



- Board of Directors  
*Communications and Legislation Committee*

4/10/2012 Board Meeting

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**8-7**

## **Subject**

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Express opposition to SB 1495 (Wolk, D – Davis) – Sacramento-San Joaquin Delta Reform Act of 2009, unless amended

## **Description**

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SB 1495 (Wolk, D-Davis) ([Attachment 1](#)) proposes to facilitate certain activities in the Delta by exempting them from having to comply with the proposed Delta Plan. Specifically, SB 1495 would exclude from the definition of “covered action” leases approved by a special district under the Harbors and Navigation Code, and dredging activities and projects conducted by the federal government or a special district under the Harbors and Navigation Code to improve interstate commerce.

## **Background**

In November 2009, the California Legislature passed a historic package of legislation to address the water supply and ecosystem challenges in the Sacramento-San Joaquin Delta as well as advance statewide water management reforms. Among the bills in the package was SB X7-1 by Senator Joseph Simitian (D-Palo Alto), which enacted the Sacramento-San Joaquin Delta Reform Act of 2009. SB X7-1 created, among other entities, the Delta Stewardship Council (Council), a new governing body for the estuary. The Council, which was formed in early 2010, is required to develop and adopt a comprehensive management plan for the Delta (Delta Plan) that furthers the coequal goals of Delta ecosystem restoration and a reliable water supply.

The Delta Reform Act also requires a state or local public agency that proposes to undertake a “covered action”, prior to initiating the covered action, to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. This consistency determination is filed with the Council. Once filed, any person who claims that a proposed covered action is inconsistent with the Delta Plan, and as a result of that inconsistency, believes the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal. The Council may dismiss the appeal, or hold a hearing and either deny the appeal or remand the matter to the state or local public agency for reconsideration. This process may take up to 120 days.

## **Analysis**

The effect of SB 1495 on Metropolitan is not clear. First, the bill language is very broad, without any parameters about what kind of lease or what kind of large or small projects the exemption would cover. In support of state policy to advance coequal goals of water supply reliability and ecosystem restoration, Metropolitan is participating in the development of the Bay Delta Conservation Plan, which includes a habitat conservation plan with specific goals to restore and develop aquatic habitat throughout the Delta. While dredging in certain deepwater channels may make sense to support shipping activity in the region, excluding dredging from the definition of a covered action may allow dredging activities that are inconsistent with the Delta Plan to occur in areas better suited for habitat restoration. Second, there are competing policy considerations regarding dredging activities. For example, deepening channels in the Delta can be a part of routine maintenance and may increase

flow to the SWP pumps but can also have significant negative impacts on listed fish. Third, it is unclear how this bill applies to federal government activities because such activities are not subject to consistency determinations by the Delta Stewardship Council.

The Delta Stewardship Council is expected to complete and adopt its Delta Plan sometime between May and October. The “covered action” consistency process will start at that time. To date, no action has been subject to the process.

Metropolitan has sought to protect the integrity of the 2009 Delta Reform package. In fact, one of Metropolitan’s 2012 State Legislative Priorities is to continue support for implementation of the 2009 Delta/water management legislative package to help ensure critical milestones are met in a timely manner. SB 1495 would amend the 2009 legislation to exempt certain lease, project and dredging activities from the covered action process before that process has started. If this exemption is granted by the Legislature, it is likely that other special interests will seek similar exemptions. The 2009 Delta Reform Act should be implemented as enacted.

### **Staff Recommendation**

Staff recommends that Metropolitan oppose SB 1495, unless it is amended to narrow the exemption related to dredging activities to ensure protection of Delta objectives.

### **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.

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 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**

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#### **Option #1**

Adopt the CEQA determination and authorize the General Manager to express Metropolitan’s opposition to SB 1495 unless it is amended.

**Fiscal Impact:** Unknown

**Business Analysis:** Protects integrity of the 2009 Delta Reform Act, comprehensive legislation to address water supply and ecosystem issues in the Delta

**Option #2**

Take no position on SB 1495 at this time.

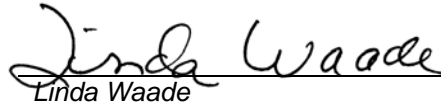
**Fiscal Impact:** None

**Business Analysis:** Threatens the integrity of the 2009 Delta Reform Act, comprehensive legislation to address water supply and ecosystem issues in the Delta, and may allow for potentially adverse impacts to Delta ecosystem restoration efforts

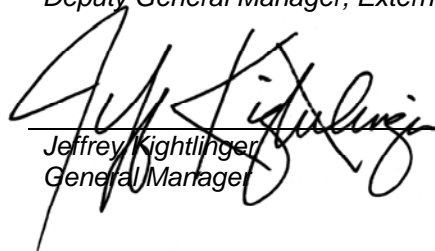
**Staff Recommendation**

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Option #1

  
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Linda Waade  
Deputy General Manager, External Affairs

3/28/2012  
Date

  
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Jeffrey Kightlinger  
General Manager

3/28/2012  
Date

**Attachment 1 – Senate Bill 1495 (as introduced February 24, 2012)**

Ref# ea12617797

**SENATE BILL****No. 1495**

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**Introduced by Senator Wolk**

(Coauthors: Assembly Members Bill Berryhill, Galgiani, and Huber)

February 24, 2012

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An act to amend Section 85057.5 of the Water Code, relating to the Sacramento-San Joaquin Delta.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1495, as introduced, Wolk. Sacramento-San Joaquin Delta Reform Act of 2009.

