

REPORT ON STATE LEGISLATION
OF INTEREST TO THE
STATE WATER RESOURCES CONTROL BOARD
AND THE
REGIONAL WATER QUALITY CONTROL BOARDS

Second Half
of 1977-78 Regular Session

Submitted By

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LEGISLATIVE SUMMARY: SECOND HALF OF
1977-78 REGULAR SESSION

INTRODUCTION

The California Legislature adjourned on September 1, 1978 for the final recess of the 1977-78 regular session. Clearly, the second half of the session was dominated by Proposition 13 issues. Not only was a great deal of time spent on issues directly related to Proposition 13, but virtually all bills with fiscal implications were subjected to increased scrutiny.

The obvious legislative highlight of the year from the Board's standpoint was the adoption by the electorate of Proposition 2 - the Clean Water and Water Conservation Bond Law of 1978. Proposition 2, which was the only bond measure to buck the Proposition 13 tide, not only authorizes \$375 million for clean water grants but can also be utilized in next year's legislative session as a strong expression of the people's support of water quality protection efforts. The other major water-related bill of the session, SB 346 (Peripheral Canal bill), was not enacted. While SB 346 contained important provisions related to Delta water quality, the importance of their enactment was diminished by the U. S. Supreme Court's decision in California v. U. S.

Regarding other legislation of interest to the Board, the session can be described as successful, but unspectacular. Of the seven bills sponsored by the Board, all but the oil spill liability bill were signed into law. These bills related to hazardous waste disposal sites, temporary water right permits, dredged and fill permit authority, Regional Board membership composition, and the water quality loan fund. These new laws will be discussed in detail below.

Several bills that were supported by the Board became law. These range from legislation to encourage the use of reclaimed water to a resolution urging Congress to adopt a comprehensive oil spill liability bill.

The Board's opposition to several bills was instrumental in their being killed. Chief among these was a bill that would have drastically reduced State Board review time of appeals from Regional Board action, a bill that would have abolished Regional Board jurisdiction within the San Diego area, a bill that would have required Board legislative personnel to register as professional lobbyists, and a bill that would have disrupted the Board's workshop process by requiring lengthy notice of agency actions.

In 1978, the Legislature introduced 2,815 legislative measures. During this same year, a total of 1,432 bills were enacted and chaptered into law. As is typical, fewer bills were introduced in

the second year of the 1977-78 session, but more became law. It should be noted that nonurgency bills enacted in 1978 will become effective on January 1, 1979, whereas urgency measures are effective when filed with the Secretary of State.

Each legislative measure and all amendments thereto were reviewed by Legislative staff. Of those introduced this year, the Board actively followed almost 200 measures and prepared analyses on about 50 of these. In addition, Board members and staff attended and participated in numerous committee hearings and handled many legislative inquiries and requests both on a formal and informal basis. The remainder of this report will summarize specific bills of interest to the State and Regional Boards. Questions regarding these measures or requests for copies of individual bills or analyses thereof, should be directed to Craig Wilson at (916) 322-0188.

SWRCB SPONSORED LEGISLATION

A Overview

The Board sponsored seven bills during the 1978 legislative session. Six of the seven were enacted into law. The Legislative Unit prepared detailed positions of support for the Governor's Office on these bills, testified on their behalf in committee hearings, answered inquiries regarding them, and prepared recommendations that the Governor sign the bills. The seventh bill dealt with oil spill liability and was the first such bill in recent years to reach the Assembly Floor.

B. Specific Bills

1. SB 1130 (Presley) - Liquid and Hazardous Waste Disposal Sites. The measure requires assurances of financial responsibility from owners or operators of hazardous or liquid waste disposal sites regarding the adequate closure and subsequent maintenance of such sites after they have served their useful lives, establishes a revolving fund to assist in closure and maintenance efforts and provides funding to abate conditions of pollution and nuisance that exist at a hazardous waste disposal site in Riverside County. The bill grew in its substantive provisions as it moved through the legislative process and could prove to be a real sleeper as far as its long-range significance is concerned. The Stringfellow appropriation was added to the measure after Riverside County backed out of a commitment to assist in closure efforts. Such a commitment was a condition precedent to an appropriation enacted in 1977 to close the Stringfellow site. In the long run things worked out well since the appropriation in SB 1130 is

Larger and has fewer strings attached to it. Passage of the measure in light of Proposition 13 concerns was in doubt until the Legislative Unit received commitments of support from the Assembly Ways and Means Committee consultant and the Department of Finance. (Stats. 78, Ch. 784.)

