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The Role of Water Retailers in Furnishing Reclaimed Water: SB 788 (Dills) and the Service Duplication Act

Assembly Committee on Utilities and Commerce

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ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE

**THE ROLE OF WATER RETAILERS
in
FURNISHING RECLAIMED WATER:**

**SB 778 (DILLS)
and the
SERVICE DUPLICATION ACT**



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GOLDEN GATE UNIVERSITY

October 21, 1993
Museum of Science and Industry
Los Angeles, California

CHAIRWOMAN: ASSEMBLYWOMAN GWEN MOORE
William Julian Consultant
Yvonne Wilson, Committee Secretary

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INTERIM HEARING

on

The Role of Water Retailers in Furnishing Reclaimed Water:
SB 778 (Dills) and the Service Duplication Act

October 21, 1993
Los Angeles Museum of Science and Industry

2:00 p.m.
Seminar Room

AGENDA

I. Opening Remarks

Assemblywoman Gwen Moore

II. Testimony

Gordon Cologne, California Water Re-Use Association

Mike Dillon, Legislative Representative
California Association of Sanitation Agencies (CASA)

Jim Stahl, Assistant General Manager
Los Angeles County Sanitation Districts

Joe Young, Vice-President of Southern California Water Company
Michael Whitehead, President of San Gabriel Valley Water Company
representing California Water Association (CWA)

Dave Williams, Manager of Support Services East Bay MUD
Ed Biederman, Manager Walnut Valley Water District
representing Association of California Water Agencies (ACWA)

P. Gregory Conlon, Commissioner
California Public Utilities Commission

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INTERIM HEARING

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The Role of Water Retailers in Furnishing Reclaimed Water:
SB 778 (Dills) and the Service Duplication Act



October 21, 1993
Los Angeles Museum of Science and Industry

2:00 p.m.
Seminar Room

BACKGROUND

This hearing addresses issues raised by Senate Bill 778, authored by Senator Dills. SB 778 proposes to amend the Service Duplication Act, Public Utilities Code §§ 1501 and following, to limit its applicability where reclaimed water service is provided by a third party within the service area of an investor-owned or public water retailer. The Service Duplication Act (SDA) provides a damage remedy for any public or investor-owned water purveyor against another agency which duplicates water service, or provides competing facilities within the geographic service area served by the utility.

SB 778 addresses a specific scenario -- where a water reclaimer proposes to use its reclaimed water for its own purposes and not for sale to a third party. As amended April 12, 1993, it proposed to exempt such "self-use" from damage liability. But the issues it raises are broader than the specific dispute which gave rise to the bill.

The Committee would like to explore an apparently intractable conflict among state policies. On the one hand, there is the policy against the unreasonable use or waste of water, which has found expression in a number of laws promoting the use of reclaimed water as a substitute for potable water. The state is committed to an ambitious program of expanded use of reclaimed water in a variety of scenarios, essentially doubling its production and application to beneficial use from current levels by the turn of the century. A recent study by the Water Reuse Association¹ (September 1993) estimates that the rate of reclaimed water usage in California

¹ Summary Tables from the Study are attached as Appendix A.



increased by nearly 44 % between 1990 and 1993 (to 380,000 acre feet per year or AFY), and forecasts a threefold increase (to over 1 million acre feet annually) by the year 2000. (An acre foot is the amount of water needed to cover one acre a foot deep, approximately 325,000 gallons.)

On the other hand, the state has induced substantial private and public investment in facilities for the provision of retail water service for domestic, industrial, commercial agricultural and irrigation purposes, in part through a statutory guarantee of the integrity of the water utility's geographic market.² The purpose of this guarantee is to optimize the use of the investment in water delivery facilities dedicated to public use by avoiding duplication of water service and facilities, or to minimize the economic loss to the utility and/or the utility's other ratepayers caused by stranding or underutilizing the existing water resources and transport facilities of the utility. The guarantee applies to both investor-owned and public retailers.

The application of reclaimed water to a place of use within a retail service area has been held by a trial court to be the sort of "service duplication" proscribed by the SDA. Adding substantial damages to the cost of treatment and transport of reclaimed water could inhibit reclaimed water development and use. However, reclaimed water cannot be mixed with potable water and must be transported to the place of use in separate facilities.³ To use reclaimed water appears to require facility duplication and (potentially) duplicative and excessive investment.

The real question may very well be how to use reclaimed water at the least over-all cost, or -- put another way -- how to maximize the value of the use to which the reclaimed water is put. Answering this question requires defining the role of the water retailers in identifying and delivering reclaimed water to high value uses and in minimizing the cost of transport. Water retailers

² The SDA applies its protection to the opportunity to provide service to all customers in a geographic area. Specifically it applies "whenever a political subdivision ... provides or extends [water] service to any service area of a private utility with the same type of service." PU Code § 1503. The term service area is defined as an area in which "facilities have been dedicated to public use and in which ... the utility is required to render service." PU Code § 1502(b). The term type of service is defined as various types of retail end uses, "...among other things, domestic, commercial, industrial, fire protection, wholesale or irrigation service." PU Code § 1502(e).

³ The California Water Resources Control Board (SWRCB) determines the cost effectiveness of investments in reclaimed water facilities for the purpose of making Clean Water Bond Act loans. Its determination is made by calculating the present value of the cost per acre foot, and comparing it with the cost of incremental potable water (freshwater) supply to the area to be served with reclaimed water. Transport costs are not included in this calculation. SWRCB, Office of Water Recycling, "Background Information on Economic Analysis of Reclamation Projects" (April 1992).

are in the business of serving water for beneficial use, and know their customers and their needs. Retailers may be better able to find the optimal use for reclaimed water in their service area than a provider who is primarily in the business of water treatment.

How large a problem does the SDA pose for expansion of reclaimed water utilization ?

The Water Reuse study describes several uses of reclaimed water which are not specifically identified in the SDA. Groundwater recharge, the creation of saltwater intrusion barriers and "environmental" water (restoration of marsh or wetland habitats) make up 46 % of the uses of reclaimed water in 1995 (302,000 of 654,000.AFY) Utility "types of service" under the SDA (industrial, irrigation, landscaping) make up the remainder of the uses of reclaimed water. Where the entity providing reclaimed water is also the retail water provider in the service area (in many municipal settings), the SDA does not come into play. The SDA does not come into play in settings such as the Monterey County Regional Wastewater Facility where the reclaimed water is being used for agricultural irrigation in areas where there is no existing utility service.

Where the SDA is potentially significant is in urban settings such as Los Angeles where there are large volumes of potentially reclaimable water and a number of retailers, both public and private, with potential high value applications for that water. Water reclaimers in Los Angeles have adopted different approaches to their dealings with water retailers. Los Angeles County Sanitation Districts, the co-sponsor of SB 778, have furnished reclaimed water at retail (sparking the litigation that gave rise to SB 778), and have moved aggressively to identify and exploit opportunities for self-use. Central Basin MWD, on the other hand, has entered into agreements to sell reclaimed water to retailers for resale. This voluntary approach may be a model for helping to define an appropriate relationship between reclaimer and retailer.

The provision of reclaimed water service by public agencies entails additional costs of treatment and additional costs for transportation facilities. Clearly the revenues received from the provision of reclaimed water service should cover those costs where appropriate. The public agencies are also experiencing a change in the composition of their revenue streams, as property taxes are diverted to other governmental entities and are replaced by fees. Reclaimers have a strong interest in maximizing their revenues from any such sale.

The substantial investments associated with tertiary water treatment, as well as with new transport facilities makes it unlikely that public agencies or investor-owned utilities will commit the capital on a speculative basis. The Public Utilities Commission (CPUC) has not been particularly sensitive to the economics of water conservation or new water supply. SB 129 (Kelley) directs the CPUC to develop expedited procedures for authorizing and pricing reclaimed water service by investor-owned utilities.

QUESTIONS OF INTEREST TO THE COMMITTEE

- 1) Who is responsible for producing reclaimed water and what are the plans for expanded production in California ? What are the limiting factors for production of reclaimed water ? What are the costs of reclaimed water ? How do the costs of reclamation (as distinguished from transportation) compare with other new sources of supply ?**
- 2) To what extent are the identities of water reclaimers (sanitation agencies) different from the identities of water retailers serving the area where reclaimed water is to applied ? How frequently does a Service Duplication Act conflict occur between a water reclaimer and a water retailer ? As reclaimed water service expands, how frequently will such conflicts occur?**
- 3) To what extent is the economic loss avoided or lessened by requiring the reclaimed water provider to offer the reclaimed water for sale to the utility for resale ? To what extent is the use of reclaimed water optimized by requiring the reclaimed water provider to offer the reclaimed water for sale to the utility for resale ? What should the price be ? If the utility refuses to buy, what should be the recourse of the provider ?**
- 4) Should the revenues of providers from the sale of reclaimed water for resale be maximized as an additional source of income to support general water treatment costs as well as the added cost of reclamation ?**
- 5) In addition to an intelligent plan for implementing SB 129, what changes in regulatory programs at the CPUC would facilitate entry of investor-owned utilities into the reclaimed water business ?**

Table 6. WATER REUSE CATEGORIES BY REGIONS

Region 1. North Coast--Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	13,040	13,890	15,890	15,890	15,890
Environmental	358	358	6,108	6,108	6,108
Landscape	794	1,344	1,944	1,944	1,944
Total	14,192	15,592	23,942	23,942	23,942

Region 2. San Francisco Bay--Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	1,320	2,500	10,080	18,310	18,710
Environmental	11,200	11,200	11,400	11,400	5,800
Industrial	1	6,001	23,286	31,106	31,106
Landscape	3,391	17,528	46,159	71,040	73,790
Miscellaneous	5,840	6,690	13,921	18,863	18,863
Total	21,752	43,919	104,846	150,719	148,269

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Region 3. Central Coast--Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	9	20,409	25,409	30,409	30,410
Environmental	0	0	2,000	2,400	2,400
Landscape	708	2,608	3,808	3,808	5,008
Groundwater Recharge	11,698	12,098	12,098	12,098	9,732
Total	12,415	35,115	43,315	48,715	47,550

Region 4. Los Angeles--Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	2,381	14,274	15,024	21,180	21,785
Barrier	0	5,600	18,000	31,000	46,000
Environmental	15,375	22,380	22,383	22,385	27,085
Industrial	3,662	31,320	52,395	62,780	97,008
Landscape	16,906	54,622	77,482	106,130	124,873
Groundwater Recharge	50,700	99,100	113,400	135,400	135,400
Miscellaneous	193	200	238	246	38
Total	89,217	227,496	298,922	379,121	452,189

Table 6. WATER REUSE CATEGORIES BY REGIONS

(continued)

Region 5. Central Valley—Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	53,169	66,643	74,324	77,738	82,738
Environmental	1,456	1,456	1,656	1,656	1,656
Industrial	100	715	1,330	1,330	1,430
Landscape	78	758	903	1,370	1,420
Groundwater Recharge	11,932	13,531	15,363	17,090	21,522
Miscellaneous	0	895	895	895	895
Total	66,735	83,998	94,471	100,079	109,661

Region 6. Lahontan—Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	4,000	4,500	5,000	5,000	5,000
Landscape	0	1,000	1,000	1,000	3,000
Snow-making	0	698	808	1,088	1,120
Total	4,000	6,198	6,808	7,088	9,120

Region 7. Colorado River Basin—Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Landscape	2,521	14,742	20,742	28,742	33,743
Snow-making	727	2,719	5,219	8,219	9,179
Total	3,248	17,461	25,961	36,961	42,922

Region 8. Santa Ana—Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	5,000	5,000	5,000	5,000	1,000
Barrier	7,000	14,000	31,000	36,000	36,000
Environmental	775	775	775	775	550
Industrial	0	0	430	1,076	1,076
Landscape	15,841	26,715	51,094	85,304	101,934
Groundwater Recharge	110,000	118,430	214,235	257,041	291,041
Miscellaneous	16,855	22,503	44,804	57,078	63,578
Total	155,471	187,423	347,338	442,274	495,179

Table 6. WATER REUSE CATEGORIES BY REGIONS

(continued)

Region 9. San Diego—Cumulative Reuse By Category of Use

Category	Existing Reuse (AFY)	1995 (AFY)	2000 (AFY)	2010 (AFY)	"Ultimate" (AFY)
Agriculture	672	4,366	13,474	22,709	22,165
Environmental	0	36	2,736	2,736	3,736
Industrial	2,895	2,927	3,594	5,492	5,993
Landscape	6,873	20,781	55,425	84,698	102,968
Groundwater Recharge	0	710	11,710	15,740	24,740
Miscellaneous	6,282	8,032	8,032	8,345	8,345
Total	16,722	36,852	94,971	139,720	167,947

STATE GRAND TOTALS:	383,752	654,054	1,040,574	1,328,619	1,496,779
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Table 7. CUMULATIVE POTENTIAL WATER RECYCLING TOTAL BY CATEGORY OF REUSE

Category of Reuse	1995	2000	2010	"Ultimate"
Landscape	140,098	258,557	384,036	448,680
Industrial	40,862	80,934	101,683	136,412
Agricultural	131,582	164,201	196,236	197,698
Groundwater Recharge	247,428	372,865	446,428	492,454
Seawater Intrusion Barrier	19,600	49,000	67,000	82,000
Environmental Uses	36,205	47,058	47,460	47,335
Miscellaneous Uses	38,279	67,959	85,776	92,200
Totals:	654,054	1,040,574	1,328,619	1,496,779

SENATE BILL

No. 778

Introduced by Senator Dills

March 3, 1993

An act to amend Section 1502 of, and to add Section 1507 to, the Public Utilities Code, relating to water service.

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Dills. Water service.

Existing law requires the payment of just compensation to a private or public entity when another entity, either public or private, provides or extends water service to a service area served by the first entity.

This bill would provide that these provisions do not apply to any entity's own private use of ~~potable or~~ reclaimed water, as defined.

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 1502 of the Public Utilities Code
2 is amended to read:
3 1502. (a) As used in this chapter, "political
4 subdivision" means a county, city and county, city,
5 municipal water district, county water district, irrigation
6 district, public utility district, or any other public
7 corporation.
8 (b) As used in this chapter, "service area" means an
9 area served by a privately owned public utility in which
10 the facilities have been dedicated to public use and in
11 which territory the utility is required to render service to
12 the public.

1 (c) As used in this chapter, "operating system" means
2 an integrated water system for the supply of water to a
3 service area of a privately owned public utility.
4 (d) As used in this chapter, "private utility" means a
5 privately owned public utility providing a water service.
6 (e) As used in this chapter, "type of service" means,
7 among other things, domestic, commercial, industrial,
8 fire protection, wholesale, or irrigation service.
9 (f) As used in this chapter, "reclaimed water" means
10 reclaimed water as defined in Section 13050 of the Water
11 Code.
12 (g) As used in this chapter, "private use" means an
13 entity's use of its own ~~potable water or~~ reclaimed water.
14 SEC. 2. Section 1507 is added to the Public Utilities
15 Code, to read:
16 1507. The provisions of this chapter shall not be
17 applicable to any entity's own private use of ~~potable and~~
18 ~~or~~ reclaimed water, whether or not that entity was
19 previously served with potable or reclaimed water.

Date of Hearing: July 12, 1993

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE

Gwen Moore, Chair

SB 778 (Dills) - As Amended: April 12, 1993

SUBJECT

Damages for the substitution of reclaimed water for potable water service provided by California Public Utilities Commission-regulated water utilities or other public retail water utilities.

DIGEST

Existing law:

- 1) The Service Duplication Act prohibits public agencies from providing water service to the retail customer of another water utility, either public or private, unless damages are paid for the loss of the customer.
- 2) Declares "that the use of potable domestic water for nonpotable uses including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water...if reclaimed water is available...." under specified conditions, including availability at a reasonable cost comparable to the cost of supplying potable domestic water.

This bill permits agencies to use reclaimed water at their own facilities without incurring the obligation to pay damages under the Service Duplication Act.

FISCAL EFFECT

Unknown.

COMMENTS

- 1) Under the impact of the drought and relentless population growth in California, the Legislature has established strong policy preference for the use of reclaimed water where appropriate and cost effective, and has established ambitious quantitative goals for the use reclaimed water by the Year 2000. Investor-owned water utilities regulated by the California Public Utilities Commission (CPUC) now serve potable water for industrial, landscaping and irrigation uses identified by the Legislature as appropriate for reclaimed water.

- continued -

SB 778

Page 1

State and federal law requires that reclaimed and potable water be strictly segregated. The provision of reclaimed water service therefore always requires additional facilities dedicated entirely to the provision of reclaimed water service. These facilities and the service are therefore incremental. The substitution of reclaimed for potable water entails additional investment for the separate dedicated facilities. The pricing of the service under traditional regulatory principles would require recovery of the cost of the new facilities.

- 2) This bill addresses a specific situation involving Los Angeles County Sanitation Districts (LACSD), who are major generators of reclaimed water. LACSD seek to use reclaimed water which they generate at other locations in Los Angeles County where they now irrigate or make industrial use of potable water served by investor-owned water utilities. This "self-use" of reclaimed water is cost effective and efficient they contend.

The specific situation which gave rise to the bill involves the use of LACSD reclaimed water at a LACSD landfill. Prior to the proposal to use reclaimed water, the landfill was served with potable water by an investor-owned utility. The investor-owned utility had made substantial investments in pipes and other facilities which would be idled (bypassed and stranded) through the construction and use of new reclaimed water facilities.

The opponents of the bill contend that permitting displacement of their service will have the effect of stranding their investment and causing rates for remaining customers to increase. They contend that existing facilities used to serve the customer seeking to substitute reclaimed water could be dedicated or otherwise re-engineered so as to be more efficient than the construction of a new facility, and that reclaimed water sold to them for resale can be effectively used.

- 3) The Service Duplication Act (Public Utilities Code Sections 1501 and following) is intended to protect the retail customer base of the entities, both public and private, which provide water service in California. These retail water purveyors are in a position to obtain reclaimed water and resell it to their retail customers. Entities which produce reclaimed water have an obligation to produce it under state law, but without the ability to deal with endusers, their options for making the most cost-effective use of reclaimed water are limited. Further, their ability to recover the cost of water treatment facilities through sales of reclaimed water may be limited if they are compelled to sell it at wholesale for resale by the provisions of the Service Duplication Act.

SUPPORT

County Sanitation Districts
of Los Angeles County
WaterRuse Association

OPPOSITION

Association of California
Water Agencies
San Gabriel Valley Water Assn.

- continued -

SUPPORT

California Association of
Sanitation Agencies
Monterey Regional Water
Pollution Control Agency
Central Marin Sanitation Agency
Las Virgenes Municipal
Water District
Rancho Santa Fee Community
Services District
Whispering Palms Community
Services District
Fairbanks Ranch Community
Services District
Lee Lake Water District
Central Contra Costa
Sanitary District
Town of Apple Valley
Leucadia County Water District
Carmel Area Wastewater District
Delta Diablo Sanitation District
City of Camarillo
Metropolitan Water District of
Southern California
Las Gallinas Valley Sanitary District
City of Culver City
City of Whittier
City of Walnut
City of El Monte
City of La Verne
Ross Valley Sanitary District
Union Sanitary District
Heal the Bay
Los Angeles County Board
of Supervisors

OPPOSITION

California Water Association
Southern California Water Company
Great Oaks Water Company
California Water Service Company
San Jose Water Company
Dominguez Water Corporation
Park Water Company
Fontana Water Company
Cucamonga County Water District
Valencia Water Company

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INTERIM HEARING
on
The Role of Water Retailers in Furnishing Reclaimed Water:
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October 21, 1993
Los Angeles Museum of Science and Industry

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Seminar Room

QUESTIONS OF INTEREST TO THE COMMITTEE

This hearing addresses issues raised by Senate Bill 778, authored by Senator Dills. SB 778 proposes to amend the Service Duplication Act, Public Utilities Code §§ 1501 and following, to limit its applicability where reclaimed water service is provided by a third party within the service area of an investor-owned or public water retailer.

The Committee would like to explore and hopefully resolve an apparent conflict among state policies. On the one hand, there is the policy against the unreasonable use or waste of water, which has found expression in a number of laws promoting the use of reclaimed water as a substitute for potable water. The state is committed to an ambitious program of expanded use of reclaimed water in a variety of scenarios, essentially doubling its production and application to beneficial use from current levels by the turn of the century. The use of reclaimed water requires, among other things, construction of transport facilities from the reclamation facility to the place of use.

On the other hand, the state has induced substantial private and public investment in facilities for the provision of retail domestic water, in part through a statutory guarantee of the integrity of the water utility's geographic market. The Service Duplication Act (SDA) provides a damage remedy for any public or investor-owned water purveyor against another agency which duplicates water service, or provides competing facilities, and characterizing such competition as a "taking" with constitutional overtones. The service and facilities for transporting reclaimed water to a place of use within a retail service area appear to be precisely the sort of "service duplication" proscribed by the SDA.

- 1) Who is responsible for producing reclaimed water and what are the plans for expanded production in California ? What are the limiting factors for production of reclaimed water ? What are the costs of reclaimed water ? How do the costs of reclamation (as distinguished from transportation) compare with other new sources of supply ?
- 2) To what extent is the identity of water reclaimers (sanitation agencies) different from the identity of water retailers serving the area where

reclaimed water is to applied ? How frequently does a Service Duplication Act conflict occur between a water reclaimer and a water retailer ? As reclaimed water service expands, how frequently will such conflicts occur?

One rationale for the SDA is to minimize the economic loss to the utility and/or the utility's other ratepayers caused by stranding or underutilizing the existing water resources and transport facilities of the utility. Water retailers are in the business of serving water for beneficial use, and know their customers and their needs. Retailers may be better able to find the optimal use for reclaimed water in their service area than a provider who is primarily in the business of water treatment.

3) To what extent is the economic loss avoided or lessened by requiring the reclaimed water provider to offer the reclaimed water for sale to the utility for resale ? To what extent is the use of reclaimed water optimized by requiring the reclaimed water provider to offer the reclaimed water for sale to the utility for resale ? What should the price be ? If the utility refuses to buy, what should be the recourse of the provider ?

The provision of reclaimed water service by public agencies entails additional costs of treatment and additional costs for transportation facilities. Clearly the revenues received from the provision of reclaimed water service should cover those costs where appropriate. The public agencies are also experiencing a change in the composition of their revenue streams, as property taxes are diverted to other governmental entities and are replaced by fees.

4) Should the revenues of providers from the sale of reclaimed water for resale be maximized as an additional source of income to support general water treatment costs as well as the added cost of reclamation ?

The substantial investments associated with tertiary water treatment, as well as with new transport facilities makes it unlikely that public agencies or investor-owned utilities will commit the capital on a speculative basis. The Public Utilities Commission (CPUC) has not been particularly sensitive to the economics of water conservation or new water supply. SB 129 (Kelley) directs the CPUC to develop expedited procedures for authorizing and pricing reclaimed water service by investor-owned utilities.

5) In addition to an intelligent plan for implementing SB 129, what changes in regulatory programs at the CPUC would facilitate entry of investor-owned utilities into the reclaimed water business ?

Informational Hearing
Assembly Utilities and Commerce Committee
October 21, 1993

**The Role of Water Retailer in Furnishing Reclaimed Water:
SB 778 (Dills) and the Service Duplication Act**

CHAIRWOMAN GWEN MOORE: I want to thank you for attending this hearing on the role of water utilities in promoting the use of reclaimed water in California.

We are attempting to reconcile two important elements of our state policy on water. We want to avoid wasting water by recycling or reusing it where it is safe and economical to do so, and we want security for the and commitments we have made to provide water service.

How do we accomplish these two objectives while making appropriate and necessary water service available to all consumers at the lowest possible cost?

This interim hearing is about Senate Bill 778, authored by Senator Dills. The bill raises a question of whether a developer of reclaimed water can use that resource in the service area of an existing utility without paying damages. The sponsors propose in the bill's current form that the developer be permitted to use reclaimed water for its own purposes without incurring liability. Is this consistent with a least-cost approach to water service?

