



- Board of Directors  
*Communications and Legislation Committee*

12/10/2013 Board Meeting

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8-7

## Subject

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Express support for SB 772 (Roth, D-Riverside), if amended, regarding drinking water.

## Executive Summary

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SB 772 by Senator Richard Roth, as amended September 6, 2013, would exempt the Eastern Municipal Water District (EMWD) and Elsinore Valley Municipal Water District (EVMWD) from liability for injuries or damages arising out of the proposed delivery of water to County Water Company of Riverside (CWC) customers ([Attachment 1](#)). CWC is a small privately owned, nonmutual water company serving approximately 140 customers in rural Wildomar and Menifee, within Riverside County. The area is served by one groundwater well. Because nitrate levels in this well exceed drinking water standards, emergency water supplies are necessary. Significant infrastructure repairs are needed to provide a safe and adequate long-term supply of drinking water to the area. EMWD and EVMWD have agreed to provide emergency service to the area, and are willing to provide long-term service to the area if they are provided with immunity from any liability arising out of the past neglect of the system. This area would be annexed to Metropolitan and Western Municipal Water District (Western) and thus, the immunity in this bill should also be extended to protect both agencies.

## Details

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For years, CWC's customers have been unable to drink the water from their pipes due to high nitrate levels and have suffered periods of water loss due to pump failures at the company's one water tank. This situation has continued for many years without relief despite oversight by the Public Utilities Commission, which regulates private water companies.

In late 2012, County of Riverside health officials and the California Department of Public Health (DPH) asked two of the adjacent public water districts, EMWD and EVMWD, for assistance in providing both a short-term and a long-term solution to the health and safety risks CWC customers face as a result of this failing water system. EMWD and EVMWD have been working for over a year to find a solution that would include the dissolution of the CWC and the subsequent installation of new infrastructure in the service area. In late 2012, DPH determined that emergency water supplies were necessary because nitrates in the well were found to exceed the maximum contaminant level. In response, as a temporary measure, EMWD installed an emergency water tank in the neighborhood for residents to use.

The installation of new, long-term infrastructure will be paid for through state grants from the DPH and no costs will be borne by any current EMWD or EVMWD ratepayers. Additionally, the area will be annexed to Metropolitan and Western using monies from the state grants, to the extent possible. The possible takeover of a private utility involves potential legal liability for EMWD and EVMWD when they assume responsibility for CWC customers. The concern is risk of liability for past administrative actions or operational deficiencies of the existing water system. Both agencies believe that passage of this legislation is critical to the successful takeover of the current CWC system.

The intent of the bill is to provide legal protections to the public water districts for taking these actions. Such protections would specifically address three areas:

- liability release for interim operation of the system during construction
- liability for issues stemming from ownership and operation by the prior owners
- future claims that stem from any remaining portions of the existing system.

Examples of the types of liability EMWD and EVMWD could be assuming upon takeover of the CWC system include: substandard fire flows, inadequate fire protection, location of the existing CWC water tank on private property, inadequate records detailing pipeline locations, facilities in the ground that do not match corresponding maps, risk of increased water pressure, and potential water quality issues related to the interim use of a substandard distribution system as a new distribution system is brought on line.

### **Discussion**

SB 772 appears to be the first of its kind in California seeking to proactively address liability relating to public water districts assuming control of a nonmutual private water company. As currently drafted, SB 772 only applies to EMWD and EVMWD, both municipal water districts formed pursuant to the Municipal Water District Act of 1911.

Senator Bill Emmerson (R-Redlands) authored the original bill, which was assigned to the Senate Governance and Finance Committee, followed by the Senate Judiciary Committee. With the resignation of Senator Emmerson, Senator Richard Roth has agreed to serve as the principal author for the recently amended SB 772. The author and sponsors are motivated to move the bill quickly in 2014 to coincide with the start date of the emergency “lifeline” system construction that will provide an interim potable supply from EVMWD’s system to CWC’s customers.

### **Recommendation**

Metropolitan staff recommends supporting SB 772, if amended. Metropolitan recognizes the public health issues existing in CWC’s service area and applaud EMWD’s and EVMWD’s efforts to address these concerns. Immunity from past liability is warranted because it would be unfair for EMWD or EVMWD or their ratepayers to pay for the past neglect of the system when they are trying to help correct and repair the situation. Because the CWC area would be annexed to Metropolitan and Western as part of the long-term solution, immunity should be extended to Metropolitan and Western, who could face the same types of potential liability without SB 772’s protections. Metropolitan staff is working with the sponsors and authors on proposed amendments.

The Association of California Water Agencies supports SB 772. Potential opposition includes the Consumer Protection Attorneys Association.