2. SB 1809 (Ayala) - Water Quality Standards. This bill was a technical measure necessitated by passage by the federal government of the Clean Water Act of 1977. The new law made significant changes in the basic federal water pollution control act. It retained the requirement that states administering a permit program for the discharge of pollutants must meet federal standards. This measure simply brought state law back into consistency with those federal standards. It also gave the Board authority to administer a discharge permit program relating to aquaculture projects. The measure had no opposition and breezed through the legislative process. (Stats. 78, Ch. 618.)

3. SB 1810 (Ayala) - Dredged or Fill Permit Authority. The Federal Clean Water Act of 1977 provides that a state desiring to administer its own permit program for the discharge of dredged or fill materials into certain navigable waters (generally those waters not subject to the ebb and flow of tide) may seek assumption of such a program from EPA. EPA must approve a program in lieu of the federal program if it finds that the proposed permit program meets certain federal standards. These standards are similar to those required in a state's NPDES program. This measure establishes the statutory framework for a Board-administered dredged or fill permit program. At the Assembly Ways and Means Committee it was suggested that the bill be amended to provide that the Board could not administer such program unless federal funding was made available. We responded that, while our thinking was to only seek assumption of the program if federal funding was available, such language was overly restrictive. The Committee then adopted language that merely requires the Board to request federal funding prior to any assumption of the program. While this bill establishes the statutory framework for the Board to assume this program, the question of whether we will in fact apply to EPA is still being evaluated. (Stats. 78, Ch. 746.)

4. SB 1811 (Ayala) - Temporary Water Rights. This measure is an extension of the concept contained in legislation enacted in 1973 whereby an abbreviated procedure for acquisition of a water right permit was developed for situations where there was an urgent but temporary need for water. This new law extends the procedure to situations where a person has applied for a water right permit under the ordinary procedures

of Division 2 of the Water Code, but has an urgent but nontemporary need for water. The permit would be temporary and the application would thereafter be processed as a standard application. This measure had no opposition and was enacted by the Legislature on consent. (Stats. 78, Ch. 563.)

5. SB 2034 (Ayala) - Regional Board Membership Composition. This measure is a modest attempt to deal with the continual problem of filling membership positions caused by the federal conflict of interest provision. That overly-restrictive provision prohibits persons from being Regional Board members if they receive a significant portion of their income from persons subject to waste discharge requirements. This requirement has led to problems in filling certain positions, in particular the county-government position. This measure provides, when the county position cannot be filled because of the federal requirement, that the appointment can be made from one of the other categories. The County Board of Supervisors Association originally opposed the bill, but a minor amendment solved their problem. Thereafter the measure encountered no difficulty in being enacted. (Stats. 78, Ch. 622.)
6. SB 2035 (Ayala) - Water Quality Loan Fund. Under the Water Quality Loan Fund, monies are available in certain instances to fund the local share of wastewater treatment facilities. Such facilities have traditionally been eligible for federal and state grants. This measure broadens the law to permit similar loans for water conservation facilities that are now eligible for state grants because of the passage of Proposition 2. The measure was adopted without difficulty. (Stats. 78, Ch. 436.)
7. AB 3220 (Hart) - Oil and Hazardous Substances Liability. This comprehensive measure was drafted by Board staff after considerable research. The bill sought to bring uniformity to the existing patchwork of inconsistent state laws on the subject, provided for strict liability for these ultra-hazardous activities, increased liability for environmental damage and set up an administrative mechanism for assessing liability. While the bill failed to pass on the Assembly Floor, it did progress farther than the more modest oil spill bills the Board has backed in recent years and will hopefully facilitate future legislative efforts in this area

LEGISLATION ENACTED WITH THE SUPPORT OF THE BOARD

A. Overview

Many bills that were formally supported by the Board were signed into law. Notable among these were two measures encouraging the use of reclaimed water, a measure exempting the review of

certain water rights petitions from CEQA requirements, a new law that could lead to reclamation efforts in Lake Tahoe under tight environmental control, a measure providing for increased efficiency of water softening devices, a law requiring certain findings before the PUC could mandate water meters, and a resolution encouraging Congress to adopt major oil spill legislation.

