



SAN JOAQUIN COUNTY

FLOOD CONTROL & WATER CONSERVATION DISTRICT

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MICHAEL SELLING
DEPUTY DIRECTOR OF PUBLIC WORKS

ADVISORY WATER COMMISSION

April 15, 2015, 1:00 p.m.

Public Health Conference Room, 1601 E. Hazelton Avenue, Stockton, California

AGENDA

Roll Call

Approve Minutes for the Meeting of March 18, 2015

SCHEDULED ITEMS

I. Action Items:

- A. No Action Items

II. Discussion Items:

- A. Update on Water investigation Zone No. 2 Fee Protest Process – Brandon Nakagawa
- B. Update on Smith Canal Gate Project – Roger Churchwell
- C. Discussion on 2015 Drought Emergency – Mike Cockrell

III. Communications (See Attached):

- A. April 8, 2015, The Sacramento Bee, “California Warns of Deep Water Right Curtailments Amid Drought”.
- B. April 8, 2015, Letter of Opposition to AB 647 Groundwater Recharge as a Beneficial Use (Eggman).
- C. April 6, 2015, Board of Supervisors Letter of Support for AB 647.
- D. April 6, 2015, Metropolitan Water District of Southern California, Staff Recommendation to Oppose AB 647.
- E. March 19, 2015, Recordnet, “Supes to Weigh ‘Zone 2’ Water Fee”.

Public Comment (Non-Agenda Items)

Adjournment

Next Regular Meeting: May 20, 2015, 1:00 p.m.
Public Health Conference Room

Commission may make recommendations to the Board of Supervisors on any listed item.

If you need disability-related modification or accommodation in order to participate in this meeting, please contact the Water Resource Staff at (209) 468-3089 at least 48 hours prior to the start of the meeting. Any materials related to items on this agenda distributed to the Commissioners less than 72 hours before the public meeting are available for public inspection at Public Works Dept. Offices located at the following address: 1810 East Hazelton Ave., Stockton, CA 95205. These materials are also available at <http://www.sjwater.org>. Upon request these materials may be made available in an alternative format to persons with disabilities.

**REPORT FOR THE MEETING OF
THE ADVISORY WATER COMMISSION OF THE SAN JOAQUIN COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT
March 18, 2015**

The regular meeting of the Advisory Water Commission of the San Joaquin County Flood Control and Water Conservation District was held on Wednesday, March 18, 2015, beginning at 1:00 p.m., at Public Health Services, 1601 E. Hazelton Avenue, Stockton, California.

Roll Call

Present were Commissioners Nomellini, Holman, Flinn, Winn, Herrick, Holbrook, Salazar, Jr., Hartman, Price, Secretary Nakagawa and Chairman McGurk. Others were present, but did not sign the attendance sheet. The Commission had a quorum.

Approval of Minutes for the Meeting(s) of February 18, 2015

Motion and second to approve the minutes of February 18, 2015 (Nomellini/Herrick). Unanimously approved.

SCHEDULED ITEMS:

Fritz Buchman, Deputy Director/Development SJC Public Works Department, led the agenda.

I. Action Items:

A. Election of officers for 2015 – Brandon Nakagawa

Mr. Nakagawa referred to the Commission's charter in the San Joaquin County Ordinance Code and highlighted the requirement to elect 2015 officers. Several Commissioners noted the quality of existing leadership and recommended to retain all officers in their current positions. Motion and second was made to retain current officers (Hartman/ Herrick 2). Unanimously approved.

B. Discussion and Possible Action on the Water Investigation Zone No. 2 Fee Analysis Report - Brandon Nakagawa, Dennis Anderson, Harris & Associates

Mr. Nakagawa presented the Commissioners with a brief overview of Water Investigation Zone No. 2 Successor Effort history and highlighted March 24, 2015 as the pending date in which the item would be presented to the San Joaquin County Board of Supervisors (Board). The Board will consider adopting the 2015 Strategic Plan to Meet Water Needs, approving the Water Investigation Zone No. 2 Property Related Fee Analysis Report, declare the intent to adopt the property related fee, approve the public notice, and set a public hearing date of May 19, 2015 at 9:00 am. Mr. Nakagawa presented the Commissioners with a draft copy of the prospective fact sheet that would accompany the public notice.

