

**WRA Legislative Advocacy – LEGISLATIVE SUPPORT REQUEST**

**To:** Legislative Committee  
**From:** Robert Johnson, WRA Deputy GM  
**Date:** March 3, 2017  
**Re:** Receive a report and provide direction on legislative proposals to address the white bass issue related of the Interlake Tunnel and Spillway Modification Project

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This is a request from the Monterey County Water Resources Agency (Agency) to the Monterey County Legislative Committee (Committee) seeking a legislative solution to the white bass component of the Agency's Interlake Tunnel and Spillway Modification Project (Project). The Agency requests the Committee's feedback and recommendation.

**BACKGROUND**

The Project consists of an underground tunnel approximately two miles long that would connect Lake Nacimiento and Lake San Antonio reservoirs, which provide water storage, flood management, water conservation, and recreational opportunities. The Project is advantageous since Lake Nacimiento fills three times faster than Lake San Antonio, so in wet years, water can be moved to San Antonio, thus allowing the ability to increase the storage capacity of the entire reservoir system. Additionally, the Project has a second component, the raising of the San Antonio Spillway, which would provide for an additional 59,000 acre-feet of water storage in Lake San Antonio. The water that is moved and stored can then be utilized for environmental and groundwater recharge purposes that is beneficial to the entire Salinas Valley Groundwater Basin. The Agency embarked on the Project in 2014, and continues to work on determining the feasibility of the Project, as well as quantifying the benefits of the Project. Legislative support has been an important part of moving the Project. The enactment of AB 155, AB 1585, and most recently SB 831 has played a part in keeping the Project on track.

One key element of the Project's viability is with possible incidental movement of white bass out of Lake Nacimiento into Lake San Antonio through the tunnel. White bass are present in Lake Nacimiento. They are a non-native species that was placed in Lake Nacimiento by (then) California Department of Fish and Game (now called Department of Fish and Wildlife (CDFW)) in the late 1960's. They are an aggressive fish and have been known to prey on steelhead.

Monterey County and Agency staff has been working with CDFW on a concept to restrict potential, incidental white bass movement from Lake Nacimiento to Lake San Antonio as a result of the Project since late 2015. A proposal was given to CDFW in November 2015. The proposal consisted of the design of a screened deepwater intake, which would minimize the opportunities for white bass to enter the Interlake Tunnel and move to Lake San Antonio. The proposed cost of the deepwater intake is between \$5M and \$20M. At this writing, white bass has not been found in Lake San Antonio. Meanwhile, white bass do escape from Lake Nacimiento during times of releases from the High Level Gates, or from spills over the movable spillway crest.

**CURRENT SITUATION**

The Agency is seeking a legislative remedy because our efforts to identify and gain approval of a viable solution to date with CDFW have been unsuccessful and now jeopardizes the project timeline. The Project Manager has been unsuccessful trying to establish communication with or obtain feedback from CDFW. CDFW was alerted that the critical path of the Project has been extended due, in part, to the lack of an approved solution. Continued delays result increase Project costs and threaten the viability of the Project. The California Legislature appropriated a \$10M Grant towards the Project under SB 831 (Alejo), and work under the Grant has commenced, though is complicated by the lack of a timely white bass solution.

The Agency, Monterey County's County Administrative Office (CAO) and the County Counsel's Office have developed a possible legislative solution that is before the Committee. The recommended, or preferred, alternative (draft language attached) would add Section 11.2 to the Agency Act. Proposed Section 11.2 to would provide that the movement of white bass through the tunnel would not violate existing provisions of the Fish and Game Code prohibiting the taking, planting, transport, etc., of white bass. Other possible options to address this issue involve either: 1) amending current Fish and Game Code provisions to allow the movement of white bass between Lake Nacimiento and Lake San Antonio, or 2) adding a new section to the Fish and Game Code allowing the movement of white bass through the Project. Both

alternatives appear to involve more time and complications than simply amending the Agency Act. The preferred alternative is sound and viable because white bass are already escaping from Lake Nacimiento through the high level gates, or over the spillway when flood control releases are performed. The Project reduces the amount of spills from Lake Nacimiento, and therefore reduces the opportunities for white bass to escape. This reduction will result from increased storage capacity, and fewer and less intense spills and releases from Nacimiento.