The Governor recently signed SB 129, authored by [Senator] Dave Kelley, that gives the PUC [Public Utilities Commission] an opportunity to contribute to the cost effective development of

reclaimed water. Investor-own utilities will play a role in finding appropriate uses for reclaimed water; that is marketing it.

The commission (PUC) has an opportunity to define the role of investor-own retailers and structure the marketing of reclaimed water if it responds creatively. We hope to be informed on these subjects at this hearing so that we may contribute to the state's growing reclaimed water industry.

With that, I'd like to indicate that Senator Dills could not be with us. But in a letter to the Committee, he has authorized Mike Dillon to represent him, and Mike is at the table. Then, we will hear from Gordon Cologne and others in regard to the issue.

MR. MIKE DILLON: Madam Chair, Mike Dillon. If you would like to follow the agenda, that's fine with us and have Mr. Cologne go first.

CHAIRWOMAN MOORE: All right. We can do that. You're wearing two hats, I take it?

MR. DILLON: I just want to say, Madame Chair, that I met with Senator Dills yesterday afternoon. He is in Sacramento, and he said, sorry he could not be here. He has business up there for several days.

MR. GORDON COLOGNE: Madame Chair, Gordon Cologne. I'm speaking for WateReuse Association. I'm just going to talk today without reading any statement. But, I will prepare a letter and send it to the Committee so you will have our position on file.

WateReuse does support SB 778. I'd like to give you some background, if I may at this time.

I was in the Legislature in 1960 when we passed the \$1.75 billion bond issue to develop the State Water Project. At that time, we saw this project as solving the water problem of the State of California for 25 years. That was through our generation. We thought that was going to be enough.

Twenty five years have already passed. So, you're looking at the problem as we face it today. It's a new problem all together, and the aqueduct we built did not solve the problem. When I return to the Legislature to watch how you people are solving the problems today, I discovered we can't build any more dams. We can't build any more reservoirs for new water. We can't tap the rivers that are available for water resources. The Miller/Bradley Bill that just passed Congress is going to take 800,000 acre feet of water from the Central Valley project and use it for supplementing the water in the Delta. You're going to hear on the first of December of the Federal Fish and Wildlife asking for another 700,000 acre feet to a million acre feet to protect the endangered species in California.

Now, just to put these numbers in perspective, the City of Los Angeles just last year imported 700,000 acre feet of water to support the City of Los Angeles. So, we're talking now about taking not only 800,000 acre feet that the Central Valley project is going to lose, but we're talking about another 700,000 acre feet or the amount the City of Los Angeles would use to support these endangered species.

Now, this is a serious problem, and you have already recognized it when you set the parameters for us in the generating of

recycled water. At 700,000 acre feet, the amount of water which the City of Los Angeles would import, to be developed new water by the Year 2000 or one million by the Year 2010. This is a lot of water. But, we have taken this on seriously and are progressing very fast to develop this new source of water to supplement the water that's here. You have the figures before you; the particular project, you have them in your file already, so I'm not going to go through those. But, let me tell you that this is the only place you are going to get new water, and that is using your water twice. This is now technically possible.

We have the technology to clean this water up, and through tertiary treatment, we can bring it up to drinking water standard.

CHAIRWOMAN MOORE: You bring us to the bottom line. The concern is, as we create new water and we have existing systems that have been built on projections of certain utilizations of water, the Duplication Act was designed to give protection to water utilities or water purveyors on the basis of those projections. Clearly, when we were establishing it, it was more with the notion that another water company just couldn't exist in and move side by side. But, the intent behind that was to protect the investment that was being made on the basis of those projections of being able to provide services, and that obligation to serve that many had. To the extent that you find new water resources and the state, as I indicated in the opening statement, has a dual kind of policy. In the sense that we're encouraging the development and recognizing the need for new water, and on the other hand, we're trying to protect the existing

facilities. Somehow we got to find a middle ground to let both of those policies move forward. What I'm really interested in the testimony today is, how do we do that?

MR. COLOGNE: That's where I am at this point. Water conservation, the reuse of water, is essential. This is going to require the cooperation of not only the generators, but the retailers of waters.

Let me tell you, in most instances today they are working together. I would hope that you would examine the Central and Western Basin in Los Angeles, where there is a joint effort between the wholesalers and the retailers of water. Where they are sharing the cost of developing this new infrastructure that has to go in to supply these users, and then sharing in the profit, and this has been done. They worked out a beautiful arrangement, and it's a very complicated one, but it has been worked out and it can be done. This is aside from SB 778. How you work out that solution to force the parties to come together -- I don't know whether it's by arbitration or what -- but, it has to be done on a case-by-case basis. It's impossible, because it's so complex to do it on a statewide basis. In most instances, it's being done.

Now, we're talking about in SB 778 a specialized problem where the generator of recycled water cannot use it on their own premises. If you want to get technical, statutory language right now says, they can't use it for wash down their driveways. They can't use it for their own purposes on their plant. This goes a little further in that they are now denied the opportunity to use it on their landfill which is adjacent or nearly adjacent to their own site. We have to

bring these parties together to get them to realize the importance of water conservation and use it. To allow them to use potable water on a landfill is just unbelievable. Our constitution says that's a waste. Water Code Section 13550 says that's a waste. We have to get these parties together to realize the importance of not wasting potable water. Let me tell you, there is a good example of this.

If you go to the junk yards and collect parts of different automobiles and put them together so that you have a car you can now use, are you required to sell that car to an automobile dealer so he can sell it back to you? It's the same principle. When you generate recycled water, you ought to be able to put it to your own use.

CHAIRWOMAN MOORE: Well, it's not exactly the same principle, because we go back to the investments that have been made on the assumption that you're going to be the sole provider in a given area. I'm hearing your suggestion is one that there possibly needs to be some negotiations between the existing company and any new purveyor.

MR. COLOGNE: If you can tell me who is obstructing the process of bring these two parties together, I can give you a solution. But, I can't tell you right now whether it's the Los Angeles County Sanitation District or San Gabriel that's obstructing it. We sat down in good faith. They both had good arguments to us two years ago as to why they couldn't do it. But if I understand the PUC process, the investor-owned utilities are not going to suffer. They are going to get a return on their investment. The people who are going to suffer are the ratepayers who might have to pay a little more in their water

rates. But, these are the same ratepayers who are sending their sewage to the L.A. Sanitation District's collection agency for treatment. If they are going to make the the Sanitation District pay more for the treatment of their sewage and cannot recover any these costs, then they are the ones who are being shortsighted. But, I think you'll find that those people are not going to be interested in losing this valuable resource of water and maybe having to in turn ration their supply of water if they are not allowed to use this reclaimed water at no cost to the Sanitation District or at a minimal cost. Particularly when the Sanitation District puts in all the improvements so there is no further investment on the part of the [water] district.

I am not here to suggest that we should invade the process now where a monopoly is given to the water district to sell it. Our people, generally speaking, do not want to get into the retail business. They are there to generate recycled water and to get it into beneficial use.

CHAIRWOMAN MOORE: All right. Let's hear from Mr. Dillon.

MR. DILLON: Madame Chair, Mike Dillon, representing the California Association of Sanitation Agencies. Because of the lateness of the day and the number of people wanting to speak, I'll just highlight my remarks very briefly. They are before you in written form.

Our members have been reclaiming water for more than 30 years. We're hoping to help the Legislature reach the goal of recycling a million acre feet by the Year 2010. We are only a third of

the way there. There are a lot of barriers, so we're glad you're having the hearing today.

I would emphasize that Senator Dills' bill is very narrow in dealing just with this self-use of water on your own property, such as watering dust control, landscape, irrigation and so forth.

The one major point I would like to make are the first of several. We do not feel the Service Duplication Act was intended to apply to reclaimed water. It was passed back in 1965 when reclaimed water was in its infancy. It's my understanding that the State Water Resources Control Board at the trial down here presented statements to the fact that they felt despite the law that the Service Duplication Act was not intended to apply to reclaimed water.

CHAIRWOMAN MOORE: But, I think there are some principles that are set forth in the Act that speak to the impact that the reclaimed water would have on existing facilities, such as protecting the investments, which was part of what was stated in the Act in the first place. So to that extent, I think you must take the spirit of what was intended. While the manner in which reclaimed water is provided is certainly different, it's not a duplication of service, because it's a whole different water source. The impact nevertheless would be the same to the extent that you're competing and displacing water that normally they could count on selling by replacing it with the reclaimed water.

MR. DILLON: We think in some cases you may need to look at the stranded investment versus the greater public good. Again, getting back to the original intent of the law, at that time water was plentiful. It is our feeling that in most cases, Madame

Chair and Members, the water retailer is going to be able to sell that water to someone else. The Legislature has been involved in the last couple of years in getting legislation to help farmers free up water to be able to sell it to Southern California. If you have that greater need here, we find it very difficult to think a water company could not find other customers. In most cases the amount of water that's going to be displaced by us using reclaimed water on our own facilities is going to be pretty minimal. Even in a larger sense if you're talking about a major city, and parts of something else, we still don't think it's going to be that significant. Maybe in some unusual case, it could be, but we tend to think it's going to be pretty small as Mr. Stahl maybe telling you later.

In addition on the issue of dual piping, you're in a sense starting from scratch for reclaimed water. The agency has to set up a whole new system for delivering it. So, you're really only talking about the amount of water that they're going to be using if the agency starts using its own reclaimed water.

Specifically with respects to some of the questions raised, most of them are in writing. So, again to save time, I'll just skip over those and address another major issue in which we call the "chilling effect." Waste water facilities are extremely expensive to put in place. If the agency knows that they're going to be hassled or have to pay fees, there's going to be less of an incentive to develop these expensive facilities. If the retailer and the agency are unable to agree, the reclaimer only has three choices: Agree to the retailers' terms, supply the water directly to the customers and run the risk of facing suits -- as has happened in Los Angeles -- or just abandon the

project all together. We believe that as water reclamation becomes more widespread and you have cities, for example, instituting mandatory ordinances for landscaping and irrigation with reclaimed water, you're going to have more of these conflicts.

We would like to enter into cooperative relationships, but in some cases, to be honest with you, the other side holds all the cards. We've got a stacked deck. There's no incentives for them to engage into negotiations regarding price and so forth under the current law.

CHAIRWOMAN MOORE: I think that's probably the area, as I indicated before, that I'm willing to look at, because I do recognize this is a problem, and it is something that needs to be resolved. I think all will benefit if we can figure out a way to do it, and in a manner in which we don't leave a stranded investment on the part of the water utility, and that there is fairness in encouraging development, which means you have to be adequately compensated for whatever is being done.

MR. DILLON: We agree. I'll just conclude with, Madame Chair, that you have my written statement before you. But, I would emphasize in relating to the point that you just made that we're willing to make the investment to reclaim waste water to try to get to the goals that the Legislature has established, but we don't feel we should be penalized in the process, because we have major investments to protect. We also have paying customers as well that we need to worry about. Especially as our property taxes are being taken away as local public agencies, we hate to be hit twice.

Thank you, Madame Chair and Members.

CHAIRWOMAN MOORE: Let's hear from the next witness.

MR. JIM STAHL: Madame Chair and Members of the Committee, my name is Jim Stahl. I'm with the Los Angeles County Sanitation District. I'd like to in my presentation add some more specific details to what Judge Cologne and Mike Dillon have pointed out to you in regards to our particular approach on implementing reclaimed water systems.

I've given you a package. I'm certainly not going to read testimony to you. I will be submitting written testimony to you, like Judge Cologne. I have a package in front of you with maps, and I feel some pertinent tables and photographs that pertain to the issue.

Let me give you a quick overview of who we are. Even though our name is the Los Angeles County Sanitation District, we're really not an arm of county government. We are an enterprise special district. The first map shows our service area, and the colored portions of the county, we serve the eastern and southwestern portion of county; essentially everything outside of the City of Los Angeles. Also, we do serve small portions of the City of Los Angeles.

We provide sewage treatment for 79 cities in Los Angeles County. Each one of the mayors of those cities sits on our board of directors. The county unincorporated area is represented by the chair of the board of supervisors. Our directors and mayors are very proud of the extensive water reclamation program that we've established over the years. On the second plot -- and, I'll go through these kind of quickly considering the hour -- the second is Exhibit 2 is a little more simplified. The first one has a lot of black

lines on it. That represents some eleven hundred miles of trunk sewers that we operate. The geewhiz numbers of 50 pumping plants and 11 treatment plants. When you serve 5 million people, then obviously the numbers are going to be bigger.

Because all of our cities have banded together, it has allowed us to be able to develop an environmentally sound and very cost effective system for the treatment of sewage. On that second exhibit, what I have identified for you, and tried to pull out of the morass of information on the first one, identified by the blue triangles are the location of our water reclamation plants. You'll see in the bottom right hand corner, we start off all the way up in the cities in the northern part of the county, Lancaster and Palmdale. On the left hand side at the bottom shows the City of Santa Clarita, a very booming population, and we have two water reclamation plants there. Then, in the coastal plain itself, from the San Gabriel south, we have 5 water reclamation plants.

On the third exhibit that I have provided for you, those plants together right now produce about 180,000 acre feet of reclaimed water a year. This is water that meets unrestricted recreational reuse standards. Some of the strictest standards, if not the strictest in the United States. That's the good news. I think the unfortunate news is, we have been only been able to this point in time reuse about 33 percent., about 60,000 acre feet a year. As it shows on that diagram our water represents the water supply for a town of 300,000. So, we clearly are one of the largest promoters and providers of reclaimed water in the state.

The pie diagram shows you how that water is reused. I won't go through each one of those. But, you can see it's a variety of use patterns throughout L.A. County. It's sold through 17 contracts we have with various entities: municipal water districts, cities and other entities at over 200 sites. In fact, the number grows every day. Right now, I think it is up to about 227 different sites.

What I do want to point out to you, not only in the agenda and the back-up package that was given to us today, and Judge Cologne referred to it, is the unique contract was developed with the Central Basin Municipal Water District. I personally was involved in negotiating that with Mr. Atwater.

CHAIRWOMAN MOORE: Let me ask you a question so that I understand your chart. The wildlife, refuge and ground water recharge are not at issue. Right?

MR. STAHL: No. If you take that 62,000 acre feet a year, what I wanted to do is give you an overview of our program, and then, obviously get into, as you would say, the bottom line and the issue that is before us today and that is Senate Bill 778. I wanted to give you some specifics from the very thoughtful and provocative questions that you've asked in the October 7th letter. I think there were 13 questions and 5 categories. I'm here to answer each one of those. But, I wanted to give you some idea as an agency that serves 5 million people what we've tried to do over the last 30 years.

I would dare say in present worth, we've invested close to \$250 million in water reclamation facilities. I'm not going to name specific cities or areas, but we didn't have to go that way. We knew that in Southern California, we got to provide water for a dry land

and a desert area. As an investment our directors felt that's the way to go.

To answer your specific questions, what I've tried to do is just take that 62,000 acre feet that we used in 1992/93 -- that's actually reused -- and, 7 percent of it is used in a wildlife refuge and majority of that is in the Lancaster/Palmdale area. Sixteen percent for landscaping; 7 percent for agriculture throughout the county, some out in the Pomona area; a lot of it out in the Lancaster area; 7 percent industrial and 64 percent ground water recharge. Again, we sell these through these individual contracts. The most recent one would be the one we entered into with Central Basin. As Judge Cologne said, and I didn't attach this, but I would be happy to leave the details with you, Rich Atwater and I were able to work out something that I would simplisitically call "sharing the cost." We're charging them a very nominal amount of money in the early years, because they have a huge capital investment. What we will do in the later years is allow them to be able to deduct their expenses. What's remaining from the sale of the water and the subtraction of the expenses is what we will call "excess revenues," and we're going to split those down the middle in however that comes out. It is something that allows Central Basin to go out. We don't want to get into the retail business.

There have been instances where we've gotten into it because other people weren't selling the water. But, the fact of the matter is, Rich Atwater and Central Basin will then go out and negotiate with private water companies. Certainly San Gabriel Valley

Water Company is one of them on the Rio Hondo project and a number of other municipalities.

Another simple way to take a look at it in terms of our treatment plant itself, it seemed only appropriate that we don't have a hundred straws in the tank drawing out of it. There's one regional agency that we would deal with, and in this case it's West Basin as the wholesaler. We don't want to get into the distribution business. But, the one area, and this didn't enter into our discussions in that particular entity, but the one area which is extremely important to us is self-use. That's where Senate Bill 778 comes in. I've attached in the next photograph an aerial view of our San Jose Creek Water Reclamation plant, as well as Puente Hill landfill.

I apologize for the poor quality of this photograph. It was darker than we wanted it. So, I brought along a larger exhibit, which is over here on my left and your right.

What I would point out to you, and now we get into the specifics of SB 778 and the narrowly focussed language in that bill that relates to the fact that if an entity owns a water reclamation facility, which we clearly do here in our San Jose Creek plant, and to give you some idea where this is at, the freeway running down the middle that he's pointing out to you is the 605 freeway. To your right would be the south, and that's the Pomona Freeway running diagonally across. Our administration building, as well as the San Jose Creek Reclamation plant, is in the area where Dave is circling. This is a photograph about two years old. The plant has a capacity of 100 million gallons a day. So, that's the sewage from a million

people, and we are producing water that meets some restricted recreational reuse standards.

In 1971 when the first segment of the plant was built, we had to build a pipeline which is shown in orange. It's some five miles long. The pipeline was built to be able to get us to the spreading grounds, where the water is then spread for reuse. We also had to get it to a lined portion of the San Gabriel River, because the regulatory agencies didn't want all of the water going into the underground, so at some point in time they had to go to the lined portion. When we came along later and said, we'd like to be able to serve with our own reclaimed water the Point Hills landfill. We certainly entered into negotiations and discussions with the San Gabriel Valley Water Company over this issue. We were not able to reach a resolution. The matter did get to court. The judge, if I can paraphrase and I can certainly read directly from the judge's ruling, said that he realized that the ruling against us being able to do this was a hindrance, and it provided a hindrance to the furtherance of the reuse of reclaimed water. That, however, was not a matter for the judiciary, it was a matter for the Legislature.

In other words, his [the judge] feeling was that when the Service Duplication Act was drawn, as you so appropriately said Ms. Moore, the fact of the matter is that nobody was thinking about reclaimed water. Yet, he was looking at the language and said, it didn't provide for it. But, he realized also that it's something we have to address with the Legislature. Enter Senate Bill 778, because we want to and I think we've shown by deeds that we're willing to enter into contracts. Over the years, we have done that, and we want

to do more. But, the issue of self use seems one that we feel is necessary for our agency. We ask nothing more than what a private company would have. If we weren't the Sanitation District and if we were a private company and that was our property across the street, we wouldn't be in violation of the Service Duplication Act. In fact, in that yellow pipeline is the 1,800 feet pipeline we have built. It 36' inch diameter pipeline that we've built to serve water to the landfill. We are not serving it now. The only portion of the system that we've built is that pipeline. You may have heard to the contrary, but that's all we've built. Certainly we have plans for a system that would serve the entire landfill itself and the many acre feet that are required for irrigation, because we want to save that potable water. It's not our potable water. The water is going to go the San Gabriel Valley Water Company. What we have done in that regard is, again, build this pipeline.

ASSEMBLYWOMAN VIVIEN BRONSHVAG: Excuse me.

Was the pipeline underground or is it above ground?

MR. STAHL: It is an underground pipeline. One of the reasons why we built that pipeline is because at the same time that we were addressing reclaimed water, and we only want to cut the streets once, we were taking methane gas from that landfill over to our facility -- our administration building as well as the treatment plant -- to construct a central heating and cooling area that would rely upon landfill gas. When we built that pipeline the Gas Company never said to us, "Wait a second. We need for you to be able to sell us that gas, and we're going to mark it up in the pipeline. Then, when it gets back over to your building, we want you to buy it from

us." Th Gas Company dealt with us and said, we realize that by you doing this you're going to be able to release natural gas. There's always the issue of yes, they are a great big corporation. This is a pittance compared to what they have. I think the standard has been established that we ought to follow with reclaimed water.

There's an example that ought to be drawn here in terms of the percentage of water that San Gabriel Valley Water Company would use.

CHAIRWOMAN MOORE: I should tell you that there's a similar feeling by the gas and electric companies about companies that set up to provide those services. Unless they are a utility, they ought to be treated the same. They have raised that question as well. Maybe in your instance that is the case. Their reaction has been very similar to yours to homes and areas where people want to set up an individual systems. Their reaction has been exactly the same as the water company.

What is the cost and the capacity of the yellow line that you're describing?

MR. STAHL: That line represents about 20 percent of the project. The total project itself, when it's constructed, all of the pipe, pumping stations and everything at the landfill, when it's completed would be \$5 million. That would represent a \$5 million investment on our part. The pipeline itself would be sized to serve that entire landfill. Right now we use about 1,400 acre feet per year at the landfill. This has come up and you are certainly aware it, and that's one of the things that I wanted to address. The pipeline is also sized to be able to serve an adjacent property, Rose Hill Cemetery. Well,

you would say, "Well, I thought this was self use. What are we doing talking about Rose Hills?" We have stubbed it off. Not an extensive structure we're going to build over their infrastructure, but a stub off that Rose Hill will pick up. Right now Rose Hill owns water rights from the standpoint of ground water. They pump it up and have been using it for years. Not potable water from San Gabriel Valley Water Company. They simply came to us and said, "Look, we just want to replace the potable water that we're using from the ground, that we have the rights to, with reclaimed water. We're not going to displace any potable water that we're using in our administration building or any place else on our grounds that we have traditionally used from San Gabriel Valley Water Company." So, we entered into a separate agreement with them. They feel strongly about the fact that isn't a violation of the Service Duplication Act, and they have indemnified it. I want to let you know as you probably do is that the pipeline is also sized for that, to answer your question.

CHAIRWOMAN MOORE: You got to the second half of my question without me even taking you there. The real concern is what's to stop it from going further than Rose Hills and the property next to that, and then the next and the next, and pretty soon we have another little water company?

MR. STAHL: That's all it has been sized for. That is not our intention, and that's not what we've asked for in Senate Bill 778. If we need some sort of side bar agreement to that effect, that can be done. I say that to you right here that is exactly our intention. The whole focus was to be able to provide it to the landfill.

It was Rose Hills that came to us and said we would like the stub out.

If I can just get to the bottom line issues in terms of impact, and you used the term before "stranded investment," but the investment that has been made by the water company...

ASSEMBLYWOMAN BRONSHVAG: I have a question that will lead into that, too. You are using 1,400 acre feet a year?

MR. STAHL: I think last year's figure, and actually it's on the last table, is about 1,600 acre feet. I mean roughly in those numbers.

ASSEMBLYWOMAN BRONSHVAG: How much do you pay for that?

MR. STAHL: We pay close to -- Mr. Whitehead probably know the numbers better than I do -- I think we pay close to \$400 per acre foot for the retail water. Six hundred thousand dollars a year is the total bill that we would pay.

That gets to the next issue as well of that's a large amount of money. I think you have to put into perspective...

ASSEMBLYWOMAN BRONSHVAG: In 10 years it would save you \$5 million.

MR. STAHL: What's the total rate base? What does that represent in terms of the total?

What I've attached as the last figure for you is our water usage as a percentage of San Gabriel Valley Water Company's total water usage over the last 3 years. You can see the average is 3.3 percent. If we were not have any potable water usage at all at the site, then that would be a 3.3 percent loss on the average of the

reclaimed water of their revenue. In fact, we're still going to be using some potable water at the site, but the greater majority of it would be replaced by reclaimed water that we own and produce at the water reclamation plant and one across the street.

