

- **Board of Directors**  
**CALFED/Bay-Delta Oversight Subcommittee**  
**Communications and Legislation Committee**

May 10, 2005 Board Meeting

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**9-4**

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**Subject**

Report on SB 113 (Machado, D-Linden) regarding CALFED financing

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**Description**

**Board Policy Position.** Pursuant to policy positions on CALFED Bay-Delta financing adopted by the Board on May 11, 2004, staff has advanced an oppose position on SB 113 ([Attachment 1](#)) by Senator Mike Machado (D-Linden).

**Bill Summary.** Senator Machado, member of the Senate Natural Resources and Water Committee and Chairman of the Senate Subcommittee on Delta Resources, has introduced SB 113, a bill that attempts to define the benefits and those who must pay for certain elements of the CALFED Bay-Delta Program. This bill would require the California Bay-Delta Authority to consider the beneficiaries-pay principle in its approval or modification of plans or expenditures. Also, the bill would require state funding be targeted to projects that have broad public benefits, non-state funding to projects that have private benefits, and a shared public-private responsibility for project costs that have both private and public benefits. Further, the bill specifically identifies examples of projects that qualify as either a private benefit, public benefit, or shared public-private benefit for certain CALFED program elements.

The beneficiaries-pay principle was originally stated in the August 2000 CALFED Bay-Delta Record of Decision. The ROD was the result of a collaboration of stakeholder and federal and state governmental entities with regulatory or operational responsibilities in the Bay-Delta. This collaboration laid out a blueprint for implementation of a comprehensive, long-term plan for the Bay-Delta. The ROD calls for financing Bay-Delta actions through a combination of public (state and federal) and user contributions. Additionally, the ROD states that planning and feasibility actions will be pursued with state and federal public funds, and once a project is determined to be feasible, cost allocation agreements would be developed based on the beneficiaries-pay principle. Subsequently, the California Bay-Delta Act of 2003 established the authority within the California Resources Agency as the governance structure overseeing implementation of the program.

**Staff Analysis.** Metropolitan has been and continues to be an advocate of the beneficiaries-pay principle as prescribed in the ROD for financing the program. However, staff has opposed SB 113, as amended April 14. Rather than legislatively determining project beneficiaries, Metropolitan would be better served if such a determination was done in a cooperative manner among the affected agencies through the existing CALFED Bay-Delta administrative framework. Additionally, SB 113 raises other policy concerns as noted below:

- SB 113 provides no clear definition of beneficiaries pay, attempting to define concepts through examples. The examples in themselves are limiting, unclear, and controversial.
- SB 113 mandates that no state bond (existing and new) or general fund monies be used where an individual or group of individuals could be identified as benefiting from a particular project. This action would: (1) likely require reprogramming of existing bonds under Propositions 204, 12, 13, 40 and 50 that benefit an individual or group of individuals; and (2) may preclude eligibility for state funding for conjunctive use, conservation, recycling, desalination, water quality, levees, conveyance, storage, and transfers. This action is inconsistent with previous actions that have been strongly supported by the voters to authorize public funds for projects, which are defined under this bill as having private benefits.

- SB 113 creates a presumption of cost responsibility for Southern California in maintaining program elements such as Delta levees.

While Senator Machado’s efforts are intended to move the CALFED financing discussion forward, staff believes SB 113 is both premature and sufficiently vague that it risks serious unintended consequences. The bill could put significant constraints on the use of public funds for projects that historically have been eligible for funding. Additionally, the confusing construct of this bill demonstrates the difficulty in articulating the concept of beneficiaries pay within state law. It is more appropriate that negotiated constraints among willing buyers and sellers define their cost shares.

**Policy**

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By Minute Item 43619, dated July 13, 1999, the Board policy direction adopted, regarding the CALFED Bay-Delta Program, instructs staff to support legislation concerning CALFED that is consistent with Metropolitan's Bay-Delta Policy Direction Framework and the Statement of Needs (Nov. 15, 1999). The Framework and Statement of Needs calls for enhancement of SWP water supply capacity, source water quality, and system integrity.