B. Specific Measures

1. AB 2825 (McCarthy) - CEQA Revisions. This measure was the major cleanup bill to AB 884. Two provisions of the new law were of particular interest to the Board. Whereas AB 884 exempted protested water rights applications from its time limits, it did not similarly provide for other water rights documents that are protested. At our request, language was inserted into AB 2825 to rectify this problem. In addition, the measure also exempts administrative appeals within or to a state agency from the AB 884 time limits. (Stats. 78, Ch. 1113.)
2. AB 2643 (Padan) - Water Reclamation. This measure is an extension of legislation enacted in 1977 which declares that the use of high quality water for the irrigation of greenbelt areas is a waste or unreasonable use when reclaimed water is available, and specifically prohibits state and local public agencies from making such use of water under these conditions. This measure provides that persons as well as public agencies shall not make use of water under these conditions and that this prohibition specifically extends to water from any sources. The Board supported this bill since it was consistent with Board objectives and policies to encourage the development and use of reclaimed water. (Stats. 78, Ch. 894.)
3. AB 2970 (Gualco) - Water Meters. This measure prohibits the PUC from ordering any unmetered water corporation furnishing water for residential use to install water meters without first holding a hearing within the service area and making certain findings. Specifically, it must be found that metering is cost effective, will significantly reduce water consumption, and will not result in unreasonable financial burdens on users. The Board has supported the concept that water metering can be a useful method of conserving water. However, it being prudent policy to require findings of cost effectiveness and reasonable financial burden on users before mandating water metering, the Board recommended that the Governor sign this measure. (Stats. 78, Ch. 945.)

It should be noted that this measure contrasts sharply with bills introduced during the drought period that would have required water meters. None of those bills were enacted.

4. AB 2465 (Waters) - Water Reclamation at Lake Tahoe. This is a measure that we opposed in its original form but recommended the Governor sign the measure as amended. The original bill simply provided that reclaimed water could be used within the Lake Tahoe Basin as an exemption to the export requirement so long as it met Department of Health Services' criteria. We opposed the bill as not providing any assurances that reclamation efforts would not cause adverse effects on the Lake's water quality. The bill was subsequently amended to limit the export exception to pilot demonstration projects. It provided that no project could be initiated without the approval of the Lahontan Regional Water Quality Control Board; that applicants must demonstrate that a proposed project will not adversely affect the quality of the waters of Lake Tahoe; and that the Regional Board has the power to place conditions on any approved projects and may suspend or terminate an approved project for cause at any time. Since the amended measure seems to contain adequate controls to prevent the occurrence of adverse effects, the Board recommended that the measure be signed because of its reclamation potential. (Stats. 78, Ch. 682.)
5. SB 1681 (Holmdahl) - Reclaimed Water. The measure is a followup to legislation enacted in 1977 which provides that no loss or reduction in the use of water under any existing right shall occur to the extent and in the amount that reclaimed or polluted water is used in lieu of the water right holder's authorized appropriation. This law makes the 1977 legislation more specific by prohibiting the Board from reducing an appropriation authorized in a water user's permit to the extent and in the amount that reclaimed or polluted water is used in lieu thereof, states that such use of reclaimed or polluted water is good cause to extend the perfection period contained in a permit for application of water to beneficial use, and provides that the Board, when issuing a license, cannot reduce the permit amount to the extent that reduction in use during the perfection period has resulted from use of reclaimed water. While this measure may not have been necessary since last year's charges applied to the "use of water under any existing right regardless of the basis of right", the Board recommended that it be signed since it may provide helpful clarification to the concept that use of reclaimed water in lieu of a water right should not result in forfeiture of such right. (Stats. 78, Ch. 608.)