There have been questions brought up (at least in my mind I've surfaced them before) during the drought and not too long ago in San Gabriel Valley Water Company. A lot of agencies were faced with this, were implored that we had to cut back. We had to conserve. In fact, the voluntary goal within San Gabriel Valley Water Company service area, and I believe this number is correct, is 10 percent. What we have here is a project that we're paying for that takes 3.3 of that 10 percent. If there is a concern about stranded investment at 3.3 percent of this use, then there has to be three times the concern of the stranded investment when you were going to go from a voluntary of 10 percent. That potable water still belongs to them for further sale.

Again, it gets down to the point of why we feel strongly about reclaimed water.

CHAIRWOMAN MOORE: I was just thinking in terms of cost effectiveness of your project. I think you indicated it was \$400 an acre foot, and the cost is \$5 million to build a pipeline. It seems to me you are going to be paying more per acre foot on the basis of the investment plus the water itself.

ASSEMBLYWOMAN BRONSHVAG: No. How much does it cost to produce reclaimed water?

MR. STAHL: We're producing the reclaimed water now. Obviously, that is something that our ratepayers and mayors have

paid for. So in essence, the incremental cost to provide that reclaimed water, just the water itself to the landfill, is zero for our people. When you write off the investment over 30 years for that pipeline and use for years, we're talking about a very small amount of money.

ASSEMBLYWOMAN BRONSHVAG: What does it cost to produce an acre foot of reclaimed water?

CHAIRWOMAN MOORE: And are you going to amortize it?

MR. STAHL: If you take a look at the San Jose Creek Water Reclamation Plant, which is one of our largest facilities, and at smaller facilities it's more than this, but at this particular facility the operation and maintenance cost is about \$400 an acre foot. On top of that, though, there is waste water solids produced. In our business, one of the most difficult issues is, how do you handle sludge. Sludge is not treated here. That's put into a pipeline for centralized processing and whatever other facilities. You got to add another \$70 per acre foot for that sludge treatment. That's for O & M [operation and maintenance]. That's \$170 an acre foot. If you throw in the capital write-off on the facility, because some day you're going to have to be able to build another one or repair this one, you're probably up to somewhere around \$250 to \$275 per acre foot. That's for everything. The amount that we are charging private or municipal water districts is a minor amount.

CHAIRWOMAN MOORE: I thought we were talking about \$5 million for a 1,400 acre foot capacity.

MR. STAHL: She was asking what it cost to produce the reclaimed water.

ASSEMBLYWOMAN BRONSHVAG: I was making a comparison between the two.

MR. STAHL: Are we turning around and saying to the Central Basin and Rich Atwater, for example, you got to pay us \$275 an acre foot for that water? Absolutely not. In the first three years of that contract, they are going to pay \$5.00 to us. Thereafter, we're going to share savings.

ASSEMBLYWOMAN BRONSHVAG: I'd like to get water from you.

CHAIRWOMAN MOORE: The concern that I have is that if it cost you \$275 to produce it, and I think that's what you said for the production, what about the delivery? The \$400 includes the construction.

MR. STAHL: That's exactly right. Do you remember the exact number in the dollars per acre foot for that [speaking to someone in the audience]?

ASSEMBLYWOMAN BRONSHVAG: [Speaking to Assemblywoman Bronshvag] That's what they are paying San Gabriel.

CHAIRWOMAN MOORE: Right. That includes delivery. The \$5 million is still out there.

ASSEMBLYWOMAN BRONSHVAG: But, he's amortizing over 30 or 40 years.

CHAIRWOMAN MOORE: Plus the interest.

ASSEMBLYWOMAN BRONSHVAG: The interest is in the \$275.

CHAIRWOMAN MOORE: No it isn't.

MR. STAHL: I'll get you the exact number, Assemblywoman Moore.

ASSEMBLYWOMAN BRONSHVAG: Are there two different numbers we should be looking at? You have to pay interest on the \$5 million also. That's a good point. Does the \$5 million include the construction cost?

MR. STAHL: Just the construction cost. That's \$5 million.

ASSEMBLYWOMAN BRONSHVAG: You got the cost of using your money, too. You have to be paying for it.

MR. STAHL: I didn't come prepared to. I can get you the numbers.

ASSEMBLYWOMAN BRONSHVAG: I crunch numbers all the time. It's a habit of mine.

MR. STAHL: It's a very small number compared to what we've already spent in getting that reclaimed water. Clearly, we wouldn't be doing it if it wasn't effective for our ratepayers to be able to build the system.

CHAIRWOMAN MOORE: Let me see if I can expedite this, because I do want to get to the heart of the issue. I think your issue is clear. That it makes sense to you, and you believe it's cost effective and ultimately benefits a number of people, and does not violate, in your perception, the Service Duplication Act. Although, you do understand the potential for stranded investment, but you

think the common good out weighs the potential for stranded investment.

MR. STAHL: That's correct. I am saying to you in this particular instance, and I think in almost all instances, you will see the amount we're talking about in this stranded investment is certainly a lot smaller than the exact same issue we were facing when we were talking about a voluntary, or in some cases a mandatory water conservation. This is a form of conservation. It's a direct form of conservation that's going to be achieved.

ASSEMBLYWOMAN BRONSHVAG: I really applaud your vision. The investment already of \$255 million is certainly substantial. In Southern California it's probably a drop in the bucket for their water needs. I really think it's has to be done. I'm anxious to hear how this came about.

MR. STAHL: The issue, again, is narrowly drawn in terms of self use. The other one is, our track record stands. We want to promote it. We built the facility. We entered into agreements as Judge Cologne said. I think we've pioneered a model agreement that we would be willing to work with you on. But, none of that contemplates from our standpoint that we would be excluded from self use.

I appreciate your attention and time.

CHAIRWOMAN MOORE: This is Sam Pedroza with Assemblywoman Hilda Solis' office. She had a couple of questions since this is part of her district. Especially Rose Hills. One of her concerns is with water reclamation .

MR. SAM PEDROZA: With the newly expanded water reclamation plant near San Jose, who are your new proposed users of that water?

MR. STAHL: Right now we have existing users. We have completed a study in conjunction with Central Basin Municipal Water District. Central Basin will be using it in their Rio Hondo project. We sent a draft of the agreement to the Upper Basin Municipal Water District, who will be utilizing that in selling it. They will be the wholesaler, and then they will sell it to an agency such as San Gabriel Valley Water Company, a private utility and everybody else up in that entire basin.

Dave, you are the other users?

Those are the main key users that we're talking about. That's in addition to over and above the ground water recharge that we already have agreements for, and the City of Industry utilizes that water, too, as well as California Country Club.

The substantial use of it will occur to through Rio Hondo project which is Central Basin, and we have a contract with them now. They will build the distribution lines. We won't be in that at all. We're just going to sell them the water. By making the water available, that's what makes their project possible.

MR. PEDROZA: Is the country club and Rose Hills current customers of San Gabriel?

MR. STAHL: No, Rose Hills is not. The country club. California Country Club is in the same position as Rose Hills. Almost 20 years ago, they wanted to be able to replace the water they were pumping out of the ground and utilize the reclaimed water, and we

entered into an agreement with them some 20 years ago. I think they are getting the water, as I recall, at about 20 percent of just our O & M cost. That's what it took in order to be able to get people to do it. Nobody wanted to use the water. The drought has brought about a little different perspective. I hope that perspective don't go away with the last good rain.

CHAIRWOMAN MOORE: One last question. Does the San Gabriel Valley Water Company support this reclamation project?

MR. STAHL: As I said, we have sent them an agreement. That's something they want. We are negotiating with them now on the exact same agreement that we sent to Rich Atwater. I might say to the effect that one of my staff is meeting today with the Upper Basin because of the legal issue that they are facing with Miller Brewery. Miller Brewery has some concerns about the fact that the reclaimed water is going to put into the ground water. There are always issues that pop up where people are trying to be concerned about using reclaimed water.

ASSEMBLYWOMAN BRONSHVAG: Is it possible that you could negotiate to reuse any of the San Gabriel's current equipment that goes over to the landfill and perhaps save your construction costs and do it in a purchase format from them, instead of having to reconstruct 80 percent of the job to be able to buy from San Gabriel so they could recover some of their investment of their equipment and work?

MR. STAHL: Surely that's possible. We had tried that before we got into litigation and weren't able to come to a number in terms of what they think it is worth and what we think it's worth.

ASSEMBLYWOMAN BRONSHVAG: Would it be worth more or less than \$5 million?

MR. STAHL: We would have to spend majority of the \$5 million no matter what, because a lot of that is pumps to get it up to a higher portion of the landfill which they don't have an existing system anyway. The majority of their system for our landfill is a pipeline and a reservoir. All of the internal piping in the landfill was constructed by us, and will have to be constructed by us in the future.

ASSEMBLYWOMAN BRONSHVAG: Their equipment cost is not substantial?

MR. STAHL: They may have a different view of that. As I said this is always a touchy issue, because there's litigation on this, and the litigation is still pending and certainly we will appeal the ruling of the judge on this issue. But, we tried to sit down and negotiate a number, and that's why we went to court, because we couldn't come to an agreement.

CHAIRWOMAN MOORE: We're doing some back-of-the-envelope kind of numbers, and our numbers suggest that it doesn't seem like there's a lot of savings that will occur.

ASSEMBLYWOMAN BRONSHVAG: But, they're saving water, though. They would be saving potable water.

MR. STAHL: A great deal of savings.

ASSEMBLYWOMAN BRONSHVAG: Potable water is only going to get more expensive.

MR. STAHL: I can tell you this number. If you were to present worth...

CHAIRWOMAN MOORE: We're just looking at the present \$400 retail rate.

MR. STAHL: If you were to compare on a 20-year basis us buying potable water at \$400 acre foot today, and it's going to go up in price...

CHAIRWOMAN MOORE: Clearly, if we do it. We're just looking at it simply.

MR. STAHL: But if you do that, I can tell you this number -- you're asking the specific dollar per acre foot -- if you compare the cost of us buying potable water over, let's say, a 20-year period versus us supplying the water through this \$5 million reclaimed water line, the difference between those is \$20 million.

CHAIRWOMAN MOORE: Gotcha. I think we understand your concerns. What I really had hoped to do is see if we couldn't reconcile some of the differences. I would like to ask the rest of the agenda to come forward to have a roundtable discussion. I want you guys to stay up here so we can kind of talk informally. Commissioner Conlon, please join us as well, so we can kind of get to the heart of the issues. Mr. Young?

MR. JOE YOUNG: Thank you Madame Chair. I'd like to make three quick points, and I would also like to respond to a comment you made at the opening of the session.

First, I don't think we would be here today if it weren't for the fact the County Sanitation District asked the judge in the court case for a couple of opinions, and they got answers they didn't want to hear. They asked the judge if reclaimed water was covered by the Service Duplication law, and judge said it was. It specifically said it

is not the source of the water, it is the use of the water that really counts.

They also asked the judge if service of reclaimed water of this landfill would be a violation of the Service Duplication law, and the judge said yes, it would be. With that, SB 778 was proffer to correct that problem. In other words, they want you to bail them out of an adverse decision of a court case. If it weren't for that, I don't think we would be here today.

The second point I would like to make is that the Service Duplication law has been around, as Mr. Cologne said, since the 1960's. In fact, it was passed in 1965. Amended only once in 28 years. The Service Duplication law covers water purveyors of all sorts, not just investor-owned water companies. It has kept the peace in a very fragmented water business for 28 years. If the law ain't broke, don't fix it.

The third point I want to make is, with this bill there are winners and there are losers. But undeniably, one of the losers is going to be the remaining ratepayers in San Gabriel's service area who would be asked to pick up the lost revenues of the largest customer in the system. Larger than the next 10 users in the system. We're not talking about a minimus impact on the ratepayers.

I'd like to respond to some of your opening remarks. Specifically when you were talking about an apparent conflict between state policies. I don't think there is a conflict. As Mr. Cologne discussed, in the west MWD [municipal water districts] areas, there are massive reclaimed water projects ongoing right now. All of them involve participation between the public sector, the

Metropolitan Water District, West Basin, Central Basin (all involved in treating reclaimed water and constructing the distribution system) and many different retail water purveyors who would be selling the reclaimed water to the end users in every case. West and Central Basins worked with the retail water purveyors, such as my company, such as many cities in the system, and there never has been any question about who should serve the water. And, there shouldn't have been any question in the matter at hand.

Thank you.

MR. MICHAEL WHITEHEAD: Thank you, Joe, for that introduction. My name is Michael Whitehead, President of San Gabriel Valley Water Company. My company has the dubious distinction of being at the center of this controversy, along with the County Sanitation District.

One thing I would like to say more than anything else before we get on with this, is that we wholeheartedly and enthusiastically support the use of reclaimed water. This is not a controversy about using potable water instead of reclaimed water. We want to use reclaimed water. We want to promote the use of reclaimed water among all of our customers in our service area who are able to use that water.

We are a water supplier. We are a water utility. We have been in this business for decades. We think we do a good job. The reclamation agency, the Sanitation District for example, does a very good job in reclaiming water, and that's what they do.

As Joe mentioned, the Central Basin project, the Century project and the Rio Hondo project take advantage of the strengths of

these agencies. The water purveyors are developing reclaimed water use in their area, and they are promoting it. They are developing systems, distribution grids and allowing customers who, on their own, would never justify the extension of the line to serve those customers. With this cooperative effort, it's being done.

Unfortunately in our area, those strengths are not being exploited. They are being set aside. My company is fully committed, whether it's in Los Angeles County or San Bernardino County, where we operate, to promote the use of reclaimed water.

Ten years ago, and in fact, more than ten years ago, I approached the County Sanitation District with a proposal to supply reclaimed water to the landfill and elsewhere in our service area, and was soundly rebuffed. As Mr. Stahl correctly pointed out there have been discussions and negotiations to attempt to resolve this. Unfortunately, they have not been successful. Ultimately, the Sanitation District insisted upon obtaining a judicial determination of this issue, which they did. The judge decided last December as Mr. Young pointed out that this, in fact, is subject to the Service Duplication law, and that process will go forward.

What we are concerned about is inviting the Legislature into the process at this time to change that outcome. My company spends tens of millions of dollars on water system improvements, to provide potable water. The biggest part of our investment is to provide water to fire protection, health and sanitation purposes. We make a tremendous investment. We have an excellent reputation, I'm sure, you would find if you ask that is true for doing so. That cost is borne by all of our customers, including the sanitation district

which avails itself of our system. That cost for operating the system is spread to all of our customers. If that customer is lost, which happens to be our largest customer -- it's in excess of \$600,000 a year, which for our operation is a very large amount, a substantial portion of that cost will have to be borne by our remaining ratepayers. A fact freely admitted by the Sanitation District here, and even more so and more strenuously so during the trial.

CHAIRWOMAN MOORE: Let me ask a question. I think you kind of set forth your concerns. What I would like to do is let everybody have an opportunity to have an opening statement, and clearly, I've not given you as much time as I gave the initial group, but I think we get your drift, if I may.

I would like to bring in MUD [municipal utility district] and the ACWA [Association of California Water Agencies] folks and Commissioner Conlon, and then I'd like for us to talk, so we can really get into the issues. Give us your opening statement and kind of let us know where you are in the process.

MR. DAVE WILLIAMS: Madame Chair, my name is Dave Williams. I'm with East Bay Municipal Utility District. We're a rather unique agency in that we provide both water and waste water service. We have a reservoir on the Mokelumne River that transmits the water 90 miles to our service area in Oakland and surrounding community areas.

The unique thing about our district is that our water service area is larger than our waste water service area. We have a waste water treatment plant that provides reclaimed water for the waste water treatment plant. Then, the surrounding water service

area, there are 11 different waste water agencies that could potentially provide reclaimed water to users in the water service area. Some of these waste water agencies are within the water service area, and some of them are adjacent to it.

East Bay MUD recognizing this, has aggressively pursued a cooperative-type approach to working with these other waste water agencies in the area of reclamation. We have a couple of agreements in place, and we're working on 5 others. East Bay MUD has taken some fairly significant steps to implement reclamation. We have currently 10 million gallons per day; million gallons per day is essentially equivalent to a thousand acre feet per year. We have 10 million gallons per day of reclamation and recycled that offsets potable water usage, and we have a water supply management plan for which we are in process of certifying the EIR, which would authorize another 8 million gallons per day. We also have approved right now an additional 7 million gallons per day. So, that's a total of 25 million gallons per day that we intend to have in water reclamation by the Year 2005 at a cost of over \$100 million.

East Bay MUD strongly supports the Service Duplication Act. We believe it protects the financial investment of the water agencies and prevents the negative impact of service duplication. However, we are willing to support SB 778, because it does promote water reclamation, and it is a very narrow exception to the Service Duplication Act.

CHAIRWOMAN MOORE: I would take a different approach to this than CWA. Do you provide the sanitation district function as well in East Bay MUD?

MR. WILLIAMS: I work in the Waste Water Department of East Bay MUD.

CHAIRWOMAN MOORE: You don't ever have to worry about this happening to you, right?

MR. WILLIAMS: In terms of the Dills' bill? Actually, there is some minor impact. For example, we have a waste water treatment plant within our water service area with which we currently have an agreement where they reclaim the water and we purvey it to golf courses for irrigation. If the Dills' bill does pass, that waste water treatment plant could potentially send the pipeline down to nearby parks or golf courses within the city limits of that waste water treatment plant and offset potable water usage. We've looked at that and the impact to us is very minimal if the Dill's bill were to pass.

CHAIRWOMAN MOORE: As we're hearing if the golf course is a substantial portion of your revenue, would you still support this bill?

MR. WILLIAMS: That would be a different question, I think.

CHAIRWOMAN MOORE: I think that's the question we're looking at, to the extent that it has an adverse impact. If it were a small instance, then I don't think that's the concern. I don't think self use as it applies to a very small portion, I don't think that's at issue. I think when it has the potential for representing a significant portion, I think that's where we come in. I thank you for your comments.

We have one more witness.

MR. DILLON: Madame Chair, may I clarify one point on the Dills' bill. The situation that was pointed out would not occur. We're saying that it would have to be on your own facility adjacent to the treatment plant. So, for golf courses down the road, then in the case of a city, we wouldn't do that.

CHAIRWOMAN MOORE: It doesn't say adjacent.

MR. DILLON: Madame Chair, on their own premises. We'd clarify that if there were some confusion. Except for the landfill.

CHAIRWOMAN MOORE: There are some new amendments that would say "adjacent to?"

MR. STAHL: The amendments introduced by Senator Dills on the 12th of July make it very clear in my mind, at least, that it is for the water reclamation facility or a landfill. That was a concern later that it was going to be a golf course or it was going to be something else.

CHAIRWOMAN MOORE: But, it doesn't have anything to do with "adjacent."

MR. STAHL: That's right. What we were saying...

CHAIRWOMAN MOORE: I understand what you were saying, but what he was raising was the fact that it could be some...

MR. STAHL: I just wanted to make sure...

CHAIRWOMAN MOORE: No, we're on the same page.

MR. WHITEHEAD: Madame Chairman, could I just add one point? The Sanitation District has used reclaimed water at their offices and reclamation plant for years. That is in our service area. We have not objected to that, and we don't object to that. That was

not a material invasion of our business. For the greater good and a lot of reasons, we support that. It was only when another entity -- by the way, they call them the "Sanitation Districts," because it's more than one. Another district owns the landfill; a different district than the reclamation plant. They do operate them together obviously, but they are different districts. One is providing the water to the other.

CHAIRWOMAN MOORE: Mr. Stahl is shaking his head.

MR. STAHL: A different district does not own the landfill. District #2, which is our joint administration district, owns the landfill. The landfill happens to reside in District #18. In terms of the district itself, we are all banded together in a joint powers agreement.

ASSEMBLYWOMAN BRONSHVAG: Does that mean that you in effect would provide water to all of the sanitation properties within the joint powers agreement?

MR. STAHL: Technically, it does. If we went back to that map, we have a landfill in Calabassas. We purchase reclaimed water from the Las Virgenes Water District. We have a landfill in Glendale that we operate. We purchase water -- or will be -- from the City of Glendale, and that's City of L.A. water. We have a landfill, and Mr. Biederman is going to speak to this later. We have a landfill in Spartan and Pomona that we're serving ourselves. It's only where it makes economic sense for self use that we're going to do it. We're not going to build pipeline 50 miles to be able to serve it. That doesn't make any sense. But, when you're 1,800 feet from the water, then it makes sense. I can certainly show you those numbers.

CHAIRWOMAN MOORE: Let's go to Mr. Biederman.

MR. ED BIEDERMAN: My name is Ed Biederman. I'm with the Walnut Valley Water District. We're a member of ACWA, but I do not represent ACWA's opinion of this.

I don't know if I belong here, because we're kind of like a success story. We now operate both the reclaimed water distribution system and a potable water system. We have for the past seven years. We're outside of L.A.; totally dependent on MWD water. We have a reclaimed water distribution system that has 27 miles of main pumping stations and 4 million gallons worth of storage. We have 79 users, including the City of West Covina and the Roland Water District, with who we have entered into wholesale agreements to resell the reclaimed water. The balance of our consumers are tax-supported agencies, such as schools, golf courses, cemeteries, landscape maintenance districts. To further complicate matters, we purchased our reclaimed water from the City of Pomona which has a franchise with the sanitation district for the total output of the water from the Pomona Reclamation Plant.

Our current reclaimed system has been in operation since 1987, and we've overcome most of the operational and institutional difficulties of cutting contracts with other agencies where they serve our reclaimed water within their service area. Just this year, we have \$9 million invested in the system; \$6 million which was a grant from the State of California. Three million was a bond issue supported by our potable water rates.

This year, it is the first time it's turned around. One of our largest customers was the Walnut Valley School District. We

hooked up all their school yards. We do charge them for the water, but we have to discount it, because there's a Health Department problem with the use of the reclaimed water. It has to be governed. You can't puddle it. You need an onsite monitor. It's difficult to retail. Especially seven years ago, it was difficult to retail it. You have to remember, we shoot ourselves in the foot every time we hook up a reclaimed customer, because we give up the potable customer on one side. We give up the potable customer and gain the reclaimed customer.

There are just some myths floating around, and I think they've touched on it, that a water system is usually designed for fire. So taking one specific parcel and using a different type of water on it doesn't really destroy the system, because that same water can be used some place else. The swap of a domestic customer for a reclaimed customer, it really doesn't have an effect, because if it is the same entity, you are still going to charge for it and you have a mark up in it.

What helps in the use of a reclaim system, reclaimed water is usually used at night and not during the day time. So, it helps meet your peak factor. So, there are some benefits.

If you want to say there's an absolute revenue loss, it can be recouped. You don't to go out and search for new water. You have a source of water. It's a new source of water. The use of reclaimed water on any parcel is problematic. The fear of having "mom and pop's" hooked up to the reclaimed system is very remote, because there's enough Health Department restrictions.

CHAIRWOMAN MOORE: I guess what's at issue, though, is self use. When you're no longer a potable customer nor are you a reclaimed number, you lose the total source from that group. I think that's what's at issue.

MR. BIEDERMAN: We have no problem with Senate Bill 778 or the amendments that have been entered. We have a landfill within our district that is currently provided reclaimed water, and we feel that SB 778 or the ability for a sanitation district to use their water for their own use should be restricted where an agency has gone out a build a reclaimed system and that they can provide it. That's what I'm here seeking is the amendments to SB 778.

CHAIRWOMAN MOORE: Say that again.

MR. BIEDERMAN: We support SB 778 in concept, but we feel that where a public or private agency has already invested in a reclaimed system, that the sanitation district should not duplicate that effort. In other words, it should take that reclaimed water from the purveyor of record.

ASSEMBLYWOMAN BRONSHVAG: So, that's a codicil you want to make.

MR. BIEDERMAN: Yes.

ASSEMBLYWOMAN BRONSHVAG: But, that wouldn't apply in this case, because San Gabriel doesn't have a reclaimed facility.

CHAIRWOMAN MOORE: They do have one.

MR. WHITEHEAD: We have facilities there. We offered to provide reclaimed service. We don't have a reclaimed line because that offer was refused.

