

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

July 12, 2005 Board Meeting

8-16

Subject

Reconsideration of AB 672 (Klehs, D-San Leandro), regarding the recreational use of drinking water reservoirs.

Description

As noted in Board Letter 8-5 (June 2005), AB 672 was introduced as a result of Assemblyman Klehs' belief that governmental entities that own reservoirs may be unreasonably restricting or failing to provide recreation at drinking water reservoirs – thereby denying Californians access to much-needed recreational opportunities.

Metropolitan and several of its member agencies were opposed to the April 28 version of the measure due to the infeasibility of providing recreation at certain facilities for a variety of reasons, including security and water quality. Metropolitan and member agencies reached agreement with the author on amendments that moved the water agencies to a neutral position. In light of this agreement, Assemblyman Klehs has requested support from Metropolitan and member agencies.

AB 672 – as amended June 23 – seeks to increase recreational activities at reservoirs by:

- (1) Clarifying existing law pertaining to the current, general prohibition against body-contact with reservoir water intended for domestic use.
- (2) Requiring each governmental entity that owns a water supply reservoir larger than 3,500 acre-feet to prepare and adopt a watershed or recreation master plan, as specified.

Under the June 23 amended version of the bill, as referred to in [Attachment 1](#), each governmental entity would be required to develop a watershed or recreation master plan that “sets forth the full range of recreational and environmental management activities that will be permitted to occur on or adjacent to the reservoir and surrounding watershed lands that are owned by that governmental entity.”

With respect to the applicability of the measure, when the April 28 amendment was considered by the Board, the bill exempted the following types of facilities:

- 1) A reservoir owned by local flood control agencies
- 2) A reservoir that is an online reservoir
- 3) A reservoir containing water that is not filtered prior to use by consumers
- 4) A reservoir of less than 3,500 acre-feet capacity
- 5) A reservoir operating as a forebay for pumping facilities or treatment plants that cause substantial fluctuation in reservoir levels
- 6) A reservoir owned and operated by a private company

The June 23 version of the bill – along with clarifying and technical amendments adopted in the Senate Environmental Quality Committee – is expected to reflect negotiations and an agreement among the author's office and representatives from Metropolitan, the San Diego County Water Authority, the Los Angeles Department of Water and Power, the Calleguas Municipal Water District, the Las Virgenes Municipal Water District and the Irvine Ranch Water District.

Specifically, the water agencies noted above agreed to remove their opposition to the bill in light of the author's commitment to maintain and clarify the following changes to the measure:

- 1) Provide an exemption from the recreation planning process for those reservoirs for which the public agency has determined that, pursuant to the findings of any vulnerability assessment completed in compliance with the Federal Bioterrorism Act pertaining to facility security or protection of water quality, increased public access poses significant risks.
- 2) Provide an exemption for reservoirs where at least one of three specified recreational activities are provided (trail access, non-motorized boating and shoreline fishing). It should be noted that the author may seek to revisit this issue and alter this provision to provide an exemption if two or more activities are provided.
- 3) Exempt reservoirs that provide treated water directly to consumers.
- 4) Define an “online reservoir” as a reservoir where water flows from the reservoir into a water treatment plant, without going through an additional holding reservoir.
- 5) Revise the exemption for pumping-facility forebays to also include pump-storage hydroelectric facilities.
- 6) Reorganization of the bill’s structure to clarify provisions and other significant clarifying changes.

It should be noted that the water agencies also requested the inclusion of a provision that would have provided public agencies with a “periodic findings” alternative to the recreation plan requirement. Specifically, the provision would have exempted reservoirs for which the operating public agency has determined that recreational access is infeasible due to public health or safety, environmental or cost issues. The water agencies proposed that such a determination should be made publicly at least once every five years. In light of other amendments, the author ultimately rejected this proposed provision.

Reconsideration of Board-Adopted Position:

As noted above, the author has requested, given the amendments he agreed to accept, that Metropolitan and other Southern California water agencies move to support the amended version of AB 672.

Policy

Source Water Quality Protection, M. I. 39929 – November 10, 1992; M.I. 40878 – June 14, 1994; M.I. 41222 – January 10, 1995; M. I. 42820 – February 10, 1998

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

None required.

CEQA determination for Option #2:

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.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and remain neutral on AB 672.

Fiscal Impact: None

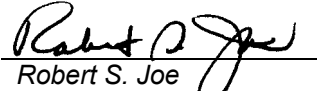
Option #2

Adopt the CEQA determination and support AB 672.


Fiscal Impact: None

Staff Recommendation

No recommendation.


Robert S. Joe
Manager, External Affairs

7/6/2005
Date


Dennis B. Underwood
CEO/General Manager

7/6/2005
Date

Attachment 1 – AB 672 (Klehs) as amended June 23, 2005

BLA #3826

AMENDED IN SENATE JUNE 23, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY APRIL 21, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 672

Introduced by Assembly Member Klehs

(Coauthor: Senator Torlakson)

February 17, 2005

An act to add Sections 115827 and 115828 to the Health and Safety Code, relating to reservoirs.