6. Senate Joint Resolution No. 47 (Rains) - Oil Pollution Liability. This resolution urges Congress to enact federal oil pollution legislation that would set a standard of strict liability regarding liability and compensation for oil pollution, that would not preempt state law and that would not disallow a claimant from proceeding directly against any party who may be liable for oil pollution. The Board supported the resolution since it is in accord with the two most important issues to the Board regarding federal oil spill legislation -- namely, strict liability and pre-emption. The resolution was very timely since Congress was at the time considering a major oil spill measure. (Stats. 78, Ch. 106.)
7. SB 1327 (Ayala) - Safe Drinking Water Grants. During 1975-76 the Legislature enacted and the voters subsequently approved the Safe Drinking Water Bond Law of 1976. This bond measure is administered by DWR and authorizes a loan program for public agency water suppliers who cannot otherwise finance facilities to meet safe drinking water standards. The law also contained a provision permitting the Legislature to establish a grant program for suppliers who did not have the ability to repay loans. This measure establishes such a grant program. (Stats. 78, Ch. 322.)
8. SB 2148 (Campbell) - Water Softening Devices. This is another measure that the Board originally opposed but recommended that the Governor sign in its amended form. The original bill would have established marginally better efficiency standards on water softening devices but would have preempted local governments from regulating the installation of such devices. As sent to the Governor, the measure contained efficiency standards for both new and existing devices but did not contain any provisions limiting local regulation of this area. (Stats. 78, Ch. 923.)
9. SB 2209 (Nejedly) - Oil Spill Overflow Prevention Mechanisms. This legislation requires the use of mechanisms to prevent overflows during petroleum and hazardous substance transfers between a vessel and a shore facility or another vessel. While it is possible that portions of this bill are preempted by federal law, this bill is notable in that it is the only measure dealing with oil spills passed in recent years. The bill was opposed by major oil interests. (Stats. 78, Ch. 1352)
10. AB 1026 (Vicencia) - Stats. 78, Chapter 131 - Administrative Regulations. The Board recommended that the Governor sign this measure as an acceptable alternative to several other bills introduced in 1977 that would have severely hampered the ability of state agencies to adopt regulations in a

timely manner. This new law deals mainly with the adoption of emergency regulations and requires specified information to be contained in the written statement of facts constituting an emergency. This statement must be filed with the Legislature. The measure also provides that emergency regulations cannot be readopted without the express prior approval of the Governor. Finally, the bill makes technical changes in the notice requirements for the adoption, amendment, or repeal of non-emergency regulations.

LEGISLATION ENACTED THAT THE BOARD OPPOSED

A. Overview

Two measures opposed by the Board were signed by the Governor. One, SB 2167, places limitations on state agency review of ABAG's Environmental Management Plan. The second, SB 1082, will require state agencies to report to the Legislature regarding efforts at implementing new statutory programs. The Governor did veto one measure in conformance with the Board's recommendation. This measure was AB 3380 which would have flatly prohibited the PUC from mandating water meters.

B. Specific Measures

1. SB 2167 (Nejedly) - State Review of ABAG Environmental Management Plan. This measure basically provides that state agencies reviewing ABAG's plan must transmit the plan without change to EPA or return the plan to ABAG for appropriate revision in order to bring it into compliance with federal standards. We opposed the bill because it appeared to take away state agency flexibility in reviewing the plan (and its annual revisions) and because the bill did not adequately address the issue of what would happen should ABAG fail to make revisions requested by state agencies. In addition to our opposition, the bill was opposed by the Resources Agency and the Air Resources Board. The bill was strongly supported by various business and labor groups. It should be noted that while the measure prohibits unilateral revision of ABAG's plan by state agencies, it does not appear to preclude the State Board from approving, with qualification, the ABAG 208 plan. Therefore, the effect of SB 2167 on the Board may not be as great as that on the Air Resources Board since that agency has specific authority under federal law to make unilateral revisions to air implementation plans. (Stats. 78, Ch. 934.)
2. SB 1082 (Marks) - State Agency Reports to the Legislature. This new law requires state agencies charged with administering a new program created by statute to report on implementation efforts to the Legislature within six months

of the effective date of the statute. It specifically provides that the costs of complying with the measure shall be borne of the agencies' normal operating budgets. The Board opposed the bill because, the duty of agencies to carry out the law being without question, the need for the report called for by the bill is unnecessary and a burden on the agencies. The Board also recommended that this bill be opposed at the Agency level since the Board was not the appropriate department to lead the opposition. (Stats. 78, Ch. 1213.)

