



● **Board of Directors**  
**Legislation Committee**

2/8/2011 Board Meeting

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**8-2**

**Subject**

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Express opposition, unless amended, to AB 134 (Dickinson, D-Sacramento and Steinberg, D-Sacramento) - Sacramento Regional County Sanitation District

**Description**

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**Background**

Last December, the Central Valley Regional Water Quality Control Board (Regional Board) approved a new discharge permit for the Sacramento Regional County Sanitation District's (SRCSD's) 181-million-gallon per day (mgd) wastewater treatment plant. The new discharge permit will require nitrification/denitrification upgrades to reduce nitrogen that is currently being discharged into the Sacramento-San Joaquin Bay Delta. Nitrogen in the form of ammonium has been shown to be altering the food web to the detriment of native, endangered species. The permit will also require tertiary filtration upgrades to remove pathogens and other constituents that are a public health concern to downstream water districts as well as the California Department of Public Health. SRCSD estimates the compliance costs at approximately \$2.1 billion, although other estimates are much lower.

SRCSD's response to the new permit is threefold: (1) it has appealed the Regional Board permit decision to the State Water Resources Control Board (State Board); (2) it has proposed legislation to obtain public financing for a position of the required upgrades (see Board Letter 8-3); and (3) it has proposed this legislation, AB 134 ([Attachment 1](#)), which would allow SRCSD to market its treated effluent for sale outside of its service area in order to offset the upgrade costs.

**Analysis**

In general, under existing law SRCSD can market treated effluent for recycled water use within its service area. Although SRCSD now operates an existing 3 mgd recycling facility and has completed design for a 10-mgd expansion, apparently there is little local demand for recycled water. Treated effluent that cannot be recycled locally is discharged to the Sacramento River, and once those flows are returned to the river, under existing law, SRCSD's rights to its treated effluent terminate.

In order to market SRCSD effluent as a transfer supply, SRCSD would need to obtain an appropriate water right from the State Board and approval for a change in place of use and purpose of use. The State Board administers a water rights program pursuant to which the State Board grants permits and licenses to appropriate water and to make changes to the point of discharge, place of use, or purpose of use of treated wastewater. Water rights applications and place of use changes are reviewed by the State Board in accordance with prescribed procedures, and require consideration of potential injury to legal water users and adverse effects on fish and wildlife.

AB 134 would authorize SRCSD to file an application for a permit to appropriate its treated effluent in order to facilitate sale and transfer beyond SRCSD's service area. AB 134 is modeled on an existing provision in the California Water Code that applies to dischargers on the San Joaquin River (Wat. Code Section 1485), but with two very significant differences: (1) AB 134 *requires* that the State Board issue SRCSD's permit (language in Section 1485 stating "the Board *may* grant the permit" is changed to "*shall*"), and (2) AB 134 exempts SRCSD's

application from the traditional State Board approval and change of use process, thus eliminating consideration of effects to downstream users and to fish and wildlife.

By eliminating the traditional constraints on the appropriation of water and materially limiting the State Board's discretion – in fact requirement – to consider impacts on downstream legal users of water, AB 134 would allow SRCSD to legislatively trump senior appropriative water rights to Sacramento River flows. Analysis performed by the State Water Contractors over an 82-year hydrologic record indicates that with AB 134, SRCSD would be able to transfer up to 169,000 acre-feet per year south of the Delta, with a long term annual average of approximately 40,000 acre-feet. This equates to the Central Valley Project and State Water Project Delta export water supplies that would be lost.

AB 134 would also set a precedent that could similarly exempt other dischargers from the consideration of injuries to downstream water users and fish and wildlife that has long stood in the state's existing regulatory scheme.

### **Proposed Amendment**

AB 134 should be amended to eliminate the exception to the State Board's traditional process for reviewing water rights appropriations and change of place of use requests. This would restore the State Board's consideration of injuries to downstream water users and fish and wildlife and its discretion to not approve or modify the request as appropriate.

### **Policy**

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This board action is consistent with the Board's Delta policy principles memorialized in the following prior policy adoptions:

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

By Minute Item 47232, dated September 11, 2007, the Board adopted criteria for support of conveyance options in implementation of a long-term Delta improvement plan.

By Minute Item 47605, dated August 19, 2008, the Board approved Delta Governance Principles as outlined in the board letter.

### **California Environmental Quality Act (CEQA)**

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CEQA determination for Options #1 and #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.

CEQA determination for Option #3:

None required

**Board Options**

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**Option #1**

Adopt the CEQA determination and express opposition to AB 134 unless it is amended to restore the State Board’s discretion and its traditional process of considering effects on legal users of water and fish and wildlife.

**Fiscal Impact:** Potentially none

**Business Analysis:** Protects Metropolitan’s rights to State Water Project supplies

**Option #2**

Adopt the CEQA determination and express opposition to AB 134.

**Fiscal Impact:** None

**Business Analysis:** Protects Metropolitan’s rights to State Water Project supplies

**Option #3**

Take no position on AB 134.

