

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

June 8, 2004 Board Meeting

9-15

Subject

Express opposition, unless amended, to Senate Bill 1374 (Machado): Economic or Environmental Impacts

Description

SB 1374 (Machado) is the most recent of a number of legislative proposals that have been introduced over the past several years in an attempt to address the issue of “third party impacts” potentially caused by water transfers. Metropolitan has long recognized that the potential for these impacts—whether perceived or real—is a major basis for local controversy over water transfers. Consequently, Metropolitan has been proactive in studying the issue and providing approaches to mitigate any potential economic impacts.

As part of a two-year water transfer program with the Palo Verde Irrigation District in 1992/93, Metropolitan commissioned a study of the economic impacts of the transfer in the Palo Verde Valley. The study identified a slight short-term loss in agricultural jobs, but a long-term increase in economic activity and jobs. Just recently, Metropolitan approved a request from the UCLA-Anderson Forecast to fund an analysis of water transfers throughout California and any local economic effects of the transfers; UCLA-Anderson should publish that analysis later this year.

Irrespective of the current lack of actual data documenting impacts from properly structured water transfers, Metropolitan has voluntarily established funding for potential third party impacts in its water transfers. For example, as part of Metropolitan’s 2003 water transfer agreements with Sacramento Valley water agencies, Metropolitan deposited \$5 per acre-foot in a fund to be managed locally for the purposes of mitigating any potential impacts. It is our understanding that no claims have been submitted for these funds to date. Metropolitan also has agreed to provide \$6 million (in 2004 dollars) as part of a new long-term water transfer with the Palo Verde Irrigation District. The 1992/93 study of impacts in Palo Verde has been the basis for an unprecedented program with community leaders in the Palo Verde Valley, which is creating a channel through which potential impacts are to be mitigated.

While Metropolitan believes that the issue of potential third party economic impacts must be dealt with, we have concerns with the approach in SB 1374. The bill would require, for the first time, that the State Water Resources Control Board (State Board) determine that a proposed water transfer of more than one year would “not cause unreasonable economic impacts” before it could approve the transfer. The bill appears to presume that third party impacts would occur, and requires a new “disclosure” process. It is not clear how the new process is intended to co-exist with the existing statutory State Board approval process. In the new process, the transfer parties would be required to review “each claim of potential impact individually” before the transfer is approved. The State Board would be required to take “recommendations” from the county of transfer, without specifying any evidentiary requirements or how the State Board is required to treat these recommendations.

Staff is concerned that SB 1374, as drafted, would dampen the water transfer market and lead to litigation. Staff proposes that the bill be opposed unless amendments along the following lines are considered:

- Whether, and to what extent, properly structured water transfers cause significant long-term third party (or other) impacts is still open to question. Creation of a water transfer clearinghouse, similar to that proposed by Senator Machado in the past, would result in the understanding necessary to resolve the issue and should be considered as the basis of this bill.

- There must be a clear recognition that the new disclosure process and proposed role of counties to provide recommendations do not establish any new claim against, or limit to, existing water rights. It should be made clear that new property rights are not being created in third parties by this bill.
- Certain types of water transfers that are structured to avoid potential third party impacts should be exempt from the new requirements (e.g., allowing transfers limited to no more than 20 percent of land or limited to a few years).
- Claimed third party economic impacts are often caused, or dwarfed by, the effects of the regional and global agricultural economy and claimants should be required to demonstrate that a transfer caused actual impacts.
- The bill should require that the analysis of potential economic impacts will consider positive impacts in the local area as well as any negative impacts.

Policy

Metropolitan Water District Administrative Code § 4203: Water Transfer Policy

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and oppose SB 1374 unless amended.

Fiscal Impact: No direct fiscal impacts

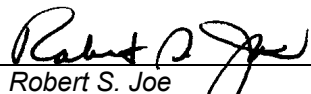
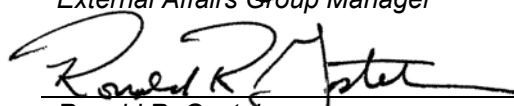
Option #2

Take no position on SB 1374.

