



# Overview of Preferential Rights

Water Planning & Stewardship Committee

Item 6c

August 16, 2021

# Topics Covered

- Statutory Language, Purpose and Intent
- Legislative History
- Historical Issues, Discussions and Proposals
- Court Decisions
- Current Status
- Relationship to Other Laws and MWD Allocation Plans

# Statutory Language, Purpose and Intent

# MWD Act Section 135

Provides each member agency with:

- Preferential *right to purchase water* from MWD
- For domestic and municipal *use within that agency's service area*
- In an *amount proportional* to:
  - Agency's total payments to MWD for capital and operating expenses relative to those made by other member agencies
  - Excluding any payments made toward the purchase of water

# The Calculation



Total Capital and Operating  
Expense Payments  
[Excluding Water Purchases]



$\times 100 = \% \text{ PR}$



All MA

Total Capital and Operating  
Expense Payments  
[Excluding Water Purchases]

# Purpose and Intent

- Intended to provide *measure of protection* for financial investment being made by original MAs
  - Collection of tax revenues commenced before CRA deliveries
  - City of LA provided majority of tax revenues, though it had access to imported supplies from Owens Valley
- *Did not create “entitlement”* to MWD water supplies
- Akin to “right of first refusal” to purchase water

# Legislative History



# Legislative History

1927

- Section 5½ enacted
- Provided PR to purchase water "served by the district"
- Calculation based on **assessed property valuation** within MA boundaries relative to district as a whole

1931

- Section 5½ amended
- Calculation based on **total payments made** by MA toward capital and operating expenses "**excepting purchase of water**" relative to all other member agencies



- ✦ Official Statement: "This accumulation feature tends to keep the ratios constant, and to minimize the effect of more rapid increase of assessed valuation in certain cities."
- ✦ Underlying Concern: City of LA would "hog" all the water in times of shortage
- ✦ Lingering Issue: Exclusion of water purchases meant that PR calculation did not necessarily reflect actual "reliance" on MWD

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1969

- MWD Act repealed and reenacted
- Section 5½ now within **Section 135**
- No significant changes

# Issues, Discussions and Proposals

# Principal Issues



# Principal Issues

## Outside Uses

- Statute: “use within such city” / “use within the agency”
- Policies/Admin Code: Water use generally limited to portion of MA service area lying within District

## Allowable Uses

- Statute: “for domestic and municipal purposes”
- Admin Code: In 1970, term defined to include “use of water for all domestic, municipal, commercial, industrial, and recreational purposes”

## Annexation Fees & Charges

- Statute: “total accumulation of amounts paid”
- Policies/Admin Code: annexation fees and charges required to be paid up front

## “Excepting Purchase of Water”

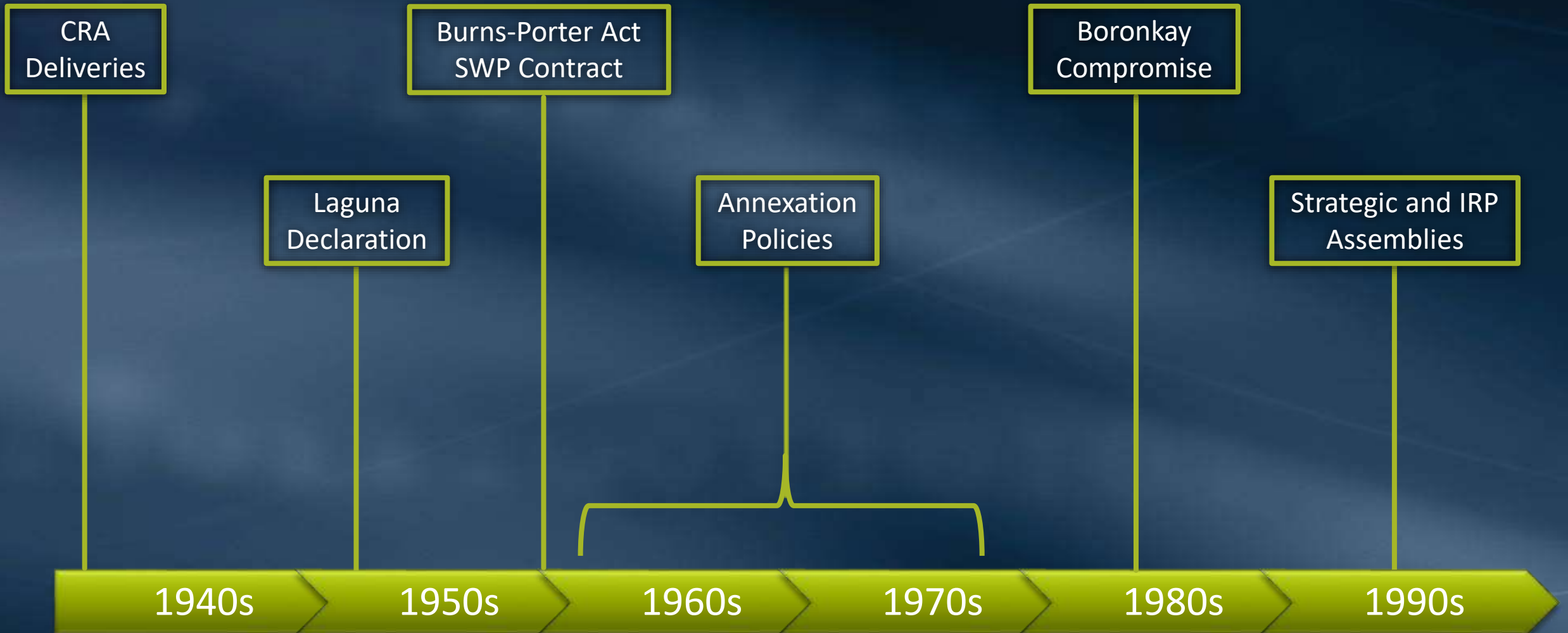
- Meaning and scope of term has engendered *most debate and controversy* with respect to PRs
- Raises *issues of perceived equity* and fairness among MAs
- Only area where PRs have been *subject of litigation*

