

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

June 8, 2004 Board Meeting

9-16

Subject

Express opposition to Assembly Bill 2725 (Laird) – Coastal Commission: Communications

Description

Staff recommends that the Board adopt an “oppose” position on AB 2725 (Laird – Santa Cruz) related to Coastal Commission communications.

Existing law allows Coastal Commission members to participate in an ex parte communication with a person connected with a matter subject to an enforcement action or a matter in litigation in which the Commission is a party if the member fully discloses and makes public the ex parte communication to the executive director of the Commission or to the Commission.

Assembly Bill 2725, as amended on April 12, 2004, would prohibit a member of the Commission and a person connected with a matter before the Commission, as specified, from conducting outside of a public hearing, workshop, or other official proceeding, an oral or written communication about a matter subject to an enforcement action involving a cease and desist order or restoration order, or a matter in litigation in which the Commission is a party. This bill would provide that a commission member or specified person, who knowingly violates these provisions, is subject to a civil fine not to exceed \$7,500.

Because the Commission has both legislative as well as adjudicatory functions, discussions with parties who have differing views are an important source of supplemental information for Coastal Commission members and can offer valuable perspectives for consideration in resolving issues and making decisions. As Metropolitan’s member agencies pursue seawater desalination projects, the complexity of the issues surrounding those projects emphasizes the need for exchanges of information and communications that existing law allows and this bill would prohibit. Additionally, AB 2725 would affect any future interests that Metropolitan and its member agencies may have in their service areas that are also within the Coastal Commission’s jurisdiction.

Policy

By Minute Item 44356, dated February 13, 2001, the Board adopted policy principles for brackish and seawater desalination.

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 take an oppose position on AB 2725.

Fiscal Impact: None

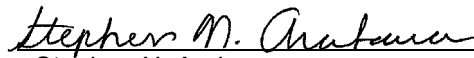
Option #2

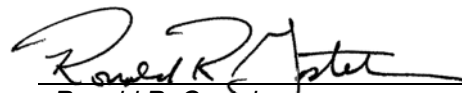
Do not take a position on AB 2725.

Fiscal Impact: None

Staff Recommendation

Option #1

 Stephen N. Arakawa Manager, Water Resource Management	6/7/2004 Date
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 Ronald R. Gastelum Chief Executive Officer	6/8/2004 Date
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Attachment 1 – Assembly Bill No. 2725 (AB 2725 – Laird), amended in Assembly April 12, 2004

BLA #3020

AMENDED IN ASSEMBLY APRIL 12, 2004

AMENDED IN ASSEMBLY MARCH 30, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2725

Introduced by Assembly Member Laird

February 20, 2004

An act to amend ~~Sections 30323 and 30324~~ *Section 30824* of, and to add Section 30324.5 to, the Public Resources Code, relating to the California Coastal Commission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2725, as amended, Laird. California Coastal Commission: communications.

Existing law prohibits a member of the California Coastal Commission and an interested person, as defined, from conducting an ex parte communication unless the member fully discloses and makes public the ex parte communication to the executive director of the commission or to the commission, as specified. Existing law defines “ex parte communication” as any oral or written communication between a member of the commission and an interested person about a matter within the commission’s jurisdiction that does not occur in a public hearing, workshop, or other official proceeding, except as specified.

This bill would prohibit a member of the commission and ~~an interested party~~ *a person connected with a matter before the commission, as specified*, from conducting, outside of a public hearing, workshop, or other official proceeding, an oral or written

communication about a matter subject to an enforcement action involving a cease and desist order or restoration order, or a matter in litigation in which the commission is a party. ~~This bill would exclude this class of ex parte communications from the above described full disclosure exception.~~

~~Existing law defines an interested person as an applicant, a person with a financial interest, a representative of an organization, or their agents on a matter before the commission.~~

~~This bill would also define an interested person as a person who is a party to a matter subject to an enforcement action involving a cease and desist or restoration order or a matter in litigation in which the commission is a party, an agent or an employee of that person, or a person receiving consideration for representing that person provide that a commission member or specified person, who knowingly violates these provisions, is subject to a civil fine not to exceed \$7,500.~~

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. — Section 30323 of the Public Resources Code is~~
- 2 *SECTION 1. Section 30324.5 is added to the Public*
- 3 *Resources Code, to read:*
- 4 *30324.5. (a) A member of the commission and a person*
- 5 *described in subdivision (b) may not conduct an oral or written*
- 6 *communication that does not occur in a public hearing, workshop,*
- 7 *or other official proceeding, and is about either of the following:*
- 8 *(1) A matter subject to an enforcement action involving a cease*
- 9 *and desist order or restoration order.*
- 10 *(2) A matter in litigation to which the commission is a party.*
- 11 *(b) This section applies to the following persons:*
- 12 *(1) An applicant, an agent or employee of the applicant, or a*
- 13 *person receiving consideration for representing the applicant, or*
- 14 *a participant in the proceeding on a matter before the commission.*
- 15 *(2) A person with a financial interest, as described in Article 1*
- 16 *(commencing with Section 87100) of Chapter 7 of Title 9 of the*
- 17 *Government Code, in a matter before the commission, an agent or*
- 18 *employee of the person with a financial interest, or a person*
- 19 *receiving consideration for representing the person with a*
- 20 *financial interest.*



1 (3) A representative acting on behalf of any civic,
2 environmental, neighborhood, business, labor, trade, or similar
3 organization who intends to influence the decision of a commission
4 member on a matter before the commission.

