

FACT SHEET – AB 134 (Dickinson) [as amended April 15, 2011]

The Case for SRCSD’s Proposed Legislation to Recapture and Market Its High-Quality Recycled Water

Background

The need for a reliable water supply is vital to California’s economic viability. To help move toward sustainable management of its water supplies, the State has set ambitious water conservation, recycling and self-sustainability goals to be met by 2020. SRCSD has up to 180,000 acre feet per year of treated wastewater that could be marketed and reused to help the State supplement its water portfolio and help achieve its water recycling goals.

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What does AB 134 do? Does it automatically grant SRCSD a water right?

AB 134 does not automatically grant SRCSD a water right. It would simply enable SRCSD to file an application to the State Water Board to obtain such a water right permit for an equivalent amount of water that SRCSD treats and discharges to the Sacramento River. This would provide SRCSD the ability to market and sell its future high-quality water both in and out of the Sacramento region. AB 134 is specific and would apply only to the water SRCSD discharges to the Sacramento River, which accounts for less than 1-2% of the river’s average daily flows.

AB 134 is closely modeled after Water Code section 1485 (enacted in 1961, and amended in 1967), which specifically allows those who discharge wastewater to the San Joaquin River to file an appropriate water right application for the amount of water they discharge, minus calculated losses. The City of Stockton recently received a permit from the State Water Board pursuant to that legislation, allowing Stockton to divert water from the San Joaquin River.

Why is AB 134 necessary?

AB 134 will provide an additional procedural option for SRCSD to *potentially* realize the benefit of its treated wastewater discharges, by allowing SRCSD to obtain a water right permit for water attributable to its discharges of high-quality recycled water. SRCSD would then be able to use or market the water available under that water right permit to a willing buyer.

SRCSD’s ratepayers and the taxpayers of the Capitol Region may soon be required to finance up to \$2.1 billion to upgrade its wastewater treatment facilities, which will then produce some of the highest-quality recycled water in California – water pure enough for unrestricted agricultural and municipal recycled uses – or dedicated for Delta ecosystem needs. Revenue generated from the sale of this high-quality water could help offset some of the enormous costs associated with the upgrades at SRCSD’s wastewater treatment plant that will be necessary to meet the stringent treatment levels recently imposed by the Central Valley Regional Water Quality Control Board. Without other sources of funding, monthly sewer bills could triple for SRCSD ratepayers and new construction sewer hook-up fees could quadruple.

SRCSD has the desire and commitment to become a positive partner in Delta ecosystem restoration and water supply reliability – it now asks the Legislature to provide the self-help tools that SRCSD will need to make this goal a reality. AB 134 could provide a necessary revenue stream for SRCSD to develop recycled and new water supplies for use in and out of the Sacramento region, and help solve the issues now facing the Delta.

Does SRCSD have existing rights to its wastewater?

Yes. California Water Code sections 1210 and 1211 currently provide that the owner of a wastewater treatment plant holds the exclusive right to its treated wastewater, and can petition the State Water Board to change the point of discharge, place of use or purpose of use. SRCSD has invoked and confirmed its water rights through this petition process for its existing water recycling facilities. An existing State Water Board Order already confirms SRCSD's right to reuse up to 10 mgd of its existing discharge flows at certain places of use specified in the order.

Does the wastewater discharged by SRCSD constitute "return flows" that downstream users may acquire a right to?

No. Approximately 50-60% of the water collected and treated by SRCSD is derived from groundwater. Groundwater is considered "foreign water" and is legally distinct from surface water. As such, no downstream water right holder can legally claim a right to SRCSD's recycled water discharges that are derived from groundwater supply. Similarly, where water is diverted to storage away from a stream, a later release of this water from storage is not considered "natural" flow, but rather the flow of foreign waters. In this regard, water that passes through a sanitary sewer system and into a wastewater treatment plant is anything but natural. Through the treatment process, the water has changed significantly, both in its constituents and in the timing of its later return to a stream, after it has been temporarily stored in the sewer collection and treatment system. As a consequence, to the extent that water law concepts are applied, treated wastewater, regardless of its source, should *per se* be treated as foreign waters. Finally, many downstream water right holders contain the State Water Board's standard Permit Term 25, which provides that if the water available for use under the permit is wastewater, the permit "shall not be construed as giving any assurance that such supply will continue."

Would a water right application still need to be filed by SRCSD?

Yes. AB 134 would require SRCSD to file a water right application, which would be reviewed and potentially approved by the State Water Board. Interested parties may participate in that water right application and permitting process. Amendments to AB 134 (March 23 and April 15) confirm the State Water Board's authority and discretion to condition any water right awarded to SRCSD to protect legal users of the water, including environmental needs of the Delta.

Will AB 134 affect the water rights of others?

No. AB 134 is designed to address a very specific situation related to SRCSD's recycled water and provides another procedural tool for SRCSD to sell and transfer water, attributable to its recycled water discharges, to other interested parties. Moreover, AB 134 would not cause any injury to other legal users of water because, like the 1961 legislation that it is modeled after, it allows the State Water Board to grant any water right permit "upon such terms and conditions as in the [State Water] Board's judgment are necessary for the protection of the rights of any legal user of the water."

Has SRCSD taken amendments to address concerns of the Water Contractors?

Yes. SRCSD has met with dozens of parties interested in AB 134, including many Southern California and agricultural water suppliers. After these meetings, and in an effort to address concerns and objections raised, SRCSD asked Assembly Member Dickinson to make several, important changes to AB 134. On March 23 and April 15, 2011, the bill was formally amended to address all of the substantive objections received. Most importantly, amended AB 134 confirms the authority and discretion of the State Water Board to review and, if appropriate, approve SRCSD's potential water right application, subject to terms and conditions the State Water Board may deem necessary to protect all legal users of the water, including environmental needs of the Delta.