## “Excepting Purchase of Water”

- Issue *discussed many times* in various contexts
- Issue resurfaces *when changes are made or proposed* to District’s rate structure or allocation of costs



# “Excepting Purchase of Water”



## “Excepting Purchase of Water”

- Issues *discussed many times* in various contexts
- Issue resurfaces *when changes are proposed or made* to District’s rate structure or allocation of costs
- *Various approaches for revising PR calculation* have been proposed and debated
- *No consensus* has been reached

# Court Decisions

# Court Decisions

- SDCWA v. MWD (2004):
  - Challenge filed in 2001 involving bundled rate structure
  - MWD successfully demurred to complaint
  - Issue: Whether portion of water sales revenues used to pay MWD's capital and O&M costs should be included in PR calculation
  - Held: Statutory context / legislative history “clearly contemplated” water sales revenue would be used to pay such costs and should be excluded from calculation of PRs

# Court Decisions

- SDCWA v. MWD (2017):
  - Challenges filed in 2010 and 2012 involving unbundled rate structure (“rate cases”)
  - PRs was one of many claims
  - Issue: Whether payments made by SDCWA to MWD pursuant to Exchange Agreement should be included in PR calculation
  - Held: Payments must be included in PR calculation; terms of Exchange Agreement made clear SDCWA was not purchasing water from MWD

# Current Status

# Current Status

- Text of Section 135 as amended in 1931 *remains operative*
- Volumetric charges *generally excluded* from calculation of PRs
- Calculation currently *includes taxes, RTS and capacity charges,* and certain other payments made by MAs



# Fiscal Year 2019-2020 Member Agency Preferential Rights

Member Agency	Preferential Right (FY19-20)
SDCWA	25.8%
Los Angeles	18.1%
MWDOC	12.4%
West Basin MWD	7.1%
Central Basin MWD	5.5%
Calleguas MWD	4.0%
Eastern MWD	3.7%
Western MWD	3.6%
Upper San Gabriel Valley MWD	2.9%
Three Valleys MWD	2.7%
Inland Empire Utilities Agency	2.5%
Long Beach	2.1%
Glendale	1.1%

Member Agency	Preferential Right (FY19-20)
Pasadena	1.0%
Torrance	1.0%
Anaheim	1.0%
Beverly Hills	0.9%
Las Virgenes MWD	0.9%
Burbank	0.8%
Santa Monica	0.8%
Santa Ana	0.7%
Foothill MWD	0.6%
Fullerton	0.5%
Compton	0.2%
San Marino	0.2%
San Fernando	0.1%

# Relationship to Other Laws and MWD Allocation Plans

# Relationship to Other Laws

- Preferential rights are *not absolute*
- Exist within *complex framework of laws* governing conservation and use of water within California
  - Often related and intertwined
  - Likely to come into play under similar circumstances
- Many *adopted after enactment* of preferential rights statute

# Relationship to Other Laws

Cal. Const. Art. X, § 2  
(1928)

Water Code § 100 *et seq.*  
(1943)

- Requires beneficial use of water “to the fullest extent possible”
- Prohibits “waste or unreasonable use”
- What constitutes “reasonable and beneficial” use changes over time

Water Code § 350 *et seq.*  
(1953)

- Grants wide discretion to address water shortage emergencies
- Allows regulations to conserve supplies for “greatest public benefit”
  - Regulations prevail over other laws during period of emergency

Water Code § 375 *et seq.*  
(1977)

- Authorizes implementation of water conservation programs “notwithstanding any other law”
- Can encourage water conservation through rate structure design
- Allows enforcement of use limitations through volumetric penalties

# Relationship to Other Laws

## UWMP Act (1983)

- Requires preparation of UWMPs every five years
- Water shortage contingency plans (WSCPs) key component
- WSCPs must contain statement that supplier “shall declare a water shortage emergency” pursuant to WC§350 if warranted