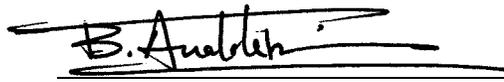
By Minute Item 43688, dated Aug. 17, 1999, the Board adopted the Statement of Needs for the CALFED Bay-Delta Program.

By Minute Item 45753, dated May 11, 2004, the Board adopted the CEQA determination and the refined Bay-Delta finance and cost allocation policy principles for communication with the California Bay-Delta Authority and interested parties.

**Fiscal Impact**

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As currently written, passage of SB 113 would legislatively determine beneficiaries to selected CALFED program elements and attempts to distinguish between private and public benefits. As structured, SB 113 could potentially require Metropolitan to pay for CALFED program elements that yield no benefits to Metropolitan, while benefiting other entities who are not required to pay for such benefits. The associated costs could be significant, but are unknown at this time.

	4/25/2005
B. Anatole Falagan for Stephen N. Arakawa Manager, Water Resource Management	Date
	4/26/2005
Dennis B. Underwood CEO/General Manager	Date

**Attachment 1 – Senate Bill No. 113**

BLA #3707

AMENDED IN SENATE APRIL 14, 2005

**SENATE BILL**

**No. 113**

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**Introduced by Senator Machado**  
**(Coauthor: Senator Torlakson)**

January 24, 2005

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An act to amend Sections 79402, 79423, and 79509.6, *of, and to add Section 79403 to, the Water Code*, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 113, as amended, Machado. California Bay-Delta Authority Act.

Existing law, the California Bay-Delta Authority Act, establishes in the Resources Agency the California Bay-Delta Authority until January 1, 2006, unless a certain determination is made. The act requires the authority and the implementing agencies, as defined, to carry out programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended. The act requires the authority to review, approve, and make recommendations regarding certain annual program plans and project expenditures submitted by the implementing agencies based on prescribed criteria.

This bill would require the authority, in undertaking that review, approval, or modification, to consider the extent to which those plans or expenditures are consistent with the "beneficiary pays principle," as defined. *The bill would provide that, for the purposes of implementing the act and subject to certain exceptions, state funds shall fund projects that have public benefits, nonstate funds shall fund projects that have private benefits, and both project beneficiaries and the*

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*public are responsible for costs associated with a project that has both private and public benefits.*

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) The CALFED Bay-Delta Program Record of Decision,*  
4 *dated August 28, 2000 (Record of Decision), and the Final*  
5 *Programmatic environmental impact statement/environmental*  
6 *impact report (EIS/EIR) called for the development of a finance*  
7 *plan. A fundamental philosophy of the CALFED Bay-Delta*  
8 *Program is that costs to implement programs, or to mitigate*  
9 *impacts resulting from the implementation of programs, should,*  
10 *to the extent possible, be paid for by the beneficiaries of the*  
11 *program actions.*

12     *(b) The need to implement a finance plan is important given*  
13 *that current funding sources will soon be depleted, the review of*  
14 *program benefits and beneficiaries is needed to support a*  
15 *benefits-based cost allocation, as called for in the Record of*  
16 *Decision, and state and federal fiscal budgets are severely*  
17 *constrained.*

18     *(c) The California Bay-Delta Authority should use the*  
19 *following program element examples as guidance when making a*  
20 *determination as to whether a project includes public, private, or*  
21 *shared public-private benefits:*

22     *(1) Under the levee program element, a private benefit occurs*  
23 *from levee maintenance and conveyance improvements needed to*  
24 *export water through the San Francisco Bay/Sacramento-San*  
25 *Joaquin Delta (Delta) to meet urban and agricultural water*  
26 *needs, from levee maintenance and rehabilitation improvements*  
27 *that serve to protect privately-owned land in the Delta, and from*  
28 *improvements needed to address erosion problems resulting from*  
29 *recreational boating activities. An example of a public benefit*  
30 *occurs when an improvement benefits the ecosystem beyond*  
31 *mitigation of impacts resulting from the implementation of*  
32 *projects.*

1 (2) *Under the environmental water account program element,*  
2 *a private benefit occurs when an improvement is designed and*  
3 *intended to mitigate project impacts to fish and wildlife or an*  
4 *improvement is intended to hold a local entity harmless or*  
5 *modify requirements imposed under the Endangered Species Act*  
6 *in order to avoid water supply impacts. An example of a public*  
7 *benefit occurs when there is an enhancement to fish and wildlife*  
8 *above conditions existing prior to the commencement of actions*  
9 *that caused the initial mitigation.*