Fiscal Impact: No direct fiscal impacts

Staff Recommendation

Option #1

	6/7/2004
Robert S. Joe External Affairs Group Manager	Date
	6/7/2004
Ronald R. Gastelum Chief Executive Officer	Date

AMENDED IN SENATE MAY 24, 2004

SENATE BILL

No. 1374

Introduced by Senator Machado

February 18, 2004

An act to amend Section 1736 of, and to add Sections 1738, 1738.5, and 1739 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1374, as amended, Machado. Water transfers: ~~third-party economic or environmental~~ impacts.

Existing law authorizes the State Water Resources Control Board to approve a petition for a long-term transfer of water if the change would not result in substantial injury to a legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

This bill, *in addition*, would authorize the board to approve that petition only if ~~it additionally~~ *the board notifies, among others, the county of transfer and the board* determines that the proposed transfer would not cause ~~substantial negative third-party unreasonable economic or environmental~~ impacts. With regard to that determination, the bill would prohibit the board from approving the petition unless it finds that the petitioners have met prescribed conditions relating to ~~potential third-party economic or environmental~~ impacts. The bill would require the board to accept and consider evidence that the proposed transfer ~~neither avoids nor mitigates all likely significant negative third-party~~ *will likely cause unreasonable economic or environmental* impacts. The bill would authorize the board to develop and adopt an abbreviated process to approve long-term transfers that it determines are least likely to ~~negatively affect third parties cause unreasonable economic or environmental~~ impacts.

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 finds and declares all of the
2 following:

3 (a) Water transfers can be win-win solutions to regional water
4 problems. However, if the transfer is not structured properly,
5 innocent third parties can be significantly harmed.

6 (b) With short-term transfers, the problems with third-party
7 impacts, while potentially significant, are by their nature
8 short-term phenomena. However, as we move to increasingly
9 longer term transfer agreements, the potential for continuing
10 problems becomes more significant.

11 (c) The persons most likely to be negatively affected by water
12 transfers include all of the following:

13 (1) Groundwater users who share the groundwater basin from
14 which water will be transferred or used in lieu of transferred
15 surface water.

16 (2) Employees of farms or other economic concerns whose
17 employers plan to reduce production through fallowing or other
18 means in order to free up water for transfer.

19 (3) Local governments whose case loads would increase, and
20 whose revenues would decrease, or both, as a result of reduced
21 local economic activity associated with the transfer of water.

22 (d) Transfer structures least likely to negatively affect third
23 parties include transfers of conserved water.

24 (e) In developing long-term water transfers, it is desirable that
25 proponents of the transfer bring interested third parties into the
26 discussion as early as possible.

27 (f) This act is necessary to ~~assure~~ *ensure* that long-term water
28 transfers do not impose unreasonable ~~negative impacts on third~~
29 ~~parties~~ *economic or environmental impacts*.

30 SEC. 2. Section 1736 of the Water Code is amended to read:
31 1736. The board, after providing notice and opportunity for
32 a hearing, including, but not limited to, written notice to, and an
33 opportunity for review and recommendation by, the Department
34 of Fish and Game *and the county of transfer*, may approve a
35 petition for a long-term transfer if the board determines that the



1 change would not result in substantial injury to any legal user of
2 water, would not cause ~~substantial negative third party~~
3 *unreasonable economic or environmental* impacts, and would not
4 unreasonably affect fish, wildlife, or other instream beneficial
5 uses.

6 SEC. 3. Section 1738 is added to the Water Code, to read:

7 1738. In making a determination regarding ~~substantial~~
8 ~~negative third party~~ *unreasonable economic or environmental*
9 impacts pursuant to Section 1736, the board may not approve the
10 petition unless it finds that the petitioners have met all of the
11 following conditions:

12 (a) The petitioners made a ~~full disclosure of good faith effort to~~
13 *fully disclose* the structure, timing, and financing of the transfer to
14 all persons who are likely to be affected by the proposed transfer.

15 (1) As used in this section, the term “structure” includes all of
16 the following:

17 (A) The source of water.

18 (B) The water rights affected.

19 (C) The method of making the water available, including, but
20 not limited to, conservation, groundwater substitution, or forgoing
21 economic activities, such as fallowing farm land.

22 (D) The method of transporting the water, including, but not
23 limited to, either of the following:

24 (i) In the case of physically moving the water from the
25 transferor to the transferee, the type and ownership of the
26 conveyance system or systems.

