37 *regional board from the first available funds obtained from cost*  
38 *recovery actions for the specific site.*

39 (c) (1) If the waste is cleaned up or the effects of the waste are  
40 abated, or, in the case of threatened pollution or nuisance, other



1 necessary remedial action is taken by any governmental agency,  
2 the person or persons who discharged the waste, discharges the  
3 waste, or threatened to cause or permit the discharge of the waste  
4 within the meaning of subdivision (a), are liable to that  
5 governmental agency to the extent of the reasonable costs actually  
6 incurred in cleaning up the waste, abating the effects of the waste,  
7 supervising cleanup or abatement activities, or taking other  
8 remedial action. The amount of the costs is recoverable in a civil  
9 action by, and paid to, the governmental agency and the state board  
10 to the extent of the latter's contribution to the cleanup costs from  
11 the State Water Pollution Cleanup and Abatement Account or  
12 other available funds.

13 (2) The amount of the costs constitutes a lien on the affected  
14 property upon service of a copy of the notice of lien on the owner  
15 and upon the recordation of a notice of lien, which identifies the  
16 property on which the condition was abated, the amount of the lien,  
17 and the owner of record of the property, in the office of the county  
18 recorder of the county in which the property is located. Upon  
19 recordation, the lien has the same force, effect, and priority as a  
20 judgment lien, except that it attaches only to the property posted  
21 and described in the notice of lien, and shall continue for 10 years  
22 from the time of the recording of the notice, unless sooner released  
23 or otherwise discharged. Not later than 45 days after receiving a  
24 notice of lien, the owner may petition the court for an order  
25 releasing the property from the lien or reducing the amount of the  
26 lien. In this court action, the governmental agency that incurred the  
27 cleanup costs shall establish that the costs were reasonable and  
28 necessary. The lien may be foreclosed by an action brought by the  
29 state board, on behalf of the regional board, *or by the governmental*  
30 *agency*, for a money judgment. Money recovered by a judgment  
31 in favor of the state board shall be deposited in the State Water  
32 Pollution Cleanup and Abatement Account.

33 (d) If, despite reasonable effort by the regional board to  
34 identify the person responsible for the discharge of waste or the  
35 condition of pollution or nuisance, the person is not identified at  
36 the time cleanup, abatement, or remedial work is required to be  
37 performed, the regional board is not required to issue an order  
38 under this section.

39 (e) "Threaten," for purposes of this section, means a condition  
40 creating a substantial probability of harm, when the probability



1 and potential extent of harm make it reasonably necessary to take  
2 immediate action to prevent, reduce, or mitigate damages to  
3 persons, property, or natural resources.

4 (f) This section does not impose any new liability for acts  
5 occurring before January 1, 1981, if the acts were not in violation  
6 of existing laws or regulations at the time they occurred.

7 (g) Nothing in this section limits the authority of any state  
8 agency under any other law or regulation to enforce or administer  
9 any cleanup or abatement activity.

10 SEC. 3. Chapter 5.11 (commencing with Section 13399.70)  
11 is added to Division 7 of the Water Code, to read:

12  
13 CHAPTER 5.11. GROUNDWATER CLEANUP SYSTEMS  
14

15 13399.70. (a) A groundwater cleanup system that  
16 commences operation on or after January 1, 2002, and that draws  
17 groundwater from an aquifer that is currently being used, or has  
18 been used at any time since 1979, as a source of drinking water  
19 supply by the owner or operator of a public water system, and that  
20 discharges treated groundwater to surface water or groundwater  
21 from which a public water system draws drinking water, shall treat  
22 the groundwater to standards approved by the regional board,  
23 consistent with this division and taking into account the beneficial  
24 uses of the water and the location and method of its discharge.

25 (b) In making its determination of the applicable water quality  
26 standards to be achieved by the operator of the groundwater  
27 cleanup system the regional board shall consult with the affected  
28 groundwater management entity, if any, affected public water  
29 systems, and the State Department of Health Services to ensure  
30 that the discharge, spreading, or injection of the treated  
31 groundwater will not adversely affect the beneficial uses of any  
32 groundwater basin or surface water body that is or may be used by  
33 a public water system for the provision of drinking water.