### **Policy**

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Drinking Water Quality (M.I. 46191) April 12, 2005: support legislative and administrative efforts to adopt cost effective drinking water regulations to help ensure the protection of human health, maintain or improve water quality aesthetics.

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

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CEQA determination for Option #1:

The proposed action to support legislation 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 that the proposed action is not subject to CEQA and authorize the General Manager to express Metropolitan’s support for SB 772, if amended.

**Fiscal Impact:** Uncertain at this time

**Business Analysis:** By expressing support for SB 772, if amended, Metropolitan will be supporting efforts to provide safe drinking water supplies to the Wildomar and Menifee areas and seeking protection from other parties’ past liability.

**Option #2**

Take no position on SB 772.

**Fiscal Impact:** Uncertain at this time

**Business Analysis:** Metropolitan would not be supporting EMWD’s and EVMWD’s efforts.

**Staff Recommendation**

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Option #1

	12/5/2013
Dee Zinke, Interim Deputy General Manager, External Affairs	Date

	12/5/2013
Jeffrey Lightinger General Manager	Date

**Attachment 1 – SB 772 (amended September 6, 2013)**

Ref# ea12628361

AMENDED IN SENATE SEPTEMBER 6, 2013

**SENATE BILL**

**No. 772**

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**Introduced by Senator Emmerson**  
*(Principal coauthor: Senator Roth)*

February 22, 2013

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An act to ~~amend Section 56430 of the Government Code, to add Section 116453 to the Health and Safety Code, and to amend Section 2709 of the Public Utilities~~ *add Section 71760 to the Water Code*, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

SB 772, as amended, Emmerson. Drinking water.

*The Municipal Water District Law of 1911 provides for the formation of municipal water districts and grants to those districts specified powers. Existing law permits a district to acquire, control, distribute, store, spread, sink, treat, purify, recycle, recapture, and salvage any water for the beneficial use of the district, its inhabitants, or the owners of rights to water in the district.*

*This bill would exempt the Elsinore Valley Municipal Water District and the Eastern Municipal Water District from liability for injuries or damages arising out of the delivery of water to County Water Company of Riverside customers, as specified.*

~~(1) Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adoption~~

of enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

This bill would require the department or the local health agency, where applicable, annually to provide the address and telephone number for each public water system and state small water system to the Public Utilities Commission and, as prescribed, to a local agency formation commission.

(2) Under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, each local agency formation commission is required to develop and determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere of influence, and requires the commission, in preparing and updating spheres of influence, to conduct a service review of the municipal services provided in the county or other area designated by the commission. Existing law authorizes the commission, in conducting the service review, to request information from identified public or private entities that provide wholesale or retail supply of drinking water, and authorizes the commission to include a review of whether the agencies under review are in compliance with the California Safe Drinking Water Act, as specified.

This bill would require the commission to request information, as part of a service review, from identified public or private entities that provide wholesale or retail supply of drinking water, and would require the information submitted to include the identification of any retail water suppliers within or contiguous to the responding entity for the purpose of aiding the commission in creating a comprehensive review of retail water suppliers in the county. This bill would also require the commission to provide a copy of its sphere of influence review for retail private and public water suppliers to the Public Utilities Commission and the department.

(3) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including water corporations. Existing law authorizes the Public Utilities Commission to require any water corporation to file with the Public Utilities Commission a statement in writing defining and describing the lands and territory to be supplied by the corporation with water.

This bill would require the commission to require the above-described statement, and would require the statement also to be filed with the

~~local agency formation committee for the county in which the water corporation is located.~~

~~(4) By imposing additional duties on local officials 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

1     *SECTION 1. The Legislature finds and declares the following:*

2     *(a) The Legislature recognizes there is an urgent need for safe*  
3     *and reliable water service to be provided to the water users of the*  
4     *County Water Company of Riverside, a private water company.*

5     *(b) The company is located in Riverside County, California.*  
6     *Currently, the County Water Company of Riverside is unable to*  
7     *provide clean and reliable water services to their water users.*

8     *(c) The County Water Company of Riverside is located adjacent*  
9     *to two municipal water districts, the Eastern Municipal Water*  
10    *District and the Elsinore Valley Municipal Water District, both*  
11    *of which are formed pursuant to the Municipal Water District Law*  
12    *of 1911 (Chapter 1 (commencing with Section 71000) of Part 1 of*  
13    *Division 20 of the Water Code).*

14    *(d) It is the intent of the Legislature to provide the Eastern*  
15    *Municipal Water District and the Elsinore Valley Municipal Water*  
16    *District immunity from any and all claims and operational liability,*  
17    *while they are using the preexisting substandard facilities of the*  
18    *County Water Company of Riverside to provide water service to*  
19    *the County Water Company of Riverside's customers and*  
20    *simultaneously constructing new facilities which will serve those*  
21    *customers.*

22    *(e) It is the intent of the Legislature to provide the Eastern*  
23    *Municipal Water District and the Elsinore Valley Municipal Water*  
24    *District ongoing immunity from any and all future claims*

1 associated with the unimproved, substandard facilities portions  
2 of the system originally constructed by the County Water Company  
3 of Riverside.