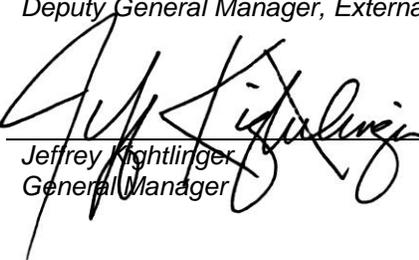
**Fiscal Impact:** Unknown. Potential for significant fiscal impact to replace lost State Water Project supplies

**Business Analysis:** Potential for loss of Metropolitan’s rights to State Water Project supplies

**Staff Recommendation**

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Option #1

	1/26/2011
Linda Waade Deputy General Manager, External Affairs	Date
	1/27/2011
Jeffrey Nightlinger General Manager	Date

**Attachment 1 – Assembly Bill 134**

Ref# ea12610426

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL****No. 134**

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**Introduced by Assembly Member Dickinson**  
(Principal coauthor: Senator Steinberg)

January 12, 2011

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An act to add Section 1486 to the Water Code, relating to water resources.

## LEGISLATIVE COUNSEL'S DIGEST

AB 134, as introduced, Dickinson. Appropriation of water: Sacramento Regional County Sanitation District.

Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants permits and licenses to appropriate water.

Existing law requires the owner of a wastewater treatment plant to obtain the approval of the state board prior to making any changes in the point of discharge, place of use, or purpose of use of treated wastewater, and requires the state board to review the proposed changes in accordance with prescribed procedures.

This bill would authorize the Sacramento Regional County Sanitation District to file an application for a permit to appropriate a specified amount of water that is based on the volume of treated wastewater that the district discharges into the Sacramento River and recovers for reuse. The bill would require the state board to grant a permit to appropriate that treated wastewater upon terms and conditions determined by the state board. The bill would exempt from the above-described approval and review requirements, the appropriation of water, and any change in the point of discharge, place of use, or purpose of use of treated

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wastewater, in accordance with a permit granted pursuant to the bill's provisions.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Sacramento Regional County Sanitation District.

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 conservation of all available water resources requires  
4 the maximum reuse of recycled water in satisfying the requirements  
5 for beneficial uses of water.
- 6 (b) Encouraging water conservation and water recycling are  
7 commonsense methods to make more efficient use of existing  
8 water supplies.
- 9 (c) The people of the State of California have a primary interest  
10 in the development of facilities to recycle wastewater to supplement  
11 existing surface water and groundwater supplies and to assist in  
12 meeting the future water requirements of the state.
- 13 (d) Providing a more reliable water supply for the state includes  
14 the implementation of wastewater reclamation projects.
- 15 (e) The Legislature has established statewide goals to recycle  
16 a total of seven hundred thousand acre-feet of water per year by  
17 the year 2000 and one million acre-feet of water per year by the  
18 year 2010.
- 19 (f) It is the intent of the Legislature that the state expeditiously  
20 undertake all possible steps to continue to encourage the  
21 development of water recycling facilities so that recycled water  
22 may be made available to meet the growing water requirements  
23 of the state.
- 24 (g) It is the policy of the state that each region that depends on  
25 water from the Sacramento-San Joaquin Delta watershed should  
26 improve its regional self-reliance for water through investment in  
27 water recycling, and local and regional water supply projects.
- 28 (h) It is in the best interest of the people of the State of  
29 California, in enacting this act, to provide an additional means for  
30 the Sacramento Regional County Sanitation District to realize the

1 benefit of its production and discharge of high-quality recycled  
2 water, and to provide a potential revenue stream to offset the high  
3 costs associated with upgrades to the sanitation district's  
4 wastewater treatment plant, to meet new wastewater treatment  
5 requirements under the national pollutant discharge elimination  
6 system permit issued by the California Regional Water Quality  
7 Control Board, Central Valley.

8 SEC. 2. Section 1486 is added to the Water Code, to read:

9 1486. (a) The Sacramento Regional County Sanitation District,  
10 and any successor thereto, with respect to treated wastewater  
11 produced by the sanitation district that meets the requirements of  
12 the appropriate regional board, and that is discharged into the  
13 Sacramento River, may file an application for a permit to  
14 appropriate an amount of water that is equal to either of the  
15 following:

16 (1) Up to the amount of treated wastewater that is discharged  
17 into the Sacramento River, if the treated wastewater is delivered  
18 directly for reuse prior to discharge.

19 (2) Up to the amount of treated wastewater that is discharged  
20 into the Sacramento River, less diminution by seepage, evaporation,  
21 transportation, or other natural causes between the point of  
22 discharge from the wastewater treatment plant and the point of  
23 recovery for reuse.

24 (b) Upon application for a permit to appropriate water pursuant  
25 to subdivision (a), the board shall grant the permit subject to the  
26 terms and conditions as in the board's judgment are necessary for  
27 the protection of the rights of others.

28 (c) The appropriation of water, or any change in the point of  
29 discharge, place of use, or purpose of use of treated wastewater,  
30 in accordance with this section, shall not be subject to Section  
31 1211.

32 (d) Water appropriated in accordance with this section may be  
33 sold or utilized for any beneficial purpose.

34 (e) The right to the use of water granted by this section shall  
35 not include water flowing in underground streams.

36 SEC. 3. The Legislature finds and declares that a special law  
37 is necessary and that a general law cannot be made applicable  
38 within the meaning of Section 16 of Article IV of the California  
39 Constitution because of the unique problems applicable to the full  
40 utilization of the waters of the Sacramento River and the

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- 1 Sacramento-San Joaquin Delta, into which treated wastewater
- 2 discharged by the Sacramento Regional County Sanitation District
- 3 flows.

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