



• **Board of Directors**

Legislation, Regulatory Affairs & Communications Committee

4/11/2023 Board Meeting

7-15

Subject

Adopt Policy Principles for Modernization of Water Rights Administration in California to Enhance Enforcement and Protect Supply Reliability; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA

Executive Summary

A set of bills have been introduced in this state legislative session with the goal of improving the state's water rights system. However, the proposed legislation, as currently drafted, raises serious concerns about certainty in the water rights system and a lack of due process for water rights holders, including Metropolitan and the State Water Contractors, due to the potential bypass of the usual state rules of evidence necessary for the fair determination of rights for water providers tasked with providing reliable water supplies.

Staff proposes the Board adopt a set of policy principles that support modernizing the administration of water rights and that would provide direction regarding positions on current and future legislation or proposed regulations.

Timing and Urgency

Timely action is necessary to allow staff flexibility to respond within the established deadlines of the state legislative process.

Details

Background

Water rights are vested property rights to use water. It is important to have certainty in water rights and transparent, predictable, and fully informed enforcement that does not weaken or bypass due process protections. Certainty in water rights and a stable process for administering water rights is foundational to public and private investments in infrastructure, business, water management planning, and voluntary water transfers and exchanges.

Climate change is resulting in more frequent and prolonged droughts and wetter wet periods in California. The last two droughts have revealed challenges in the State Board's ability to quickly respond and enforce water rights priorities and deter violations of its orders. The higher precipitation years of 2017 and 2023 and periodic high-storm runoff events in otherwise extremely dry years have underscored the need for more flexible regulations and modernized infrastructure to divert and store more water in wet periods while protecting the environment.

A set of state bills have been introduced in this legislative session with the goal of improving the state's water rights system. However, the proposed legislation, as currently drafted, delegates broad new regulatory authorities to the State Board to investigate, cancel, reduce, reallocate, and enforce water rights. As drafted, the bills would make changes that create uncertainty in the water rights system and a

lack of due process for water rights holders, like Metropolitan and the State Water Contractors, due to the potential bypass of the usual due process and state rules of evidence necessary for the fair determination of rights for water rights holders, including water suppliers tasked with providing reliable water supplies.

Risks to Metropolitan Water Supply Portfolio

If passed as drafted, the proposed water rights legislation poses serious concerns to the state's water rights system and would impact Metropolitan's water supply portfolio. Examples of possible risks and impacts to Metropolitan, member agencies, and regionally from the bills as drafted include:

- Colorado River Agreements: the bills would create uncertainty for Colorado River agreements. In years when Metropolitan fills the Colorado River Aqueduct, nearly half of that water comes through transfer and exchange agreements with contractors that have higher priority rights to Colorado River water in California. These agreements were entered to reduce the risk of supply shortages to Southern California that could result from Metropolitan's junior priority. Metropolitan and the San Diego County Water Authority have made significant investments in these contracts, and legislation that changes water rights could have the unintended effect of reducing municipal water supply certainty. These agreements and partnerships account for approximately 450,000 acre-feet of annual water supply to Metropolitan and San Diego County Water Authority.
- Bay-Delta Regulatory Stability: the bills would slow or could potentially undo the progress made to date on the Bay-Delta Water Quality Control Plan, placing further regulatory uncertainty onto Metropolitan's State Water Project (SWP) supplies if an alternative solution such as the Voluntary agreement is not implementable because water rights are reallocated. The SWP supplies currently make up on average 30 percent of Metropolitan's annual water supply.
- Existing Water Supply Programs: the bills jeopardize existing water transfers and groundwater programs if parties in those partnerships do not have stable water supply reliability and assets to assure Metropolitan's continued supply reliability, especially during drought periods, as described below:
 - Since 2007, Metropolitan has secured over 250,000 acre-feet of water through its partnership in the Lower Yuba River Accord Water Transfer Program, a supplemental water program composed of more senior water rights, which has been instrumental in managing through recent droughts.
 - In 2021, Metropolitan utilized its existing groundwater partnership with Arvin Edison to secure 38,000 acre-feet of water, which involved multiple parties, including senior water rights holders (Central Valley Project Contractors), to provide needed water supply to Metropolitan during a critical water year.
- New Water Partnerships and Water Transfer Market: the bills could create future uncertainty in water transfer markets designed to solve supply shortages in light of climate change, including the viability of long-term water programs. As a result, water users and entities are disincentivized from advancing creative partnerships such as multi-benefit initiatives, land repurposing, and flood and/or sustainable groundwater management solutions.
- Infrastructure Investments and Regional Economy Impacts: the bills could create open-ended and ongoing risks to the ability to maintain and sustain economic health and stability for water suppliers, communities, farms, tribes, and others, including other State Water Contractors that have developed urban and agricultural infrastructure and investments based upon the certainty of consistent and predictable water rights.