CHAIRWOMAN MOORE: What's at issue, though, is the cost of the water in some instances as I understand the issue. With that, let's hear from Commissioner Conlon.

COMMISSIONER P. GREGORY CONLON: I just wanted to thank you for inviting us (PUC) today. I consider the use of water resources in the state to be one of the most important issues facing our agency. I think the fundamental position of the Commission (PUC) is that we wish to encourage reclaimed water use while protecting the sinken investment of investor-owned utilities, because if we don't, that cost will be shifted over to the general ratepayers. I understand the state requires the use of reclaimed water where available for golf courses, parks and green belts under the Water Code Section. As a commission we believe that using the existing water retailers, both the private and the public, will be the most cost effective because they have the common operations-maintenance-billing-customer function that they can share with the reclaimed water. Therefore, I think compensation should be provided if the providers of the sanitation districts use it for a purpose that would bypass or strand investment of private own utilities. We have had a couple of those situations in Pebble Beach and in the Central Basin and Metropolitan District where there has been agreement reached, and those parties did compensate each other for the stranded investment that was caused from putting in the reclaimed for major customers of the privately-owned company. I think we would generally oppose the bill if it where in fact stranded investment or significant ratepayer impact.

CHAIRWOMAN MOORE: Let me ask along the line that Commissioner Conlon is suggesting, and I guess I share a similar concern that the Commission has in the stranded investment. Let me also ask Judge Cologne, Mr. Dillon and others, is it a problem that water purveyor of record should be compensated for potential stranded investment? Is it because it's too costly?

MR. BIEDERMAN: Let me explain. With the shortage of water we have now, people are having to conserve, so the cost of water is going to up, because there are fewer ratepayers out there who are getting water. They're not getting the same quantity of water that they used to get. So, the cost of buying the imported water and getting it to them is going to make the rates go up. So, there's a stranded investment because we're required to conserve water. These people have a stranded investment, it's true, but this is a problem we have to face today because there's just fewer gallons of water. Everybody is going to have to assume this. Metropolitan has an investment in that aqueduct. They can't get all the water out of the aqueduct that they originally agreed to pay for. These people are going to get less water than they used to get, because there's not the water to go around. So, they are going to have a stranded investment simply because there isn't the number of people out there to use this water. We can't reimburse them for that stranded investment, and this little stranded investment, it's true, somebody is going to have to pick it up. But if we're going to meet the needs of all water users in the State of California, we're going to have to assume that there isn't going to be a stranded investment on the

infrastructure that we've built over the years. We're having to build a whole new infrastructure.

CHAIRWOMAN MOORE: I understand that. But, even selling the water to the water company of record that you've developed through your system for resale purposes, is that a problem area?

MR. BIEDERMAN: I'm not following you exactly.

CHAIRWOMAN MOORE: I guess the question that I'm asking, is there some way that it makes sense that we recognize the water purveyor of record, and we've already talked about part of the cost in their search for water. What we've attempted to do at the state level is encourage the development of reclaimed water. There ought to be a marketplace for that water, and the marketplace ought to be with the water company who has to go out and search for water for their new customers. It would seem to me that there ought to be some way that you could encourage development of reclaimed water in the manner that you have without displacing the existing water company, if they were to buy that water from you and resell it. As the purveyor of water, that ought to address the problem. Because it would encourage the development of water. It would leave them in the position of selling water. It would eliminate their need for water and would provide some compensation for you for what you've been doing without displacing the water company of record.

MR. BIEDERMAN: Ms. Moore, one of the things that I think we're overlooking is the fact is they are not going to have to find new customers. With the water shortage, they are going to be

able to sell all the water they can get. So, there's going to be a supply of water that would otherwise have to be rationed. If we can divert some of this demand on the water by using the reclaimed water, we can divert some of that demand, then they can sell 100% without rationing to the other water users. Now, they have to ration.

CHAIRWOMAN MOORE: I hear all of that. What I'm trying to do is maintain the integrity of the water purveyor of record. To the end they are not in competition with you in trying to resell it, they ought to have first right to refuse it. That's what is bothersome to me is that I'm not sure all of that is being done.

MR. COLOGNE: This is the tip of the iceberg. You have got sanitary systems creating reclaimed water that do not have distribution systems, somebody has to build the distribution system. Whether they build their own or overlay existing systems or whether they sell it to the franchise purveyor and let him to do is really the gut issue. This is not necessarily at issue here. I mean in the larger sense.

ASSEMBLYWOMAN BRONSHVAG: You would need to construct a whole duplicate distribution system anyway. It would have to be a parallel system that wouldn't in any way be able to -- gosh, if there was a leak or something, you would have to protect it. They couldn't probably be parallel.

CHAIRWOMAN MOORE: That's correct. That's part of why they say it's not a duplication of the system.

ASSEMBLYWOMAN BRONSHVAG: Right. It has to be a totally separate system. San Gabriel Company should perhaps take over paying some of their infrastructure they have invested. In the

meantime the ratepayer is a distinct issue you are going to have to work out in another way because, as you say, it is a tip of the iceberg, Commissioner, it's going to happen again and again as we do get into more and more droughts throughout the state.

COMMISSIONER CONLON: We want to encourage it. We want to encourage reclaimed water, so we need to resolve the issue.

ASSEMBLYWOMAN BRONSHVAG: We have to resolve the issue about the ratepayer, and it is an important issue, too. I think we have to break this up into a couple of different components. I happen to have four constituents who are in support of this bill. I'm not even from this area. I'm from Northern California. As of the 15th of October, I have at least four constituents supporting this bill. So, perhaps it wasn't an accident.

MR. STAHL: Ms. Moore, you've made this point a couple of times, and I couldn't agree more with you and Commissioner Conlon has said the same thing. Nobody is looking to replace the private water companies or the infrastructure they need to distribute it. We have done it by example, not out there giving talks that we want to promote it, but we've done it by example. Where we've entered into contracts and had Central Basin build the infrastructure. We're not in any way saying we don't want to see the water company do it. We'll get into competition with them, but this has narrowed down to -- I want to sit down with you and talk about the broader issues. I think we bring to the table a model contract that can help in that regard. But, what we're simply talking about is this very narrow issue of self use. That is to say that for our own facilities, can we use the reclaimed water that we produce?

CHAIRWOMAN MOORE: I guess it's not as simple as you say when the self use represents a large portion.

MR. STAHL: But if 3.3 percent represents a problem with stranded investment, then so does the 10 percent, over three times a much.

ASSEMBLYWOMAN BRONSHVAG: What's 10 percent?

MR. STAHL: The 10 percent is what people were talking about in asking for voluntary contribution for conservation. In other words, save 10 percent of the water. Well, we found a way to save 3.3 percent. Maybe it's not lost, but what certainly isn't spoken to here is that we have ratepayers also. So, when you talk about the fact that there is a ratepayer impact of the water company stranded investment, well, we have ratepayers and our mayors feel strongly from the standpoint of the responsibility to them that we pursue economically sound projects. It is clearly economically sound for us to provide our own reclaimed water 1,800 feet to a landfill rather than to give it to somebody, mark it up, build the distribution system, and then pay for that. The numbers aren't there to support it other than the fact that the economic way to do it and the cost effective way to do it is through self use.

CHAIRWOMAN MOORE: Let me hear from you.

MR. WHITEHEAD: I want to make something clear, and if I haven't made it clear, I'll do it again. I'm not interested in suing sanitation districts and winning judgments. We're in the water business. That's what we do well, and that's what we want to do. I'm not interested in collecting damages or having them pay for my stranded investment. I want to be in the water business. That's

what we want to do. We want to serve the landfills. If I serve the landfills and if I serve reclaimed water in my service area, then I'm made whole. My customers are benefitted. Even my potable water customers are benefitted. But if they refuse that, and it's more cost effective for them to go ahead and built it themselves and strand my investment, then I guess I have no choice but to rely my compensation remedy and he characterizes it as being very minimal. If he feels that way about it, I don't know why we're here fighting over this bill. That process should go forward. The court will decide. Hopefully, we can negotiate. I don't think it's that much either. But, my purpose is to serve reclaimed water. That's what we want and need to do.

COMMISSIONER CONLON: I have one other point to make if I could in my statement, and there was a question in the questions you submitted. One of them was what changes in the regulatory programs at the CPUC would facilitate entry of investor-owned utilities into the reclaimed water business. I just want to answer that by saying that as of January 1, 1994, we're requiring all water companies to do a comprehensive study of all future resources and costs, including conservation, by filing a water management program document that does a cost benefit study on each resource alternative when they file their general ratecases. I will recommend that the utilities be required to consider reclaimed water in the study. That is what we will do to help that process.

CHAIRWOMAN MOORE: Say that again? I didn't hear your last sentence.

COMMISSIONER CONLON: I said I will recommend that the utilities be required to consider reclaimed water in this study to make it clear that they need to address it. I'm not sure that the utilities have been as aggressive as they could in going to these sanitary districts and saying, "Hey, we know you're creating the opportunity to claim reclaimed water. Let's get together and distribute it." I just don't sense there's a ground swell to do that. Maybe there is in Southern California, but I haven't seen it in Northern California.

ASSEMBLYWOMAN BRONSHVAG: What about agriculture? Does agriculture down here use reclaimed water?

MR. BIEDERMAN: Absolutely.

ASSEMBLYWOMAN BRONSHVAG: He's shaking his head no.

MR. BIEDERMAN: Not San Gabriel Valley, but there is in Southern California. The agriculture interests in San Diego County, for example, are working diligently to get the reclaimed water from Riverside County from their homeowners so they can use it for agricultural use, because in San Diego County, depending on high up the mountain you are, they are paying as much as \$1,000 and \$2,000 an acre foot for water, and agriculture is not going to survive at that price.

MR. STAHL: I'll give you a specific example. In Antelope Valley in Lancaster, we have direct use with a rancher. They are using almost our entire effluent. It makes sense for them, certainly when you're out in the desert, to use the reclaimed water.

Responding to what Mr. Whitehead said about customers, I think it's important and in a street language way of putting it, it's almost a question of whose ox we're actually going to gore. We have customers. They have customers. We've got to look at what is the most effective thing for the total public, and there's no doubt that the cheapest way to be able to serve the landfill for the total public is the self use thing that we're looking at. But, you have to look at the customers on both sides. Our mayors feel strongly about the fact that when they have public hearings for rate increases that we've done the best that we can to be able to minimize our cost. We're providing the reclaimed water to all of the water companies. I told you \$5 an acre foot for the first 3 years for Mr. Atwater. You (Assemblywoman Bronshvag) commented that's extremely low. The reason we did that in those early years is so that they can get over it. That's the kind of agreements we're willing to enter into. Self use is a different matter.

CHAIRWOMAN MOORE: Self use is different than resale. You indicated you didn't see any problem. What would you buy it for and what would you resell it for?

MR. WHITEHEAD: I would buy it for the price they said. I'm not in a position to discuss price. Typically, the reductions we've seen in the Central Basin, for example, have been 20 to 25 percent. We think we can do at least that. For the landfill, we were thinking upwards of 50 percent from the general metered rates. We think it all depends on what they charge us for the water. If he wants to charge me \$5 for the water, that represents a tremendous savings. The agreements we have been talking about have the water price

substantially higher than that. But nevertheless, at a price that has to be low enough to pass through a discount to give an economic incentive to the user.

CHAIRWOMAN MOORE: He's saying it's \$400. You're talking about 50 percent, which is \$200. Doesn't that make sense to buy it?

MR. STAHL: What it cost us for that pipeline is probably somewhere around \$100 an acre foot. So, the difference is \$200; a \$100 an acre foot. Over and above that, I think what San Gabriel Valley Water Company is talking about is us deeding over the \$5 million investment that we've made. We're getting into negotiations here.

CHAIRWOMAN MOORE: I'm not trying to do that. I'm really trying to understand what you're saying. As you talk about a \$5 million pipeline, how do you get \$100 an acre foot on a \$5 million project?

MR. STAHL: You capitalize it over time. You take the amount of water that we will be using and you look at that investment, and it comes out to about \$100 an acre foot. I mean don't hold be exactly to it, but it's clearly not \$200 an acre foot. So, there's an incremental savings. Our mayors sent me to this meeting with a strong message that with all of the pressures that they face,...

CHAIRWOMAN MOORE: Well, I'm kind of confused. When you tell me \$400,...

MR. STAHL: Four hundred is the potable price right now. That's the potable price we pay today.

ASSEMBLYWOMAN BRONSHVAG: Then he would discount it 50 percent at \$200.

MR. WHITEHEAD: Or more perhaps. Whatever could be justified, depending on what they want to pay.

ASSEMBLYWOMAN BRONSHVAG: He would be discounting it for \$200, and you would be buying it for \$5 for 5 years.

CHAIRWOMAN MOORE: No, no, no.

MR. WHITEHEAD: If I got it for \$5, we would be talking about a very substantial reduction in price.

MR. STAHL: Let me make it very clear that what we talked about in our agreement with Mr. Atwater, because it's a nonprofit agency, that in those first three years where they have very high cost in terms of their investment, we wanted to be able to have the ability for him to go forward with that. In subsequent years, you have "share the savings." We sent an agreement over on another issue to Mr. Whitehead, he didn't want to get involved with that complex formula, and said, let's just split the cost down the middle; \$130 and just bill me on the terms of what it is. But, there is a difference. There's clearly a difference when you have to build a pipeline only 1,800 feet. If this landfill was 5 miles away, then the economics that you're talking about probably would dictate that we look at something else. But, that's the fact. It's so close.

MR. WHITEHEAD: We're not going to build an 1,800 foot line, we're going to build miles of line. As Mr. Biederman mentioned, 27 miles of line. We have hundreds of miles of pipeline that we operate now. We envision, going into the next century, hundreds of

miles of reclaimed water pipelines to reach out and serve those customers that Mr. Stahl won't be able to reach out and serve. He's not a utility, we are. We serve the public. That's our job. We have to have all the customers, including the landfill, Rose Hills, the nurseries they have taken away from us, and other customers.

CHAIRWOMAN MOORE: What's the increased cost to our customers if we lose the sanitation district?

MR. WHITEHEAD: We're not sure yet. We know the overall lost revenue is in excess of \$600,000, but the impact cost to the facilities that would be rendered useless or less useful may be less than that. But, nonetheless it is a cost. If I can use an analogy, Mr. Cologne mentioned the junkyard study, I'll mention Caltrans. Caltrans condemns property quite frequently to build freeways, and it is in the greater public interest evidently to do so because it happens. But when they take somebody's backyard in Culver City or up north or anywhere, that property owner is entitled to be compensated for that taking, whether it's \$500 or \$500,000. It's important to that owner to be made whole. That's what the Service Duplication law does; it makes us whole so that my customers don't have to bear that cost, whether it's \$5,000 or \$500,000 or million or whatever it is. I don't know what it is, but the party that creates the damage and causes the problem should compensate for it. That's what the court said.

CHAIRWOMAN MOORE: From what you're stating there is no middle ground in this measure?

MR. WHITEHEAD: I don't agree. I agree that there ought to be some middle ground, whether it is compensation negotiated,

arbitrated -- I'm certainly willing to look at arbitration as a solution, and they know that -- to get this behind us. Because I think what we're seeing is that this local special interest problem has become a statewide cause celebre, and it doesn't need to be.

ASSEMBLYWOMAN BRONSHVAG: That leads to a question I was going to ask of Commissioner Conlon. I am also Vice Chair of the Water, Parks and Wildlife Commission. I know Assemblyman Cortese has got his water transfer bill. When you start looking at the history of water in California, you can go numb or dizzy.

CHAIRWOMAN MOORE: Or, both -- all of the above.

ASSEMBLYWOMAN BRONSHVAG: But, we are in Year 1993, and we already heard the big word "deregulation" and we also heard the big word "competition" over and over, as you know, sir, in almost every industry except water. Has it ever crossed the minds of the Public Utilities Commissioners to begin to take a new attitude about water in this state? Rather than compiling law upon law upon law with water and making special circumstances, can we just possibly take a fresh look at water? In the era of competition, see what the market can bear and try to understand new ways.

COMMISSIONER CONLON: I think your point is very valid on competition.

CHAIRWOMAN MOORE: You did go back and read all those water hearings, and you know that probably there's not been a more embattled issue than water rights in the State of California. There's a very substantial body of water law.

ASSEMBLYWOMAN BRONSHVAG: I know that. It's just made for all these very difficult situations over and over again, and it's very frustrating and time consuming, and I think costly.

COMMISSIONER CONLON: I think competition is healthy when there are competitors. When you have a distribution system that is very expensive for the ratepayer to pay twice, it's more difficult to use competition when you're putting in mains and services. You have to do that for reclaimed water. You can't run them in the same pipes. So, you have to have separate pipes. Whether we could have a competitive price, I think would be difficult to do without some real cost effective way of putting pipe in the ground for a very inexpensive price, because you just can't afford to have more than one purveyor in a given geographical area.

ASSEMBLYWOMAN BRONSHVAG: I was just thinking statewide. A change in attitude.

COMMISSIONER CONLON: I said I would recommend. I don't believe that the water utilities have been as aggressive as they could be in furthering the use of reclaimed water. I think that through this report that they have to file with their general rate cases, we will have the opportunity to at least make sure they have considered it and they've looked at it on a cost effective basis, and encouraged them to use reclaimed water for all of the parks, golf courses, and greenbelt areas in their service area.

CHAIRWOMAN MOORE: Mr. Young, and then we are going to start to wrap this up, because I think this has been very enlightening for us, and also points to the magnitude of the problem in terms of trying to come to some kind of way of resolving the issue. I

can think of a couple of ways. Why don't we go to Mr. Young, and then I'll give everybody else a parting shot.

MR. YOUNG: First of all, to address an issue that Commissioner Conlon just raised. I know that investor-owned water companies are aggressively pursuing reclaimed water customers. We have water customers in the Lakewood area, and Mr. Whitehead's company is developing customers. Park Water Company has reclaimed water customers. California Water Service Company has reclaimed water customers. Even a couple of very small water companies have reclaimed water customers. The Association is active within the WaterReuse Association to develop plans and strategies to maximize the use of reclaimed water. We supported legislation all along the way to maximize that use. We worked with West Basin and Central Basin. Many of these 150 customers of West Basin's reclaimed water system will be our customers. The end users will be our customers. It's a fledgling industry to be sure, but we're all in there to do this because it may be the next cheapest source of additional water supply in Southern California.

CHAIRWOMAN MOORE: Why don't I give everyone at the table a parting shot at words of wisdom as we ponder this question. If there's something you haven't said or something that you want us to keep in mind, then now is your opportunity to do so.

MR. DILLON: Madame Chair and Ms. Bronshvag, I just compliment you for a long hard day, and we appreciate the time you've given us. We know you had a difficult hearing this morning. So, I'm speaking for all of us at the table, we appreciate very much your sticking to the end.

ASSEMBLYWOMAN BRONSHVAG: I have to leave. I have a plane to catch.

CHAIRWOMAN MOORE: I want to commend her for her endurance at these hearings. Go ahead.

MR. WILLIAMS: I did want to make one comment. East Bay MUD's position that if there is a project that is cost effective, there would be no conflict because East Bay MUD would pursue that project. You mentioned a first right of refusal. I assume that was in the context of the Dills' bill. Because if it's outside of the context of the Dills bill, it opens up a whole new area of controversy.

CHAIRWOMAN MOORE: Absolutely, within the context of the Dills bill.

MR. BIEDERMAN: The only thing I would like to say is that what I hear is the minds of the water purveyors have to be changed. They have to realize that the domestic customers are going to have to subsidize the construction of reclaimed systems which affects our water supply.

CHAIRWOMAN MOORE: That's a good point. One of the things that we may need to pursue is the notion that recognizes the water purveyor in the district, to the extent perhaps along the lines that Commissioner Conlon has suggested to the extent that they have not aggressively pursued water reclamation that maybe there ought to be a right for others to come in and make up that extent. But, to the extent that there is evidence that the water purveyor is moving in the development of those areas, maybe that ought to be a second standard in terms of looking at it. So, that might be something we want to discuss or add to the bill, because I think the concern would

be that as you try to develop the second system, if everybody goes and does a little short bit, then it makes it pretty hard to develop a comprehensive delivery system. To that end I would think that probably presents some concern to the delivery system. So, to that end, I would think that maybe that ought to be part of the criteria that we look at: the extent that the existing purveyor is pursuing the use of reclaimed water. Where there is no indication that it is occurring maybe it ought to be fair game.

MR. WHITEHEAD: I think that's a very pressing observation, because it is a new reality as Mr. Biederman has pointed out. The water companies and water districts, I think by and large, have accepted that. We need to be more aggressive. There's no question about that. We accept that responsibility, and we're going to go out there and do it. I'm signing up customers daily for reclaimed water in the Central Basin. I want to do that throughout my system. I want the opportunity to do that.

COMMISSIONER CONLON: We do have jurisdiction over the private water companies, but we do not have jurisdiction over the public. So, we could only encourage it on those which we regulate.

CHAIRWOMAN MOORE: I think that may be another area that we need to look at as well.

Let me thank each and every one of you for your participation. I think this has been very enlightening, and I think you have given us some food for thought. We look forward to working with you so that come January we will have some measure that can respond to the concerns that have been raised by the Dills bill, if not

in the current form, at least we will have some basis upon which to pursue policy that will serve the people of California.

Again, let me thank you for coming, and this adjourns the hearing.

***** HEARING ADJOURNED *****

SUBMISSIONS AND CORRESPONDENCE



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Assembly Committee on Utilities and Commerce

Interim Hearing on SB 778 (Dills)

October 21, 1993

Los Angeles, CA

Testimony of

Michael F. Dillon, Executive Director

California Association of Sanitation Agencies

Chairwoman Moore and Members:

Thank you for the opportunity to be here this afternoon to discuss an issue of great importance to the California Association of Sanitation Agencies. CASA members have been reclaiming wastewater for reuse for more than 30 years and are committed to helping the California Legislature reach its goal to recycle one million acre feet of water per year by 2010. To accomplish this, we need to continue to remove institutional, financial and legal barriers which inhibit development of reclaimed water supplies.

Before addressing myself to the thoughtful questions you have posed, I would like to make a couple of general points. First, we appreciate the committee's interest in examining the

larger issue of the relationship between the Service Duplication Act and the provision of reclaimed water in California. As you will hear today, many in the water reclamation field believe that all reclaimed water distribution should be exempt from the service duplication law. And, while CASA believes those arguments have merit and are worthy of the Committee's consideration, I want to stress that the legislation we are co-sponsoring, SB 778 by Senator Dills, is a very narrow bill dealing only with self-use of reclaimed water by reclamation agencies. Within the larger framework we will be discussing today is the precise, narrow question of whether a public agency which produces reclaimed water should be able to use that water on the premises of its own treatment plant or landfill without paying compensation to a potable water purveyor.

Secondly, I would like to clarify a statement in the Committee material with which we must respectfully disagree. The introductory paragraphs preceding the questions include a statement that the service and facilities for transporting reclaimed water appear to be "precisely the sort of service duplication proscribed by the SDA." On the contrary, the Service Duplication Law was passed in 1965, when reclaimed water usage was in its infancy and water supplies relatively plentiful in California. With a few exceptions, both purveyors and willing customers were few and far between. More importantly, unlike duplication of drinking water service, dual piping is essential before **anyone** can supply reclaimed water. An additional investment to install parallel distribution systems is a requirement for supplying reclaimed water, and therefore we feel is not truly a "duplication."

Moving on now to the questions the Committee has raised, I believe that the questions regarding the production, supply, costs and constraints to reclaimed water are ably summarized in the WateReuse Association's 1993 Survey of Water Recycling Potential.