Ms. Joyce Vollmer (MIG, Inc.) described the fact sheet in greater detail and pointed out that it would serve a dual purpose as a companion piece to the protest form and materials and could also be used as a "stand-alone" reference sheet describing the effort. Ms. Vollmer noted that the fact sheet refers to Water Investigation Zone No. 2 as a District, due to feedback that the

concept of a “zone” may be confusing to the public. She presented sample prospective fee calculations, and shared efforts to continue developing informational kits that would enable stakeholders to answer questions about the District and the Zone No. 2 Renewal effort. Ms. Vollmer clarified for Chairman McGurk that the fact sheet will accompany the legal notice and come in an official packet to distinguish the notice from junk mail.

Mr. Dennis Anderson, (Harris & Associates, Inc.) gave a presentation encompassing the history of the Water Investigation Zone No. 2, reiterating that the current assessment sunsets on June 30, 2015. Due to changes in the Proposition 218 law, the services currently provided through Zone No. 2 funding can no longer be provided under an assessment structure, but can be funded under a fee structure. An assessment is established primarily for projects with a direct benefit to specified properties through an affirmative ballot vote by property owners and 50% plus one is required for an assessment to pass. Current case law supports assessments to support the construction or maintenance of infrastructure projects. In contrast, a fee supports the access to and use of a system and is established through a protest process and hearing in which more than 50% of property owners must submit a written protest for the fee not to move forward. A fee can be charged for access of a system, such as water, sewer and trash.

Mr. Anderson utilized a Fee Analysis Study to satisfy the requirement by the State that the fee must be proportional to the cost of service in determining the fee structure. He described the two categories used in the fee analysis as Indoor and Outdoor use determining that county wide water usage was a 25%/75% split between Irrigated and Developed properties. Mr. Anderson defined and described various water demand factors and rates for the Commission, as reflected in Table 5 in the Fee Analysis Report packet.

Commissioner Hartman requested clarification on the number of people assumed to reside in a single family residential home. Mr. Anderson stated 3.2 people per household used for fee analysis. Chairman McGurk questioned Mr. Nakagawa and Mr. Buchman if \$1.1 million dollars is adequate funding to do the job required. Mr. Nakagawa responded that the funding will be adequate and referenced an escalator built into the fee of no more than 3% per year tied to the CPI index, which would fund the legally required annual notice and protest hearing at the end of a five year period.

Commissioner Price questioned the current budget amount and asked if the \$1.5 million dollar budget is arbitrary, Commissioner Holbrook stated that Mr. Nakagawa was directed by the Advisory Water Commission to keep the new Water Investigation Zone No. 2 fee as close to the existing fee as possible.

Commissioner Flinn requested a contingency plan be developed if Water Investigation Zone No. 2 fee is protested. Mr. Nakagawa described the budgetary processes in place should the successor effort either pass or fail. Commissioners were in support of continued efforts to communicate the severity of the water issues to the community and subsequent impacts that may be felt by individual property owners upon the loss of the Water Investigative Zone No. 2 funding.

Motion: A motion and second to approve (Nomellini/Holbrook). Passed unanimously with one Commissioner abstaining (Winn).

II. Discussion Items:

A. Discussion on Lower San Joaquin River Feasibility Study – Roger Churchwell

Mr. Roger Churchwell presented the status of the Lower San Joaquin River Feasibility Study. Mr. Churchwell stated the study did not meet the completion date of December 2014 which was a critical milestone due to the project being part of the Army Corps of Engineers 3x3x3 planning paradigm. Mr. Churchwell noted the reason the completion date was missed was due to the debate over the EO 11988 wide use of floodplains no resolution with the Corps on the application of the Executive Order. Mr. Churchwell noted that the disagreement has been set aside and the Lower San Joaquin River Feasibility Study will resume and be released due to the impact to and funding requirements of the State to the projects such as the Smith Canal Gate Project, Reclamation District 17 Phase III repairs.

Additional funding is required to complete the study due to the delay; the Army Corps of Engineers is requiring \$1.2 Million dollars with a required 50/50 split between the Army Corp of Engineers and the California State Department of Water Resources. Mr. Churchwell advised the Commission that there is a draft report available and provided a link to the website, noting that comments can be made on the draft report until April 13, 2015.

Mr. Churchwell provided a map with the current areas that will be included in the Lower San Joaquin River Feasibility Study as well as which areas due to EO 11988 were eliminated from the study. He informed the Commission that the Chief's report will be available July 2016 upon its release the timeline for projects created in the Lower San Joaquin River Feasibility Study will be followed.