**REQUEST**

The Agency is requesting that the Legislative Committee approve its request for Legislative support to change the Agency Act to allow movement of white bass from Lake Nacimiento to Lake San Antonio.

Attachments:

DRAFT Legislative language for the Preferred Alternative

**PREFERRED ALTERNATIVE:**

**Senate Bill No. \_\_\_\_**

CHAPTER \_\_\_\_

An act to add Section 11.2 to the Monterey County Water Resources Agency Act (Water Code Appendix, Chapter 52) relating to water (Inter-Lake Tunnel and Spillway Modification Project).

Senate Bill No. \_\_\_\_

CHAPTER \_\_\_\_

**LEGISLATIVE COUNSEL'S DIGEST**

SB \_\_\_\_, Canella. Monterey County Water Resources Agency Act: Section 11.2.

(1) Existing law, the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), establishes the Monterey County Water Resources Agency. Section 11.1 of the Act was added to allow the Agency to procure, through the design build process, the construction of a tunnel or pipeline connecting Lake San Antonio, located in the County of Monterey, and Lake Nacimiento, located in the County of San Luis Obispo (Chapter 865, Statutes of 2015). The California Legislature appropriated \$10,000,000 to assist in the development of the tunnel, and modification of the spillway at Lake San Antonio (Chapter 338, Statutes of 2016).

(2) Existing law, Fish and Game Code Section 6400, prohibits the placement or planting of any live fish in the waters of the state without inspection by and permission of the Department of Fish and Wildlife. Fish and Game Code section 6400.5 prohibits the transportation or possession of white bass without inspection by and permission of the Department of Fish and Wildlife.

(3) This act would add section 11.2 to the Agency Act. This bill would provide that the movement of white bass between the Nacimiento Reservoir in San Luis Obispo County and the San Antonio Reservoir in Monterey County as a result of the Inter-lake Tunnel Project, as described in section 11.1 of the Agency Act, is not the placement or planting within the meaning of section 6400, and not the taking, transportation or possession within the meaning of section 6400.5, of the Fish and Game Code.

(4) The bill would declare that, due to the unique circumstances of the Agency, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

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

SECTION 1.

(a) The Legislature finds and declares all of the following:

(1) The Department of Fish and Wildlife planted white bass in the Lake Nacimiento in 1965. The introduction of these white bass created the possibility that white bass would move with the flow of the waters of the Nacimiento Reservoir.

(2) The activities of the Monterey County Water Resources Agency are those of a public entity of the state, providing flood control, water conservation, and recreational services for the Salinas Valley Groundwater Basin. The Legislature intends that Fish and Game Code § § 6400 and 6400.5 not be construed or applied to the incidental movement of white bass, if such movement results or is caused by the Inter-Lake Tunnel and San Antonio Spillway Modification Project proposed under Agency Act Section 11.1.

(3) Construction of the Project will reduce the opportunities for white bass to be carried over the Nacimiento dam spillway and into the Nacimiento River as a result of high flows and flood control releases. One consequence of the Project will be to minimize the opportunities for white bass to enter the Salinas River, at its confluence with the Nacimiento River.

*[Additional recitals]*

SECTION 2.

Section 11.2 is added to the *Monterey County Water Resources Agency Act* (Chapter 1159 of the Statutes of 1990), to read:

Sec. 11.2.

The movement of white bass between the Nacimiento Reservoir in San Luis Obispo County and the San Antonio Reservoir in Monterey County, through the project described in section 11.1 of this Act, is not placement or planting within the meaning of section 6400, and not the taking, transportation or possession within the meaning of section 6400.5, of the Fish and Game Code. Notwithstanding any other provisions of law, the incidental movement of white bass through the project is not prohibited.

SEC. 3.

The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Monterey County Water Resources Agency.

SEC. 4.

This act shall become operative \_\_\_\_ .