As the Committee has rightly noted, one factor in the service duplication/reclaimed water picture is the extent to which the identity of the water reclaimer and the water retailer differ within a community. The short answer is "it varies." CASA represents over 90 agencies, 25 of which provide both wastewater and water services, including East Bay Municipal Utility District, Chino Basin Municipal Water District and Irvine Ranch Water District. Some large cities, such as San Francisco and Los Angeles, provide both water reclamation and potable water service; others, such as San Jose, are responsible for wastewater treatment while drinking water is supplied through a water wholesaler to a private water company and a public water agency.

Despite these intricate interrelationships and overlapping service areas, wastewater and water agencies have been able to work out satisfactory arrangements to allow over 383,000 acre feet of water to be recycled this year in California. Service duplication conflicts do arise, some of which are resolved among the parties through negotiations. We believe, however, that the true impact of the law on reclaimed water is difficult to measure, because it results in a "chilling effect" on the development of reclamation facilities.

If the water retailer and reclamation entity are unable to agree upon the terms for purveying

the reclaimed water, the reclaimer has only three choices: agree to the water retailer's terms, supply the water directly and face a service duplication suit, or abandon the reclamation project. CASA believes that as water reclamation becomes more widespread, and local agencies adopt mandatory use ordinances for certain activities, the potential for conflicts will continue to increase. We commend the Committee for seeking a viable solution to this problem before it becomes overwhelming.

The questions posed in Section 3 of the Committee's listing get to the heart of the service duplication/reclaimed water issue. I want to be very clear that CASA's goal is not to displace water retailers nor to have sanitation agencies get into the business of purveying water. We are seeking a cooperative relationship, and frankly, we believe existing law works against that goal by stacking the deck in favor of the water retailers. They hold all the cards under the Service Duplication Act, and there is simply no incentive for water companies to engage in negotiations regarding price, infrastructure, marketing or other aspects of water reclamation. The WaterReuse Association, which includes wastewater and water agencies, has been struggling for several years with the questions you have raised: Should the reclaimed water provider be required to offer the reclaimed water first to the water supplier for retail? What should the price be? What happens if the water agency refuses to purchase and purvey the water?

These are complex issues, and a number of potential solutions have been discussed. As to price, the water purveyor and water reclaimer could share the savings equally; water

retailers could have a right of first refusal to accept the water according to some agreed upon guidelines...if they decline, the reclaimer could purvey the water directly. Developing answers to these questions is a worthy effort, one which CASA would very much like to be part of. However, because the SDA now exclusively favors water purveyors, we do not believe the incentive to develop this type of consensus exists.

Water reclamation is an expensive undertaking, requiring extensive capital facilities and significant up-front investment. Wastewater agencies willing to make the required investment should not be penalized by having to pay compensation to water retailers under a law that was intended to protect their investment in **potable water** facilities. The fact is that the use of reclaimed water, by definition, will render potable water distribution facilities "less useful", as separate conveyance systems are needed. However, in light of California's increasing population and limited fresh water supplies, the Legislature has recognized the need to maximize water reclamation. I am not familiar with the regulations placed on water companies by the PUC, but perhaps reform is needed in this area to assist water companies in becoming more active partners in water reclamation. CASA is willing to assist the Committee and the investor-owned water companies in developing and supporting conservation rate changes and other reforms.

However, the Service Duplication Law cannot be viewed as off-limits in this process. In crafting a solution, we must consider the purpose of the law, the consequences of its application to reclaimed water, and the interest which all Californians have in an adequate,

reliable water supply. We know this is a difficult task, and this hearing is an important step toward resolving these issues. Again, CASA commends the Committee for its willingness to examine the larger picture and offers our assistance in this ambitious effort. I would be happy to respond to any questions you may have.



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SUBJECT: Interim Hearing on Reclaimed Water Service

COMMENTS:

As we discussed, attached please find our written testimony from the October 21st interim hearing on reclaimed water service. Sorry for the delay in getting this to you; I hope that you can still incorporate it into the hearing record. If you have any questions, please give Jim Stahl or me a call.

ASSEMBLY UTILITIES AND COMMERCE COMMITTEE
INTERIM HEARING ON RECLAIMED WATER SERVICE
OCTOBER 21, 1993
LOS ANGELES, CALIFORNIA

Testimony of
James F. Stahl, Assistant General Manager and Chief Engineer
Sanitation Districts of Los Angeles County

Chairwoman Moore and Members of the Committee, thank you very much for holding a hearing and for inviting me to testify before you this afternoon on these very important issues.

The Sanitation Districts of Los Angeles County (LACSD) are a confederation of special districts which operate and maintain regional wastewater and solid waste management systems to provide sanitation services to approximately 5.0 million people in 79 cities and unincorporated areas in Los Angeles County (Exhibits 1 and 2 -- maps). As a leader in the field of water reclamation, the Districts have been producing and supplying reclaimed water for reuse since the early 1960s. Our facilities include 10 water reclamation plants constructed between 1960 and 1993. These facilities represent a present value of over \$250 million in capital investment and produced about 188,000 acre feet of reclaimed water last year. In FY 93 approximately 62,000 acre-feet per year of the reclaimed water produced was reused -- enough water to supply a city of about 300,000 people. The majority of the reclaimed water that is reused goes to groundwater recharge and landscape irrigation, with the remainder evenly split between agriculture, a wildlife refuge, and industrial uses. The size and diversity of our program is facilitated through 17 contracts that the Sanitation Districts have with water districts, cities and other entities (Exhibit 3 -- pie chart). There are currently over 200 different sites in Los Angeles County using reclaimed water produced by the Sanitation Districts. This number continues to grow each year through the expansion of new and existing systems like the Central Basin Municipal Water District's Century and Rio Hondo Projects.

Our reason for appearing here today, and indeed, our reason for co-sponsoring SB 778, is because we feel strongly that the use of our own reclaimed water at our own facilities should be exempt from the requirements of the Service Duplication Act. Senate Bill 778 is very narrowly focused. The amendments presented before the Committee in July restrict the bill's applicability to treatment facilities and landfills owned by water reclamation entities. This language has been

further refined, and it is our understanding that Senator Dills will be submitting these amendments to Legislative Counsel very soon.

Service of reclaimed water at a landfill owned and operated by the Sanitation Districts has been a focal point of the debate about SB 778. LACSD decided to build a project to supply reclaimed water from the San Jose Creek Water Reclamation Plant to the Puente Hills Landfill some years ago as it became clear that the San Gabriel Valley Water Company (SGVWC) was making no effort toward building a reclaimed water system. As the project developed Rose Hills Memorial Park requested to purchase reclaimed water to replace their on site use of groundwater. It is the Districts understanding that reclaimed water will only be used to replace their own well water and will not diminish their use of potable water from SGVWC. LACSD expects the total cost of the project to be approximately \$5 million. The project is about 20% complete at this time, with some components still in the design phase and others already constructed. Exhibit 4 (photo) shows the portion of the project which has been constructed, a gravity supply line approximately 1800' long that will transport reclaimed water from the existing San Jose Creek effluent outfall to the base of the landfill.

I would like to note that the Puente Hills landfill may be a relatively large water user according to the SGVWC, but that use constitutes just 3-4% of the total supply of water by SGVWC (Exhibit 5 -- table). Because the Water Company would avoid groundwater replenishment fees, pumping costs and maintenance expenses on the conserved potable water, our best estimates are that a conservation of this amount of potable water usage would translate into a loss of less than 1.5% of their net revenue. This hardly qualifies as "leaving the ratepayers stranded," of which we are being accused. Rather, this is part of the short-term cost of conservation, which will undoubtedly be offset by the sale to other customers of the potable water "freed up" by the use of reclaimed water. Moreover, the Sanitation Districts' operations are also financed by ratepayers, and these ratepayers are the same as those served by SGVWC. We believe it is good public policy to serve reclaimed water at the least overall cost to the public, and this goal will be accomplished by eliminating the Service Duplication Requirements for self-use, as proposed for water reclamation plants and landfills in SB 778.

There are several additional reasons that it makes sense to exempt self-use from the Service Duplication Act. First, the Service Duplication law was intended to provide water purveyors with the stability and predictability needed to plan and construct potable water facilities to serve their customers. It was not intended to apply to the use of reclaimed water, nor to self-use. The Service Duplication law was enacted in the mid-1960s when potable water supplies were relatively plentiful, and water reclamation was just getting under way. In the intervening 25 years, because of the need to conserve scarce water resources, the Legislature has established ambitious goals for the widespread use of reclaimed water, and required its use under certain conditions. In *San Gabriel Valley Water Co. v. Los Angeles County Sanitation Districts*, the judge recognized that "the additional cost being imposed by this decision upon the use of non-potable water may well serve as a disincentive for maximizing such usage. That, however, is a problem for legislative rather than judicial solution." (emphasis added) The judge made it clear that the inconsistencies between the different statutes require clarification by the Legislature.

Second, we do not believe that water utilities should get special compensation that other utilities, such as those that provide natural gas, do not receive when entities serve their own facilities. Water reclamation agencies frequently use energy produced at their own facilities, such as digester gas, instead of purchasing energy from a utility, without compensating the utilities. The Sanitation Districts are in the process of constructing a gas line to convey landfill gas recovered from the Puente Hills Landfill to utilize for our central heating and cooling systems at our Joint Administration Office. Recognizing the importance of conservation, the Gas Company has been completely cooperative and supportive of the project. The change in the Service Duplication Act proposed in SB 778 would merely put reclaimed water on an equal footing with other resources.

Third, water reclamation agencies typically use reclaimed water at their facilities for everything from tank washdown to cooling towers to lawn irrigation. Without SB 778, the Service Duplication Act could lead to higher costs for water reclamation agencies throughout the state, yet would not add value to water reclamation facilities or lead to improved service. Yet, as public entities, we have a responsibility to deliver services in the most cost-effective manner possible. If we were a private company we would not be here because the Service Duplication Act does not apply to industries or private companies. We believe that we should have the same rights that

private industry has -- to use our own water on our own property without having to sell it to a water purveyor and buy it back or pay compensation. This is just common sense.

Fourth, the reason that SB 778 makes sense: water conservation. During the recent drought, water retailers were required to implement water conservation programs to reduce usage by 10 percent. Although the drought is officially over, water conservation must become a way of life in order to reduce our dependence on imported supplies. The use of reclaimed water is a conservation practice that has become a necessity in southern California. Using reclaimed water at the Puente Hills Landfill will allow the SGVWC to conserve 3 percent of its water supply which means the impact of conservation on its other potable water customers will be diminished. When SGVWC asked its customers to voluntarily cut back or conserve water by 10% during the drought, we heard no concerns about economic losses or "stranded investment". Yet when we present an economically sound project to conserve water by using our own reclaimed water and achieve the cut back they requested, we are told there is a stranded investment.

The fifth reason to support SB778 is to ease the economic burden on local governments. This is a point that is most critical and troublesome to our Mayors. You know better than I that these are very difficult economic times for state and local government. The key words are "cut" economize, be innovative and find ways to further save money. There have been many discussions with the Wilson Administration and the Legislature about identifying unfair or unnecessary and economically burdensome regulations and then providing relief from them when appropriate. Our Mayors feel strongly that the Service Duplication Act as it relates to self-use of reclaimed water is unfair and unnecessary and ask for your relief from it by means of this bill. There are instances where we can clearly save money if we are allowed to serve ourselves with our own reclaimed water. If the situation is such that we can't save money through self-use then we will be glad to work with the Water Company as we have with other water purveyors. We are just asking for the right to do either without a violation of the Service Duplication Act.

In total when you consider the 5 basic points I have just presented and couple them with what I believe to be our mutual desire to minimize impediments to sound water policy and promote water reuse, I sincerely hope you will approve this bill.

Clearly, the issues before the Committee are contentious. We have worked hard to try to find equitable solutions, and are committed to continue these efforts. We readily concede that the water retailers have expertise in the distribution of water, and we wish to assure you that our goal is not to compete with water agencies in their overall retail market. However, we do feel strongly that we should be able to serve ourselves with our own reclaimed water.

While I have focused my remarks on the issue of self-use, I realize that the Committee is interested in several broader issues surrounding the application of the Service Duplication law to reclaimed water service. I agree wholeheartedly that these issues need to be addressed. However, I believe that self-use should be exempt from the Service Duplication Act regardless of any other changes made with respect to service to other users. I urge you to hear SB 778 when the Legislature reconvenes in January, even as we continue to develop solutions to the other Service Duplication issues.

Thank you very much for the opportunity to speak today. I would be happy to answer any questions that you may have.

**California Legislature
Assembly Committee on Utilities and Commerce**

Interim Hearing

on

**The Role of Water Retailers in Furnishing Reclaimed Water:
SB 778 (Dills) and the Service Duplication Act**

**October 21, 1993
Los Angeles, California**

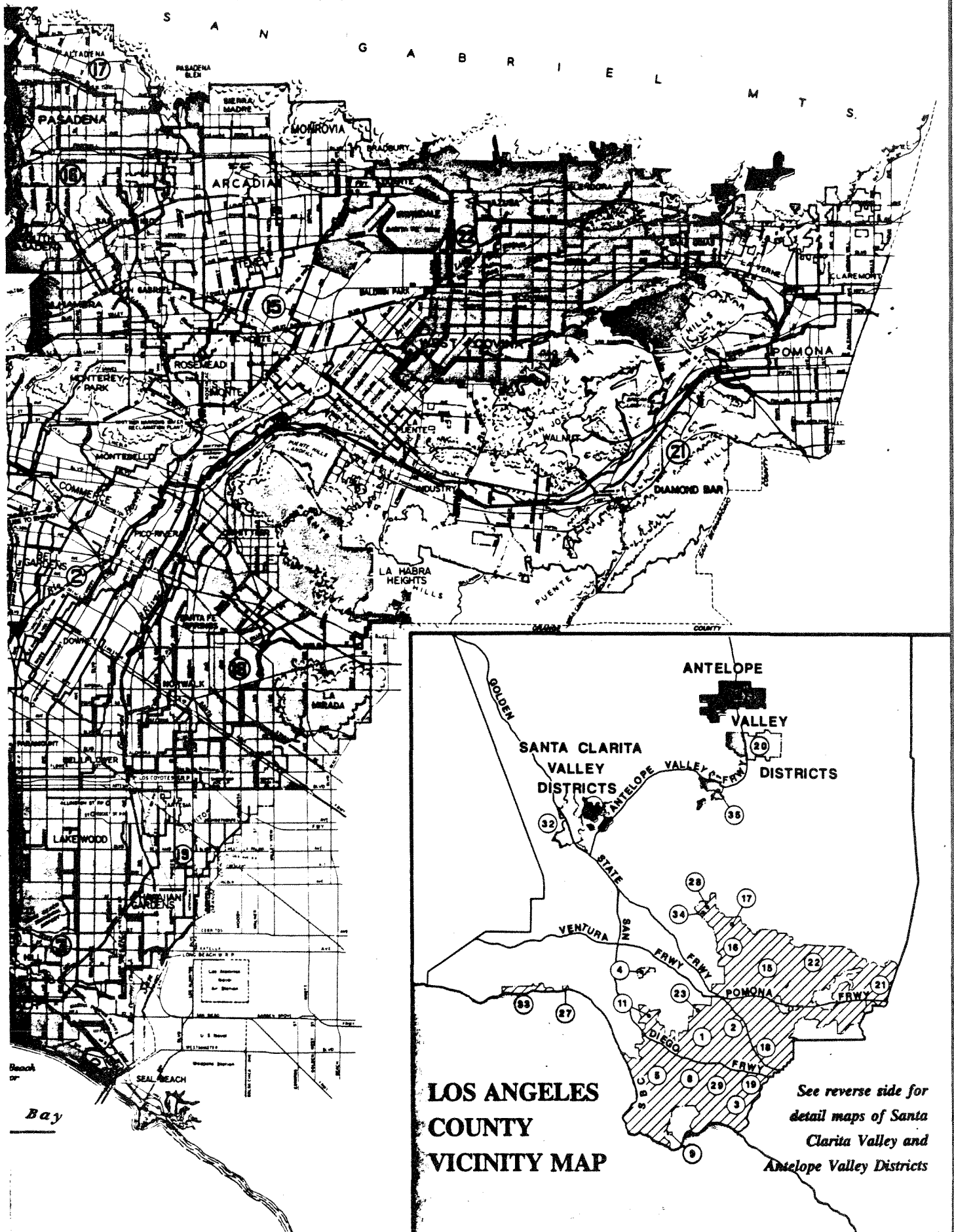
Testimony of

**James F. Stahl
Assistant Chief Engineer & Assistant General Manager
Sanitation Districts of Los Angeles County**

FOLD-OUT

EXHIBIT IN ITS ENTIRETY AVAILABLE AT COMMITTEE
FOR VIEWING.

EXHIBIT 1



WASTEWATER MANAGEMENT FACILITIES DATA

DIST NO	DATE OF FORMATION	PLACED IN OPERATION	AREA SQ MILES	POPULATION	INCRP CITIES (ALL OR PART)	MILES OF SEWERS TRUNKS	LATERALS	PUMP STATION	METHOD OF DISPOSAL
8 B C	12-24-23	09-01-26	13 858	130 400	8	20 15	256	8	JOINT OUTFALL SYSTEM
1	11-17-24	02-13-28	41 714	494 000	11	76 63	728	1	"
2	02-25-24	02-13-28	75 864	570 800	20	138 56	1,168	4	"
3	05-19-24	05-20-48	48 838	424 300	8	34 81	914	7	"
4	03-17-24	12-09-26	1 985	38 500	3	5 19	48	0	L.A. CITY BEVERAGE SYSTEM
5	03-31-24	02-13-28	87 242	855 000	15	141 99	1,074	7	JOINT OUTFALL SYSTEM
8	09-21-25	02-13-28	31 511	138 200	4	33 13	279	2	"
9	08-16-26	05-10-27	0 205	2 300	1	0	5	0	L.A. CITY BEVERAGE SYSTEM
11	06-12-29	06-18-30	1 977	0	2	1 42	0	0	L.A. CITY BEVERAGE SYSTEM
14	08-31-38	12-02-41	40 643	75 500	2	49 40	275	0	PHI TRMT & OXIDATION PONDS
15	01-02-45	02-27-48	77 611	505 000	20	63 20	1,040	3	JOINT OUTFALL SYSTEM
16	01-02-46	02-27-48	36 803	239 000	5	33 89	825	0	"
17	01-02-46	11-23-49	7 484	43 300	1	5 38	110	0	"
18	11-23-48	07-01-50	60 489	307 500	11	73 42	717	0	"
19	03-28-50	05-19-51	13 856	107 000	3	21 26	173	1	"
20	08-07-51	09-08-52	29 774	44 200	1	34 03	154	0	PHI TRMT & OXIDATION PONDS
21	11-13-51	08-20-54	77 025	307 100	9	85 27	731	4	JOINT OUTFALL SYSTEM
22	09-22-53	12-06-54	63 207	262 500	12	73 64	851	0	"
23	07-10-56	07-14-59	2 949	100	1	0 80	20	0	"
26	01-12-61	05-10-62	14 923	65 000	1	24 25	214	0	ACTIVATED SLUDGE PLANT
27	04-20-61	04-02-62	0 230	1 900	0	0 34	2	1	L.A. CITY BEVERAGE SYSTEM
28	09-14-61	11-02-62	0 616	1 400	1	0	3	0	ACTIVATED SLUDGE PLANT
29	09-20-62	11-12-64	2 140	8 200	1	2 56	30	0	JOINT OUTFALL SYSTEM
32	03-23-65	05-02-66	16 141	39 900	1	15 99	182	1	ACT SLUDGE PLANT & FILTERS
33	08-03-65	---	5 218	7 700	0	0	0	0	"
34	10-31-67	---	7 147	20 600	1	0	0	0	"
35	11-19-70	---	9 775	6 900	0	0	0	0	"
JOINT OUTFALL	02-13-28	---	---	4 496 300	---	271 82	---	11	"
TOTAL	---	---	769 225	---	---	1,206 93	9,379	50	"

SOLID WASTE MANAGEMENT FACILITIES DATA

SANITARY LANDFILLS	PLACED IN COMMERCIAL OPERATION	AREA IN ACRES	STATUS
PALOS VERDES	05-15-57	173	CLOSED
BRADRA	07-15-57	323	OPERATING
MISSION CANYON	06-01-60	499	CLOSED
BOHOL CANYON	03-22-61	444	OPERATING
CALABASAS	02-14-61	505	OPERATING
PUEBLO HILLS	06-01-70	1,365	OPERATING
RUSTIC-BULLVAN CANYONS	---	1,910	POTENTIAL SITE
ENERGY FACILITIES	NET ELECTRICAL DESIGN CAPACITY		
COMMERCE	---	---	---
REFUSE TO-ENERGY	01-01-87	10 MW	---
SOUTHEAST REBOURCE RECOVERY	12-01-88	29.5 MW	---
PUEBLO HILLS	01-01-87	48.5 MW	---
PALOS VERDES	---	---	---
GAS TO-ENERGY	12-20-88	10 MW	---
BRADRA GAS TO-ENERGY	EARLY 1990	8 MW	---
TRANSFER STATION	*ADDITIONAL CAPACITY		
BOUTH GATE	01-02-58	---	---
RECYCLE CENTERS			
PALOS VERDES	11-01-76	---	---
PUEBLO HILLS	10-25-82	---	---