The current water rights system already includes a process for allocating water in times of drought through curtailments. Improvements are needed in the administration of water rights through improved water diversion measurement, reporting, and enforcement. Staff proposes the Board adopt a set of policy principles that support modernizing the administration of water rights, giving the State Board up-to-date information, tools, and resources to track water diversions in real time, enforce water rights and deter unlawful diversions.

In addition, the policy principles would provide direction regarding bills or proposed regulations enabling more flexible management in times of high-storm runoff or snow melt, as well as more flexible and efficient transfers among SWP and Central Valley Project contractors, including through a consolidation of the place-of-use of water for the two projects. Consolidation has been approved on a year-to-year basis, but a longer-term consolidation could have advantages of efficiency and certainty.

The proposed policies are intended to protect investments made by the state and water agencies, including Metropolitan, in water supply infrastructure, voluntary transfers and exchanges, and their interests in reaching voluntary agreements in the Bay-Delta and Colorado River watersheds to address the near- and long-term impacts of climate change needed to maintain or improve water supply reliability.

Proposed Policy Principles

1. Support funding for State Board staff and data modernization tools needed to monitor and enforce water rights priorities and protect SWP supplies, including funding and technical assistance to fully implement existing law requiring metering of diversions and potential legislation or regulation aimed at providing real-time water diversion data.
2. Support funding for and adjudication of water rights affording due process and fair proceedings governed by the California Evidence Code over reallocation by regulation or preemptive investigations by the State Board.
3. In recognition of California's constitutional policy to put California's water to beneficial use to the fullest extent possible, support application of the waste and unreasonable use doctrine based on specific fact finding for each water right at issue to determine whether water use exceeds the quantity reasonably needed to serve the beneficial use.
4. Support increases in civil penalties to deter violations of State Board orders, including curtailment orders.
5. Support the protection of SWP releases of stored water from unlawful diversion to meet water quality and environmental requirements and protect water deliveries south of the Delta.
6. Support improvements in existing law authorizing the Attorney General to seek injunctive relief in court to quickly address alleged violations of State Board orders.
7. Support voluntary water transfers and exchanges as the means to reallocate water supplies, including for the environment, to meet water supply reliability goals and achieve voluntary agreements on the implementation of the Bay-Delta Water Quality Control Plan and interstate solutions to limited Colorado River supplies.
8. Support the consolidated place-of-use of the SWP and the Central Valley Project, allowing for improved flexibility of current water systems throughout the state while protecting SWP supplies.
9. Support more flexible regulations to enhance the ability to divert water in times of high storm runoff and snow melt while protecting existing water rights, SWP water supplies, and the environment.

If adopted, staff would engage with authors and sponsors of current and future bills and proposed regulations affecting water rights and the administration and enforcement of water rights to seek amendments consistent with the policies. Staff would continue to provide regular updates on specific bills and regulations and bring recommended positions to the Board as needed.

Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

By Minute Item 53051, 2023 Metropolitan Legislative Priorities and Principles, Legislative Priority A.1; Principles III.H.1, IV.A.1; V.D.1.

California Environmental Quality Act (CEQA)

CEQA determination(s) for Option #1:

The proposed action is not defined as a project under CEQA (Public Resources Code Section 21065, State CEQA Guidelines Section 15378) because the proposed action will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and involves legislative proposals that do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Public Resources Code Section 21065 and Section 15378(b)(1) of the State CEQA Guidelines).

Board Options

Option #1

Adopt Policy Principles for Modernization of Water Rights Administration in California to Enhance Enforcement and Protect Supply Reliability

Fiscal Impact: Unknown

Business Analysis: Adoption of these principles supports staff's ability to address matters in a timely fashion related to legislation as well as advocating for more flexible regulations and transfers.

Option #2

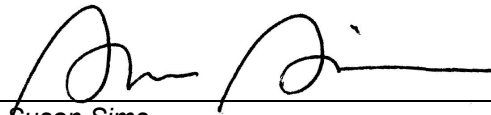
Take no action

Fiscal Impact: Unknown

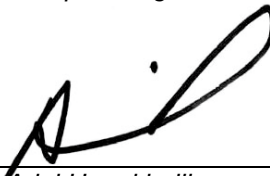
Business Analysis: Absence of these principles could hinder staff's ability to respond in a timely manner to legislation as well as advocate for more flexible regulations and transfers.

Staff Recommendation

Option # 1



Susan Sims
Group Manager, External Affairs
4/6/2023
Date



Adel Hagekhalil
General Manager
4/6/2023
Date

Ref# ea12693376