



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

4/11/2017 Board Meeting

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**8-9**

**Subject**

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Adopt CEQA determination and express opposition to AB 472 (Frazier, D-Oakley) – Water Transfers: Idled Agricultural Land: Wildlife, Waterfowl, and Bird Nesting Habitat

**Executive Summary**

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AB 472, as introduced on February 13, 2017 ([Attachment 1](#)), would require the California Department of Water Resources (DWR) to establish an incentive program for landowners who voluntarily cultivate nonirrigated cover crops or natural vegetation to provide wildlife habitat on lands fallowed pursuant to a water transfer.

**Details**

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Water transfers are an important water management tool identified in Metropolitan's Water Surplus and Drought Management Plan. Metropolitan staff pursue, develop, and implement water transfers consistent with Metropolitan's Water Transfer Policy (Administrative Code Section 4203). A portion of Metropolitan's water transfer supplies are developed through voluntary fallowing of agricultural lands.

Historically, DWR has not allowed any vegetation on fallowed lands in order to determine the amount of water that would have been consumed by the foregone crop absent a water transfer. This approach benefits Metropolitan when Metropolitan purchases fallowing-based water transfer supplies, since it ensures that the amount of water purchased is not reduced by any vegetation consuming water on the fallowed lands. This approach also benefits Metropolitan when other parties purchase water transfer supplies, as it ensures these parties do not get too much credit for purchasing water transfer supplies if vegetation continues consuming water on fallowed lands.

In 2013, SB 749 (Wolk, D-Davis) added Section 1018 to the Water Code, which reads:

“When agricultural lands are being idled in order to provide water for transfer pursuant to this division, and an amount of water is determined to be made available by that idling, landowners shall be encouraged to cultivate or retain nonirrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat, provided that all other water transfer requirements are met.”

Subsequent to SB 749's passage, DWR has allowed nonirrigated vegetation to remain on fallowed lands if the landowner can demonstrate such vegetation is not consuming transferred water. This approach allows DWR to continue playing a key role monitoring fallowed lands to ensure legal water users are not negatively impacted by any vegetation consuming water on fallowed lands.

On February 13, 2017, Assembly Member Jim Frazier introduced AB 472, which would require DWR to establish an incentive program for landowners who voluntarily cultivate nonirrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat on lands fallowed pursuant to a water transfer. AB 472 does not identify specific funding to develop and implement the incentive program, but states the incentive program "...may include grants or other financial incentives..." DWR would also be required to consult with the California Department of Fish and Wildlife and the United States Fish and Wildlife Service prior to developing the incentive program to determine the best ways to protect wildlife habitat on fallowed lands.

Staff recommends opposing AB 472. SB 749 already encourages landowners to retain cover crops on fallowed lands that do not consume transfer water, while maintaining DWR's role to ensure that legal water users are not negatively impacted. Further, AB 472 would create a new significant burden on DWR to establish and implement a new habitat creation incentive program, which could result in increased water transfer costs and/or redirected costs. Finally, AB 472 would make it more difficult for DWR to ensure that purchasers of water transfer supplies and legal users of water, including Metropolitan, are not impacted by vegetation consuming water on fallowed lands.

## Policy

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Metropolitan Water District Administrative Code Section 4203: Water Transfer Policy

### 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  
Authorize the General Manager to express opposition to AB 472.

**Fiscal Impact:** No fiscal impact to Metropolitan

**Business Analysis:** If passed, AB 472 would potentially result in increased water transfer costs and/or redirected costs to the State Water Contractors, including Metropolitan.

### Option #2

Take no action.

**Fiscal Impact:** Potential fiscal impact to Metropolitan due to increased water transfer costs and/or redirected costs to the State Water Contractors, including Metropolitan.

**Business Analysis:** If passed, AB 472 would potentially result in increased water transfer costs and/or redirected costs to the State Water Contractors, including Metropolitan.

**Staff Recommendation**

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Option #1

  
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Dee Zinke  
Assistant General Manager/Chief External  
Affairs Officer  
3/23/2017  
Date

  
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Jeffrey Knightlinger  
General Manager  
3/28/2017  
Date

**Attachment 1 – Assembly Bill 472, as introduced 2/13/17**

Ref# ea12655528

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL****No. 472****Introduced by Assembly Member Frazier**

February 13, 2017

An act to amend Section 1018 of the Water Code, relating to water.

## LEGISLATIVE COUNSEL'S DIGEST

AB 472, as introduced, Frazier. Water transfers: idled agricultural land: wildlife, waterfowl, and bird nesting habitat.

Existing law establishes the Department of Water Resources in state government and prescribes the functions and duties of the department with regard to the regulation of water resources including water transfers throughout the state. Existing law requires landowners to be encouraged, when agricultural lands are being idled in order to provide water for transfer and an amount of water is determined to be made available by that idling, to cultivate or retain nonirrigated cover crops or natural vegetation to provide waterfowl, upland game bird, and other wildlife habitat.

This bill would require the department to establish an incentive program, which may include grants or other financial incentives, for landowners who voluntarily cultivate or retain nonirrigated cover crops or natural vegetation on idled agricultural lands to provide waterfowl, upland game bird, and other wildlife habitat, and would require that the program meet certain requirements. The bill would require that the department consult with the Department of Fish and Wildlife and the United States Fish and Wildlife Service prior to developing the incentive program, to determine the best ways of protecting wildlife habitat on idled agricultural lands.

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 1018 of the Water Code is amended to  
2 read:

3 1018. (a) When agricultural lands are being idled in order to  
4 provide water for transfer pursuant to this division, and an amount  
5 of water is determined to be made available by that idling,  
6 landowners shall be encouraged to cultivate or retain nonirrigated  
7 cover crops or natural vegetation to provide waterfowl, upland  
8 game bird, and other wildlife habitat, provided that all other water  
9 transfer requirements are met.

10 (b) *The department shall establish an incentive program, which*  
11 *may include grants or other financial incentives, for landowners*  
12 *who voluntarily cultivate or retain nonirrigated cover crops or*  
13 *natural vegetation to remain on idled agricultural lands to provide*  
14 *waterfowl, upland game bird, and other wildlife habitat, as*  
15 *described in subdivision (a).*

16 (c) *The incentive program required to be established under*  
17 *subdivision (b) shall meet all of the following requirements:*

18 (1) *Ensure that any landowner who participates in the program*  
19 *complies with any standards prescribed by the department*  
20 *regarding the removal of nonirrigated crops or natural vegetation*  
21 *in order to minimize any harm to any other landowner.*

22 (2) *Prohibit a landowner who participates in the program from*  
23 *engaging in practices such as discing, spraying of herbicides,*  
24 *mowing, chipping, or rolling any vegetation on those idled lands*  
25 *until after July 15 of each year when the waterfowl and bird nesting*  
26 *season ends.*

27 (3) *Employ licensed professionals such as biologists or other*  
28 *wildlife experts to monitor nesting bird activity and salvage eggs*  
29 *prior to permitting the removal of any nonirrigated cover crops*  
30 *or natural vegetation on any lands covered under the incentive*  
31 *program.*

32 (4) *Ensure that any determination regarding the removal of*  
33 *nonirrigated crops or natural vegetation is supported by credible*  
34 *scientific data, including peer reviewed scientific studies.*

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- 1     *(d) The department shall consult with the Department of Fish*
- 2     *and Wildlife and the United States Fish and Wildlife Service prior*
- 3     *to developing the incentive program to determine the best ways to*
- 4     *protect wildlife habitat on idled agricultural lands.*