



- Board of Directors  
*Communications and Legislation Committee*

5/13/2014 Board Meeting

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## Subject

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Report on federal legislation related to invasive species

## Executive Summary

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Metropolitan's Colorado River operations have been adversely affected by the introduction of quagga mussels. The buildup of mussels on operating equipment has increased maintenance costs, and compliance with state laws prohibiting release of the mussels have added costs to develop and implement plans that allow safe water deliveries. Metropolitan's water supplies are also threatened by the impact that invasive species can have on endangered and threatened native species. For these reasons, Metropolitan takes seriously the efforts to improve invasive species management and prevention, while also seeking to preserve the operational capabilities that allow continuing delivery of Metropolitan's water supplies. This report provides information on pending federal legislation that seeks to address the problems caused by invasive species.

## Description

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Metropolitan has adopted policy principles supporting cooperative and regulatory programs to protect the sources of its water supplies, including proper watershed management that provides water quality and water supply benefits. In addition, it is Metropolitan's policy to operate the Colorado River Aqueduct at capacity to the extent feasible. Staff has followed these policy principles in dealing with operational challenges caused by invasive species, as well as in seeking legislation that comports with the policies. For example, in response to the introduction of quagga mussels into the Colorado River, staff engaged in a cooperative effort with federal and state agencies to research and test treatment methods to control the mussels. In addition, staff worked with the California legislature to craft a law that provided regulatory authority to the Department of Fish and Wildlife to quarantine contaminated boats to help prevent the spread of the quaggas into other water bodies in the state. The legislative effort included offering proposals that were enacted to ensure that Metropolitan could continue to operate its Colorado River Aqueduct to maintain a reliable water supply despite the mussel infestation.

The federal government has a number of existing programs to deal with the consequences of invasive species and to prevent new species from entering the United States. Consistent with Metropolitan's policy principles, staff supported past legislative proposals to authorize the U. S. Coast Guard to regulate ballast water releases in U. S. waters. The quagga mussel was introduced into the Great Lakes through ballast water carried by international shipping. Eight federal agencies also make up an Invasive Species Council that coordinates federal efforts to implement a management plan for invasive species. Through the Lacey Act, Congress has also vested regulatory powers in the Secretary of the Interior to regulate interstate commerce in species deemed to be injurious to humans or wildlife. Congress specifically identified zebra mussels, a related species to quagga mussels, as an injurious species which cannot lawfully be transported into the country or across state lines.

Members of Congress are concerned that existing laws have not prevented the introduction and spread of invasive species. As a result, there are currently no less than nine bills pending in Congress to bolster existing programs and laws, and to implement new efforts to deal with the problem.

- **H.R. 4032 (Hall, R-TX)** – Inclusion of the zebra mussel as an injurious species in the Lacey Act caused the shutdown of a public water supply diversion from Lake Texoma that became infested with the

mussels. The federal government required a north Texas water agency to suspend diversions through its intake located in Oklahoma because the water containing zebra mussels was transported across state lines. This bill would exempt these water transfers from Lacey Act restrictions. Metropolitan does not have a position on this legislation, but it reflects the need for federal law to balance legal restrictions on invasive species with reasonable protections for public water supply operations.

- **H.R. 1823 (Heck, R-NV)** – The quagga mussel has been spreading west from the Great Lakes and was discovered in the lower Colorado River in 2007. This bill is one of several seeking to address this particular invasive species by listing it in the Lacey Act as an injurious species, thereby making it illegal to transport the mussels across state lines. Metropolitan has joined other lower Colorado River water agencies in expressing concern about the potential impacts of the listing on diversions of Colorado River water. Although Metropolitan’s diversions and deliveries of Colorado River water do not cross state lines, the Texas experience has highlighted the need for adding water supply protections to the Lacey Act.
- **H.R. 3390 (Amodei, R-NV) and S. 1451 (Feinstein, D-CA)** – These bills would amend the Lake Tahoe Restoration Act that generally provides for environmental improvements to Lake Tahoe. The House version of the bill would also add quagga mussels to the Lacey Act. Metropolitan joined with other Colorado River water agencies to propose language that would exempt the operation of public water supply systems from Lacey Act restrictions. The author has incorporated this language in the House bill. The Senate version does not include the quagga mussel listing or the public water system exemption. Senator Feinstein’s bill would require federal agencies to take steps to prevent the introduction of invasive species into Lake Tahoe, but without using the regulatory authority of the Lacey Act for that purpose.