LEGISLATIVE COUNSEL'S DIGEST

AB 672, as amended, Klehs. Reservoirs with water intended for domestic use: recreational use and environmental management activities.

Existing law prohibits the recreational use of reservoirs where water is stored for domestic use to include recreation in which there is bodily contact with the water by a participant. The law exempts certain reservoirs from this prohibition and sets forth certain conditions and restrictions to ensure water purity.

This bill would, with certain exceptions, exclude certain recreational activity from the prohibition against bodily contact with the water in a reservoir, owned by a ~~governmental entity~~ *public agency*, containing water intended for domestic use, including, but not limited to, shoreline fishing and trail access in areas adjacent to the reservoir and the use of nonmotorized boats.

Existing law requires a water supply reservoir of a public agency to be open for recreational use, subject to the regulation of the State Department of Health Services.

This bill would, with certain exceptions, require a ~~governmental entity~~ *public agency* that owns a water supply reservoir with a capacity of 3,500 acre-feet or more, commencing January 1, ~~2008~~ *2010*, and every 10 years thereafter, to adopt a *watershed management plan*, watershed or recreation master plan, or equivalent resources planning document, setting forth the recreational and environmental management activities permitted to occur on or adjacent to the reservoir and surrounding watershed lands, *and would require adoption of interim plans if the deadlines are not met*. The bill would set forth the required contents of the *watershed management plan*, watershed or recreation master plan, or equivalent resources planning document. This bill would also impose various requirements on ~~governmental entities~~ *public agencies* in connection with the creation of the plan, including requiring public hearings to be held prior to the adoption of the plan, ~~and requiring~~. *The bill would require* the appointment of a community advisory committee to advise the ~~entity~~ *public agency* regarding the plan’s provisions. This bill would extend the date for initial compliance with the bill to January 1, 2011, for a ~~entity~~ *public agency* that has a *watershed management plan*, watershed or recreation master plan, or equivalent resources planning document adopted after January 1, 1996.

By increasing the duties of local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 115827 is added to the Health and
- 2 Safety Code, to read:

1 115827. ~~(a)~~ Notwithstanding any provision of law to the
2 contrary, *including, but not limited to, subdivision (b) of Section*
3 *115825*, for a reservoir owned by a ~~governmental entity~~ *public*
4 *agency*, this article does not prohibit either of the following
5 recreational activities:

6 ~~(1)~~

7 *(a) Trail access in the areas adjacent to the reservoir, as*
8 *determined by the public agency as part of the policy*
9 *determinations made by the public agency in adopting its master*
10 *plan pursuant to Section 115828.*

11 ~~(2)~~

12 *(b) Shoreline fishing, or the use of nonmotorized boats, as*
13 *determined by the ~~entity~~ public agency as part of the policy*
14 *determinations made by the ~~entity~~ public agency in adopting its*
15 *plan pursuant to Section 115828.*

16 ~~(b) Subdivision (a) does not apply to any of the following:~~

17 ~~(1) A reservoir that is owned and operated by a local flood~~
18 ~~control agency.~~

19 ~~(2) A reservoir that is an online reservoir.~~

20 ~~(3) A reservoir that contains water that is not filtered prior to~~
21 ~~use by consumers.~~

22 ~~(4) A reservoir that has a capacity less than 3,500 acre-feet.~~

23 ~~(5) A reservoir that operates as a forebay for pumping~~
24 ~~facilities or treatment plants that cause substantial fluctuation in~~
25 ~~reservoir levels.~~

26 ~~(6) A reservoir that is owned and operated by a private~~
27 ~~company rather than a public agency.~~

28 ~~(e) This section does not require the governmental entity that~~
29 ~~owns the reservoir to install boat ramps or docks.~~

30 ~~(d) A governmental entity that has adopted a plan pursuant to~~
31 ~~Section 11528 and that owns and operates multiple reservoirs~~
32 ~~within a single watershed or within close proximity of each other~~
33 ~~shall be deemed to be in compliance with this section if~~
34 ~~recreational activities permitted pursuant to subdivision (a) are~~
35 ~~made available by the public agency within that watershed or~~
36 ~~proximate area under the governmental entity's control.~~

37 ~~SEC. 2. Section 115828 is added to the Welfare and~~
38 ~~Institutions Code, to read:~~

39 115828. (a) Except as provided in subdivision (g), by
40 January 1, 2008, and every 10 years thereafter, a governmental