The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council, which is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta by January 1, 2012. The act defines "covered action" to mean a plan, program, or project that meets specified conditions.

This bill would exclude from the definition of "covered action" specified leases approved by specified special districts, and dredging activities and projects conducted by the federal government or specified special districts to improve interstate and international commerce through the navigable waters of the United States.

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 85057.5 of the Water Code is amended
- 2 to read:
- 3 85057.5. (a) "Covered action" means a plan, program, or
- 4 project as defined pursuant to Section 21065 of the Public
- 5 Resources Code that meets all of the following conditions:

**SB 1495**

— 2 —

- 1 (1) Will occur, in whole or in part, within the boundaries of the
- 2 Delta or Suisun Marsh.
- 3 (2) Will be carried out, approved, or funded by the state or a
- 4 local public agency.
- 5 (3) Is covered by one or more provisions of the Delta Plan.
- 6 (4) Will have a significant impact on achievement of one or
- 7 both of the coequal goals or the implementation of
- 8 government-sponsored flood control programs to reduce risks to
- 9 people, property, and state interests in the Delta.
- 10 (b) "Covered action" does not include any of the following:
- 11 (1) A regulatory action of a state agency.
- 12 (2) Routine maintenance and operation of the State Water
- 13 Project or the federal Central Valley Project.
- 14 (3) Regional transportation plans prepared pursuant to Section
- 15 65080 of the Government Code.
- 16 (4) Any plan, program, project, or activity within the secondary
- 17 zone of the Delta that the applicable metropolitan planning
- 18 organization under Section 65080 of the Government Code has
- 19 determined is consistent with either a sustainable communities
- 20 strategy or an alternative planning strategy that the State Air
- 21 Resources Board has determined would, if implemented, achieve
- 22 the greenhouse gas emission reduction targets established by that
- 23 board pursuant to subparagraph (A) of paragraph (2) of subdivision
- 24 (b) of Section 65080 of the Government Code. For purposes of
- 25 this paragraph, "consistent with" means consistent with the use
- 26 designation, density, building intensity, transportation plan, and
- 27 applicable policies specified for the area in the sustainable
- 28 communities strategy or the alternative planning strategy, as
- 29 applicable, and any infrastructure necessary to support the plan,
- 30 program, project, or activity.
- 31 (5) Routine maintenance and operation of any facility located,
- 32 in whole or in part, in the Delta, that is owned or operated by a
- 33 local public agency.
- 34 (6) Any plan, program, project, or activity that occurs, in whole
- 35 or in part, in the Delta, if both of the following conditions are met:
- 36 (A) The plan, program, project, or activity is undertaken by a
- 37 local public agency that is located, in whole or in part, in the Delta.
- 38 (B) Either a notice of determination is filed, pursuant to Section
- 39 21152 of the Public Resources Code, for the plan, program, project,

1 or activity by, or the plan, program, project, or activity is fully  
2 permitted by, September 30, 2009.

3 (7) (A) Any project within the secondary zone, as defined  
4 pursuant to Section 29731 of Public Resources Code as of January  
5 1, 2009, for which a notice of approval or determination pursuant  
6 to Section 21152 of the Public Resources Code has been filed  
7 before the date on which the Delta Plan becomes effective.

8 (B) Any project for which a notice of approval or determination  
9 is filed on or after the date on which the final Bay Delta  
10 Conservation Plan becomes effective, and before the date on which  
11 the Delta Plan becomes effective, is not a covered action but shall  
12 be consistent with the Bay Delta Conservation Plan.

13 (C) Subparagraphs (A) and (B) do not apply to either of the  
14 following:

15 (i) Any project that is within a Restoration Opportunity Area  
16 as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy  
17 of the Bay Delta Conservation Plan, August 3, 2009, or as shown  
18 in a final Bay Delta Conservation Plan.

19 (ii) Any project that is within the alignment of a conveyance  
20 facility as shown in Figures 1 to 5, inclusive, of the Final Draft  
21 Initial Assessment of Dual Delta Water Conveyance Report, April  
22 23, 2008, and in future revisions of this document by the  
23 department.

24 (8) *Leases approved by a special district formed under the*  
25 *Harbors and Navigation Code if all of the following apply:*

26 (A) *The uses proposed by the lease are authorized by the*  
27 *applicable general plan and zoning ordinances of the city where*  
28 *the special district is located.*

29 (B) *The special district complies with the California*  
30 *Environmental Quality Act (Division 13 (commencing with Section*  
31 *21000) of the Public Resources Code) prior to approving the lease.*

32 (9) *Dredging activities and projects conducted by the federal*  
33 *government or a special district formed under the Harbors and*  
34 *Navigation Code to improve interstate and international commerce*  
35 *through the navigable waters of the United States.*

36 (c) Nothing in the application of this section shall be interpreted  
37 to authorize the abrogation of any vested right whether created by  
38 statute or by common law.

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