4 SEC. 2. Section 71760 is added to the Water Code, to read:

5 71760. The Elsinore Valley Municipal Water District and the  
6 Eastern Municipal Water District are hereby exempt from liability  
7 for any and all injuries or damages arising out of the delivery of  
8 water to the County Water Company of Riverside customers, as  
9 follows:

10 (a) Immunity from liability shall exist during the period of  
11 operation from the initiation of service by the Elsinore Valley  
12 Municipal Water District and the Eastern Municipal Water District  
13 upon the connection of a temporary potable service pipeline on  
14 or before January 2014, until permanent replacement facilities  
15 are accepted by the Elsinore Valley Municipal Water District and  
16 the Eastern Municipal Water District. The acceptance date of the  
17 permanent replacement facilities will be publicly noticed by the  
18 Elsinore Valley Municipal Water District and the Eastern  
19 Municipal Water District with the concurrence of the State  
20 Department of Public Health.

21 (b) Immunity from liability shall extend to all future claims  
22 associated with portions of the system originally constructed by  
23 the County Water Company of Riverside, including, but not limited  
24 to, claims arising from personal injury, property damage, liability  
25 related to water quality, fire flow, and service interruptions.

26 (c) Immunity from liability shall extend to all claims by the  
27 County Water Company of Riverside's customers arising prior to  
28 the Elsinore Valley Municipal Water District's and the Eastern  
29 Municipal Water District's ownership and operation of the system.

30 SECTION 1. ~~The Legislature finds and declares all of the~~  
31 ~~following:~~

32 ~~(a) Californians are dependent on public and private entities to~~  
33 ~~deliver clean and safe drinking water. Public and private water~~  
34 ~~companies provide an essential public service.~~

35 ~~(b) While the state's goal is to ensure clean and safe drinking~~  
36 ~~water, some public water systems suffer poor water quality that~~  
37 ~~fails to meet safe drinking water standards.~~

38 ~~(c) Private corporations and persons that, own, operate, control,~~  
39 ~~or manage a system for production, generation, transmission, or~~  
40 ~~furnishing of water, other than mutual water companies, are public~~

1 ~~utilities subject to the jurisdiction of the Public Utilities~~  
2 ~~Commission. These regulated utilities are required to provide the~~  
3 ~~Public Utilities Commission with a statement describing the~~  
4 ~~territory served by the utility.~~

5 ~~(d) Mutual water companies are required to submit to the local~~  
6 ~~agency formation commission for its county a map depicting the~~  
7 ~~approximate boundaries of the territory served by the mutual water~~  
8 ~~company.~~

9 ~~(e) Public agency water suppliers are required to submit to the~~  
10 ~~local agency formation commission a description of their~~  
11 ~~boundaries and service areas.~~

12 ~~(f) The State Department of Public Health, as part of its~~  
13 ~~regulatory oversight of public water systems and state small water~~  
14 ~~systems, collects information from each system, including its~~  
15 ~~address and telephone number.~~

16 ~~(g) The Legislature has identified a need to have greater~~  
17 ~~coordination between the local agency formation commissions,~~  
18 ~~the Public Utilities Commission, and the State Department of~~  
19 ~~Public Health in identifying public water systems and state small~~  
20 ~~water systems for purposes of planning, assuring regulatory~~  
21 ~~oversight by the appropriate entity, and compliance with regulatory~~  
22 ~~requirements. Accordingly, this legislation is designed to require~~  
23 ~~that a local agency formation commission, the State Department~~  
24 ~~of Public Health, and the Public Utilities Commission share with~~  
25 ~~each other the identity and other appropriate information of public~~  
26 ~~water systems and state small water systems within their~~  
27 ~~jurisdiction.~~

28 ~~SEC. 2. Section 56430 of the Government Code is amended~~  
29 ~~to read:~~

30 ~~56430. (a) In order to prepare and to update spheres of~~  
31 ~~influence in accordance with Section 56425, the commission shall~~  
32 ~~conduct a service review of the municipal services provided in the~~  
33 ~~county or other appropriate area designated by the commission.~~  
34 ~~The commission shall include in the area designated for service~~  
35 ~~review the county, the region, the subregion, or any other~~  
36 ~~geographic area as is appropriate for an analysis of the service or~~  
37 ~~services to be reviewed, and shall prepare a written statement of~~  
38 ~~its determinations with respect to each of the following:~~

