

# ENROLLED BILL REPORT

AGENCY ENVIRONMENTAL QUALITY AGENCY	BILL NUMBER AB 3491
DEPARTMENT, BOARD OR COMMISSION STATE WATER RESOURCES CONTROL BOARD	AUTHOR Katz/Bates

### Bill Summary

AB 3491 proposes five significant changes in water law, all promoting voluntary transfers of water and water rights to increase efficiency in water use. The bill would:

1. direct all state agencies, particularly the Department of Water Resources and the State Water Board, to encourage voluntary transfers of water and water rights.
2. authorize local and regional water service agencies to sell water or water rights outside agency boundaries.
3. provide that water made available because of reclamation or conservation efforts may be sold.
4. authorize the Water Board to issue temporary change orders in response to an emergency need for change in place, purpose of use, or point of diversion.
5. encourage voluntary transfers of state water project entitlement water by project water supply contractors.

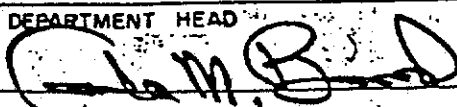
### Analysis

1. Existing law contains a policy declaration encouraging voluntary transfer of water and water rights. AB 3491 specifically directs DWR and the Water Board to encourage such transfers. Additionally, it directs the two agencies to provide technical assistance to identify water conservation measures which would make additional water available for transfer. Although the Water Board currently has a policy of providing such technical assistance when requested, enactment of this provision should result in greater understanding of the ease with which water rights can be transferred.

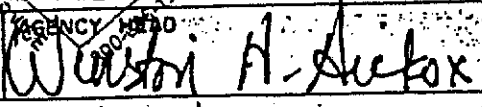
2. Under existing law, special districts which serve water are governed by various provisions regarding the service of water outside the district's boundaries. In some cases service is prohibited; in other cases, water must be deemed "surplus".

This bill would override all contrary provisions to authorize such service, providing the governing body deems the transfer to be in the best interest of its clients. Before exercising transfer authority, the governing body must establish criteria for making the "best interest" determination, and any commitment for water service must be consistent with such criteria.

RECOMMENDATION: SIGN

DEPARTMENT HEAD  


DATE  
8/24/82

AGENCY HEAD  


DATE  
8/24/82

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This bill would limit any transfer to a period of seven years. Enactment of this provision would increase the ability of water agencies to sell water at market prices outside of the district, without prejudicing the water needs of those persons served by the agency.

3. Under existing law, if water right holders cease or reduce use of water under an existing water right because of reclamation or conservation efforts, they do not forfeit the right. AB 3491 would make clear that saved water can be transferred. Although existing law allows these transfers, enactment of this provision would eliminate any uncertainty concerning this matter, and provide greater incentives for transfers.
4. Under existing law, the Water Board is authorized to issue urgency water right permits on an ex parte basis. An urgency permit may be issued for a period not to exceed six months, but only after the Board has determined there is water available at the proposed point of diversion, and has consulted the Department of Fish and Game to ensure there will be no unreasonable harm to fish, wildlife or other instream beneficial uses.

There is no provision under existing law for the Board to approve urgency changes in place of use or purpose of use of water rights. AB 3491 would authorize issuance of temporary change orders, where a permittee or licensee has an urgent need under emergency conditions. The same criteria governing Board authority to issue temporary permits would be applicable. Additionally, the bill would require that instream uses be considered before an urgency permit or change is allowed. The Board would be allowed to charge a fee to cover the reasonable costs incurred in administering this section.

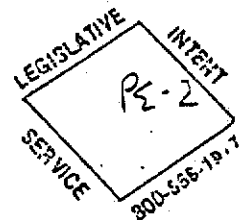
5. There is no existing legislative policy encouraging voluntary transfer of surplus state water project water by project contractors. AB 3491 would establish such a policy, declare that the policy implements the rule of reasonableness contained in the Constitution, and require DWR to establish guidelines to implement the policy. The guidelines must include the principle that such transfers not financially impair the project, nor increase the total of all annual entitlements to state water in any given year.