Commissioner Nomellini shared the history of the disagreement between the Army Corps of Engineers and Reclamation District RD 17, which led to the delay of completion of the Lower San Joaquin River Feasibility Study. The Commission agreed that further discussion on this matter with Reclamation District 17 and the Advisory Commission would be beneficial.

B. Discussion on Executive Order 13690 – John Maguire

Mr. John Maguire, San Joaquin County Flood Management presented the newly signed Executive Order (EO)13690, Signed by President Obama on January 30, 2015. EO 13690 modifies the existing EO 11988 raising the bar on certain compliance requirements. Executive Order 13690 addresses three separate areas 1) Acquisition and disposal of Federal Properties; 2) Federal Investments in buildings and infrastructure; and 3) Land use and licensing and permitting.

Mr. Maguire stated that EO 13690 is has now increased the parameters by requiring 3 new approaches to compliance around a 500 year flood level versus the 100 year flood level guidance required under EO 11988. EO 13690 has been issued and the implementing

guidelines have been released for public comment followed by rulemaking and implementation the federal agency. Listening sessions are being held Nationwide on Executive Order 13690 which allows engagement between the Federal Government and the local agencies.

Commissioner Hartman questioned the driving force behind the creation of EO 13690, Mr. Maguire noted that many references were to Super Storm Sandy and the impact it had on the affected communities. The commission will continue to monitor and obtain updates as EO 13690 progresses.

C. Presentation on Washington D.C. Advocacy Trip for SJAFCA and the Delta Counties Coalition - Roger Churchwell and Fritz Buchman

Mr. Curchwell of SAJAFCA shared with the Commission the outcome of the trip to Washington D.C. that took place March 2nd and 3rd 2015. The attendees of the trip were San Joaquin County Board of Supervisors Chair Kathy Miller, John Maguire, Fritz Buchman, and Jim Gotinini. Meetings occurred with the following on this trip: Office of Management and Budget, Federal Emergency Management Administration, Representative Denham, Representative McNeerney, Senator Feinstein, Senator Boxer. The trip was designed to determine whether the Lower San Joaquin River Feasibility Study would continue, and address Army Corps of Engineers issues. Mr. Churchwell stated he felt confident that the funding for the Lower San Joaquin Feasibility Study will be approved and the study will continue.

Mr. Buchman shared with the Commission the details of the Delta Counties Coalition trip noting that they had meetings with the Office of Management and Budget, Federal Emergency Management Administration, Representative Denham, McClintock, Senator Feinstein's office, Senator Boxer, Bureau of Reclamation Commissioner Estaban Lopez, Congressman Thompson and Congressman Desaulnier, Under Secretary of the USDA and their Agriculture Research Service Administrator. Messaging for this trip focused on several key areas such as the impact of the drought in California and stressing the importance of including the Delta Counties Coalition in the development of any drought legislation, respecting the current State and Federal laws in place and State water rights. Second topic of discussion was held with the USDA on the current issue of invasive weeds (e.g. hyacinth), which highlighted the severity of the growth in Delta waterways and the funding required to combat growth. A 5 year comprehensive plan to fight the weeds was requested. The Bay Delta Conservation Plan was discussed voicing the longstanding concerns as well as noting the new changes in the EIR/EIS and the comment period.

Chairman McGurk inquired of Mr. Buchman to what percentage did you find this trip successful? Mr. Buchman stated the trip was about 75% successful and some follow-up would be required. Meetings held with OMB and holding a conference call with USDA instead of a live meeting allowed for more member interaction on the DCC side to support the current request for funding to deal with the invasive weeds.

D. Discussion on 2015 Drought Activities – Brandon Nakagawa

Mr. Nakagawa provided an update on current drought activities. The drought is a topic of discussion in Washington D.C., but was held behind closed door meetings. Mr. Nakagawa shared that the current momentum of drought legislation at the federal level is unsure at this time due to a new congress being seated. He further noted that the State Water Board established guidelines for water quality in the Delta, with the intent to protect wildlife, farmers and water quality. Mr. Nakagawa informed the Commission there is a Temporary Emergency Change Petition submitted to the State Water Board due to ongoing drought conditions.