39 ~~(1) Growth and population projections for the affected area.~~



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1 ~~(2) The location and characteristics of any disadvantaged~~  
2 ~~unincorporated communities within or contiguous to the sphere~~  
3 ~~of influence.~~

4 ~~(3) Present and planned capacity of public facilities, adequacy~~  
5 ~~of public services, and infrastructure needs or deficiencies including~~  
6 ~~needs or deficiencies related to sewers, municipal and industrial~~  
7 ~~water, and structural fire protection in any disadvantaged,~~  
8 ~~unincorporated communities within or contiguous to the sphere~~  
9 ~~of influence.~~

10 ~~(4) Financial ability of agencies to provide services.~~

11 ~~(5) Status of, and opportunities for, shared facilities.~~

12 ~~(6) Accountability for community service needs, including~~  
13 ~~governmental structure and operational efficiencies.~~

14 ~~(7) Any other matter related to effective or efficient service~~  
15 ~~delivery, as required by commission policy.~~

16 ~~(b) In conducting a service review, the commission shall~~  
17 ~~comprehensively review all of the agencies that provide the~~  
18 ~~identified service or services within the designated geographic~~  
19 ~~area. The commission may assess various alternatives for~~  
20 ~~improving efficiency and affordability of infrastructure and service~~  
21 ~~delivery within and contiguous to the sphere of influence,~~  
22 ~~including, but not limited to, the consolidation of governmental~~  
23 ~~agencies.~~

24 ~~(c) In conducting a service review, the commission may include~~  
25 ~~a review of whether the agencies under review, including any~~  
26 ~~public water system as defined in Section 116275, are in~~  
27 ~~compliance with the California Safe Drinking Water Act (Chapter~~  
28 ~~4 (commencing with Section 116270) of Part 12 of Division 104~~  
29 ~~of the Health and Safety Code). A public water system may satisfy~~  
30 ~~any request for information as to compliance with that act by~~  
31 ~~submission of the consumer confidence or water quality report~~  
32 ~~prepared by the public water system as provided by Section 116470~~  
33 ~~of the Health and Safety Code.~~

34 ~~(d) The commission shall request information, as part of a~~  
35 ~~service review under this section, from identified public or private~~  
36 ~~entities that provide wholesale or retail supply of drinking water,~~  
37 ~~including mutual water companies formed pursuant to Part 7~~  
38 ~~(commencing with Section 14300) of Division 3 of Title 1 of the~~  
39 ~~Corporations Code, and private utilities, as defined in Section 1502~~  
40 ~~of the Public Utilities Code. The information submitted shall~~

1 include the identification of any retail water supplier within or  
2 contiguous to the responding entity for the purpose of aiding the  
3 commission in creating a comprehensive review of retail water  
4 suppliers in the county.

5 (e) ~~The commission shall conduct a service review before, or  
6 in conjunction with, but no later than the time it is considering an  
7 action to establish a sphere of influence in accordance with Section  
8 56425 or 56426.5 or to update a sphere of influence pursuant to  
9 Section 56425.~~

10 (f) ~~The commission shall provide a copy of its sphere of  
11 influence review for retail private and public water suppliers to  
12 the Public Utilities Commission and the State Department of Public  
13 Health.~~

14 ~~SEC. 3. Section 116453 is added to the Health and Safety Code,  
15 to read:~~

16 ~~116453. The department or the local health agency, where  
17 applicable, annually shall provide the following:~~

18 (a) ~~The address and telephone number for each public water  
19 system and state small water system to the Public Utilities  
20 Commission.~~

21 (b) ~~The address and telephone number for each public water  
22 system and state small water system in a county to the local agency  
23 formation commission for that county.~~

24 ~~SEC. 4. Section 2709 of the Public Utilities Code is amended  
25 to read:~~

26 ~~2709. (a) The commission shall require any water corporation  
27 to file with the commission a statement in writing defining and  
28 describing the lands and territory to be supplied by the corporation  
29 with water.~~

30 (b) ~~A water corporation shall also file the statement described  
31 in subdivision (a) with a local agency formation commission  
32 formed pursuant to Division 3 (commencing with Section 56000)  
33 of Title 5 for the county in which the water corporation is located.~~

34 ~~SEC. 5. If the Commission on State Mandates determines that  
35 this act contains costs mandated by the state, reimbursement to  
36 local agencies and school districts for those costs shall be made  
37 pursuant to Part 7 (commencing with Section 17500) of Division  
38 4 of Title 2 of the Government Code.~~