1 ~~entity that is subject to subdivision (a) of Section 115827 that~~
2 ~~owns a water supply reservoir with a capacity of 3,500 acre-feet~~
3 ~~or more, shall adopt a watershed or recreation master plan or~~
4 ~~equivalent resources planning document that sets forth the full~~
5 ~~range of recreational and environmental management activities~~
6 ~~that will be permitted to occur on or adjacent to the reservoir and~~
7 ~~surrounding watershed lands that are owned by that~~
8 ~~governmental entity.~~

9 ~~(b) Every watershed or recreation master plan or equivalent~~
10 ~~resources planning document shall, at a minimum, do all of the~~
11 ~~following:~~

12 ~~(1) Identify the terms and conditions under which trail access,~~
13 ~~fishing, boating, as well as the other recreational activities, will~~
14 ~~be allowed within the watershed.~~

15 ~~(2) Balance the recreational activities and uses and the need to~~
16 ~~protect drinking water quality and public health and safety within~~
17 ~~the watershed.~~

18 ~~(3) Identify the appropriate land management practices that~~
19 ~~should be carried out to protect and maintain the environmental~~
20 ~~values of the watershed.~~

21 ~~(4) Protect drinking water quality.~~

22 ~~(5) Protect plants and wildlife, including, but not limited to,~~
23 ~~listed species.~~

24 ~~(6) Address fiscal issues related to the costs of providing~~
25 ~~reservoir access and minimizing costs to ratepayers.~~

26 ~~(7) Protect the public safety.~~

27 ~~(e) In creating its plan, a governmental entity may require~~
28 ~~payment of an access fee.~~

29 ~~(d) In adopting its plan, the governmental entity may require~~
30 ~~seasonal closures of reservoir access that are necessary to~~
31 ~~mitigate any significant environmental impacts associated with~~
32 ~~recreational use.~~

33 ~~(e) A governmental entity required to adopt a plan pursuant to~~
34 ~~this section shall conduct extensive public hearings to receive~~
35 ~~public input prior to adopting its watershed or recreation master~~
36 ~~plan or equivalent resources planning document.~~

37 ~~(f) A governmental entity required to adopt a plan pursuant to~~
38 ~~this section shall appoint a community advisory committee,~~
39 ~~consisting of a diverse range of stakeholder interests, to advise it~~
40 ~~regarding the contents of its watershed or recreation master plan~~

1 or equivalent resources planning document. The community
2 advisory committee shall make its recommendations to the board
3 of directors of the governmental entity regarding the provisions
4 of the draft watershed or recreation master plan or equivalent
5 resources planning document no later than December 31, 2006.

6 (g) For a governmental entity required to adopt a plan pursuant
7 to this section that has a watershed master plan or equivalent
8 resources planning document that was adopted after January 1,
9 1996, a new watershed or recreation master plan or equivalent
10 resources planning document shall not be required until
11 December 31, 2011, and a subsequent watershed or recreation
12 master plan or equivalent resources planning document shall be
13 adopted every 10 years thereafter.

14 (h) A governmental entity that is required to adopt a plan
15 pursuant to this section shall make express findings that allowing
16 recreational access would not cause adverse impacts upon the
17 public health or safety, or upon the environment, including, but
18 not limited to, wildlife and habitat.

19 *SEC. 2. Section 115828 is added to the Health and Safety*
20 *Code, to read:*

21 *115828. (a) (1) Except as provided in subdivisions (g) and*
22 *(j), by January 1, 2010, and every 10 years thereafter, a public*
23 *agency that is subject to Section 115827 that owns a water*
24 *supply reservoir with a capacity of 3,500 acre-feet or more, shall*
25 *adopt one of the following documents:*

26 *(A) A watershed management plan, with an additional section*
27 *addressing recreation.*

28 *(B) A watershed or recreation master plan.*

29 *(C) An equivalent resources planning document that sets forth*
30 *the full range of recreational and environmental management*
31 *activities that will be permitted to occur on or adjacent to the*
32 *reservoir and surrounding watershed lands that are owned by*
33 *that public agency.*

34 *(2) Public agencies owning more than one reservoir subject to*
35 *this subdivision may include one or more of the reservoirs in a*
36 *single plan or document.*

37 *(b) Every watershed management plan, watershed or*
38 *recreation master plan, or equivalent resources planning*
39 *document adopted pursuant to subdivision (a) shall, at a*
40 *minimum, do all of the following:*