A few bills are proposed to relax the requirements of the Lacey Act for specific actions.

- **H.R. 3105 (Crawford, R-AR)** – This bill would exempt from Lacey Act penalties the accidental shipment of prohibited species that may be transported along with the products of commercial fish farms. Staff has not taken a position on this legislation which would not directly affect Metropolitan’s water supplies. However, efforts to control invasive species do address the potential spread of species through stocking of fish that are grown in fish hatcheries.
- **H.R. 3324 (Harris, R-MD) and H.R. 3280 (Fleming, R-LA)** – These bills would reduce the Lacey Act reporting requirements for importers of plants and plant products. Several species harmful to agriculture have been introduced into the United States by import of plant materials. However, there is no direct impact to Metropolitan, and Metropolitan does not have a position on these bills.

There are two proposals for new federal programs to deal with invasive species.

- **H.R. 3994 (Bishop, R-UT)** – This bill would enact the Federal Lands Invasive Species Control, Prevention, and Management Act. This law would require the Secretaries of Agriculture and the Interior to manage federal lands under their respective jurisdictions to control invasive species. Seventy-five percent of appropriated funds for invasive species management would be spent for on-the-ground management actions, which would be categorically exempt from the National Environmental Policy Act (NEPA) if they are in high-risk areas, such as within 1,000 feet of a water body or water project. The bill specifically provides that it does not authorize either Secretary to suspend water deliveries or diversions or otherwise prevent the operation of a public water supply system as a means of controlling invasive species. Based on Metropolitan’s policy principle to support federal funding of watershed management and efficient expenditures of such funding programs, Metropolitan supports this legislation.
- **H.R. 996 (Slaughter, D-NY) and S. 1153 (Gillibrand, D-NY)** – The Invasive Fish and Wildlife Prevention Act has been introduced in both houses of Congress. It would establish a new regulatory program for invasive species similar to the Lacey Act. The program would be implemented by the Fish and Wildlife Service, which would be responsible for determining the risk posed by non-native wildlife species and establishing a permitting process for the import and interstate transport of those that “have a high degree of potential harm.” Any person would be authorized to submit proposals to the Service to

regulate a particular family, genus, or species of animal, and the Service would have 180 days to approve or disapprove the proposal. The bill would make it unlawful to “engage in interstate commerce” for any species determined to be highly injurious. The Secretary’s permitting authority would allow injurious species to be transported on terms and conditions that would minimize the risk of their release. The bill would further require the Secretary of the Interior to accelerate its determinations of whether species should be listed as injurious under the Lacey Act; the process currently takes about five years. Finally, the Secretary’s regulatory authority to protect against pathogens and parasites would include “quarantine requirements,” “shipment and handling requirements,” and any other measures deemed necessary to prevent their movement in interstate commerce. Metropolitan’s source water quality protection policy includes support for regulatory-based programs in the event cooperative programs are unsuccessful. This legislation would duplicate existing regulatory authority that has had limited success, compared with cooperative programs, in controlling the spread of invasive species. The current versions of the bill do not include protections for water supply operations. For those reasons, Metropolitan will oppose the bills unless they are amended to include protective language substantially similar to the provisions requested by Metropolitan and added to H.R. 3390.

**Policy**

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Policy Principle on Colorado River Basin Management, M.I. 41222 - January 10, 1995; January 10, 2000 staff revisions

Policy Principle on Source Water Quality Protection, M.I. 42820, February 10, 1998

Policy Principle on Watershed Management, M.I. 43964, April 11, 2000

**Fiscal Impact**

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The federal bills would have no direct fiscal impact on Metropolitan. However, improvements in federal agency actions to prevent the introduction of new, and spread of existing, invasive species, could avoid future costs, such as the increased maintenance and operating costs incurred to deal with the quagga mussel.

  
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 Dee Zinke Date  
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 \_\_\_\_\_ 5/1/2014  
 Jeffrey Kightlinger Date  
 General Manager