



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

4/12/2016 Board Meeting

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**8-10**

**Subject**

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Express opposition, unless amended, to AB 2470 (Gonzalez, D-San Diego) – Municipal Water Districts: Water Service for Indian Tribes

**Executive Summary**

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AB 2470, as amended April 4 ([Attachment 1](#)), is sponsored by the Sycuan Band of the Kumeyaay Nation (Sycuan). The Sycuan Reservation was established in 1875. The reservation is bounded by Otay and Padre Dam Municipal Water Districts, referred to as Otay and Padre hereafter. Both Otay and Padre are members of the San Diego County Water Authority (SDCWA), and both receive Metropolitan water supplies, including supplies from the State Water Project and Colorado River. The Sycuan claims that it needs additional water supplies to address public safety and emergency issues.

AB 2470 would require a municipal water district, as defined, to supply water to contiguous Indian tribe's lands upon request of the tribe. The bill requires water service be provided "as if the lands had been fully annexed," although formal annexation would not be required. Service of Metropolitan water by municipal water districts without annexing to Metropolitan and other member agencies in the line of distribution would be inequitable to existing ratepayers who funded the construction and ongoing operation of Metropolitan's conveyance and distribution system. Sycuan could request annexation through the existing process and has discussed this option with Metropolitan in the past. AB 2470 is not necessary and would shift costs onto existing ratepayers, therefore staff recommends Metropolitan oppose AB 2470, unless amended.

**Details**

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The Municipal Water District law (Water Code sections 71000, et seq.) governs water agencies that are formed under its provisions. Metropolitan has eleven member agencies that are municipal water districts (Calleguas, Central Basin, West Basin, Eastern, Western, Foothill, Inland Empire, Las Virgenes, Municipal Water District of Orange County, Three Valleys, and Upper San Gabriel Valley). SDCWA also has eight municipal water district member agencies. The existing law limits municipal water districts to sell water "within the district for use within the district." For property that is "not subject to district taxes," such as tribal land, existing law allows a district to supply and deliver water under terms and conditions determined by the district board.

AB 2470 would add a new section to the Municipal Water District law that requires such a district to provide water service to an Indian tribe's lands that are not within a municipal water district, but are contiguous. AB 2470 is sponsored by the Sycuan, who are seeking water service to be provided to their lands by either Otay or Padre—each of which are member agencies of SDCWA. Portions of the Sycuan reservation are within the boundaries of these two municipal water districts, but a portion, approximately 640 acres, is also outside both districts. The bill would require either district to serve the reservation lands outside their district boundaries. The provisions in AB 2470 are not limited to the Sycuan and could apply to other tribal properties as well.

AB 2470 provides that the water service to the Indian tribe's lands be "at the same terms available to the current customers of the district." This provision implies that the rates charged for water service will be the same as that charged to other customers. However, there is a problem if the water districts collect some portion of their

revenues through ad valorem property taxes or property assessments. Indian tribe's lands are exempt from property taxes. Reading the new section, Water Code section 71611.5, as added by AB 2470, in conjunction with Water Code section 71613 suggests that it may be allowable for the municipal water districts to set the rates for water service to the Indian tribe's lands so that those rates collect the revenues that would otherwise be collected in property taxes and assessments. But it is also arguable that the municipal water districts can only charge the same water rates charged other customers, and that the property tax revenues would simply be lost.

The bill requires the Indian tribe's lands be treated as if fully annexed. Under standard local practice, the addition of new territory to Otay or Padre would require annexation to one of them, SDCWA, and Metropolitan. This would also require the retailer to analyze the annexation under the California Environmental Quality Act (CEQA) and for the local county's Local Agency Formation Commission (LAFCO) to approve the annexation.

In 2008 and 2009, Otay proposed annexation of the 640 acres of Sycuan lands and issued CEQA analyses for public review, including a draft Environmental Impact Report in October 2009. Metropolitan commented on this pending annexation of the Sycuan reservation to Otay and worked to facilitate it with Otay, SDCWA, and Sycuan; but this annexation was not completed. Metropolitan commented that service of Metropolitan water by Otay would require formal annexation and a water supply assessment.