SANITATION DISTRICT NUMBER ②

SANITATION DISTRICT BOUNDARY -----

MAIN TRUNK SEWERS -----

CONNECTING SEWERS USED BY DISTRICTS -----

PROPOSED TRUNK SEWERS -----

JOINT OUTFALL C

W.R.P. / WATER

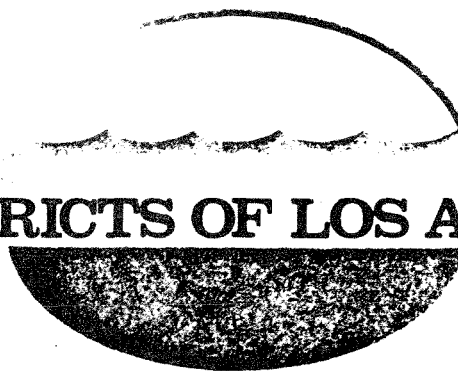
J.W.P.C.P. / JOINT WATER PC

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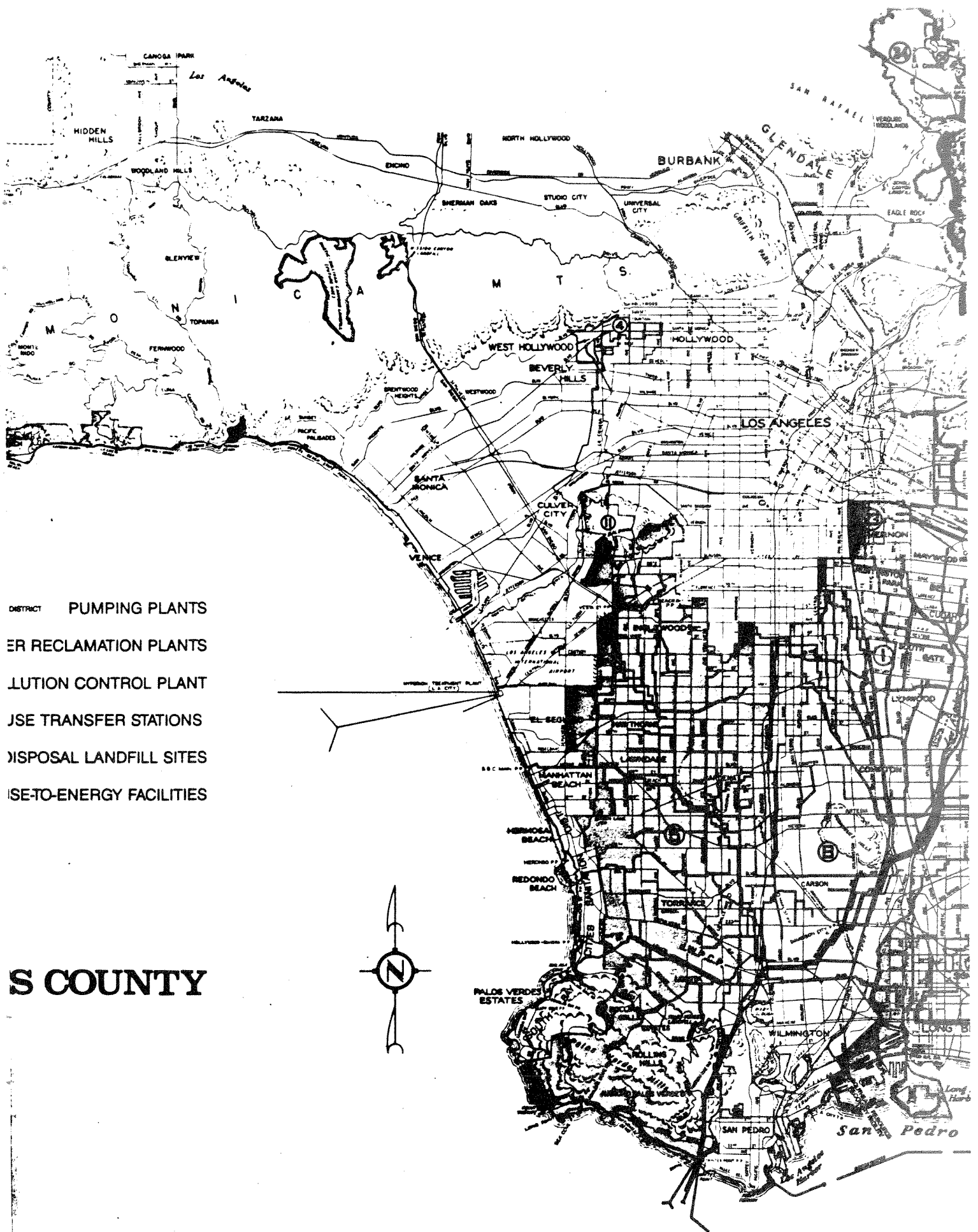
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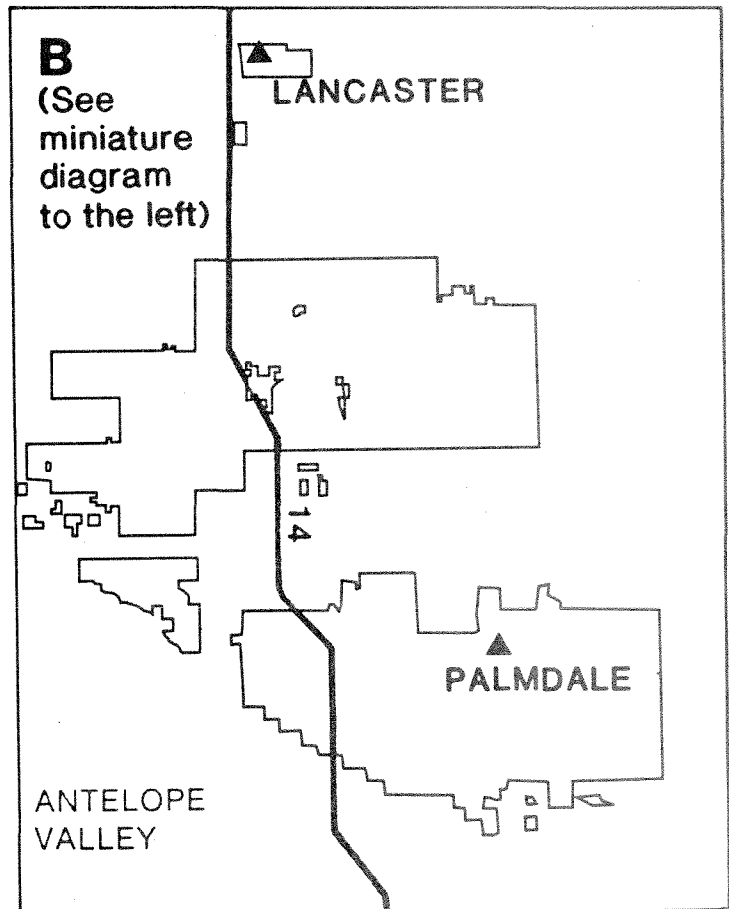
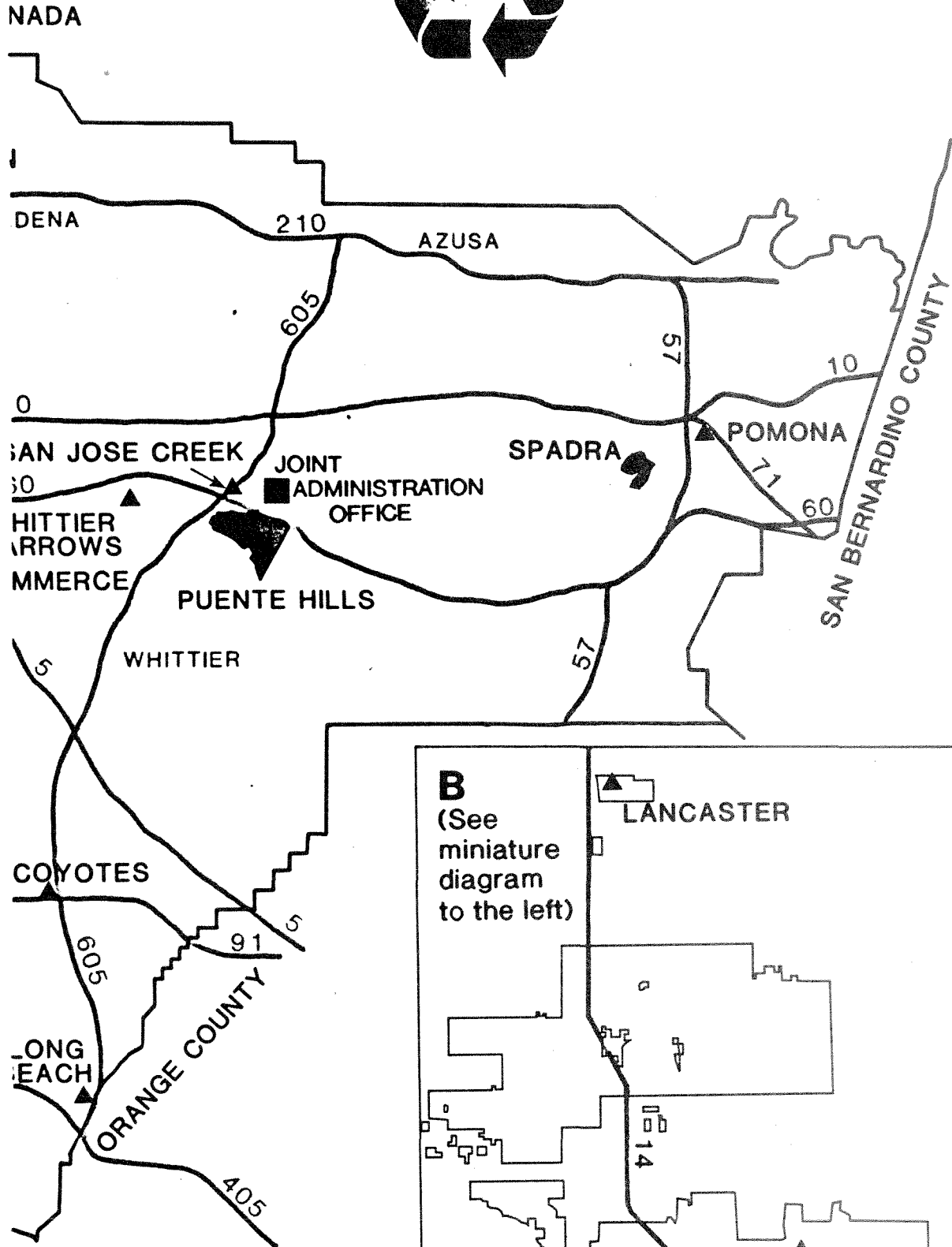
SANITATION DISTRICTS OF LOS ANGELES

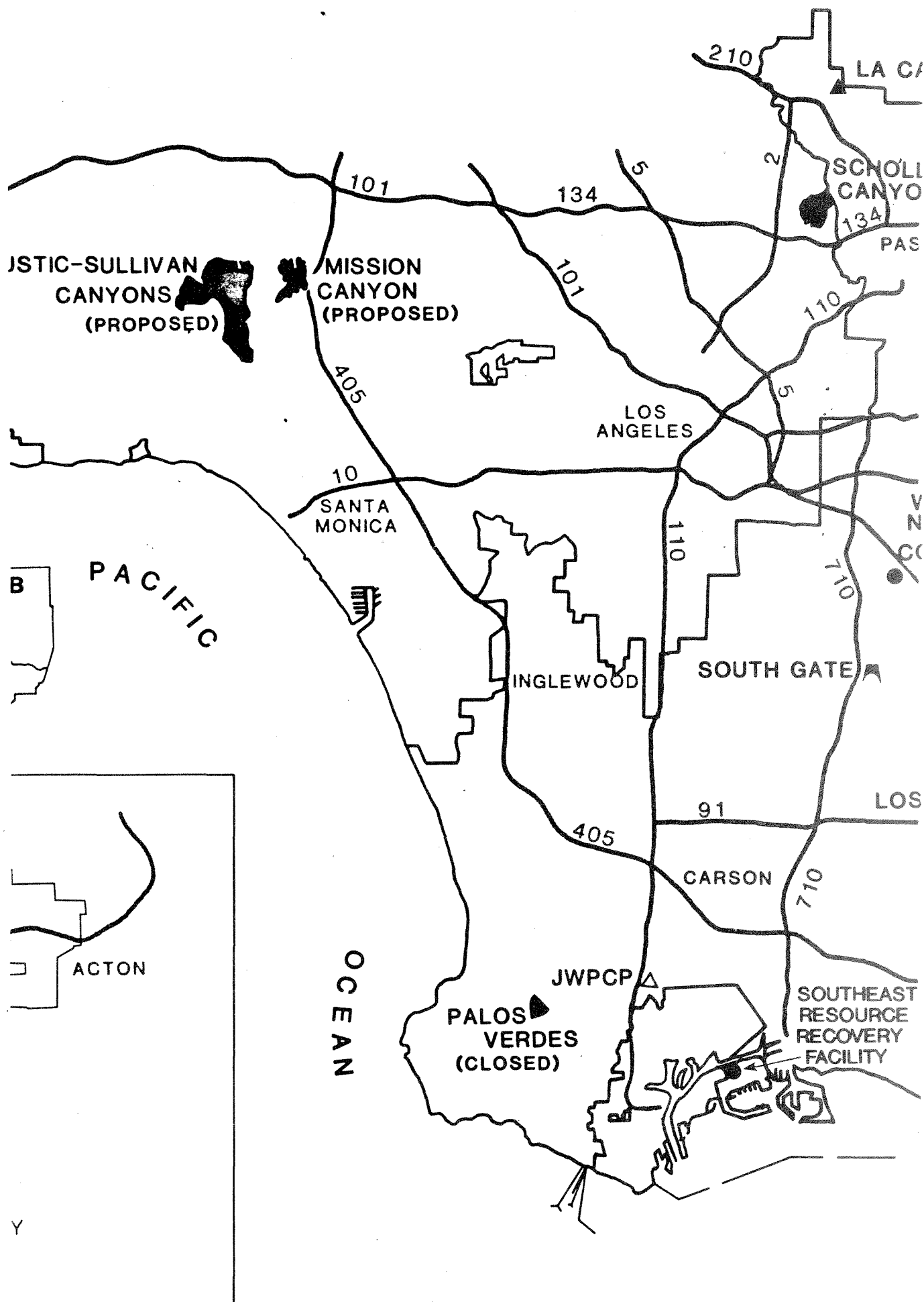


SCALES



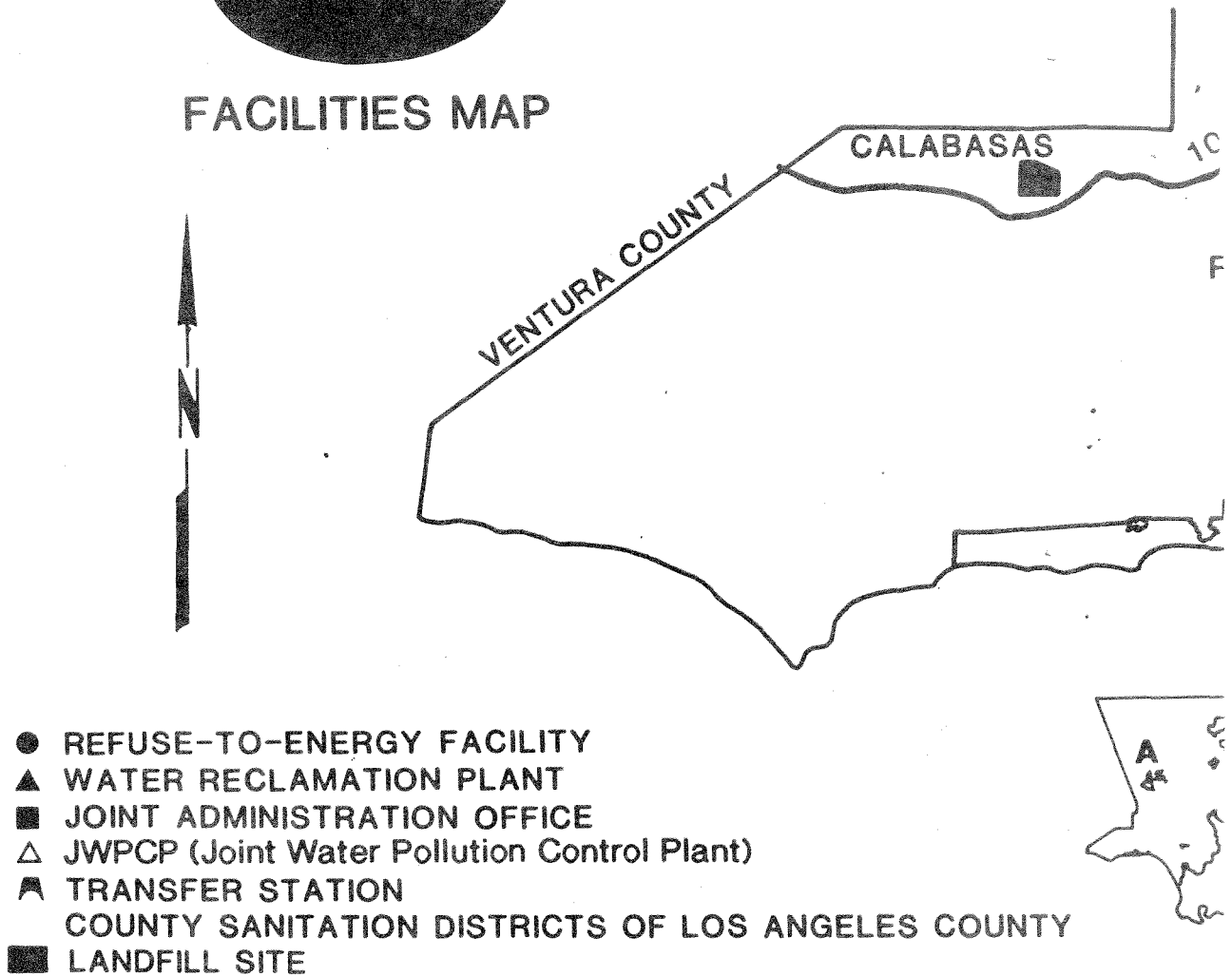




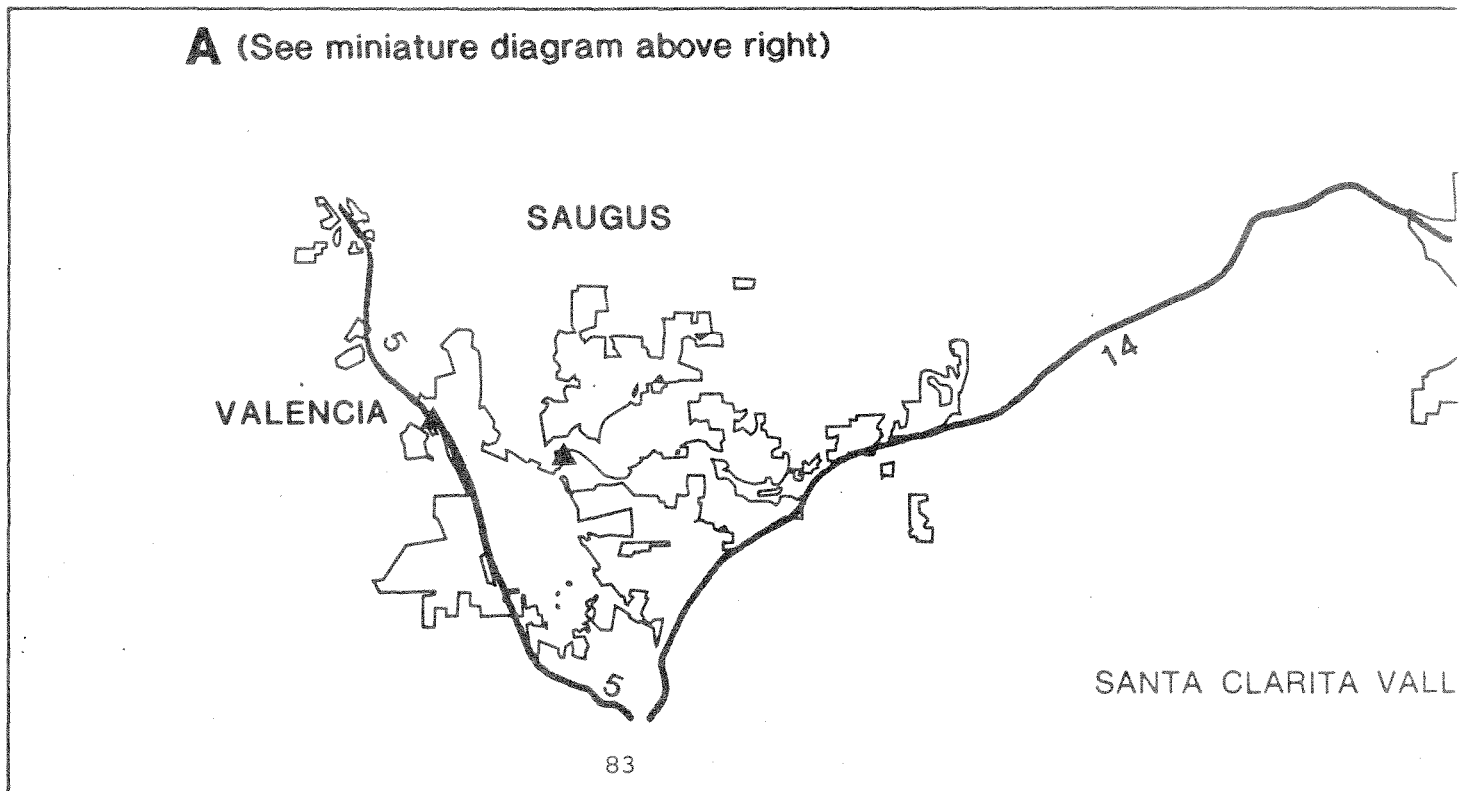


SANITATION DISTRICTS OF LOS ANGELES COUNTY

FACILITIES MAP

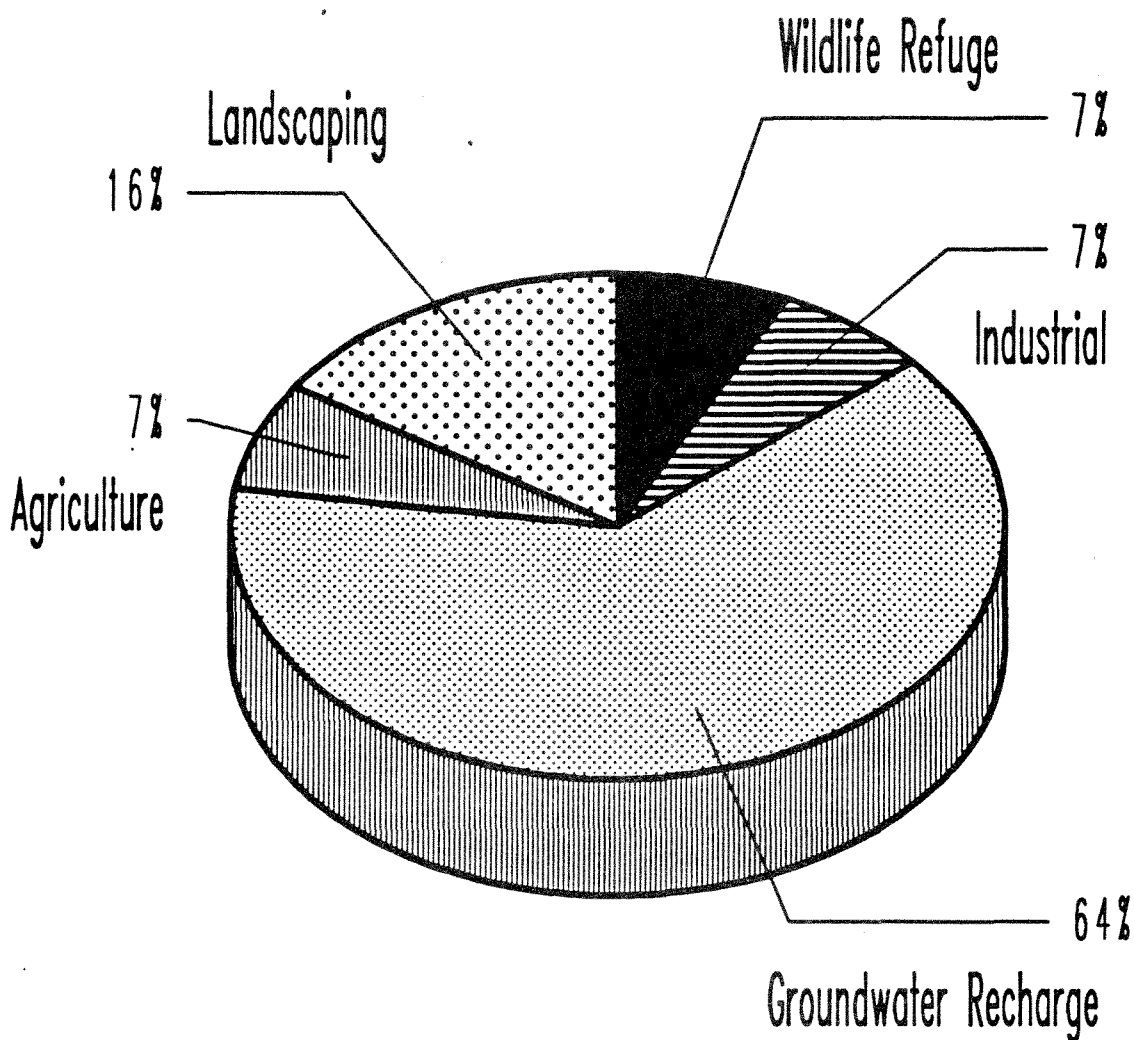


A (See miniature diagram above right)



SANITATION DISTRICTS OF LOS ANGELES COUNTY

**RECLAIMED WATER USAGE
FISCAL YEAR 1992-93
(62,000 AF)**



Reclaimed Water Sold via 17 LACSD Contracts with, Municipal Water Districts, Cities and Other Entities and is Reused at Over 200 Different Sites.