10 (3) *Under the science program element, a private benefit*  
11 *occurs when a scientific approach is undertaken to solve a*  
12 *problem for a specified local entity. An example of a public*  
13 *benefit occurs when a scientific approach is undertaken to*  
14 *improve public trust values, as opposed to a scientific approach*  
15 *that directly benefits an identifiable group.*

16 (4) *Under the ecosystem restoration program element, a*  
17 *private benefit occurs when mitigation is required under existing*  
18 *regulatory requirements to minimize the impacts of a project*  
19 *undertaken to further the purposes of the CALFED Bay-Delta*  
20 *Program, such as the preservation of fish and wildlife. A public*  
21 *benefit occurs when there is enhancement to the ecosystem that is*  
22 *beyond compliance with these regulatory requirements.*

23 **SECTION 1.**

24 **SEC. 2.** Section 79402 of the Water Code is amended to read:  
25 79402. Unless the context otherwise requires, the following  
26 definitions set forth in this section govern the construction of this  
27 division:

28 (a) "Authority" means the California Bay-Delta Authority.

29 (b) "Balance" or "balanced implementation" means the  
30 implementation of projects, programs, or other actions in a  
31 manner that meets both of the following requirements:

32 (1) Is consistent with the implementation schedule and  
33 milestones described in the CALFED Bay-Delta Program Record  
34 of Decision, dated August 28, 2000, or as it may be amended,  
35 *except as modified by the finance plan prepared by the authority.*

36 (2) Results in concurrent improvement in all program elements  
37 in a manner that ensures that improvements in some program  
38 elements are not made without corresponding improvements in  
39 other program elements.

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1 (c) “Bay-Delta” means the San Francisco Bay/Sacramento-San  
 2 Joaquin Delta Estuary.

3 (d) “Bay-Delta Public Advisory Committee” means the  
 4 Bay-Delta Public Advisory Committee established by charter  
 5 issued by the United States Department of Interior, dated June 8,  
 6 2001, and filed on July 2, 2002.

7 (e) (I) “Beneficiary pays principle” means the allocation of  
 8 project costs to beneficiaries in approximate proportion to the  
 9 benefits received.

10 ~~(2) For the purposes of applying the beneficiary pays~~  
 11 ~~principle, the following terms have the following meanings:~~

12 ~~(A) Subject to subparagraph (B), a “beneficiary” means~~  
 13 ~~\_\_\_\_\_.~~

14 ~~(B) A beneficiary does not include \_\_\_\_\_.~~

15 ~~(C) Subject to subparagraph (D), “benefits” mean \_\_\_\_\_.~~

16 ~~(D) Benefits do not include \_\_\_\_\_.~~

17 ~~(E) “Public benefits” mean \_\_\_\_\_.~~

18 ~~(F) “User benefits” mean \_\_\_\_\_.~~

19 *(2) For the purposes of applying the beneficiary pays principle*  
 20 *to the California Bay-Delta Program, the following terms have*  
 21 *the following meanings:*

22 *(A) “Benefit” mean either a public benefit, private benefit, or*  
 23 *shared benefit.*

24 *(B) “Public benefit” means an enhancement to public trust*  
 25 *values beyond those defined as a private benefit. Enhancements*  
 26 *for which an individual or group of individuals cannot be*  
 27 *identified as beneficiaries shall be deemed a public benefit.*

28 *(C) “Private benefit” means either of the followings:*

29 *(1) An improvement required as a means of meeting mitigation*  
 30 *requirements associated with a project.*

31 *(2) An enhancement or improvement where an individual or*  
 32 *group of individuals can be identified as beneficiaries.*

33 *(D) “Shared benefit” means an improvement where there are*  
 34 *public benefits and private benefits.*

35 *(E) “Project costs” includes costs associated with financing,*  
 36 *interest, operations and maintenance, planning, study, permits,*  
 37 *and capital expenditures.*

38 *(F) “Local entity” means any private or public entity or*  
 39 *association of private or public entities.*

1 (f) “California Bay-Delta Program” or “Bay-Delta Program”  
2 means those projects, programs, commitments, and other actions  
3 that address the goals and objectives of the CALFED Bay-Delta  
4 Program Record of Decision, dated August 28, 2000, or as it may  
5 be amended.