3. AB 3380 (Thurman) - Water Meters. This measure would have flatly prohibited the PUC from ordering any water corporation not presently utilizing water metered service to install water meters. The State Board has supported the concept that water metering can be a useful method of conserving water and thus opposed the bill which was a flat prohibition on the PUC's ability to mandate the future use of meters. However, the State Board's position has been that it is prudent policy to require findings of cost effectiveness and reasonable financial burden on users before mandating water metering and we thus supported AB 2970, as discussed above. AB 2970 was signed into law.

OTHER LEGISLATION ADOPTED OF INTEREST

A. Overview

There were several measures of interest to the Board which became law on which the Board did not formally take a position regarding the Governor's signature. One was SB 238 regarding consolidated hearings of state agencies. A second was SB 2031 regarding hazardous waste disposal sites. Others included AB 3662, regarding adoption of administrative regulations; AB 3161 regarding regulation of weather modification activities; and two bills relating to groundwater.

B. Specific Measures

1. SB 238 (Holmdahl) - Stats. 78, Chapter 1148 - Consolidated Procedure for Development Projects. This measure provides for the consolidation of agency hearings on development projects under certain circumstances. The bill was introduced in early 1977 as a reaction to the "Dow situation". There were many problems associated with the original bill, but the limitations contained in the bill sent to the Governor appear reasonable and in fact comport largely with State Board staff recommendations solicited by the Office of Planning and Research, who is charged with administering the bill. The major limitations include
(1) the fact that an applicant's application for a development project must be accepted as complete before he could seek a consolidated hearing; (2) public hearings need only

be consolidated to the maximum extent practicable; (3) consolidation of hearings is for procedural purposes only and shall not be construed as consolidating the statutory responsibilities of the public agencies involved; (4) only one Board member need attend the consolidated hearings; (5) each participating agency must receive a hearing transcript within 30 days of the closing of the record and within 45 days of such date each agency shall forward to the others a summary of findings of fact made by that agency; (6) nothing in the measure precludes separate agency hearings and the findings made at the consolidated hearings do not constitute the sole and exclusive record upon which to make decisions regarding approval or denial of a permit; and (7) the bill contains a sunset provision repealing the measure on July 1, 1980.

2. SB 2031 (Nimmo) - Solid and Hazardous Wastes. This measure attempts to clarify the jurisdiction of state agencies over hazardous waste disposal and thereby avoid duplication. The new law refines the regulatory responsibility over hazardous wastes of the Solid Waste Management Board and the Department of Health Services. The bill specifically provides that State and Regional Board jurisdiction in this area, through the issuance of waste discharge requirements or otherwise, is not disturbed. (Stats. 78, Ch. 1397.)
3. AB 3662 (Papan) - Administrative Regulations. Under existing law state agencies are required, when adopting regulations, to insert in the notice of proposed action a reference to the statutory authority for the regulation. This measure requires that references to the enabling legislation also be printed with the regulations when they are codified in the California Administrative Code. This new law will not affect the Board since our current practice is to include such citations when regulations are sent to the Office of Administrative Hearings for codification. (Stats. 78, Ch. 710.)
4. AB 3161 (Gualco) - Weather Modification. This measure sets up a licensing program for persons engaging in weather modification activities. This new law specifically provides that water derived from precipitation that may have been caused by such activities shall, for the purpose of water rights determinations, be considered as if it occurred as natural precipitation. (Stats. 78, Ch. 1088.)
5. SB 1505 (Nejedly) - Stats. 78, Chapter 601 - Groundwater
The measure, as finally signed, merely requires DWR to report to the Governor and the Legislature regarding its

investigation of groundwater basins. The bill as originally introduced set up a comprehensive groundwater management mechanism, but was reduced in scope after encountering stiff opposition.

6. SB 2046 (Vuich) - Stats. 78, Chapter 620 - Groundwater. This measure authorizes cities or counties to adopt ordinances which would require the payment of fees as a condition to approval of subdivisions or building permits in an area of benefit under a groundwater recharge facility plan, for the purpose of constructing recharge facilities for the replenishment of the underground water supply in such area of benefit.
7. AB 2644 (Goggin) - Power Plant Certification. This measure was part of a group of bills which shorten the time needed for the Energy Commission to issue construction certifications for various types of power plants including plants using geothermal energy. (Stats. 78, Ch. 1271.)

