



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

4/14/2015 Board Meeting

8-5

Subject

Express opposition, unless amended, to AB 647 (Eggman, D-Stockton) - Beneficial use: diversion of water underground

Executive Summary

Assembly Bill 647 by Assembly Member Susan Eggman (D-Stockton) was introduced on February 24, 2015 ([Attachment 1](#)), and would amend the California Water Code to state that diversion of surface waters underground is a beneficial use in and of itself. The bill would also remove existing forfeiture periods for water being beneficially used in the aquifer or being held for later beneficial use.

Details

California Water Code Sections 1240 through 1244 address appropriation of water for beneficial use. Section 1242 provides that storage of water underground can be a beneficial use of water for which an appropriation may be made if the user can show the diverted and stored water is thereafter put to the beneficial use for which the appropriation was made. In other words, storage itself is not a beneficial use under current law. Section 1241 provides that appropriated or adjudicated water may revert to the public or be forfeited if the water is unused for a period over five years. Parties are required to obtain a permit for storage from the State Water Resources Control Board (SWRCB), which requires a detailed accounting of when and how the water will be extracted and used within the five-year period.

AB 647, as introduced, would add language to Section 1242 to state that diversion of water underground is itself a beneficial use. In other words, the beneficial use would occur as a result of storing the water underground and the water so stored would not need to be recovered to be put to beneficial use. The bill specifies that benefits of underground storage may be protection of water quality or recovery of groundwater levels, but that the beneficial use of water stored underground is not limited to these purposes. The bill also states that the existing forfeiture provisions for non-use of water for a period of longer than five years would not apply to water being beneficially used in the aquifer or being held in storage for later beneficial use.

To date, the only known supporter of AB 647 is Stockton East Water District (Stockton East). Stockton East supports the bill because it would like to divert surface water and use it to prevent saline intrusion to its basin. It has applied to the SWRCB for permits for storage in the past, and been denied approval because it cannot prove it will use the water within five years. There is no known opposition at this time.

Impacts on Metropolitan

This bill would allow for new appropriations of surface water rights for recharge of groundwater basins with no intent to recover the recharged water within the five-year period or otherwise. Such recharged water could be used to block saline water intrusion, to avoid subsidence, or for other purposes. It is likely that this new beneficial use (storage of water underground) would be applied to existing surface water appropriations as well as to new appropriations. This could impact the water available to the State Water Project (SWP) because surface water that is otherwise available to the SWP may be diverted to groundwater basins north of the Delta. Additionally, if these diversions are not regulated by the SWRCB and prevented from capturing SWP releases when natural flows are

insufficient, water might be diverted when stored water is being released and therefore could reduce the water available to the SWP. Groundwater managers may seek to divert surface water to underground uses given the significant overdraft condition of basins around the state and the new requirements for development of sustainable groundwater management plans.

There may be significant benefit to recovering groundwater levels and leaving the water in the aquifer permanently. The Sustainable Groundwater Management Act of 2014 (2014 Act) designates January 1, 2015 as the starting point for sustainable management and storage under this bill should be consistent with the new law. The 2014 Act allows sustainable groundwater management plans to correct overpumping prior to January 2015, but does not require it.

However, there is also a potential for substantial misuse and adverse impacts if surface water is permanently stored without appropriate review and approval by an independent party, such as the SWRCB. Good water management captures and stores water during wet seasons and years for use during dry periods. It is of concern, however, if some users would capture water simply to raise groundwater levels and not to make stored water available for use during periods of shortage. Other concerns include possible “water hoarding” by parties that have limited ability to put water to appropriate beneficial use within the groundwater aquifer. Parties should have to establish with the SWRCB that permanent underground water storage is necessary to avoid salt water intrusion or subsidence or another important beneficial effect to ensure continued performance of aquifers for provision of high quality water supplies. Unchecked, the diversion of water for underground storage may adversely impact other beneficial uses of surface water for fish and wildlife, recreation, commerce, or use by a downstream diverter.

In conclusion, while staff recognizes and supports the need for permanent groundwater storage, it is also important to ensure that potential misuse is avoided. As introduced, AB 647 does not include important safeguards that are necessary to ensure that permanent underground storage is implemented in a reasonable manner.

Proposed Amendments

In order to ensure that the right to appropriate water for permanent groundwater storage is not abused and does not harm the State Water Project, staff recommends an oppose position to AB 647 unless amendments are made that address the following concerns:

- The existing Water Code language referring to “storing” of water underground should be maintained. The bill uses the terms “diversion of water underground.” The reference to storage recognizes long-standing common law that riparian water rights may not be stored without a SWRCB permit. Continued use of the term “storage,” rather than “diversion,” will maintain applicability of other existing water rights provisions and ensure that the SWRCB continues to have oversight of storage of riparian water rights.
- Beneficial use of water for permanent groundwater storage shall be reviewed and approved by the SWRCB for each water appropriation whether new or existing.
- The SWRCB may determine that an appropriation of surface water for permanent storage is a beneficial use of water if such storage is necessary to protect the sustainability of the groundwater basin, for example, to prevent saline water intrusion, contaminant plume migration, or aquifer subsidence. This should be done consistently with the requirements of the Groundwater Sustainability Legislation of 2014. Applicants for groundwater storage permits must demonstrate that the storage is necessary to protect the sustainability of the groundwater basin, and that the storage is not being done simply to accumulate supplies for future resale or other inappropriate use. This may be done by showing consistency with a management measure in an adopted sustainable groundwater management plan, measures to implement a basin adjudication, or basin management plan developed by a statutory groundwater management agency, where such plans apply.
- In approving the appropriation of surface water for permanent storage, the SWRCB shall confirm that the flows are not already otherwise appropriated or diverted from stored water from upstream imported