PUENTE HILLS RECLAIMED WATER
GRAVITY DISTRIBUTION LINE
(1800" OF 36" D.A. - BUILT 1993)

SAN JOSE CREEK
WRP OUTFALL
(9 MILES OF 66" D.A.
BUILT 1970-71)

SANITATION DISTRICTS OF LOS ANGELES COUNTY

PROPORTION OF SAN GABRIEL VALLEY WATER COMPANY'S POTABLE WATER SUPPLY USED AT THE PUENTE HILLS LANDFILL

FY 1990 - FY 1992

	FY 89-90	FY 90-91	FY 91-92	3-YR Average
	(acre-feet)			
Water Purchased by San Gabriel Valley Water Co.	46,185	43,493	40,354	43,344
Water Use at Puente Hills Landfill	1,317	1,425	1,626	1,456
Percent of San Gabriel Valley Water Co.'s Water Used at Puente Hills Landfill	2.9%	3.3%	4.0%	3.3%



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-4998
Mailing Address: P.O. Box 4998, Whittier, CA 90607 4998
Telephone: (310) 699-7411, FAX: (310) 695-6139

CHARLES W. CARRY
Chief Engineer and General Manager

FAX TRANSMITTAL

TO: Bill Julian
Assembly Utilities & Commerce Committee

FROM: Sharon Green
L.A. County Sanitation Districts
FAX: (310) 692-5103

DATE: October 19, 1993

NUMBER OF PAGES
(including this page): 3

TELECOPY OPERATOR: Cheryl Sanchez, (310) 699-7411, ext. 2500

COMMENTS:

Please find attached a mock-up of SB 778 with revised amendments. These are technical changes to the author's amendments offered in July before your Committee, and reflect discussions between LACSD/CASA and ACWA. While we do not anticipate any further changes, we are waiting for the approval of one ACWA member who has had a strong interest in the bill. We still expect to finalize these changes this week before the interim hearing, and we will request that Senator Dills submit them to Legislative Counsel as soon as possible. Please call me if you have any questions.

AMENDED IN SENATE APRIL 12, 1993

SENATE BILL

No. 778

Introduced by Senator Dills

March 3, 1993

An act to amend Section 1502 of, and to add Section 1507 to, the Public Utilities Code, relating to water service.

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Dills. Water service.

Existing law requires the payment of just compensation to a private or public entity when another entity, either public or private, provides or extends water service to a service area served by the first entity.

This bill would provide that these provisions do not apply to any entity's own private use of potable or reclaimed water, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1502 of the Public Utilities Code is amended to read:

1502. (a) As used in this chapter, "political subdivision" means a county, city and county, city, municipal water district, county water district, irrigation district, public utility district, or any other public corporation.

(b) As used in this chapter, "service area" means an area served by a privately owned public utility in which the facilities have been dedicated to public use and in which territory the utility is required to render service to the public.

1 (c) As used in this chapter, "operating system" means
2 an integrated water system for the supply of water to a
3 service area of a privately owned public utility.

4 (d) As used in this chapter, "private utility" means a
5 privately owned public utility providing a water service.

6 (e) As used in this chapter, "type of service" means,
7 among other things, domestic, commercial, industrial,
8 fire protection, wholesale, or irrigation service.

9 (f) As used in this chapter, "reclaimed water" means
10 reclaimed water as defined in Section 13050 of the Water
11 Code.

12 (g) As used in this chapter, "private use" means an
13 entity's use of its own potable water or reclaimed water.

14 SEC. 2. Section 1507 is added to the Public Utilities
15 Code, to read:

16 1507. The provisions of this chapter shall not be
17 applicable to any entity's own private use of potable and
18 or reclaimed water, whether or not that entity was
19 previously served with potable or reclaimed water.

(a)

If all of the following conditions are met:

(1) the use is limited to the private use of reclaimed water by an entity which owns a water reclamation plant;

(2) the use is limited to the premises of a water reclamation plant or a landfill owned by the entity which owns or operates the water reclamation plant;

(3) the use is limited to dust suppression, and irrigation purposes, and other uses on the site for which reclaimed water has been approved by the Department of Health Services;

(4) no existing reclaimed water facilities, whether owned or operated by a private utility or political subdivision, can reasonably and economically serve the intended use.

(b) Nothing in this section or the act enacting this section shall be construed as an expression of legislative intent as to whether this chapter applies, or whether the same type of service is being provided, where reclaimed water is provided as a substitute for use of a potable water supply in a case not involving the private use of reclaimed water.

O

SAN GABRIEL VALLEY WATER COMPANY

11142 GARVEY AVENUE - POST OFFICE BOX 6010

EL MONTE, CALIFORNIA 91734

MICHAEL L. WHITEHEAD
PRESIDENT

(818) 448-6183

October 26, 1993

The Honorable Gwenn Moore
Chairwoman
Assembly Committee on Utilities and Commerce
California State Assembly
2117 Capitol Building
Sacramento, CA 94249

Subject: Interim Hearing/Senate Bill 778

Dear Assembly Member Moore:

As you requested at the Interim Hearing on SB 778 held last Thursday, October 21, 1993, in Los Angeles, I am providing a copy of my prepared testimony. I am also providing a copy of my testimony to each of the Committee members for their information.

Again, I would like to thank you for allowing me the opportunity to provide the Committee with information about the role of water retailers in furnishing reclaimed water service. As I explained, we enthusiastically support and promote the use of reclaimed water and fully intend to be the retailer of reclaimed water in our service areas. From a public policy standpoint, this is the most efficient and cost-effective way to maximize the use of reclaimed water.

Should you or your staff require additional information, or if you have any question, please do not hesitate to contact me. Thank you.

Very truly yours,



Michael L. Whitehead

MLW:lc
Enclosure

**TESTIMONY OF
MICHAEL L. WHITEHEAD**

Assembly Committee on Utilities and Commerce

INTERIM HEARING

on

**The Role of Water Retailers in Furnishing Reclaimed Water:
SB 778 (Dills) and the Service Duplication Law**

October 21, 1993

My name is Michael L. Whitehead. I am President of San Gabriel Valley Water Company. I would like to thank the Chairwoman and the members of the Committee for allowing me this opportunity to appear and present my views and answer the five questions you pose about service of reclaimed water by retail water suppliers.

I am attaching as Appendix 1 to my Testimony, copies of the company's service area maps which are marked to show existing and proposed wastewater treatment plants and actual and potential reclaimed water users in the company's service area. Also, I am attaching as Appendix 2 a paper entitled "Facts About the Service Duplication Law" which explains the legislative purpose and sound public policy considerations supporting the Service Duplication Law and why SB 778 is not needed.

INTRODUCTION

San Gabriel Valley Water Company, through its Los Angeles County and Fontana Water Company divisions, serves a population of over 250,000 in 18 cities in Los Angeles and San Bernardino Counties. In Los Angeles County we serve portions of Arcadia, Baldwin Park, El Monte, City of Industry, Irwindale, La Puente, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, South El Monte, West

Covina, Whittier, and unincorporated areas of the county. In San Bernardino County we serve portions of Fontana, Rancho Cucamonga, Rialto, and unincorporated areas of the county.

COMMITMENT TO MAXIMIZE RECLAIMED WATER USE

San Gabriel Valley Water Company unequivocally supports the development and use of reclaimed water throughout the company's service areas by those customers who are able to use it. Indeed, we plan to operate and maintain reclaimed water distribution facilities and be the retailer of reclaimed water throughout the company's service areas and we are actively promoting the use of reclaimed water.

As I speak to you today, we are in the process of installing reclaimed water service connections to some of our customers in Whittier as part of the Central Basin Municipal Water District's Rio Hondo/Century Reclaimed Water Project. Similarly, in our Fontana Water Company system we are working to provide reclaimed water for landscape irrigation purposes along Interstate 10 in cooperation with Caltrans and the I-10 Corridor Beautification Authority. We are committed to maximizing the use of reclaimed water and developing a grid system to distribute reclaimed water so we can serve *all of the customers* in our service area who are able to use reclaimed water.

THE SERVICE DUPLICATION LAW IS GOOD PUBLIC POLICY

In adopting the Service Duplication Law, the Legislature recognized the importance of encouraging the orderly planning and development of viable water

systems to serve the public and the need to commit large sums of capital for that purpose. Indeed, water utilities like San Gabriel have invested the significant sums necessary to provide quality, reliable water service *to all customers throughout our service areas*, including major investments to provide storage and flow capacity for fire protection purposes.

There are sound and compelling public policy reasons for the Service Duplication Law. The Service Duplication Law was adopted by the Legislature in 1965 when the Legislature found that the public health and safety required that water utilities be protected from unrestricted invasions of their territory and bypassing of their water systems. The Legislature recognized that tremendous investments in water systems are required to provide sufficient amounts of water for health and sanitary purposes, and *significantly enlarged capacities for fire protection*, and that those investments must be protected. That protection is in the form of compensation whenever a water utility is damaged by another water supplier which duplicates its facilities or bypasses its system and takes its customers.

The requirement that compensation be paid when property is damaged or taken for public use is a constitutional requirement implemented in the Service Duplication Law. One of the reasons it was enacted in the first place *was to deter* the unchecked duplication of service and bypass of existing utilities. The Sanitation District could and still can avoid having to pay compensation if it sells its reclaimed water to San Gabriel so that water can be distributed to the Puente Hills Landfill and other water utility customers who can use that type of water.

WHAT IS SB 778 REALLY ABOUT?

SB 778 would allow an agency like the Los Angeles County Sanitation District to bypass service from the existing water utility and selectively cherry-pick some of the utility's large customers. At the same time, that bill would relieve the agency from compensating the utility for the stranded investment in facilities rendered useless by the agency's actions. Moreover, the agency would not and could not assume the corresponding obligations of providing water for public health, safety, sanitary, and fire protection purposes. The court has already ruled that the kind of unchecked bypass that would be permitted under SB 778 is clearly subject to the Service Duplication Law. The court ruled that the Sanitation District should be responsible for damages it causes.

Contrary to what its sponsors will tell you, SB 778 is not about maximizing the use of reclaimed water. *SB 778 is a local special interest bill* sponsored by the Los Angeles County Sanitation District solely for the purpose of relieving it from a recent Superior Court judgment in a lawsuit the District itself brought against San Gabriel Valley Water Company.

That lawsuit arose because of the District's refusal to allow San Gabriel to provide reclaimed water service to the Puente Hills Landfill. Instead of settling the matter with the company, the District stated it would seek *a judicial determination* of whether the Service Duplication Law applies to the service of reclaimed water at the Landfill.

The Sanitation District then pursued its lawsuit against San Gabriel and lost last December. During the trial, the District argued to the Court that the company's remaining ratepayers should bear the losses caused by the District's service duplication.

The Court ruled otherwise, stating that the Sanitation District, not the company's remaining customers, should be responsible for the damages it causes by duplicating San Gabriel's service to the Landfill.

Having lost that lawsuit (which the District itself initiated and which it is appealing), the District now seeks to overturn the Superior Court decision by sponsoring and promoting SB 778.

Not only is this sort of manipulation and game-playing unreasonable and abusive of the judicial and legislative processes, but more importantly, SB 778 would be bad public policy. The Legislature should not allow itself to be drawn into the middle of this controversy through SB 778.

QUESTIONS OF INTEREST TO THE COMMITTEE

I turn now to the specific questions of interest to the Committee which were distributed to the participants along with the Agenda for the Interim Hearing.

Question 1: Who is responsible for production of reclaimed water?

Answer: Reclaimed water is the product of sewage treatment plants which are operated by agencies who are mandated by law to treat wastewater to tertiary treatment standards before it can be discharged to a stream, the ocean, or put to beneficial use.

Question 2: Is the identity of water reclamation agencies different from water retailers serving the area where reclaimed water is to be used?

Answer: Usually, water reclamation agencies are not the same as the retail water suppliers in a given service area. But that, by itself, does not create a Service Duplication Law conflict. The role of the reclaimed water agency is to treat wastewater to established standards and to make it available to water retailers whose role it is to distribute it to customers in their service areas who can use that water.

The only conflict that can occur is when the reclaimed water agency decides to bypass the existing water retailer and directly serve the water retailer's largest customers.

That is precisely the conflict between San Gabriel Valley Water Company and the Los Angeles County Sanitation District. There, the District is in the process of taking over service to the Puente Hills Landfill which is San Gabriel's largest customer. In addition, the District has taken over service to several commercial nurseries, a golf course, and has signed an agreement to provide reclaimed water service to Rose Hills Memorial Park which is also San Gabriel's customer.

To make matters worse, the District has refused to enter into a reclaimed water supply agreement with San Gabriel so San Gabriel can provide reclaimed water to other customers such as the Rio Hondo Community College which has asked the company to arrange for reclaimed water service. By refusing to sell reclaimed water to San Gabriel and by cherry-picking its largest customers, the Sanitation District is inflicting damages on the company and is preventing the company from developing a reclaimed water distribution system so reclaimed water use can be maximized throughout our service area.

Question 3: To what extent is economic loss avoided or lessened?

Answer: Speaking for San Gabriel Valley Water Company, and I think most, if not all, other water utilities, we are not interested in pursuing damage claims against water reclamation agencies. In fact, the damages are avoided and the public policy of promoting the use of reclaimed water use is furthered when the retail water suppliers are also the purveyors of reclaimed water.

The role of water utilities is the efficient distribution of all water to the public in their service areas. That is not the reclaimed water agencies' role, and indeed, they do not hold themselves out to provide reclaimed water service to the public at large. We do. And, we can do it effectively, efficiently, and at a cost which will encourage the maximization of this important resource.

Under the state's Wastewater Reuse Law, reclaimed water must be used in place of potable water whenever it is available and its cost is comparable to or less than the potable water supply. Pricing of this service obviously is critical to encouraging customers to use reclaimed water. In the Central Basin Rio Hondo/Century Reclaimed Water Project which I mentioned before, water utilities are charging reclaimed water rates which are 20-25% lower than prevailing general metered rates. This appears to be encouraging users to take reclaimed water.

We have found that even larger discounts are possible under certain circumstances. For example, we projected that we could offer the Puente Hills Landfill nearly a 50% reduction in its current water costs if we supplied reclaimed water there. Unfortunately, the Los Angeles County Sanitation District refused to supply the reclaimed water and

would not even consider the possibility of San Gabriel being the reclaimed water supplier.

Question 4: Should the revenues from the sale of reclaimed water be maximized as an additional source of income to support general water treatment costs?

Answer: The cost of treating wastewater to meet established discharge standards must be incurred by the reclamation agencies irrespective of whether the reclaimed water is put to beneficial use or not.

The agency can recover all or part of that cost so long as the wholesale price it charges the water retailers for reclaimed water allows for a sufficient economic incentive to encourage the use of reclaimed water among customers in the utilities' service areas. The utility, in turn, will pass the water cost savings through to the customers in the form of discounts from the prevailing general metered rates.

Bear in mind, the Sanitation District and other reclamation agencies will continue to supply the same or greater quantities of reclaimed water without SB 778. When the water retailers' role is recognized and preserved, the agencies still continue to sell their reclaimed water and their revenue stream remains undiminished. They will simply sell the water to the water utilities instead of directly to the utilities customers.

Question 5: What changes in regulatory programs at the CPUC would facilitate entry of investor-owned utilities into the reclaimed water business?

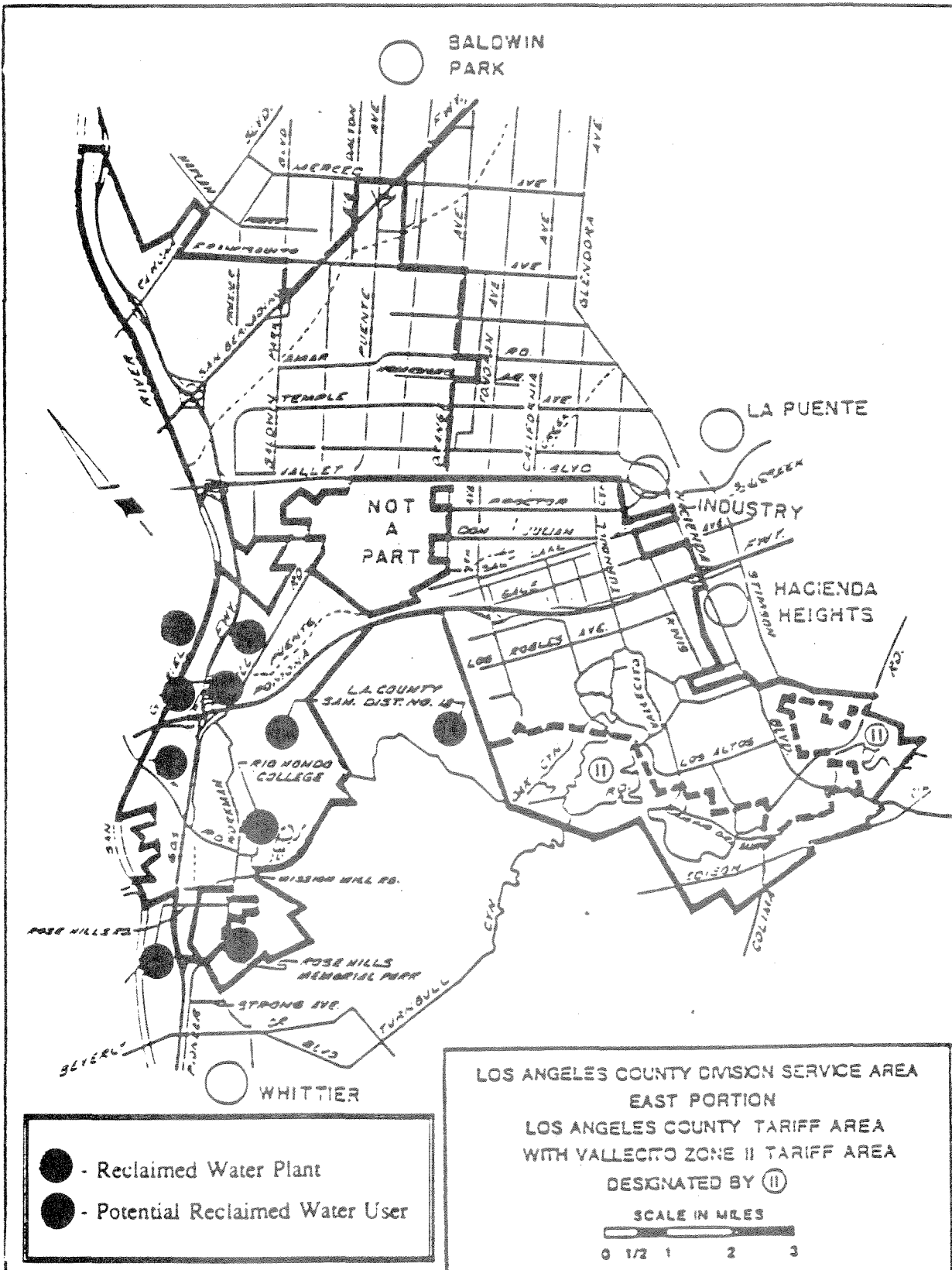
Answer: Our experience is that the California Public Utilities Commission has been receptive to these pricing arrangements and has in practically every instance routinely approved tariff changes to give effect to these price differentials. The recently enacted SB 129 will further facilitate the process by which investor-owned utilities can set economically realistic rates to encourage the maximum use of reclaimed water.

That concludes my prepared testimony.

11142 GARVEY AVENUE
EL MONTE, CALIFORNIA 91733

Revised
Cancelling Revised

Cal P.U.C. Sheet No. 1131-W
Cal P.U.C. Sheet No. 1163-W



(To be inserted by entity)
Advice Letter No. 246

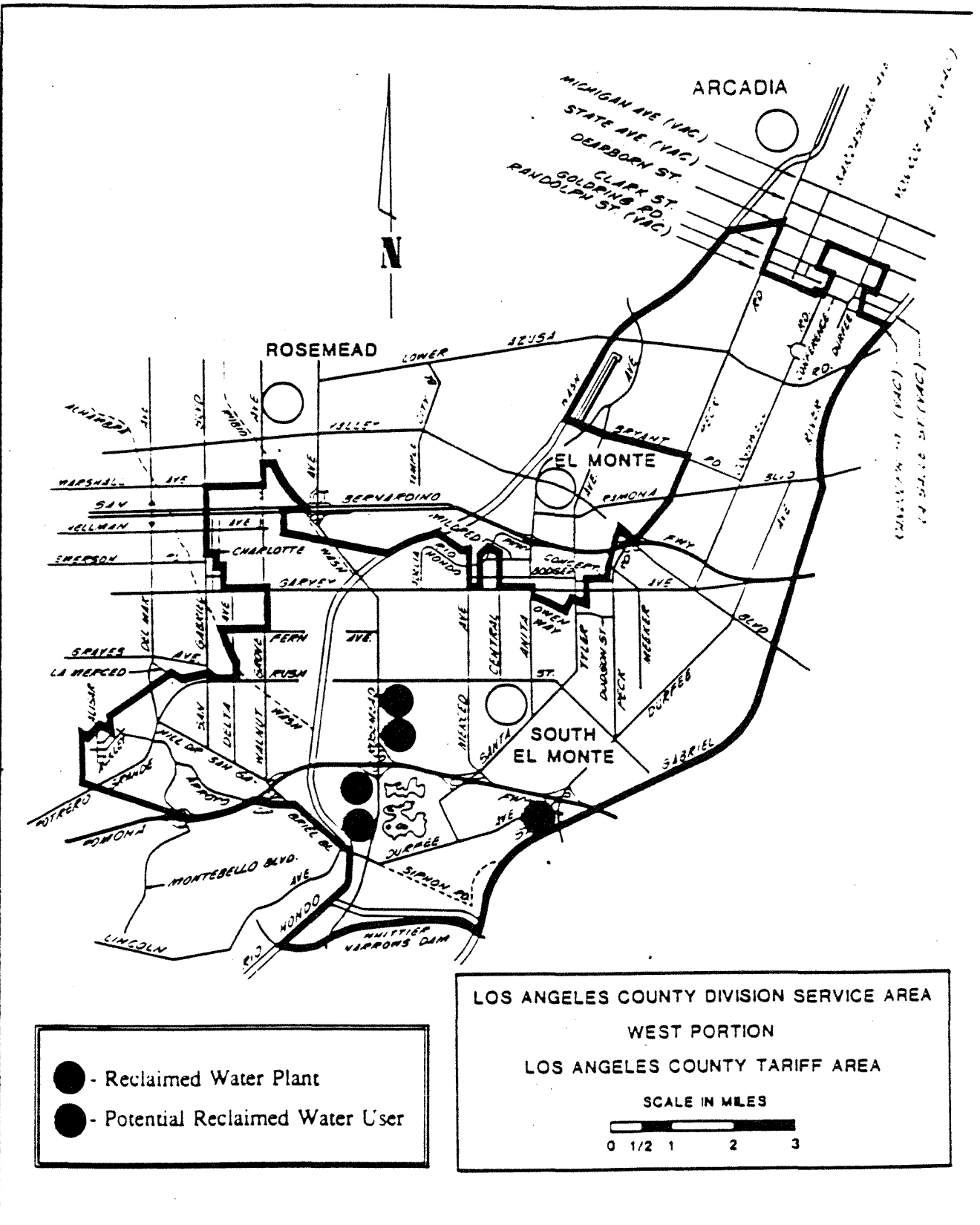
Issued by
R. E. Hoytens
NAME
Vice President
TITLE

(To be inserted by Cal P.U.C.)
Date Filed MAR 30 1989
Effective MAY 9 1989
Resolution No. 101

SAN GABRIEL VALLEY WATER COMPANY

11142 GARVEY AVENUE
EL MONTE, CALIFORNIA 91733

Revised _____ Cal P.U.C. Sheet No. 1171-W
Cancelling Revised _____ Cal P.U.C. Sheet No. 870-W