The costs caused the Water Board by this bill will be recouped through a fee system. See #4 above.

#### Reasons for Recommended Position

The SWRCB supports AB 3491 for the following reasons:

- o The provisions of AB 3491 are designed either to encourage or facilitate market transfers of water, which was urged by the Governor's Commission to Review California Water Rights Law.
- o Enactment of this bill would result in more efficient use of water.



## LEGISLATIVE INTENT SERVICE

712 Main Street, Woodland, CA 95695  
(800) 666-1917 • (916) 441-7959 • Fax: (530) 668-5866

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### DECLARATION OF DOROTHY H. THOMSON

I, Dorothy H. Thomson, declare:

I am an attorney licensed to practice in California, State Bar #099566, and a Director of the Legislative Intent Service, a California Partnership specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 3491 of 1982. Assembly Bill 3491 was approved by the Legislature and was enacted as Chapter 867 of the Statutes of 1982.


The following list identifies all documents obtained by the staff of Legislative Intent Service on Assembly Bill 3491 of 1982. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service. In compiling this collection, the staff of Legislative Intent Service operated under directions to locate and obtain all available material on the bill.

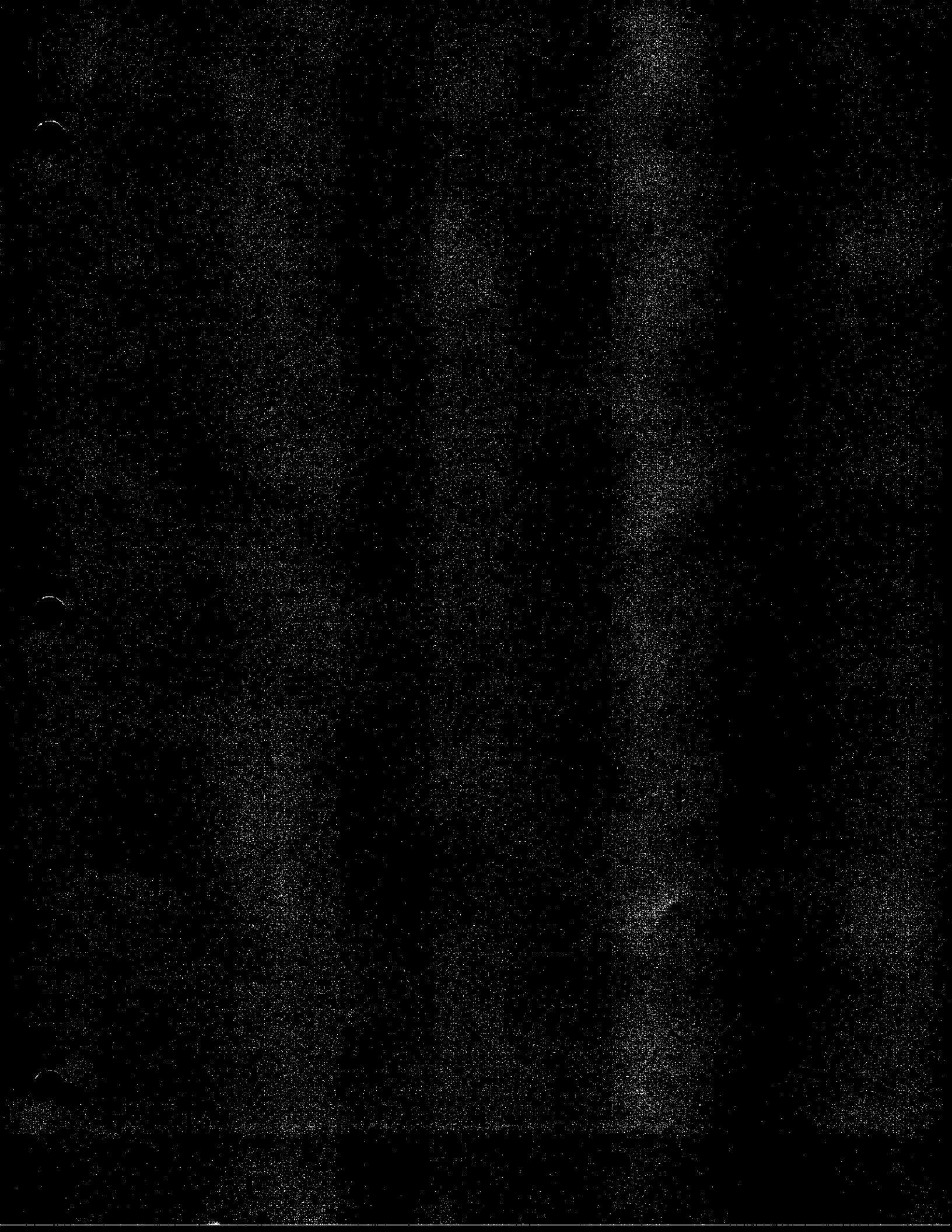
#### ASSEMBLY BILL 3491 OF 1982:

1. All versions of Assembly Bill 3491 (Katz-1982);
2. Procedural history of Assembly Bill 3491 from the 1981-82 Assembly Final History;
3. Analysis of Assembly Bill 3491 prepared for the Assembly Committee on Water, Parks, and Wildlife;
4. Analysis of Assembly Bill 3491 prepared for the Assembly Committee on Ways and Means;
5. Third Reading analysis of Assembly Bill 3491 prepared by the Assembly Office of Research;
6. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 3491;

7. Analysis of Assembly Bill 3491 prepared for the Senate Committee on Agriculture and Water Resources;
8. Analysis Assembly Bill 3491 prepared by the Legislative Analyst;
9. Third Reading analysis of Assembly Bill 3491 prepared by the Senate Democratic Caucus;
10. Third Reading analysis of Assembly Bill 3491 prepared by the Senate Republican Caucus;
11. Concurrence in Senate Amendments analysis of Assembly Bill 3491 prepared by the Assembly Office of Research;
12. Legislative Counsel's Rule 26.5 analysis of Assembly Bill 3491;
13. Material from the legislative bill file of Assembly member Katz on Assembly Bill 3491;
14. Report entitled "A Market Approach to Water Allocation," prepared by the Assembly Office of Research and submitted to the Assembly on February 23, 1982;
15. Material on water marketing studies and proposals from the file of Assemblyman Katz, 1981;
16. Material from Assemblyman Katz, post-enactment of Assembly Bill 3491;
17. Post-enrollment documents regarding Assembly Bill 3491;
18. Material from the file of the Department of Finance on Assembly Bill 3491;
19. Water Trading Free Market Benefits for Exporters and Importers, prepared by Assembly Office of Research.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of January, 1998 at Woodland, California.

  
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DOROTHY H. THOMSON



# BILL ANALYSIS

ENVIRONMENTAL AFFAIRS ASSEMBLY property of ENVIRONMENTAL QUALITY AGENCY  
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DEPARTMENT State Water Resources Control Board	AUTHOR Peace	BILL NUMBER AB 2542
SPONSORED BY	RELATED BILLS OFFICE	DATE LAST AMENDED May 9, 1984

## BILL SUMMARY

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As amended, AB 2542 would achieve the result intended by the author. These amendments substantially meet the concerns raised by the State Water Board in its earlier analysis.

### ANALYSIS

The original language of AB 2542 would have impeded rather than promoted the transfer of conserved water by Imperial Irrigation District. Since this result was inconsistent with the author's stated intent, he amended the bill so the language would carry out his intent.

However, the addition of "the United States" as a third party which must be a party to any transfer agreement is an unnecessary change in the bill. This language would give the United States Bureau of Reclamation superior bargaining power in a situation where the water transfer would likely be between two non-federal entities.

Although the federal government controls the flow of the Colorado River and its cooperation would be required to complete a transfer, giving the United States veto power over the terms of transfer agreement would be unnecessary.

Finally, the State Water Board must restate the fact that any transfer of conserved water by IID may take place today under existing law.