sources already subject to prior appropriation and that such diversion does not injure any legal user of water. For example, all new appropriations made by the SWRCB in the watershed of the Sacramento-San Joaquin Bay-Delta shall be subject to oversight by the SWRCB including compliance with standard terms 91 and 93. Terms 91 and 93 are included in many water rights permits and licenses by SWRCB in the watershed of the Sacramento-San Joaquin Bay-Delta pursuant to several SWRCB decisions. These standard terms prohibit holders of certain water right permits and licenses from diverting water in the Delta watershed during times when the federal Central Valley Project (CVP) and SWP are required to release supplemental project water to meet water quality objectives in the Delta watershed. Curtailments made under these standard terms protect the releases of supplemental project water and ensure the released water will be bypassed through the Delta to improve water quality. Term 91 addresses SWP and CVP storage releases. Term 93 applies to releases from New Melones Dam on the San Joaquin River. It would be inappropriate to allow entities to capture releases of CVP and SWP surface storage for groundwater storage, and the SWRCB should ensure this does not occur by including similar terms in future groundwater storage permits.

Staff will collaborate with Metropolitan's member agencies, the State Water Contractors, and other water industry groups, including the Association of California Water Agencies, and the bill author and supporter on the proposed amendments.

Policy

By Minute Item 41222, dated January 10, 1995, the Board adopted Groundwater Management Policy Principles.

By Minute Item 46637, dated April 11, 2006, the Board adopted Policy Principles on Long-Term Sustainability in the Delta which included the following strategic goal: Improve Water Supply Reliability Consistent with Regional Integrated Resource Plans: State policy must encourage statewide development of water use efficiency and other local and regional water resources, and it must assure the long-term reliability of imported supplies upon which the state's economy continues to rely.

California Environmental Quality Act (CEQA)

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

Option #1

Adopt the CEQA determination that the proposed action is not subject to CEQA, and authorize the General Manager to express opposition, unless amended, to AB 647.

Fiscal Impact: Uncertain at this time

Business Analysis: Metropolitan would seek to ensure that the effects of the proposed legislation are positive and do not have unintended adverse consequences for other beneficial uses of surface water.

Option #2

Take no position on AB 647.

Fiscal Impact: Uncertain at this time

Business Analysis: AB 647 in its current form could potentially have unintended adverse consequences for beneficial uses of surface water.

Staff Recommendation

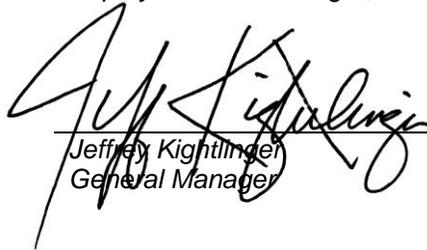
Option #1



Dee Zinke
Deputy General Manager, External Affairs

4/2/2015

Date



Jeffrey Kightlinger
General Manager

4/6/2015

Date

Attachment 1 – Assembly Bill 647, dated February 24, 2015

Ref# ea12636623

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL**No. 647**

Introduced by Assembly Member Eggman
(Principal coauthor: Assembly Member Olsen)
(Coauthor: Senator Berryhill)

February 24, 2015

An act to amend Section 1242 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 647, as introduced, Eggman. Beneficial use: diversion of water underground.

Under existing law, the right to water or to the use of water is limited to that amount of water that may be reasonably required for the beneficial use to be served. Existing law provides for the reversion of water rights to which a person is entitled when the person fails to beneficially use the water for a period of 5 years. Existing law declares that the storing of water underground, and related diversions for that purpose, constitute a beneficial use of water if the stored water is thereafter applied to the beneficial purposes for which the appropriation for storage was made.

This bill would declare that the diversion of water underground constitutes a beneficial use of water for which an appropriation may be made if the diverted water is stored and thereafter applied to beneficial use or if beneficial use of the water, including, but not limited to, protection of water quality or recovery of groundwater levels, is made while the water is underground. This bill would provide that the period for the reversion of a water right does not apply to water being beneficially used in the aquifer or being held in storage for later beneficial use.

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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 1242 of the Water Code is amended to
2 read:
3 1242. ~~The storing~~ *diversion* of water underground, including
4 the diversion of streams and the flowing of water on lands
5 necessary to the accomplishment of ~~such storage~~ *that diversion*,
6 constitutes a beneficial use of water *for which an appropriation*
7 *may be made* if the *diverted* water ~~so~~ *is stored* ~~is~~ *and* thereafter
8 applied to the beneficial purposes for which the appropriation for
9 ~~storage was made~~. *beneficial use, consistent with this division, or*
10 *if beneficial use of the water, including, but not limited to,*
11 *protection of water quality or recovery of groundwater levels, is*
12 *made while the water is underground. The forfeiture periods*
13 *described in this article do not apply to water being beneficially*
14 *used in the aquifer or being held in storage for later beneficial*
15 *use.*

O