Future actions for San Joaquin County, should the drought continue, may involve messaging via internet, radio and other media outlets. Mr. Nakagawa also addressed that San Joaquin County is discussing adjusting the Drought Stage from its current level of Stage 1 to Stage 2 consistent with the new State Water Resources Control Board Mandates as of March 17, 2015. Mr. Nakagawa stated that he would continue to keep the Commission apprised of any changes.

ATTACHMENT
III.A.

California warns of deep water rights curtailments amid drought

BY DAVID SIDERS AND DALE KASLER - DSIDERS@SACBEE.COM

04/08/2015 8:50 PM | Updated: 04/08/2015 10:22 PM



Gov. Jerry Brown makes remarks about a meeting he had with with top agricultural, environmental and urban water agency leaders from across California in Sacramento on Wednesday. With him is Jay Ziegler of The Nature Conservancy, left, Nancy McFadden of the Governor's Office, and Craig McNamara of the State Board of Food and Agriculture, right.
HECTOR AMEZCUA / HAMEZCUA@SACBEE.COM

In the week after issuing an unprecedented statewide water use reduction order, Gov. Jerry Brown labored to defend the measure's focus on urban water use instead of agriculture, which consumes far more water than cities and towns.

The drought has already pummeled farmers, Brown said, with diminished state and federal water allocations forcing them to uproot trees and fallow thousands of acres of fields.

But while Brown defends agriculture's heavy use of water, he is also considering water rights curtailments that could dramatically affect the industry.



The State Water Resources Control Board has warned water rights holders to expect restrictions on their right to divert water from rivers and streams.

Last year, the state curtailed the water rights of a host of junior rights holders, including 2,648 rural and urban agencies in the Sacramento Valley.

But with conditions worsening, the water board said last week that it might issue curtailment notices to the state's most senior water rights holders – those claimed before establishment of the state's water rights permitting process in 1914.

The last time water rights that old were curtailed was in the late 1970s, officials said.

“If dry conditions persist through the spring, it is anticipated that all holders of post-1914 and many holders of pre-1914 water rights in certain watersheds will receive curtailment notices soon,” the board said in a letter.

If water rights are curtailed, farmers are expected to pump more groundwater or buy water from other users – or go short. Other agencies, such as the city of Sacramento, have access to stored water.

Felicia Marcus, chairwoman of the water board, said districts in the San Joaquin Valley are likely to get hit harder by curtailments than in the Sacramento Valley.

“Because the rain has been uneven, the Sacramento (Valley) systems have been more flush than the San Joaquin River systems, so we will be going further up the seniority curve on the San Joaquin River than we are on the Sacramento River,” Marcus said.

Oakdale Irrigation District, which serves a largely agricultural area east of Manteca, is one of those districts holding pre-1914 rights that would have once seemed off-limits to the state's water authorities. Now the district is bracing for the possible loss of water.

“For us it's going to be a first-time ever summer,” said district general manager Steve Knell.

Even if the state doesn't curtail its rights, the district expects to limit its farmers to no more than 30 inches of water per acre this summer, he said.

That could leave growers in a pinch. The district's almond trees and grapevines generally take 40 to 50 inches, he said. Pasture for beef cattle can require as much as 60 inches, he said.

He said he expects growers will try to buy water from other sources to make up for the loss: “There's going to be a lot of innovative things that are going to have to occur.”



On Wednesday, a week after ordering a 25 percent reduction statewide in urban water consumption, Brown met for several hours with water and farm officials and environmental groups at the Capitol.

“The challenge here, aside from getting the water, is to be able to collaborate together and not try to blame other people and point fingers,” Brown said. “This water system in California is extremely complex. It affects different people differently. Some people do much better than other people, and in the midst of all that to be fair, to be sustainable, and to have foresight into the future will take some wisdom and some self-restraint.”

The drought, now stretching into a fourth year, has strained California’s patchwork system of water rights, with competing interests vying for an increasingly dwindling resource.

“The state’s passed out water rights like Goldman Sachs passes out securities,” said Bill Jennings, executive director of the California Sportfishing Protection Alliance.

With the expectation that water would continue to flow forever, Jennings said, landowners “mortgaged their futures, their lives, their dreams ... without reading the small print that this was an interruptible source, that it might not always be available.”

He said the state is only now suffering the consequences of its “failure to bring the water demand and water supply into balance.”