BILLS OPPOSED BY THE BOARD THAT DID NOT BECOME LAW

A. Overview

Many bills were introduced during the 1977-78 Legislative Session that would have seriously hampered the Board's ability to carry out certain of its responsibilities. None of these bills became law. Several bills were introduced but not enacted that would have empowered the Legislature to approve state agency regulations before such regulations could become effective. None of a number of "sunset" bills were enacted. Other bills defeated, some largely through the testimony of Board staff included: a bill that would have substituted a new regional agency authority for Regional Board jurisdiction in San Diego; a bill that would have drastically reduced the time period in which the State Board could consider appeals from Regional Board action; a proposal that would have required certain Board employees to register as professional lobbyists; a measure that would have forgiven loans made to certain Tahoe local entities from the Water Quality Control Fund; a bill providing for burdensome notice requirements of public meetings which would have disrupted the Board's workshop process; and a bill that would have abolished by statute the agency we have designated for 208 planning in San Diego.

B. Specific Bills

1. AB 2838 (Waters) - State Board Review of Regional Board Actions. This bill would have imposed time limits on State Board review of Regional Board actions. Board staff

testified against the bill on two occasions. In the Assembly Policy Committee the bill was made much less objectionable through amendment and the bill was later killed in the Fiscal Committee.

2. AB 2383 (Thurman) - Notice Requirements Regarding Public Meetings. This proposal would have established burdensome notice requirements regarding public meetings held by state agencies. Such requirements would have made the Board's workshop process unfeasible. The opposition of many state agencies, including the Board, caused the author to drop the bill.
3. AB 3698 (Kapiloff) - Regional Government in San Diego. The measure proposed to establish a regional multi-purpose governmental agency in San Diego that would succeed to the powers of many single-purpose agencies in the area, including the Regional Boards. Board staff convinced the author to drop the water elements from the bill. The bill was finally killed on fiscal grounds. Interim hearings are being held on the subject of regional planning in San Diego and a bill similar to this one could well be introduced next year.
4. SB 1746 (Mills) - 208 Planning In San Diego. This bill would have abolished the Comprehensive Planning Organization (CPO), which is currently both the regional planning agency and the designated areawide waste treatment management planning agency under Section 208 of the Federal Clean Water Act for the San Diego area. The major problem with the bill was that the Legislature does not possess the power under Federal Law to designate or de-designate 208 planning agencies. The author dropped the bill after encountering local opposition.
5. AB 3787 (McVittie) - Lobbyists. The Board opposed this measure as introduced since it would have caused certain Board personnel to register as professional lobbyists. The bill was later reduced in scope to just require agencies to furnish data on lobbying activities. Even with such amendments the bill ran into problems on fiscal grounds and was dropped.
6. AB 3833 (Chappie) - Forgiveness of Loans from Water Pollution Control Fund. This bill, which would have converted all loans from the State Water Pollution Control Fund to certain Lake Tahoe area utilities into non-reimbursable grants, was introduced later in the session and not moved. It could have been a ploy to encourage Board acceptance of a "settlement" offer regarding repayment of one of the loans.

BILLS SUPPORTED BY THE BOARD THAT DID NOT BECOME LAW

A. Overview

There were two non-Board sponsored bills that did not reach the Governor's desk which we supported. One was an oil spill liability bill less comprehensive than our own. The second was a bill revising the Forest Practices Act.

B. Specific Bills

1. SB 1353 (Smith) - Oil Spill Liability. This bill would have established a standard of strict liability, with minor exceptions, for oil spills resulting in the destruction of any bird, mammal, fish, reptile, or amphibian protected by the laws of this state. The proposal reached the Senate Floor where it was defeated.
2. AB 1236 (Calvo) - Forest Practices Act. The measure would have made major revisions to the "Z'berg-Nejedly Forest Practices Act of 1973" to expand and clarify state regulatory authority over logging and timber harvest operations. The Board was particularly in support of the safeguards for protecting water quality for water adjacent to logging operations. The bill narrowly cleared the Assembly and failed passage in the Senate, largely because of fiscal concerns.