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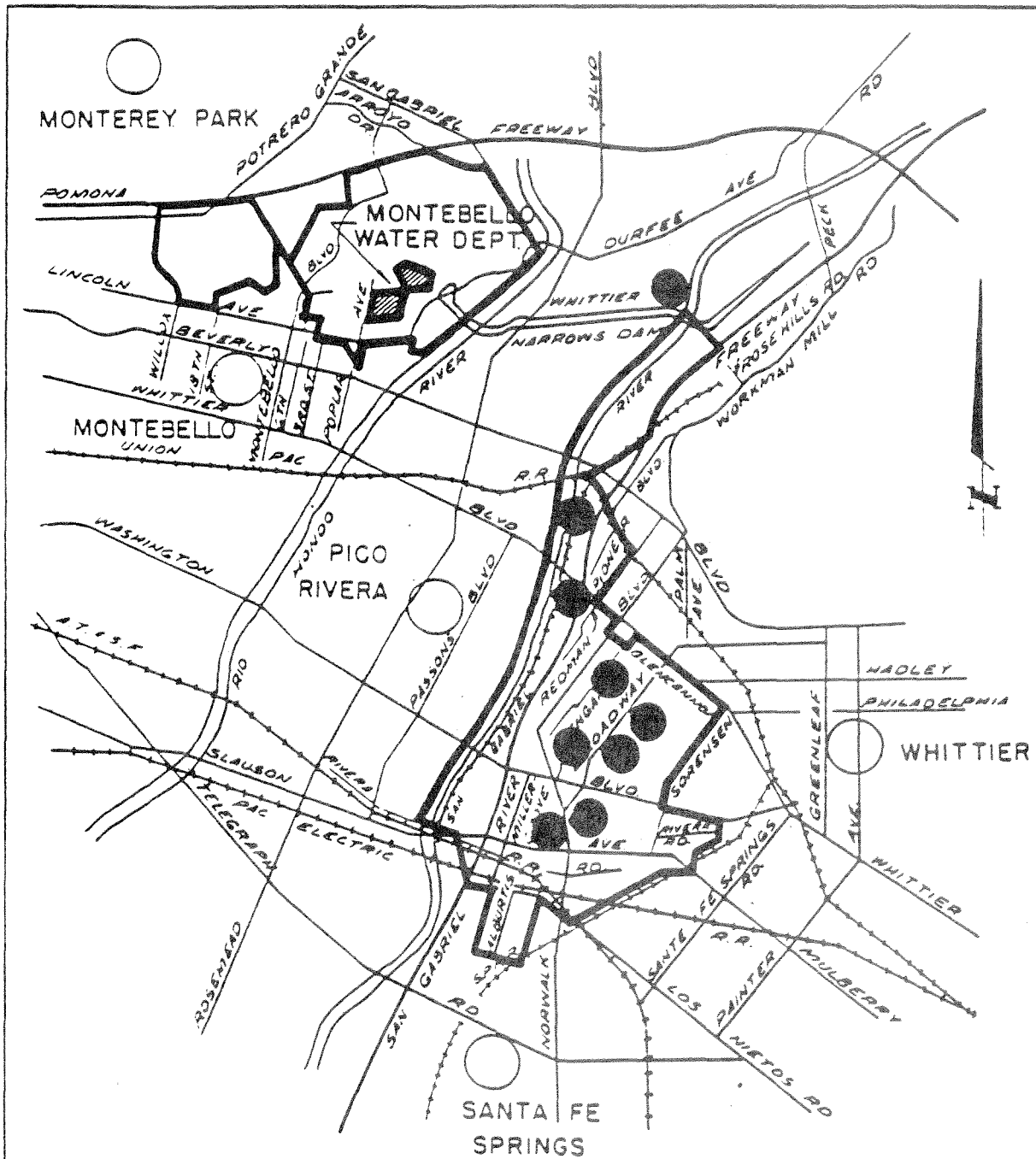
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Decision No. _____ NAME _____ Effective FEB 5 1989
Vice President _____ Resolution No. _____

SAN GABRIEL VALLEY WATER COMPANY

11142 GARVEY AVENUE
EL MONTE, CALIFORNIA

Revised
Cancelling Revised

Cal. P.U.C. Sheet No. 369-W
Cal. P.U.C. Sheet No. 723-W



- - Reclaimed Water Plant
- - Potential Reclaimed Water User

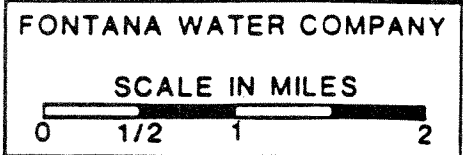
**LOS ANGELES COUNTY DIVISION
SERVICE AREA-SOUTH PORTION**

SCALE 1" = 1 MILE

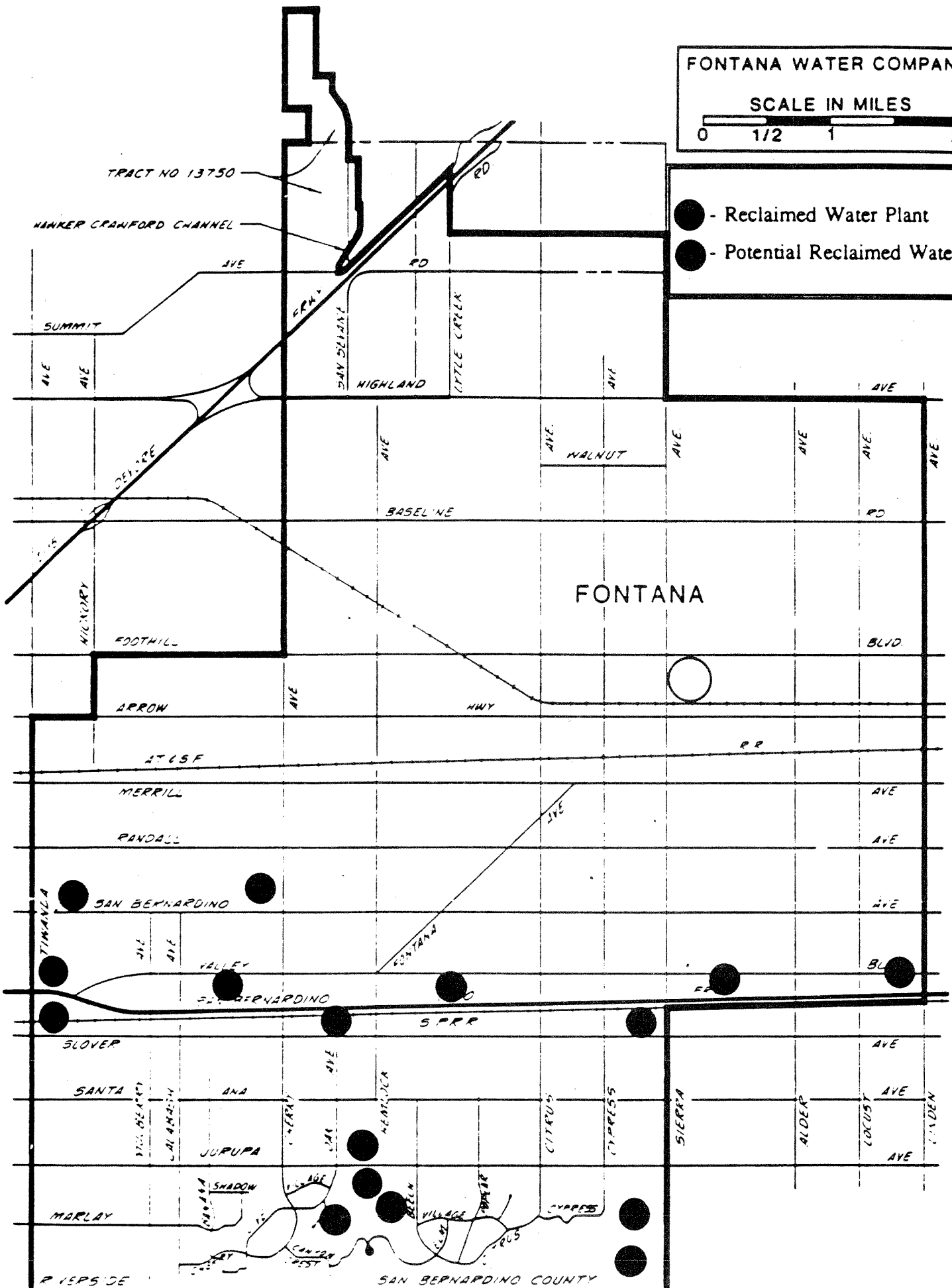
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Decision No. _____

Issued by
R. E. Heytens
NAME
Vice President

(To be inserted by Cal. P.U.C.)
Date Filed OCT 1 1930 103
Effective OCT 21 1930
Resolution No. _____



- - Reclaimed Water Plant
- - Potential Reclaimed Water Use



FACTS
ABOUT THE
SERVICE DUPLICATION LAW

1. The Service Duplication Law is a good law enacted to protect the "public health, safety and welfare" (Pub. Util. Code § 1501).
2. SB 778 is a bad amendment to a good law. It makes no logical sense and is simply an effort by a losing litigant to obtain from the Legislature what was properly denied to it by the courts.
3. The Service Duplication Law states that when a political subdivision constructs facilities to provide water service within the service area of the public utility with the same type of service, that constitutes a taking of the public utility's property for a public purpose to the extent that any of the public utility's property is "made inoperative, reduced in value or rendered useless" (Pub. Util. Code § 1503).
4. The Service Duplication Law serves three important public purposes: (1) it provides compensation to the public utility for the loss of value of its water facilities rendered useless if the political subdivision provides the same type of service, so that the loss is met, as it should be, by the entity causing the loss not by the public utility or its ratepayers; (2) it prevents the public utility's being deterred from providing reliable water service throughout its service area because of concern that its service will be duplicated

without compensation by a political subdivision; and (3) it prohibits a political subdivision from applying unfair pressure on a public utility to sell water facilities at less than their fair value by threatening to duplicate rather than condemn them so that the public utility would be left without any compensation whatsoever.

5. The Service Duplication Law protects not only public utilities but also other public entities as well. This is good, sound public policy for public and private water utilities alike, and the public they serve.
6. The application of the Service Duplication Law to the so-called private use of reclaimed water by an entity like the Sanitation District implements all three public purposes of the Service Duplication Law and places the loss for service duplication where it belongs, namely, on the entity causing the loss, and not upon the public utility or its ratepayers.
7. SB 778 is a bad amendment that would permit the Sanitation District to defeat the important public purposes of the Service Duplication Law to the detriment of health, safety and welfare simply because it is serving its own projects. The public utility is equally harmed by service duplication for private uses as well as for non-private uses. SB 778 would thus defeat the orderly planning and development of viable water systems to serve the public and the need to commit large amounts of capital for that purpose, and would enable an entity like the Sanitation District to heap upon the public utility and its ratepayers losses caused by the Sanitation District.

8. SB 778 makes no logical sense. If the Sanitation District seeks to acquire a pipeline or other property of a public utility for use in delivering reclaimed water to its own facility at another location, the District clearly has to pay just compensation for the pipe and property even though the payment of that compensation affects the cost of reclaimed water. Clearly, the paying of just compensation required by the California Constitution and the United States Constitution cannot be avoided by the unfounded excuse that such payments will prevent the maximization of the use of reclaimed water. The Sanitation District has no more right to take the public utility's property by inverse condemnation through service duplication than it does by direct condemnation.
9. Public utilities, including San Gabriel Valley Water Company, encourage and promote the use of reclaimed water. Public utilities are willing to purchase and distribute reclaimed water pursuant to regulation by the Public Utilities Commission. Indeed, by providing backbone systems and because of their expertise in the distribution of water, public utilities will maximize the use of reclaimed water, and entities like the Sanitation District can thereby avoid paying service duplication damages.
10. SB 778 is simply sour grapes. *The County Sanitation District presented this issue for determination in pending litigation which it filed against San Gabriel Valley Water Company.* The matter was heard before Judge Robert Weil, a well-known and respected retired Superior Court Judge. After a full and fair trial, Judge Weil decided that the District's proposed provision of reclaimed water to the Puente Hills Landfill in San

Gabriel's service area would be proprietary in nature and self-use as the District claimed but he also decided that the District's service to the landfill is subject to the Service Duplication Law. Judge Weil expressly found that San Gabriel is "equally harmed by the service duplication, regardless of whether the end use is or is not proprietary in nature." Having lost in court, the Sanitation District is now asking the Legislature to amend the law to provide it with the result that it sought but was denied for good reason in the pending litigation. This is wrong and should be categorically rejected.



MICHAEL J. WALLIS
DIRECTOR OF WASTEWATER

October 20, 1993

Honorable Gwen Moore
Chair, Assembly Committee on Utilities
and Commerce
2117 Capitol Building
Sacramento, CA 95814

Dear Assembly Member Moore

East Bay Municipal Utility District is pleased to provide testimony on the subject of "The Role of Water Retailers in Furnishing Reclaimed Water." Enclosed is a statement describing our efforts in the area of water reclamation and our position on SB778, and responses to specific questions of interest to the Committee.

If you have any questions regarding EBMUD's reclamation program please call David Williams at (510) 287-1496

Sincerely,

A handwritten signature in cursive script that reads 'Michael J. Wallis'.

Michael J. Wallis

MJW:OOY:

PT01V.N01

EBMUD Statement to the Utilities and Commerce Committee Interim Hearing on the Role of Water Retailers in Furnishing Reclaimed Water SB778 (Dills) and the Service Duplication Act

The East Bay Municipal Utility District (EBMUD) is a publicly owned utility governed by a seven-member Board of Directors elected from wards within the District. EBMUD supplies water and treats wastewater for parts of Alameda and Contra Costa Counties, and is also responsible for the delivery of reclaimed water within its service area.

EBMUD's supplies water from its own Pardee Reservoir on the Mokelumne river. EBMUD conveys, treats, and distributes about 200 million gallons per day of water to 1.2 million customers within its service area. EBMUD also provides wastewater services for about 600,000 of these customers, treating about 80 million gallons per day. There are 11 other wastewater entities that provide wastewater treatment services to the remainder of EBMUD's water service area.

EBMUD maintains that it is the purveyor of potable and reclaimed water within its service area. Although EBMUD owns and operates a wastewater treatment plant, most of the potential reclaimed water customers within its water service area are more easily supplied with reclaimed water from one of the other 11 other wastewater treatment plants. Consequently, EBMUD has and will continue to work cooperatively with the other wastewater agencies to develop reclamation projects.

EBMUD recognizes that reclamation provides an option for water supply, and that reclaimed water projects should be implemented when appropriate, feasible and cost-effective. To this end, EBMUD has incorporated water reclamation into its water supply planning process. EBMUD believes that as long as water is needed, and reclamation provides a viable cost-effective alternative, then water agencies should and will implement reclamation projects.

Outlined below is a summary of EBMUD's efforts on reclamation:

- o Used reclaimed water at its wastewater treatment plant since 1970 at a rate of 4.2 mgd.
- o Implemented projects that provide a total of 1 mgd of reclaimed water to irrigate five golf courses within its service area at a total capital cost of \$6.3 million.
- o Constructing a facility to provide reclaimed water to the Chevron Refinery in the City of Richmond thereby saving the equivalent of 5.4 mgd of potable water at a total capital cost of \$31 million.

- o Contributed to the development of a Contra Costa County ordinance setting forth procedures for implementing dual water systems.
- o Participated in the development of model ordinances and guidelines for water reuse in cities and counties to encourage the use of reclaimed water.
- o Participating in the study of a regional water reuse project to export reclaimed water from the San Francisco Bay Area to San Joaquin Valley.
- o Completed an evaluation of water supply needs for the service area, and plans to implement an additional 8 mgd of reclamation projects by 2005 at an estimated capital cost of \$75 million.

EBMUD supports the principle of the service duplication act because it protects the financial investment in the water distribution systems and prevents impacts to the ratepayers that would result from a duplication in service. However, EBMUD is willing to support SB778 because it does encourage development of reclaimed water projects while allowing only a narrow exception to the Service Duplication Act .

To date there have been no service duplication conflicts in the EBMUD service area, and EBMUD does not anticipate any conflicts in the future. EBMUD has agreements with two wastewater agencies for providing reclaimed water, and anticipates agreements with up to five other agencies in the future. These agreements are being pursued because EBMUD has a need for additional water supplies to reduce the impact of droughts on its customers and is committed to pursuing cost-effective reclamation opportunities.

EBMUD responses to questions of interest to the Assembly Utilities and Commerce Committee Interim Hearing on the Role of Water Retailers in Furnishing Reclaimed Water SB778 (Dills) and the Service Duplication Act.

1a. Who is responsible for producing reclaimed water and what are the plans for expanded production in California?

Reclaimed water production is most often a cooperative effort between wastewater and water utilities. According to the 1993 California Water Reuse Survey anticipated reclaimed water production in California will be over 1.3 million acre-feet by the year 2010, and may ultimately reach 1.5 million acre-feet.

1b. What are the limiting factors for production of reclaimed water?

The two most limiting factors are: (1) the costs of reclaimed water facilities and distribution systems (capital, operation, and maintenance) and; (2) State Health standards governing the use of recycled water.

1c. What are the costs of reclaimed water?

The District's existing reclamation projects produce water at between \$400 and \$800/Acre-foot (AF). It is estimated that first-year operating costs for planned future projects will be between \$1,000 and \$1,200/AF.

1d. How do the costs of reclamation (as distinguished from transportation) compare with other sources of new supply?

The cost for reclamation is a function of what the reclaimed water will be used for and the associated quality requirement. For irrigation of restricted access areas such as golf courses and freeway landscaping, secondary treated effluent produced at most wastewater treatment plants is of adequate quality. Hence, no additional treatment is necessary and the cost is essentially for distributing the reclaimed water. For irrigation of unrestricted access areas such as parks, additional treatment is required and costs will be higher.

2a. To what extent is the identity of water reclaimers (sanitation agencies) different from the identity of water retailers serving the area where reclaimed water is applied to?

EBMUD provides water service to 1.2 million people in portions of Alameda and Contra Costa Counties and provides wastewater treatment service to 600,000 residential, business, and industrial consumers in portions of Alameda County. There are 11 other Wastewater entities that provide wastewater treatment services to the remainder of EBMUD's water service area.

2b. How frequently does a Service Duplication Act conflict occur?

To date, there have been no Service Duplication Act conflicts within EBMUD's water or wastewater service areas.

2c. As reclaimed water service expands, how frequently will such conflicts occur?

EBMUD maintains that it is the potable water and recycled water purveyor within its service area. Conflicts relating to the Service Duplication Act are not anticipated because EBMUD is aggressively pursuing alternative water supplies which will reduce the impact of future droughts on customers. EBMUD currently has working agreements with two wastewater agencies for provision of reclaimed water. The District plans to construct additional cost-effective reclamation projects and will work cooperatively with wastewater agencies within its water service area. However, the District will not pursue reclamation projects which provide minimal benefits at excessive costs/risks to its customers. It is envisioned that wastewater entities would not pursue such projects either.

3a. To what extent is the economic loss avoided or lessened by requiring the reclaimed water provider to offer the reclaimed water for sale to the utility for resale?

EBMUD does not anticipate a wastewater agency within its service area choosing to serve recycled water when the District would be a willing partner in any cost-effective project. EBMUD looks at reclaimed water as another source of supply and incorporates it in its planning process. If a wastewater entity were to sell recycled water, EBMUD would suffer revenue losses and result in fixed costs being spread over a smaller customer base.

3b. To what extent is the use of reclaimed water optimized by requiring the reclaimed water provider to offer reclaimed water to the utility for resale?

Both potable and recycled water use are optimized by having the water utility purvey the recycled water. This would also result in a more reliable and efficient system for water supply. The water retailer is most familiar with the agency's water supply situation and can best identify potential major customers as well as smaller users along pipeline routes. The water utility can incorporate operation of the recycled system into its water system and thus maximize efficient use all water supplies.

3c. What should the price be?

The price for reclaimed water should be set in accordance with each agencies cost of doing business and in accord with their policies. For example, some agencies charge all customers the average cost for producing water and then add a surcharge for

pumping. A similar approach might be used for reclaimed water. In general, the price for reclaimed water should be no greater than the price for potable water.

- 3d. If the utility refuses to buy, what should be the recourse of the provider?

Water agencies are entrusted with making efficient use of water supplies for their customers. Besides cost there are other factors to be considered in the use of reclaimed water such as environmental concerns, public health, and public acceptability. These factors should be considered and decided by the water agency and not the provider of the reclaimed water. The water agency should have the discretion as to whether or not reclaimed water is in the best interest of the customer. Section 13550 of the water code does allow the State Board to make a determination on the "reasonable use of water" and could be the arbitrator in a dispute between the potable water purveyor and the wastewater agency supplying reclaimed water.

4. Should the revenues of providers from the sale of reclaimed water for resale be maximized as an additional source of income to support general water treatment costs as well as the added cost of reclamation?

Ideally, the water and wastewater entities agree to jointly pursue recycled water projects and each agency contributes funds commensurate with benefits realized. Public agencies need to recover the costs for the projects they implement but should not be in the business of making a profit. It is unlikely that reclamation projects within EBMUD's service area will make money.

5. In addition to an intelligent plan for implementing SB 129, what changes in regulatory programs at the CPUC would facilitate entry of investor-owned utilities in the reclaimed water business?

EBMUD is not regulated by the CPUC and is not intimately familiar with the CPUC regulations.

**UTILITIES AND COMMERCE COMMITTEE HEARING
ON RECLAIMED WATER
MUSEUM OF SCIENCE AND INDUSTRY
OCTOBER 21, 1993 - 2:00 P.M.**

Agency

- ♦ Walnut Valley Water District
- ♦ A California water district
- ♦ Located in Los Angeles County, approximately 29 miles east of Los Angeles
- ♦ Servicing potable and reclaimed water to five cities and an unincorporated area
- ♦ System presently has 24,725 metered connections ranging in size from ¾" to 10" and serving approximately 94,000 consumers
- ♦ All water provided is imported, purchased from the Metropolitan Water District of Southern California

Current Reclaimed System

- ♦ Comprised of approximately 27.3 miles of distribution mains ranging in size from 4 inches to 20 inches
- ♦ Includes two pump stations and four million gallons of aboveground storage
- ♦ Consumer base: 79 users, including two wholesale/retail users, the City of West Covina, and the Rowland Water District
- ♦ Balance of consumers are tax supported agencies, i.e., schools, public buildings, golf course, cemetery, and city supported landscape maintenance districts.

Source

- ♦ Reclaimed water is purchased from the City of Pomona, which has an exclusive franchise with the Sanitation Districts of Los Angeles County, which dispenses tertiary treated water from the Pomona water reclamation plant

Operations

- ♦ The current reclaimed system has been in operation since 1987 and has overcome institutional difficulties of wholesaling reclaimed water in other service areas by offering the reclaimed water at a discounted price.
- ♦ Currently, system revenues are positive, allowing for both growth and debt service.

Statement of Facts

- ♦ The design (line size and storage capabilities) of any potable water system is dictated by fire demand. System design (line sizing) is usually not affected by the use of singular parcels.
- ♦ The swap of an existing domestic consumer from potable water to reclaimed water does not have an appreciable effect on system worth when service is by the same entity, since the potable water saved can be used for other purposes.
- ♦ Time of use of reclaimed water can be controlled, reducing peaking load on domestic system.

- ♦ Revenue loss can be recovered by reducing need to find new sources of potable water to meet growth requirement or switching demand on load centers.

Realities

- ♦ The use of reclaimed water on any property is problematic, since certain Health Department regulations must be observed (so all consumers are site selective). The proposed legislation limits use to specific sites for specific uses.
- ♦ Health related regulations now in effect which place the policing burden on the end user of the reclaimed water require that the reclaimed water be offered at a discount so as to make its use attractive to the end user.

Conclusion

- ♦ Since the use of reclaimed water in Southern California offsets the need for locating and importing an additional source, its use is justifiable and an institutional decision must be made by retail purveyors to put behind them the scenarios of "lost profits" and "system under use" and support the expanded use of reclaimed water wherever practical.
- ♦ Our District supports SB 778 in its amended form and urges the Legislature to seek out means to overcome the current obstacles allowing the use of reclaimed water in retail water agencies' service zones by the reclaimer for Department of Health approved uses, since the expanded use of reclaimed water will figure dramatically in Southern California's future economic growth.

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