### FISCAL IMPACT

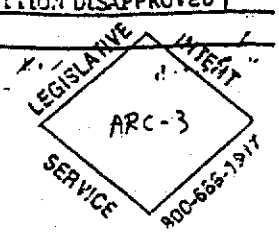
As amended, AB 2542 would impose no costs upon the Water Board.

### REASONS FOR RECOMMENDED POSITION

The State Water Resources Control Board supports AB 2542 for the following reasons:

- o The language of the bill would allow the author's intent to be implemented.
- o There is a potential 438,000 acre-foot of water which could be conserved annually by IID if they have economic incentive for doing so. This bill helps provide that incentive.

POSITION		SUPPORT		Governor's Office use	
C. G. ...		6/1/84		POSITION NOTED	
DEPARTMENT DIRECTOR		DATE		POSITION APPROVED <input checked="" type="checkbox"/>	
C. ...		6/12/84		POSITION DISAPPROVED	
AGENCY SECRETARY		DATE			



OFFICE OF ENVIRONMENTAL AFFAIRS

ENVIRONMENTAL  
QUALITY AGENCY

**BILL ANALYSIS RECEIVED**

DEPARTMENT State Water Resources Control Board	LEGISLATIVE OFFICE Peace	AUTHOR Peace	BILL NUMBER AB 2542
SPONSORED BY 84 APR 17 11:47		RELATED BILLS	DATE LAST AMENDED Original

**BILL SUMMARY**

Existing law provides that no forfeiture of an appropriative water right shall occur when the appropriator fails to use water because of water conservation efforts. AB 2542 would provide that when conservation within the Imperial Irrigation District results in reduced water use, the water conserved shall not be forfeited. Additionally, the bill provides that the right to use the conserved water shall be retained by IID, and shall not be diminished by any sale or transfer.

ANALYSIS

During the past few years numerous parties have urged that there are substantial opportunities for water conservation within Imperial Irrigation District (IID) which should be pursued. The Department of Water Resources has identified an estimated 436,000 acre-feet of water which could be conserved through the use of reasonable conservation efforts by IID.

Some groups have asserted that water conservation within IID is a way to make more water available to Southern California at a cost far lower than the cost of constructing new water projects. Many of the property owners bordering the Salton Sea urge that IID should increase water conservation efforts in order to reduce irrigation return flow into the Salton Sea and thereby alleviate flooding of surrounding land.

In December 1983, the Board completed a hearing on allegations of waste and unreasonable use of water by IID, but has not yet issued a decision. Several parties who spoke at the Board hearing expressed concern that reduced use of water within IID due to water conservation measures may result in a partial forfeiture of water rights due to non-use. These parties allege that such a forfeiture eventually would harm water users within the district if salinity in the Colorado River continues to increase, which would result in district farmers needing more water for leaching purposes. Some IID water users have also expressed the opinion that any water conserved through conservation should remain in the district for use in geothermal development or irrigation of additional acreage.

POSITION	SUPPORT, IF AMENDED		Governor's Office use	
<i>William W. Higgins</i>	<i>4/15/84</i>	<i>Christine Marshall</i>	<i>4/17/84</i>	POSITION NOTED
DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE	POSITION APPROVED <input checked="" type="checkbox"/>
				POSITION DISAPPROVED

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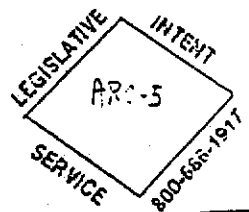
Existing law provides that no forfeiture of an appropriative water right shall occur where the appropriator fails to use water because of water conservation efforts. However, the Colorado River is an interstate water supply rather than a purely intrastate source, and rights to divert Colorado River water are subject to control by the Secretary of the Interior, rather than being directly controlled by California's appropriative rights system. These factors, combined with the serious concern of IID water users over forfeiture of water rights, justify a statute which makes the policy of existing law specifically applicable to water conservation within IID.