5 (4) A person who is a party to a matter subject to an
6 enforcement action involving a cease and desist order or
7 restoration order, an agent or employee of that person, or a person
8 receiving consideration for representing that person.

9 (5) A person who is a party to a matter in litigation to which the
10 commission is a party, an agent or employee of that person, or a
11 person receiving consideration for representing that person.

12 (c) A violation of this section by a member of the commission
13 or a person described in subdivision (b) is subject to the penalty
14 specified in Section 30824. Subsequent disclosure of a
15 communication prohibited by this section does not relieve the
16 person making the disclosure from this penalty.

17 SEC. 2. Section 30824 of the Public Resources Code is
18 amended to read:

19 30824. In addition to any other applicable penalty, ~~any~~ a
20 commission member who knowingly violates Section 30324 or
21 Section 30324.5, and a person described in subdivision (b) of
22 Section 30324.5 who knowingly violates Section 30324.5, is
23 subject to a civil fine, not to exceed seven thousand five hundred
24 dollars (\$7,500). Notwithstanding any law to the contrary, the
25 court may award attorneys' fees and costs to the prevailing party.
26 amended to read:

27 30323. For purposes of this article, an "interested person" is
28 any of the following:

29 ~~(a) An applicant, an agent or employee of the applicant, or a
30 person receiving consideration for representing the applicant, or
31 a participant in the proceeding on a matter before the commission.~~

32 ~~(b) A person with a financial interest, as described in Article
33 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
34 Government Code, in a matter before the commission, an agent or
35 employee of the person with a financial interest, or a person
36 receiving consideration for representing the person with a
37 financial interest.~~

38 ~~(c) A representative acting on behalf of any civic,
39 environmental, neighborhood, business, labor, trade, or similar~~



1 ~~organization who intends to influence the decision of a~~
2 ~~commission member on a matter before the commission.~~

3 ~~(d) A person who is a party to a matter subject to an~~
4 ~~enforcement action involving a cease and desist order or~~
5 ~~restoration order, an agent or employee of that person, or a person~~
6 ~~receiving consideration for representing that person.~~

7 ~~(e) A person who is a party to a matter in litigation in which the~~
8 ~~commission is a party, an agent or employee of that person, or a~~
9 ~~person receiving consideration for representing that person.~~

10 ~~SEC. 2. Section 30324 of the Public Resources Code is~~
11 ~~amended to read:~~

12 ~~30324. (a) No commission member, nor any interested~~
13 ~~person, shall conduct an ex parte communication unless the~~
14 ~~commission member fully discloses and makes public the ex parte~~
15 ~~communication by providing a full report of the communication~~
16 ~~to the executive director within seven days after the~~
17 ~~communication or, if the communication occurs within seven days~~
18 ~~of the next commission hearing, to the commission on the record~~
19 ~~of the proceeding at that hearing.~~

20 ~~(b) (1) The commission shall adopt standard disclosure forms~~
21 ~~for reporting ex parte communications which shall include, but not~~
22 ~~be limited to, all of the following information:~~

23 ~~(A) The date, time, and location of the communication.~~

24 ~~(B) The identity of the person or persons initiating and the~~
25 ~~person or persons receiving the communication.~~

26 ~~(C) A complete description of the content of the~~
27 ~~communication, including the complete text of any written~~
28 ~~material that was a part of the communication.~~

29 ~~(2) The executive director shall place in the public record any~~
30 ~~report of an ex parte communication.~~

31 ~~(e) Communications shall cease to be ex parte communications~~
32 ~~when fully disclosed and placed in the commission's official~~
33 ~~record.~~

34 ~~(d) This section does not apply to Section 30324.5.~~

35 ~~SEC. 3. Section 30324.5 is added to the Public Resources~~
36 ~~Code, to read:~~

37 ~~30324.5. A member of the commission and an interested~~
38 ~~person shall not conduct an oral or written communication that~~
39 ~~does not occur in a public hearing, workshop, or other official~~
40 ~~proceeding, and is about either of the following:~~



- 1 ~~(a) A matter subject to an enforcement action involving a cease~~
- 2 ~~and desist order or restoration order.~~
- 3 ~~(b) A matter in litigation in which the commission is a party.~~

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