

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

December 9, 2008 Board Meeting

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**8-9**

**Subject**

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Approve Legislative Strategy for 2009

**Description**

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Metropolitan staff has developed a proposed federal and state legislative strategy for 2009. This strategy supports Metropolitan's mission and incorporates its overall conservation and sustainability objectives.

**Federal Legislative Proposals**

*Twenty-First Century Water Commission*

- Continue to support legislation to authorize a water resource management strategy through the creation of the Twenty-First Century Water Commission. [110<sup>th</sup> Congress: H.R. 135 (Linder, R-GA), S. 2728 (Isakson, R-GA)]

*Chlorine Gas as a Disinfectant*

- Continue to oppose any legislation that impedes local jurisdiction over the use or on-site storage of chlorine gas as a disinfectant. [110<sup>th</sup> Congress: H.R. 5577 (Thompson, D-MS), H.R. 5533 (Wynn, D-MD)]

*Global Climate Change*

- Support legislation authorizing the Environmental Protection Agency (EPA) to provide grant funding to conduct research enabling water agencies to adapt to the ongoing impacts of global climate change.
- Work with water agencies and other stakeholders on pending climate change initiatives to seek legislation that would:
  - Provide funding for water agencies to reduce greenhouse gases and develop alternative renewable resources
  - Provide renewable energy credit for hydroelectric power
  - Provide for sustained distribution system reliability and efficiency
  - Contain escalating public power costs

*Perchlorate Standards*

- Continue to support EPA's authorization to develop a federal drinking water standard for perchlorate. [110<sup>th</sup> Congress: S. 24, S. 150 (Boxer, CA), H.R. 1747 (Solis, D-CA)]

*Quagga Mussel Infestation*

- Continue to support legislation through congressional authorization and funding vehicles to develop and enhance efforts to contain the quagga mussel.

### *Tax Credit Bond Financing*

- Continue to support legislation to modify the U.S. Tax Code to facilitate the use of tax credit bond financing by water agencies to plan and to build new local water supplies that meet the environmental criteria of water efficiency programs (similar to Title XVI). [110<sup>th</sup> Congress: H.R. 3452 (Becerra, D-CA)]

### *Appropriations Priorities include:*

- Delta CALFED Levee Stability Program (Corps of Engineers)
- Environmental planning and other efforts related to an alternative Delta conveyance system (Bureau of Reclamation, National Marine Fisheries Service, and U.S. Fish and Wildlife Service)
- Expedite and enhance operation of the Desalination Plant in Yuma, Arizona (Bureau of Reclamation)
- Metropolitan Water District Area Regional Water Conservation Plan (Bureau of Reclamation)
- Additional funding for the Title XVI Program (Bureau of Reclamation)

### **State Legislative Proposals (Sponsorship)**

- *Fixed Ad Valorem Tax Limitation:* Amend the Metropolitan Water District Act, Section 124.5, Ad Valorem Tax Limitation, to allow Metropolitan to fix the tax levy rate at the rate in effect for the fiscal year 2008/09.
  - Metropolitan seeks to fix its future tax levy rate at .0043 percent, which is the ad valorem tax rate for fiscal year 2008/09, to help mitigate impacts on future water rates of higher cost water supply projects, including water use efficiency projects, that benefit all users in Metropolitan's service territory. Since this revenue source would not be affected by lower water sales, it would serve as the foundation for water use efficiency investments, such as recycled water projects and conservation incentives.
- *Water Use Efficiency Financing:* Amend Sections 5898.12 to 5898.30 of the California Streets and Highways Code and add Section 242 to the California Revenue and Taxation Code.
  - Metropolitan seeks to authorize public entities, after a determination of public interest, to designate an area within which authorized public entity officials and free and willing property owners may enter into contractual assessments to finance the installation of water use efficiency improvements that are permanently fixed to real property (such as permeable pavement, recycled water piping, cisterns or synthetic turf), as specified.
  - This proposal is similar to AB 811 (Levine) signed by the Governor on July 21, 2008, that addressed property-owner contractual assessments to finance the installation of solar or other renewable energy-generating devices or make specified energy efficiency improvements to their properties.
- *Water Conservation in Common Use Developments:* Amend Section 1353.8 of the California Civil Code, relating to water conservation in landscaping in common interest developments.
  - Existing law does not adequately address the Legislature's intent to improve landscape water conservation in all landscapes, regardless of property type (Government Code Section 65593). Furthermore, it does not prevent a development's governing documents from limiting a property owner's ability to comply with the State Model Landscape Ordinance or its locally adopted equivalent.
  - This proposal would provide the comprehensive coverage needed to adequately address this issue, eliminating the discrepancy in state regulations and ensuring that the Legislature's intent for landscape water conservation is supported by ensuring that application of the State Model Landscape Ordinance or the locally adopted equivalent is equitable throughout an agency's service area. It would eliminate the ability of common interest developments to require