Some districts hold a polyglot of different rights, and a state-ordered curtailment could bring legal complications. The massive Glenn-Colusa Irrigation District north of Sacramento has pre-1914 water rights. It also has a “settlement contract” with the U.S. Bureau of Reclamation that says the district can’t be cut back any more than 25 percent, said general manager Thad Bettner.

If the state seeks to curtail Glenn Colusa’s rights, “then the system just starts to dissolve pretty quickly,” Bettner said. “There will be disputes ... We’re talking about legal battles.”

Earlier this year, the water board ordered more than 1,000 property owners with claims to water in the Central Valley to prove their claims.

But Chris Scheuring, a lawyer for the California Farm Bureau Federation, said it remains a challenge for some farmers to produce proof of decades-old rights established under a procedure that was once “as simple as posting a notice on a tree by the river.”

Scheuring said, “If the state board takes an action to curtail a very senior and very large water right, I think that some party is going to be willing to litigate for the principle that the state board is not the appropriate enforcement venue.”

Marcus said the board believes it has the authority. The governor’s executive order “has given us more tools” to enforce curtailment orders, she said.

Representatives of some water districts that could see their rights curtailed said they will accept the state's order as long as legal protocol is followed, with junior rights holders cut off before senior rights holders.

Jeff Shields, general manager of the South San Joaquin Irrigation District, said he expects farmers to increase groundwater pumping to compensate for water rights curtailments.

Still, Shields lamented that farmers in the district have been "playing by the rules" for more than 100 years, counting on water they hold by right.

"Our farmers made investments to develop storage and to acquire those rights and invested in land accordingly," he said. "So to have those rights challenged even under a temporary curtailment for the remainder of the season ... that does give us some concern."

The district is already restricting water usage among its growers, said Dave Kamper, 56, a board member of the South San Joaquin Irrigation District.

Kamper raises 300 acres of almonds east of Manteca and is a partner in an almond-processing business. Because most growers got about 9 inches of rain this winter, the almond trees should survive, although the crop will probably be light.

"We may sacrifice some yield," he said.

If the district's water rights are curtailed by the state, some trees could conceivably be lost, Kamper said.

He said, "We'll get by – different levels of discomfort, I guess."

Call David Siders, Bee Capitol Bureau, (916) 321-1215. Follow him on Twitter @dauidsiders (https://twitter.com/dauidsiders).

WHAT'S THE DIFFERENCE?

Senior water rights generally fall into two categories in California.

Pre-1914 appropriative rights: Rights claimed prior to the establishment of the state's water rights permit process in 1914.

Riparian rights: Rights held by owners of property that abuts a stream or river.

Junior water rights are generally those claimed after 1914.

Source: State Water Resources Control Board

Comments (2) (#tabs-b0710947-1-tabPane-2)

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**ATTACHMENT
III.B.**



April 8, 2015

The Honorable Marc Levine
Chair, Water, Parks and Wildlife Committee
California State Assembly
California State Capitol Building
Sacramento, CA 94249-0031

RE: AB 647 - Diversion of Water Underground - OPPOSE

Dear Assemblymember Levine:

Our organizations work with communities that lack safe drinking water and worked diligently to ensure that the historic groundwater legislation passed in 2014 protects communities whose water supplies are or will be threatened by the unsustainable management of California's groundwater resources.

Unfortunately, AB 647 as written fails to protect those communities. The bill describes diversion of surface water to groundwater as a beneficial use, as long as the recharged water is ultimately put to some unspecified beneficial use in some undefined future.

We have many concerns with this proposal:

- Under longstanding California law, the storage of water, including in surface reservoirs, is not in itself a beneficial use. By defining water storage as a beneficial use of water, the bill appears to create another layer of water rights that could be in conflict with existing water rights and contracts.
- The imprecise language in the bill provides far too much leeway. Under this scenario, a district could divert water for recharge water, for withdrawal at any time, for an unspecified use. There are no references to the groundwater sustainability goal required by last year's groundwater bill and no other assurances that water diverted under this bill will be managed sustainably.
- The specific need for this proposal has not been established. Groundwater storage and conjunctive use projects have been and continue to be established in the state. If there is a regulatory or statutory problem that delays or interferes with current projects, let's

address that issue in a focused manner rather than creating such a broad new allowance.

We appreciate that local agencies are trying to create flexibility in the implementation of the Sustainable Groundwater Management Act. Unfortunately, this bill is too broad in its scope and the need for it is still unclear. We regret that we must oppose this bill.