The second sentence of the proposed statute provides that the right to use water within IID shall not be diminished by any lease, exchange, sale, or other transfer of the water to any other Colorado River water user. The general rule under existing law is that water resulting from conservation may be sold, leased, or otherwise transferred. The Water Board believes the author's intent is to specifically state IID's authority to transfer conserved water, parallel to provisions of existing law.

Unlike existing law, however, the proposed statute may impede rather than promote the transfer of water saved within IID to other water users. The statement that the right to use water conserved within IID shall be retained within the district and "shall not be diminished by any lease, exchange, sale or other transfer" appears to prevent the district from entering into any type of enforceable lease, exchange or transfer whatsoever since any such arrangement would necessarily limit or "diminish" the district's rights.

This type of limitation would make it very difficult for the district to find any outside party willing to finance conservation measures within IID since it would not receive an enforceable right (even of a contractual nature) in exchange. Such a situation would be contrary to the interests of the district, the interests of other potential users of the conserved water, and the interests of the state in promoting the maximum beneficial use of available water.

Assuming that the intent is to protect IID's underlying water right while at the same time encouraging the leasing of the use of the water outside of IID for a term of years, the language of AB 2542 should be amended. Such an amendment should recite an affirmative grant of authority to IID to enter into such a lease, sale, exchange or transfer, coupled with a declaration that such a transaction shall not result in IID's loss -- through alienation forfeiture, or otherwise -- of the primary right. It might be appropriate to include a limitation on the term of years for which any lease could be made.





Section 2 of AB 2542 is a declaration of legislative intent which would not be codified. The declaration states that enactment of Water Code Section 1012 is intended to clarify and make specific existing California law in regard to water conservation measures which may be taken within the Imperial Valley. The declaration also states that the Legislature does not intend to alter the relationship of state and federal law as each may apply to the distribution and use of Colorado River water. This provision was apparently added to reduce the possibility that the proposed statute would be found to be in conflict with federal law.

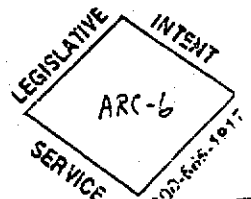
FISCAL IMPACT

Enactment of AB 2542 would not impose substantial new costs upon the State Water Board. If IID did initiate a water transfer, the Water Board would likely be called upon to approve the change of place of use petition. This kind of activity is already budgeted for.

REASONS FOR RECOMMENDED POSITION

The SWRCB supports AB 2542 for the following reasons:

- o The Water Board supports legislation that would promote water conservation, particularly where there is a potential of 438,000 acre-feet of water that could be conserved annually.
- o The Water Board's proposed amendment would encourage the transfer of conserved water, as compared to the existing language which could be interpreted to discourage such a transfer.



# BILL ANALYSIS

RESOURCES

DEPARTMENT WATER RESOURCES	AUTHOR Peace	BILL NUMBER AB 2542
SPONSORED BY	RELATED BILLS	DATE LAST AMENDED

## BILL SUMMARY AND ISSUES

This bill specifies that the Imperial Irrigation District (IID) would not lose its water rights as a result of water conservation measures or sale of conserved water to another Colorado River user.

## ANALYSIS

### A. Specific Findings:

#### 1. History and Sponsorship

This bill was drafted by the Department of Water Resources' staff. It was among the legislative proposals which the Department was considering earlier in the year. After discussing the proposal with various interested parties, including legislative staff and the Colorado River Board staff, we decided not to introduce the bill. There was virtually no interest expressed in clarifying IID's water rights at this time. However, Assemblyman Peace obtained a draft of the proposal and introduced it.

#### 2. Existing Law

Under existing law an appropriative water right may be lost in part or entirely if the water is not put to beneficial use for a period of five years. However, Water Code Section 1011 provides that where a person fails to use all or part of the water because of water conservation efforts, the right is not lost. Furthermore, the salvaged water may be sold or transferred.

#### 3. Changes In Law Provided by This Bill

This bill is largely declaratory of existing law. It provides that water conservation efforts within the IID will not result in forfeiture or diminution of the water rights of the IID. Federal law controls allocation of the waters of the main stem of the Colorado River, and the bill declares that it is not intended to affect existing State-Federal relationships.