6 (g) “Category A programs” means those state and federal  
7 agency programs and funds that are to be managed and  
8 implemented consistent with the California Bay-Delta Program’s  
9 goals and objectives.

10 (h) “Director” means the Director of the California Bay-Delta  
11 Authority.

12 (i) “Implementing agencies” means those agencies with the  
13 primary responsibility for implementing the program elements,  
14 subject to Sections 79440 and 79441.

15 (j) “Program elements” means the following 11 program  
16 elements of the California Bay-Delta Program:

17 (1) Levee system integrity.

18 (2) Water quality.

19 (3) Water supply reliability.

20 (4) Ecosystem restoration.

21 (5) Water use efficiency.

22 (6) Water transfer.

23 (7) Watershed.

24 (8) Storage.

25 (9) Conveyance.

26 (10) Science.

27 (11) Environmental water account.

28 (k) “Projects” means both programs and capital projects.

29 *SEC. 3. Section 79403 is added to the Water Code, to read:*

30 *79403. For the purposes of implementing this division, all of*  
31 *the following requirements apply:*

32 *(a) State funds shall fund projects that have public benefits.*  
33 *State funds shall not fund projects that do not have public*  
34 *benefits.*

35 *(b) Nonstate funds shall fund projects that have private*  
36 *benefits. Nonstate funds shall not fund projects that do not have*  
37 *private benefits.*

38 *(c) Where both private and public benefits are identified for a*  
39 *project, both project beneficiaries and the public are responsible*

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1 *for costs associated with the project in proportion to the benefits*  
2 *received.*

3 *(d) Notwithstanding subdivisions (a), (b), and (c), the*  
4 *authority may allocate available state funds to pay for costs*  
5 *associated with a project that benefits a disadvantaged*  
6 *community, as defined in Section 79505.5, or any Indian tribe*  
7 *having a federally recognized governing body.*

8 ~~SEC. 2.~~

9 ~~SEC. 4.~~ Section 79423 of the Water Code, as added by  
10 Section 2 of Chapter 955 of the Statutes of 2002, is amended to  
11 read:

12 79423. (a) The implementing agencies shall annually submit  
13 to the director their annual program plan and proposed budget for  
14 the following budget year describing how each implementing  
15 agency proposes to implement their respective program elements  
16 during the following budget year. The director shall then submit  
17 a comprehensive budget proposal to the Secretary of the  
18 Resources Agency for consideration consistent with the existing  
19 budget development process. Individual departmental budget  
20 requests are exempt from the Bagley-Keene Open Meeting Act  
21 (Article 9 (commencing with Section 11120) of Chapter 1 of Part  
22 1 of Division 3 of Title 2 of the Government Code). These  
23 programs shall also address environmental justice concerns and  
24 assess the impacts of projects and activities on tribal trust  
25 resources and tribal governmental concerns.

26 (b) Each annual program plan and proposed budget shall  
27 include programs that are designated as Category A programs in  
28 Attachment 3, entitled "Implementation Memorandum of  
29 Understanding" of the CALFED Bay-Delta Program Record of  
30 Decision, dated August 28, 2000, or as it may be amended.

31 (c) Annually, the authority shall consult with the agencies  
32 identified in subdivision (f) of Section 79401 and the Bay-Delta  
33 Public Advisory Committee, and shall determine, with the  
34 concurrence of the implementing agencies, those changes that  
35 shall be made to the list of Category A programs.

36 (d) Each annual program plan and proposed budget shall  
37 include program priorities, work plans, proposed budgets, and  
38 significant program products, including, but not limited to,  
39 regulations, grant or loan solicitations, schedules for production  
40 of environmental documents, and project selection processes.

