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MEMORANDUM

TO: MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
FROM: KIDMAN, BEHRENS & TAGUE
DATE: SEPTEMBER 7, 2011
RE: **AB 134 - APPROPRIATION OF WATER: SACRAMENTO REGIONAL
COUNTY SANITATION DISTRICT.**

BACKGROUND

The Sacramento Regional County Sanitation District (SRCSD) owns and operates the Sacramento Regional Wastewater Treatment Plant (Treatment Plant). The SRCSD discharges its wastewater into the Sacramento River. On December 9, 2010 the Central Valley Regional Water Quality Control Board (CVRWQCB) issued a new Waste Discharge Requirement for the Treatment Plant. The new requirement will, according to the SRCSD, require upgrades to the Treatment Plant at a cost of approximately \$2 billion. To offset some of this cost, SRCSD would like to market its effluent. As a result, AB 134 was introduced to “authorize the Sacramento Regional County Sanitation District to file an application for a permit to appropriate a specified amount of water that is based on the volume of treated wastewater that the district discharges into the Sacramento River and recovers for reuse.”¹

ANALYSIS

As originally introduced, AB 134 allowed SRCSD to “file an application for a permit to appropriate an amount of water that is equal to either of the following: (1) Up to the amount of treated wastewater that is discharged into the Sacramento River, if the treated wastewater is

¹ AB 134, January 12, 2011.

delivered directly for reuse prior to discharge [or] (2) Up to the amount of treated wastewater that is discharged into the Sacramento River, less diminution by seepage, evaporation, transportation, or other natural causes between the point of discharge from the wastewater treatment plant and the point of recovery for reuse.” The original version of AB 134 *required* the State Water Resources Control Board (SWRCB) to grant the permit. The final version of AB 134, provides that the SWRCB *may* grant the permit “subject to the terms and conditions as in the [SWRCB’s] judgment are necessary for the protection of the rights of any legal user of the water.” Further, prior to granting the permit, the SWRCB must “comply with the provisions of Part 2 (commencing with Section 1200) of Division 2, and other applicable law, and may impose terms and conditions authorized thereunder.”

Over 50 parties opposed the first version of AB 134, including the Association of California Water Agencies and the Metropolitan Water District of Southern California (MWD). At the end of the process, six parties continued to oppose the bill, including MWD. As set forth in the June 28, 2011 Senate Committee on Natural Resources and Water bill analysis (June 2011 Analysis), six California water agencies remained opposed to AB 134 and submitted a letter stating: “Although several of our previous concerns have been addressed in amendments to the bill, we remain opposed due to the precedent it creates as other wastewater dischargers would be encouraged to seek similar authorization to appropriate their effluent discharges. In addition, we are concerned that the ‘market opportunities’ the bill would provide to SRCSD can actually serve as a disincentive for water conservation in the region.”

MWD’s point about creating a precedent was highlighted in the June 2011 Analysis. In a section entitled “Camel’s Nose” the June 2011 Analysis states: “A number of other upstream Sacramento River interests have expressed interest to the sponsors, either directly or indirectly, in having similar authorizations as provided by this bill. Should this bill be enacted, it would not be surprising to see similar such bills introduced in the not so distant future.” The June 2011 Analysis also questioned the bill’s necessity. The June 2011 Analysis states: “Is This Bill Necessary? Part 1. Current law already authorizes everything authorized in this bill and all actions the sponsor purportedly is contemplating. It is not clear what additional powers, duties, or authorities this bill would create, if any.” Thus, although the final version of the bill may have turned into a summary of existing law, there is still a danger that lingers at the end of the day. When the time comes for the SRCSD to file its application, the SWRCB may decide to curtail another party’s appropriation in order to satisfy SRCSD. Therefore, all water appropriators in the Sacramento River should remain vigilant in order to protect their rights.