- landscapes that exceed the water use standards and other requirements of the model ordinance or locally adopted equivalent.
- *CEQA Exemptions for One-Year Water Transfers:* Exempt one-year transfers from California Environmental Quality Act (CEQA) review such as all one-year transfers or a more narrowly defined group of water transfers (e.g., Drought Water Bank transfers, Department of Water Resources (DWR) approved transfers, etc.).
    - One year transfers must already comply within the regulatory parameters for the State Water Project (SWP) and the Central Valley Project (CVP), including all applicable Biological Opinion requirements under the Endangered Species Act (ESA) that govern SWP and CVP pumping in the Sacramento-San Joaquin Delta. Existing law currently exempts one-year transfers that are required to be approved by the State Water Resources Control Board from CEQA review. Because of the similar ESA, Section 1810(d) and CVP Improvement Act review requirements and protections, a similar exemption for single—usually dry year—transfers not subject to State Water Resources Control Board review seems appropriate.

### **State Legislative Proposals (Support)**

*Sponsor: Association of California Water Agencies*

- *Plumbing Retrofits on Resale:* Require the removal of inefficient toilets and plumbing fixtures and retrofit to ultra low flow toilets or future standards upon resale of property. Staff is investigating a phased-in or funding approach to lessen the impacts of this proposal.
  - Public agencies shall require that no new or existing structures within their respective jurisdictions shall be sold or transferred unless all existing plumbing fixtures in the structure are retrofitted exclusively with water-conserving plumbing fixtures. Compliance with this section shall be included as a condition of escrow for any sale or transfer. Disclosure of these requirements is material to any sale or transfer and is required in advance of any sale or transfer of real property.
- *Quagga Mussel Containment Study and Liability Limits:* Require a study to identify the level of success that current management and containment efforts for quagga mussels have achieved, and propose reasonable liability limitations for water supply operations that result in an unintended and inevitable infestation and spread of quagga mussels.
  - Existing law authorizes the Department of Fish and Game (DFG) to proactively address quagga mussel infestation in California water bodies. DFG has the authority to inspect, quarantine and take other necessary actions to prevent the spread of quagga mussels. While it is fair to say that despite developing and implementing the most diligent and scientifically sound eradication and containment plan, it is unlikely to result in the complete eradication of quaggas in any water body due to the forces of nature that are beyond any operator's control. Under existing law, water system owners or operators could potentially be held liable for quagga mussel infestation even where they are diligently taking all possible steps to control them. Under these circumstances, reasonable limits on liability are warranted.

*Sponsor: California Municipal Utilities Association*

- *Recognition of Hydroelectric Power as a Renewable Energy Resource:* Expand the definition of eligible renewable energy resource to encompass any hydroelectric generating facility that does not cause or contribute to a violation of a California environmental quality law or requirement.
  - Existing law limits renewable energy resource qualification to hydroelectric generating facilities that are 30 megawatts or less. This limit was incorporated into law because opponents argued that large hydroelectric generating facilities may have adverse impacts on the environment. However, all renewable resources, including solar and wind projects, will have some adverse

environmental impacts so this factor does not justify different treatment of hydroelectric power. Additionally, existing large hydroelectric systems are already interconnected to the grid and are subject to environmental review as part of the Federal Energy Regulatory Commission’s licensing process. This proposal would abolish the existing discriminatory and arbitrary limit.

**NOTE:** In addition to the proposed legislative strategies for 2009, staff will continue to be engaged in state and federal legislation consistent with the positions the Board has previously taken. New legislation, not consistent with board-adopted policy, will be presented to the Board for consideration.

**Policy**

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Supports Metropolitan’s mission and overall conservation and sustainability objectives

**California Environmental Quality Act (CEQA)**

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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). However, in the future, for any project-specific actions that Metropolitan may take as outlined in the letter, additional CEQA review and documentation, as required, will need to be done prior to the Board’s action.

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**

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**Option #1**

Adopt the CEQA determination and approve the 2009 Legislative Strategy.

**Fiscal Impact:** None

**Option #2**


Take no action.

**Fiscal Impact:** None


**Staff Recommendation**

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Option #1

  
Linda Waade  
Deputy General Manager, External Affairs

11/24/2008  
Date

  
Jeffrey Nighling  
General Manager

11/24/2008  
Date