#### 4. Discussion

John Elmore, a farmer within the IID, alleged that practices of the IID were wasting water in violation of State law. He requested that the DWR and the State Water Resources Control Board take steps to prevent the waste. The Department investigated his allegations and in a report dated December, 1981, found

ANALYZED BY: John Kramer, Office of the Director

POSITION	NEUTRAL		
DEPARTMENT DIRECTOR	DATE	AGENCY SECRETARY	DATE
<i>[Signature]</i>	3-6-84	HAROLD F. WARAAS	MAR 9 1984

Governor's office use	
Position noted	
Position approved	<input checked="" type="checkbox"/>
Position disapproved	
by: <i>[Signature]</i>	DATE: 3/16/84

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HAROLD F. WARAAS  
MAR 9 1984

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that up to 438,000 acre-feet of water could be salvaged. Mr. Elmore's allegations are currently before the State Water Resources Control Board which has held two sessions of hearings in El Centro.

The Department's report on its investigation of Mr. Elmore's allegations points out that one use for salvaged water would be an exchange with the Metropolitan Water District of Southern California. This exchange would involve an arrangement whereby MWD would pay for some of the water conservation measures in IID (e.g., canal lining) and would purchase the salvaged water. This scheme involves some complex legal and institutional problems which would have to be worked out. AB 2542 may be of some help in working out the scheme, by assuaging fears that IID would lose its rights to the salvaged water.

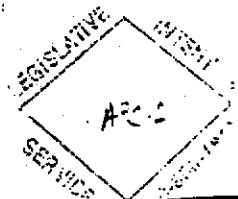
**B. FINANCIAL EFFECT:**

This bill will not result in any costs or savings to State or local government.

**C. REASON FOR POSITION:**

The Department thought that a bill clarifying IID's rights may be helpful, but there is no interest in pursuing this approach. If the Department supported or opposed this bill, its position might suggest to others hidden agendas which we do not have.

The bill is not legally necessary. It may be more desirable to amend this bill into a resolution requesting Colorado River users to cooperate in salvaging water within IID.



# LEGISLATIVE INTENT SERVICE

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## DECLARATION OF FILOMENA M. YEROSHEK

I, Filomena M. Yeroshek, declare:

I am an attorney licensed to practice before the courts of the State of California, State Bar No. 125625, and am employed by Legislative Intent Service, a California Partnership specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 2542 of 1984. Assembly Bill 2542 was approved by the Legislature and was enacted as Chapter 429 of the Statutes of 1984.

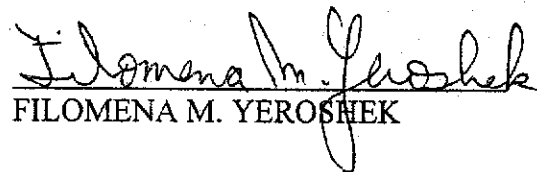
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2. Procedural history of Assembly Bill 2542 from the 1983-84 Assembly Final History;
3. Two analyses of Assembly Bill 2542 prepared for the Assembly Committee on Water, Parks, and Wildlife;
4. Material from the legislative bill file of the Assembly Committee on Water, Parks, and Wildlife on Assembly Bill 2542;
5. Third Reading analysis of Assembly Bill 2542 prepared by the Assembly Office of Research;
6. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 2542;

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8. Third Reading analysis of Assembly Bill 2542 prepared by the Senate Democratic Caucus;
9. Document from the legislative bill file of the Senate Democratic Caucus on Assembly Bill 2542;
10. Third Reading analysis of Assembly Bill 2542 prepared by the Senate Republican Caucus;
11. Post-enrollment documents regarding Assembly Bill 2542;
12. District Report entitled "Investigation Under California Water Code Section 275 of Use of Water by Imperial Irrigation District," prepared by the Department of Water Resources, December 1981.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of January 1998 at Woodland, California.

  
FILOMENA M. YEROSHEK