- 1 (1) *Identify the terms and conditions under which trail access,*
2 *fishing, boating, and other recreational activities, will be allowed*
3 *within the watershed.*
- 4 (2) *Balance the recreational activities and uses and the need*
5 *to protect drinking water quality and public health and safety*
6 *within the watershed consistent with the requirements of the*
7 *department.*
- 8 (3) *Identify the appropriate land management practices that*
9 *should be carried out to protect and maintain the environmental*
10 *values of the watershed.*
- 11 (4) *Protect drinking water quality.*
- 12 (5) *Protect plants and wildlife, including, but not limited to,*
13 *listed species.*
- 14 (6) *Address fiscal issues related to the costs of providing*
15 *reservoir access and minimizing costs to ratepayers.*
- 16 (7) *Protect the public safety.*
- 17 (c) *In adopting its plan, a public agency may require payment*
18 *of an access fee.*
- 19 (d) *In adopting its plan, or equivalent resources planning*
20 *document the public agency may require seasonal closures of*
21 *reservoir access that are necessary to mitigate any significant*
22 *environmental impacts associated with recreational use up to a*
23 *total of three months within a calendar year. Closure of*
24 *recreational access may exceed three months only if*
25 *environmental mitigation requires closure for a longer time*
26 *period.*
- 27 (e) *A public agency required to adopt a plan or document*
28 *pursuant to this section shall conduct extensive public hearings*
29 *to receive public input prior to adopting its plan or document.*
- 30 (f) *A public agency required to adopt a plan or document*
31 *pursuant to this section shall appoint a community advisory*
32 *committee, consisting of a diverse range of stakeholder interests,*
33 *to advise it regarding the contents of its plan or document. The*
34 *community advisory committee shall make its recommendations*
35 *to the board of directors of the public agency regarding the*
36 *provisions of the plan or document prior to preparation of the*
37 *required environmental documentation or other administrative*
38 *processes necessary for the adoption of a plan or document by*
39 *the board of directors of the public agency.*

1 (g) For a public agency required to adopt a plan or document
2 pursuant to this section that has a plan or document that was
3 adopted after January 1, 1996, a new or revised plan or
4 document shall not be required until December 31, 2011, and a
5 subsequent plan or document shall be adopted every 10 years
6 thereafter.

7 (h) A public agency that is required to adopt a plan or
8 document pursuant to this section shall make express findings
9 that allowing recreational access that would not cause adverse
10 impacts upon the public health or safety, or upon the
11 environment, including, but not limited to, wildlife and habitat.

12 (i) (1) If a public agency subject to subdivision (a) of Section
13 115827 has not adopted a plan or document by the deadlines set
14 forth in subdivision (a) or (g), the public agency shall adopt
15 interim rules for recreational activities within 30 days of those
16 deadlines.

17 (2) The interim rules shall remain in effect until the plan or
18 document has been adopted.

19 (3) The interim rules shall allow the recreational activities set
20 forth in subdivision (a) of Section 115827 to take place in the
21 watershed, subject to any limitations or restrictions that the
22 public agency imposes on those recreational activities.

23 (4) In establishing the interim rules, the public agency shall
24 consider the importance of balancing the need for recreational
25 activities against the need to protect drinking water quality, the
26 need to protect the public health, and the need for security of
27 drinking water reservoirs and public water supplies.

28 (j) Section 115827 does not apply to any of the following:

29 (1) A reservoir that is owned or operated by a local flood
30 control agency.

31 (2) A reservoir that is an online reservoir, where water flows
32 from the reservoir. This includes reservoirs that are currently
33 under construction, with the intent of making them into online
34 reservoirs.

35 (3) A reservoir that provides treated water directly to
36 consumers.

37 (4) A reservoir that contains water that is not filtered prior to
38 use by consumers.

39 (5) A reservoir that has a capacity less than 3,500 acre-feet.

1 (6) A reservoir that operates as a forebay for pumping
2 facilities or treatment plants or includes a pump-storage
3 hydroelectric facility that causes substantial fluctuation in
4 reservoir levels.

5 (7) A reservoir that is owned and operated by a private
6 company rather than a public agency.

7 (8) A reservoir for which the public agency has determined
8 that, pursuant to findings of any vulnerability assessment
9 completed in compliance with the Federal Bioterrorism Act (P.L.
10 107-188) pertaining to facility security or protection of water
11 quality, increased public access poses significant risks.

12 (9) A reservoir where, as of January 6, 2006, recreation was
13 permitted or provided at the reservoir, provided that the
14 recreation continues for a minimum of nine months out of each
15 calendar year and includes one or more of the following
16 recreational activities:

17 (A) Trail access.

18 (B) Nonmotorized boating.

19 (C) Shoreline fishing.

20 (k) This section does not require the public agency that owns
21 the reservoir to install boat ramps or docks.

22 (l) A public agency that has adopted a plan or document
23 pursuant to Section 11528 and that owns and operates multiple
24 reservoirs within a single watershed or within close proximity of
25 each other under the public agency's control shall be deemed to
26 be in compliance with this section if recreational activities
27 permitted pursuant to Section 115827 are also permitted within
28 that watershed or close proximate area.

29 SEC. 3. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 a local agency or school district has the authority to levy service
32 charges, fees, or assessments sufficient to pay for the program or
33 level of service mandated by this act, within the meaning of
34 Section 17556 of the Government Code.