## Emergency Proclamations / Executive Orders

- Issued by Governor
- Typically focus on state agencies, but may contain directives affecting local agencies, private entities and residents
- Includes authority to temporarily suspend any local statutes, ordinances and regulations under certain circumstances

# Relationship with MWD Allocation Plans

Preferential Rights **have never been utilized** in allocating supplies

**Alternatives have worked** in times of shortage

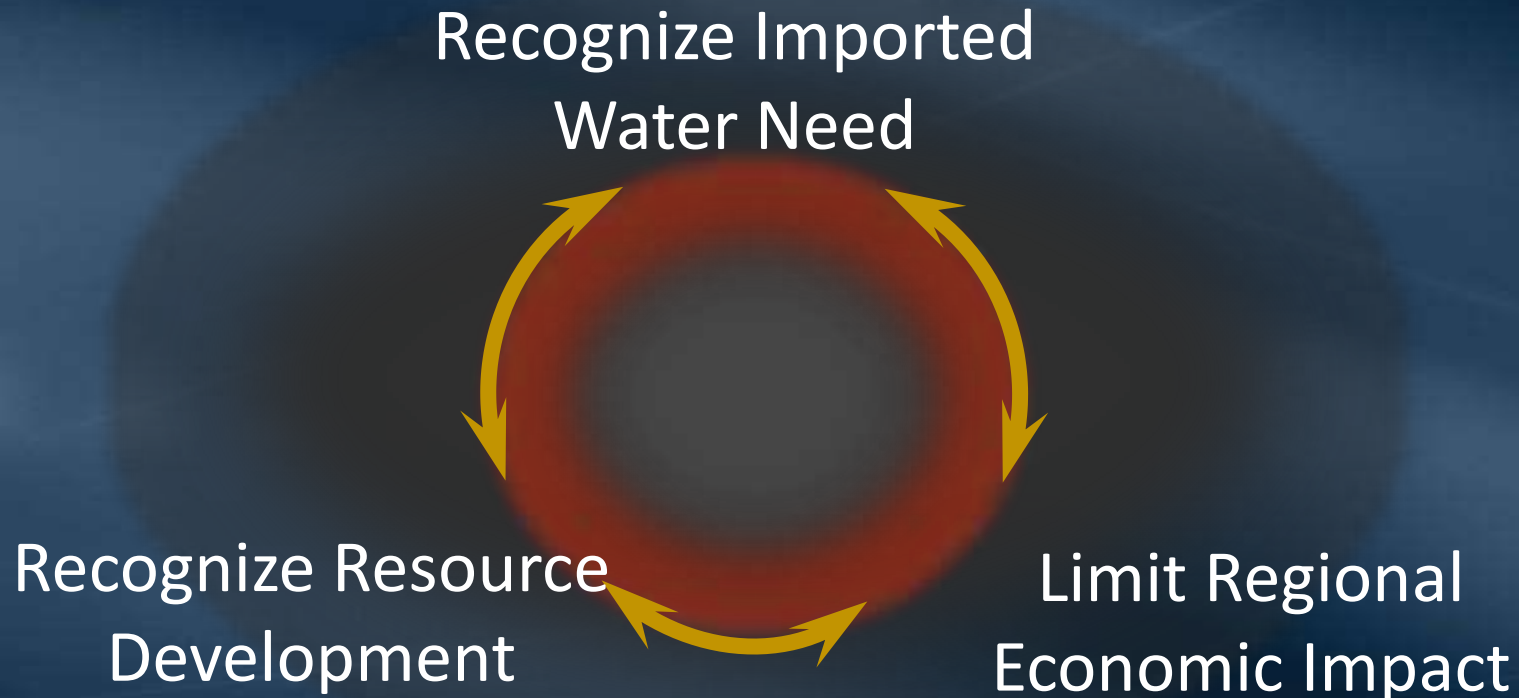
IICP (1990's)

WSDM: (1999-present) / WSAP (2008-Present)



## WSDM Plan Guiding Principle

“Metropolitan will encourage storage of water during periods of surplus and *work jointly with its Member Agencies to minimize the impacts* of water shortages on the region’s retail consumers and economy during periods of shortage.”





# Water Supply Allocation Plan (WSAP)

- Adopted in 2008; provides *approach for allocating available supplies* to MAs in times of water shortages
- Is needs-based and seeks to *maintain equity among MAs* and minimize impacts on region.
- Accounts for:
  - MA's relative dependence on MWD
  - Population and economic growth
  - Local supply investments
  - Changes in local supply conditions; and
  - Demand hardening impacts from recycled water use and conservation

# Relationship with MWD Allocation Plans

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**Alternatives have worked** in times of shortage

IICP (1990's)

WSDM: (1999-present) /WSAP (2008-Present)

PRs **calculate a MA's potential share** of available supplies;  
WSDM/WSAP **incentivize reduction in overall demand** to preserve total supplies