1 (e) Annual program plans and proposed budgets also shall  
2 include a strategy and proposed budget for addressing  
3 program-specific, critical scientific uncertainties, developing and  
4 implementing performance measures, evaluating program  
5 actions, developing strategies for incorporating tribal and  
6 environmental justice interests, and conducting scientific review  
7 of program implementation and proposed projects. The  
8 implementing agency and the director shall consult with the lead  
9 scientist, as appropriate, to determine an appropriate science  
10 strategy and proposed budget.

11 (f) The implementing agencies shall develop comprehensive  
12 tribal and environmental justice work plans, including specific  
13 goals and objectives and projected expenditures that address all  
14 program areas.

15 (g) The implementing agencies shall coordinate the  
16 preparation of annual program plans and proposed budgets with  
17 agencies participating in the California Bay-Delta Program,  
18 federally recognized Indian tribes, and other appropriate  
19 agencies.

20 (h) The implementing agencies and the director shall seek to  
21 integrate the annual plans and proposed budgets for the program  
22 elements into a comprehensive and balanced annual  
23 implementation plan.

24 (i) Annually, the authority shall review and approve, and, as  
25 appropriate, may recommend that implementing agencies  
26 modify, multiyear program plans and long-term expenditure  
27 plans on behalf of Category A programs, based on the following  
28 criteria:

29 (1) Consistency with the program.

30 (2) The balanced achievement of the program's goals and  
31 objectives.

32 (3) Consistency with the "beneficiary pays principle," as  
33 defined in Section 79402.

34 (j) If the authority does not approve an implementing agency's  
35 multiyear program plan and long-term expenditure plan, the  
36 authority shall prepare and submit written findings to the  
37 appropriate policy and fiscal committees of the Legislature and  
38 the implementing agencies, describing how the multiyear  
39 program plan and long-term expenditure plan do not meet the

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1 criteria adopted by the authority pursuant to subdivision (o) of  
2 Section 79421.

3 (k) If the authority recommends modification to  
4 implementation of the Budget Act for the current fiscal year or  
5 the multiyear program plan and long-term expenditure plan, the  
6 implementing agency shall resubmit the Budget Act  
7 implementation plan, the multiyear plan, or the long-term  
8 expenditure plan, as appropriate, to the authority for approval. If  
9 an implementing agency makes any of the modifications  
10 recommended by the authority, the authority shall submit these  
11 modifications to the Legislature.

12 (l) Nothing in this division limits or interferes with the final  
13 decisionmaking authority of the implementing agencies.

14 (m) This section shall become operative only if this bill and  
15 Senate Bill 1653 of the 2001-02 Regular Session are both  
16 chaptered and become effective on or before January 1, 2003,  
17 and this bill is chaptered last, in which case this section shall  
18 prevail over Section 79423, as added by Senate Bill 1653.

19 ~~SEC. 3.~~

20 SEC. 5. Section 79509.6 of the Water Code is amended to  
21 read:

22 79509.6. (a) For the purposes of ensuring compliance with  
23 Section 79509, the California Bay-Delta Authority shall review  
24 regulations, guidelines, or criteria that are proposed by an  
25 implementing agency to carry out a grant program for projects  
26 and activities that meet the following criteria:

27 (1) The project is located within the CALFED solution area as  
28 defined in the CALFED final programmatic environmental  
29 impact statement/environmental impact report, dated July 2000.

30 (2) The project wholly or partially assists in the fulfillment of  
31 one or more of the goals of the CALFED Bay-Delta Program.

32 (b) Except for projects financed pursuant to Chapter 6  
33 (commencing with Section 79545) or Chapter 10 (commencing  
34 with Section 79570), the California Bay-Delta Authority may  
35 review, and comment to the appropriate implementing agency  
36 with regard to, a proposal to award a grant pursuant to this  
37 division on behalf of a project that meets the criteria set forth in  
38 subdivision (a) for the purposes of determining whether or not  
39 the project is consistent with the CALFED *Bay-Delta*  
40 Programmatic Record of Decision.

1 (c) To avoid any delays in project awards, the opportunity for  
2 review by the California Bay-Delta Authority pursuant to  
3 subdivision (b) shall be incorporated into the grant program  
4 schedules established by the implementing agencies.

5 (d) For the purposes of this section, “implementing agency”  
6 has the same definition as that set forth in subdivision (i) of  
7 Section 79402.

O