Sincerely,



Jennifer Clary
Water Policy Analyst
Clean Water Action



Phoebe Seaton
Executive Director
Leadership Counsel for Justice and Accountability



Omar Carrillo
Policy Analyst
Community Water Center

Cc: Assembly member Eggman

ATTACHMENT
III.C.



MIMI DUZENSKI
Clerk of the Board

BOARD OF SUPERVISORS

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STOCKTON, CALIFORNIA 95202
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April 6, 2015

The Honorable Susan Eggman
State Capitol
Post Office Box 942849
Sacramento, California 94249-0013
Fax: (916) 319-2113

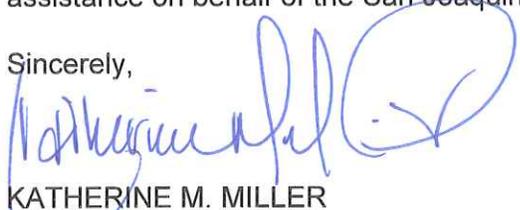
SUBJECT: LETTER OF SUPPORT FOR ASSEMBLY BILL 647

Dear Assembly Member Eggman:

As Chair of the San Joaquin County Board of Supervisors, I am pleased to convey our support for Assembly Bill 647. As interpreted by the State Water Resources Control Board, current law does not recognize recharge for the purposes of raising groundwater levels or repelling saline intrusion into a groundwater aquifer. Assembly Bill 647 will confirm into law what most Californians already know—groundwater recharge of surface water is not only a beneficial use of water, but a critical component to meeting the requirements set forth in the Sustainable Groundwater Management Act of 2014.

We appreciate your leadership role in this effort, and stand ready to provide support and assistance on behalf of the San Joaquin County Board of Supervisors.

Sincerely,


KATHERINE M. MILLER
Chair, San Joaquin County
Board of Supervisors

Thanks, Susan!

CW:BN:rc
WR-15C041-R4

ATTACHMENT
III.D.



● **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

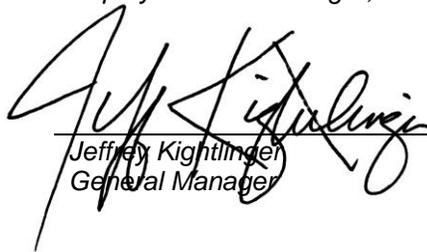
Option #1



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.

2

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

ATTACHMENT
III.E.

By Alex Breitler
Record Staff Writer

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March 19, 2015 12:01AM

Supes to weigh 'Zone 2' water fee

Its name invokes visions of black helicopters and barbed wire, but the “Zone 2” assessment is not quite so conspiratorial.

It’s a relatively small sum that property owners across San Joaquin County have been paying for 25 years, whether they know it or not. The money helps to fund local water planning efforts, including the fight against Gov. Jerry Brown’s proposed twin tunnels.

The 15-year assessment is set to expire in June, though. A county water commission took the first step Wednesday toward renewing it, this time as a fee that property owners will have the opportunity to protest if they wish.

If county supervisors approve the plan next week, formal notices will be sent by early April to the owners of all 220,000 parcels in the county.

The roughly \$1.25 million raised by the fee each year would prove useful as water issues continue to be a pressing need, county officials said. The amount that property owners have paid in the past for Zone 2 is not expected to change significantly; for homeowners, estimates range from \$1.60 per year to \$5.25 per year, depending on the size of the lot.

“It’s a cup or two of Starbucks per year,” said Brandon Nakagawa, the county’s water resources coordinator.

Farmers would pay anywhere from \$4.97 per 10 acres to \$275.10 per 640 acres.

Half of the property owners would have to file written protests to block the plan. A hearing is planned for mid-May.

Besides battling the Delta tunnels, county officials say the money could be used to monitor groundwater levels, chase down state grants and implement new groundwater rules over the next five years.

“We’re not going to see fewer regulations — we’re going to see more of them,” said Chuck Winn, a county supervisor who also sits on the commission.

George Hartmann, an attorney for reclamation districts and a water commissioner, said the money would help protect local water rights. Without funding to protect those rights, he said, “that vacuum would get filled with water demand from Southern California.”

— *Contact reporter Alex Breitler at (209) 546-8295 or abreitler@recordnet.com. Follow him at recordnet.com/breitlerblog and on Twitter @alexbreitler.*

<http://www.recordnet.com/article/20150319/NEWS/150319625>

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