### **Effect on Metropolitan**

The bill does not amend the LAFCO requirements in the Government Code, the Metropolitan Water District Act, or the County Water Authority Act. The Cortese-Knox-Hertzberg Local Government Reorganization Act (LAFCO Act), requires county approval of all public agency reorganizations, including annexations. The Metropolitan Water District Act section 132 requires that "preference" shall be given to "uses within the district" and authorizes water sales outside the district of "surplus water not needed or required for domestic or municipal uses within the district." Section 4200 of the Metropolitan Administrative Code enforces this provision by providing: "District water will be available only to cities and areas now or hereafter included within the legal boundaries of the District." Similarly, Section 5(11) of the County Water Authority Act authorizes SDCWA to sell surplus water outside its boundaries subject to the paramount right to discontinue such deliveries. AB 2470 does not address these restrictions, although they apply to Otay and Padre because they receive imported water from Metropolitan and SDCWA.

Since AB 2470 only amends the Municipal Water District law, it cannot authorize Otay or Padre to deliver water supplied by Metropolitan and SDCWA to the Sycuan reservation lands outside the boundaries of those districts. This will create legal problems if Otay or Padre seek to deliver water to the un-annexed Sycuan lands pursuant to the new authority granted by AB 2470. In the past, Metropolitan has strongly objected to any member agency or sub-member agency selling water outside the Metropolitan service area; even if such sale is indirect (i.e., the sale of a local supply that is replaced by imported water). In light of the conflict the bill would create between the statutes governing Metropolitan and SDCWA, and the new authority granted to municipal water districts, it is not clear if the water service to the un-annexed Indian tribe's lands would be legal under California law.

There are also financial effects for Metropolitan and SDCWA if the un-annexed lands receive water service. Without any annexation, the Indian tribes would not be obligated to pay the annexation fees or any property taxes or assessments that are normally collected by Metropolitan and SDCWA. Thus, the sale of water to those lands would not fully cover the same costs charged to other retail customers of Metropolitan member agencies. These financial issues are not addressed in the bill.

Indian tribes are sovereign entities and cannot be sued in the event of any dispute—leaving the municipal water districts without any means to enforce any water service agreement or collect unpaid money. The tribe's sovereign immunity can only be waived by Congress or the Tribal Council. The State Legislature cannot require the tribe to submit to state or federal courts; so no amendment to AB 2470 can address this issue.

Metropolitan is currently working with Eastern Municipal Water District and its subagency Rancho California Water District on terms for water service to un-annexed portions of the Pechanga Reservation in Riverside County. The Pechanga are agreeing to pay an in-lieu of annexation charge that will provide the same revenues that would be charged for annexation and the present value of future property taxes. The Pechanga are further

agreeing to an extension of the service area boundaries to include the reservation lands. This agreement provides for a limited waiver of tribal sovereign immunity to deal with any disputes that arise. Further, the agreement is subject to the LAFCO process. If this approach is approved by Metropolitan's Board, it would be a preferable process for dealing with the Sycuan water service issues than the approach offered in AB 2470, which does not address annexation procedures or the property tax/assessment revenues that cannot be collected on tribal lands. AB 2470 is unnecessary if Sycuan follows existing local processes for annexation.

For these reasons, staff recommends that Metropolitan oppose AB 2470 unless amended. The bill would create an untenable position where Metropolitan, member agencies and subagencies would be required to serve imported water to an Indian tribe's land without any means for resolution of the financial and legal hurdles involved with that service. Water service to un-annexed tribal lands would violate the statutory constraints in the Metropolitan authorizing statutes.

If AB 2470 were amended to clarify that tribes had to substantially comply with all existing local processes, the bill would be acceptable. In this instance, the extension of water service to Sycuan would be reviewed and approved by LAFCO, Metropolitan, and the County Water Authority, in addition to requiring Sycuan to pay all the standard annexation charges and the estimated present value of ad valorem taxes, and to waive sovereign immunity to allow enforcement of the terms and conditions for water service.