27 (ii) In the case of an exchange or in-lieu transfer, the source of
28 the water to be exchanged.

29 (E) The method of administering the transfer, including, in the
30 case of a transfer of conserved water, the method of verifying that
31 the water transferred equals the amount conserved.

32 (F) The extent to which the transfer either conforms to, or
33 conflicts with, any of the following:

34 (i) An integrated regional water management plan adopted
35 pursuant to Part 2.2 (commencing with Section 10530) of Division
36 6.

37 (ii) An urban water management plan adopted pursuant to
38 Chapter 3 (commencing with Section 10620) of Part 2.6 of
39 Division 6.



1 (iii) A groundwater management plan adopted pursuant to
2 Chapter 3 (commencing with Section 10753) of Part 2.75 of
3 Division 6.

4 (iv) An agricultural water management plan adopted pursuant
5 to Chapter 3 (commencing with Section 10820) of Part 2.8 of
6 Division 6.

7 (v) A water supply and demand assessment conducted pursuant
8 to Section 10910.

9 (2) As used in this section, the term “timing” includes all of the
10 following:

11 (A) The term of the transfer agreement, including any options
12 for early termination or contract extensions.

13 (B) The quantity of water to be transferred each year for the
14 duration of the transfer agreement.

15 (3) As used in this section, the term “financing” includes all of
16 the following:

17 (A) The price of the water transferred.

18 (B) Costs of transporting the water.

19 (C) The costs of administering the transfer.

20 (D) The costs to mitigate any ~~substantial third-party~~ *economic*
21 *or environmental* impacts.

22 (E) The intended uses of the proceeds of the transferor.

23 (b) There was sufficient opportunity for persons likely to be
24 negatively affected by the proposed transfer to present information
25 documenting those likely effects to the petitioners, and offer
26 alternatives that would avoid or mitigate those effects. The
27 threshold for sufficiency of opportunity to present information
28 varies directly with all the following:

29 (1) The term of the transfer agreement.

30 (2) The number of persons or entities providing the water to be
31 transferred.

32 (3) The amount of water to be transferred.

33 (4) The number of ~~third~~ parties likely to be negatively affected
34 by the transfer.

35 (c) The petitioners seriously evaluated and considered
36 evidence presented regarding potential ~~negative third-party~~
37 *economic or environmental* impacts. Indicators that the
38 proponents seriously considered the evidence include, but are not
39 limited to, all of the following:



1 (1) Outreach to potentially affected ~~third~~ parties in the early
2 stages of developing the transfer proposal.

3 (2) The establishment of, and consultation with, an advisory
4 committee of potentially affected ~~third~~ parties.

5 (3) Modification of the proposal to address ~~third-party~~
6 *economic or environmental* concerns.

7 ~~(d) The proposed transfer either avoids or mitigates all likely~~
8 ~~significant negative third-party impacts.~~

9 *(d) The proposed transfer would not cause unreasonable*
10 *economic or environmental impacts.*

11 (e) The petition discusses each claim of potential ~~third-party~~
12 impact individually, comments on whether or not the claim
13 reaches the threshold of ~~significance~~ *unreasonable*, and includes
14 the basis for that determination.

15 (f) The petition discusses the potential cumulative impacts of
16 potential ~~third-party~~ impact claims, comments on whether or not
17 the cumulative claims reach the threshold of ~~significance~~
18 *unreasonable*, and includes the basis for that determination.

19 SEC. 4. Section 1738.5 is added to the Water Code, to read:

20 1738.5. As a part of a proceeding pursuant to Section 1738,
21 the board shall accept and consider evidence that the proposed
22 ~~transfer neither avoids nor mitigates all likely significant negative~~
23 ~~third-party impacts.~~ *transfer will likely cause unreasonable*
24 *economic or environmental impacts.*

25 SEC. 5. Section 1739 is added to the Water Code, to read:

26 1739. Notwithstanding Section 1738, the board may develop
27 and adopt an abbreviated process to approve long-term transfers
28 ~~that it determines are least likely to negatively affect third parties.~~
29 *that it determines are least likely to cause unreasonable economic*
30 *or environmental impacts.*