## Policy

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MWD Act Sections 350, 351, 352, 353, 354, 355, and 356

Metropolitan Water District Administrative Code Section 3100, *et seq.*: Annexation Procedure

## 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 legislative proposals which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (CEQA Section 21065 and Section 15378(b)(1) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project under CEQA pursuant to CEQA Section 21065 as well as Section 15378(b)(1) 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 defined as a project under CEQA, and  
Express opposition unless amended to AB 2470

**Fiscal Impact:** Potential loss of annexation charges and tax revenue

**Business Analysis:** Service of Metropolitan water by municipal water districts without annexing to Metropolitan and other member agencies in the line of distribution would be inequitable to existing ratepayers who funded creation and ongoing operation of Metropolitan's conveyance and distribution system.

### Option #2

Take no position on AB 2470

**Fiscal Impact:** Potential loss of annexation charges and tax revenue

**Business Analysis:** Service of Metropolitan water by municipal water districts without annexing to Metropolitan and other member agencies in the line of distribution would be inequitable to existing ratepayers who funded creation and ongoing operation of Metropolitan's conveyance and distribution system.

**Staff Recommendation**

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Option #1

  
\_\_\_\_\_  
Dee Zinke  
Assistant General Manager/Chief External  
Affairs Officer

4/6/2016

Date

  
\_\_\_\_\_  
Jeffrey Nighthlinger  
General Manager

4/7/2016

Date

**Attachment 1 – AB 2470, as amended April 4, 2016**

Ref# ea12643112

AMENDED IN ASSEMBLY APRIL 4, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL****No. 2470**

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**Introduced by Assembly Member Gonzalez**

(Principal coauthor: Senator Anderson)

**(Coauthors: Assembly Members Atkins, Jones, Maienschein, and Waldron)**

(Coauthors: Senators Block and Hueso)

February 19, 2016

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An act to add Section 71611.5 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2470, as amended, Gonzalez. Municipal water districts: water service: Indian tribes.

Existing law, 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. Existing law authorizes a district to sell water under its control, without preference, to cities, other public corporations and agencies, and persons, within the district for use within the district. Existing law authorizes a district to sell or otherwise dispose of water above that required by consumers within the district to any persons, public corporations or agencies, or other consumers.

This bill, upon the request of an Indian tribe, would ~~authorize~~ *require* a district to provide ~~permanent or temporary~~ service of water to Indian lands, as prescribed. This bill would exempt the provision of water pursuant to these provisions from the California Environmental Quality Act. *at the same terms available to the current customers of the district to an Indian tribe's lands that are not within a district, as prescribed, if the Indian tribe's lands meet certain requirements. By imposing new duties on a municipal water district, this bill would create 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 no reimbursement is required by this act for a specified reason.*

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

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

1 SECTION 1. Section 71611.5 is added to the Water Code, to  
2 read:

3 71611.5. ~~(a)~~Notwithstanding any other law, upon the request  
4 of an Indian tribe, a district ~~may~~ *shall* provide ~~permanent or~~  
5 ~~temporary~~ service of water at the same terms available to the  
6 current customers of the district to an Indian tribe's lands that are  
7 not within a ~~municipal water district~~ but are contiguous with at  
8 least two municipal water districts and lie within the special study  
9 area of at least one municipal water district, if at least 75 percent  
10 of the Indian tribe's total Indian lands are currently within the  
11 boundaries of one or more municipal water districts. *district as if*  
12 *the lands had been fully annexed within the district and any other*  
13 *special districts required for the provision of water service if the*  
14 *Indian tribe's lands meet all of the following requirements:*

15 (a) *The lands were owned by the tribe on January 1, 2016.*

16 (b) *The lands are contiguous with at least two districts.*

17 (c) *The lands lie within the special study area of at least one*  
18 *district.*

19 (d) *At least 75 percent of the Indian tribe's total Indian lands*  
20 *are currently within the boundaries of one or more districts.*

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1 ~~(b) Division 13 (commencing with Section 21000) of the Public~~  
2 ~~Resources Code does not apply to the provision of water service~~  
3 ~~pursuant to this section.~~

4 *SEC. 2. No reimbursement is required by this act pursuant to*  
5 *Section 6 of Article XIII B of the California Constitution because*  
6 *a local agency or school district has the authority to levy service*  
7 *charges, fees, or assessments sufficient to pay for the program or*  
8 *level of service mandated by this act, within the meaning of Section*  
9 *17556 of the Government Code.*

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