



April 18, 2016

The Honorable Bob Hertzberg
California State Senate
State Capitol, Room 4038
Sacramento, CA 95814

Subject: Coalition OPPOSE - SB 163 (Hertzberg): Recycled Water Mandate for Ocean Dischargers - As Introduced / As Proposed to be Amended

Dear Senator Hertzberg,

The coalition of undersigned associations and individual water and wastewater agencies respectfully oppose SB 163 (Hertzberg), which would impose an unworkable mandate on each wastewater treatment facility that discharges through an ocean outfall in order to achieve at least 50 percent reuse of the facility's actual annual flow for beneficial purposes by 2026 and 100 percent by 2036.

Our coalition represents nearly all of the ocean dischargers who would be directly impacted by the mandate approach currently outlined in the bill, and many more agencies that are interested in issues pertaining to recycled water production throughout the state. As discussed in detail below, these dischargers have very different circumstances with respect to the quantities of water they are able to recycle and discharge. The water and wastewater community is highly supportive of developing recycled water projects and increasing recycled water production and use in the future. We are also committed to the aspirational goals set forth by the State Water Resources Control Board for increases in recycled water production and use. Unfortunately, the statewide ocean discharge prohibition in SB 163 is simply unworkable for a variety of reasons, including the following:

- A statewide mandate will cost local public agencies tens of billions of dollars, most if not all of which will be borne by local ratepayers, some in disadvantaged communities.
- A statewide mandate is not a feasible, practical, or efficient method to promote water recycling. Regional and watershed differences are crucial, and barriers are multiple.
- Significant efforts are already underway to expand production and use of recycled water. SB 163 would undermine these efforts, hindering recycled water goals rather than promoting them.
- Several regulatory efforts must be completed before agencies can examine the full suite of reuse options, including development of direct potable reuse regulations.
- Exemptions or extensions to the proposed deadline place the burden on local agencies, will not avoid disruption in long-term agency planning, and are unhelpful.
- A task force to examine substantive barriers to recycled water production and beneficial use is a necessary first step that would improve recycled water outcomes.

Each one of these issues is discussed in greater detail below.

The Cost to Implement SB 163 Would be Astronomical

The cost to implement a 100 percent reuse mandate on all ocean dischargers in the state would be staggering. Initial estimates are in the tens of billions of dollars, and would include massive treatment facility upgrades, significant infrastructure costs, and a fundamental shift in how wastewater operations with ocean outfalls are managed today. These costs would be borne, in part or in whole, by local ratepayers. This could result in wastewater bills that are three, four, or even five times current wastewater rates. In some cases, this would have a significant impact on disadvantaged communities within the jurisdiction of the local wastewater agency.

In order to comply with this arbitrary mandate, ocean dischargers would be required to add advanced treatment infrastructure such as filtration, microfiltration, reverse osmosis, and/or ultraviolet disinfection with advanced oxidation. Nearly all agencies would be required to develop expansive additional distribution infrastructure to deliver this new water. In combination, these actions would cost billions of dollars. Despite recent increases in grant and low interest loan funds for recycled water through Proposition 1 and the State Revolving Fund (SRF) Loan program, the current level of assistance is nowhere near enough to make the 100 percent mandate feasible or affordable for local ratepayers. SB 163 offers no practical solutions to address this funding shortfall.

A Statewide Ocean Discharge Prohibition is Not Feasible, Practical, or Efficient

California has more than fifty ocean dischargers across the state, ranging in size from agencies that discharge a few hundred thousand gallons per day up to 330 million gallons per day. Every watershed, region, treatment facility and outfall is different, and the capability to beneficially reuse water varies widely. A reliable and feasible end use for recycled water is not always available, and is dependent on factors other than simply the ocean discharger's technical ability to supply recycled water. The blanket mandate approach contemplated by SB 163 simply does not work because of this variability and the need to account for local conditions. For example:

- In many cases the regional demand simply does not exist to reuse 100 percent of an agency's ocean discharge. Some agencies are also long distances from groundwater basins or reservoirs suitable for recharge or storage, making such alternatives impractical.
- Many wastewater agencies are not water purveyors and have complex relationships with local water supply agencies, leaving limited options for distribution of recycled water.
- Some communities are built out and densely populated, making the development of purple pipes and distribution infrastructure for non-potable water exceedingly difficult and prohibitively expensive.
- Advanced treatment produces brine, which must be managed and ultimately discharged, meaning a true ocean discharge prohibition is unattainable.
- Public acceptance of beneficial reuse of wastewater, both for direct potable and indirect potable reuses, still remains an obstacle. While water and wastewater agencies and others are actively seeking to educate the public and dispel misconceptions regarding the safety of recycled water, this remains an issue that needs to be addressed.

SB 163 Is Counterproductive and Hinders Existing Water Recycling Efforts

Not only is the approach contemplated by SB 163 infeasible, the specter of a 50 or 100 percent statewide mandate could interfere with existing water recycling efforts currently underway. Water and wastewater agencies are already actively planning for the future and looking for opportunities to maximize recycled

water production and beneficial reuse. Coalition member agencies are producing hundreds of thousands of acre-feet of recycled water each year, and with recent funding initiatives and the potential for additional financial incentives down the road, California is well on its way to meeting the recycled water goals set forth by the State Water Resources Control Board. The ocean discharge prohibition in SB 163 undermines these efforts. Many agencies already have capital projects planned for long-term time horizons, are pursuing joint projects with other agencies, and are otherwise managing and balancing their water supply goals. If the mandate in SB 163 goes into effect, agencies would be forced to significantly modify their long term planning and budgeting priorities and spend billions of ratepayer dollars to focus solely on achieving this arbitrary ocean discharge prohibition.

SB 163 is Premature in Light of Pending Regulatory Efforts

Aside from the enormous practical and cost implications of moving to a 100 percent reuse mandate for ocean dischargers, the proposal is premature in light of pending regulatory efforts intended to lay the foundation for additional recycled water production and beneficial uses moving forward. Specifically, an existing "regulatory gap" needs to be filled before wastewater agencies can determine what methods, processes and types of reuse make the most sense for the required increase in use of recycled water in their service areas.

The State Water Board is currently receiving input from an expert panel and an advisory group on the feasibility of developing criteria for direct potable reuse (DPR). Depending on the results of that process and any regulations or actions that arise therefrom, the suite of options for wastewater agencies to beneficially reuse their water could change and expand dramatically. The availability of DPR is absolutely essential for maximizing recycled water production and beneficial use in the state, yet SB 163 attempts to impose a mandate before that process has been completed. The State Water Board is also currently developing regulations regarding surface water augmentation with recycled water. That process will inform available options for those agencies not in close proximity to groundwater basins conducive to replenishment with recycled water, and could change the dynamics of decision making at certain agencies. Finally, several bills in this legislative session (and in recent years) are laying the groundwork for expanded use of on-site treatment and recycling. This could have a significant impact on flows to wastewater facilities and change the dynamics of discharge in the future. These regulatory processes need to be finalized before agencies can fully evaluate their options as it relates to appropriate levels of treatment, available outlets for recycled water, and the best "fit" for a particular region and situation. Adopting a mandate in advance of the completion of these regulations and processes would require agencies to pursue paths that might not be the most beneficial to the agency, the ratepayers, or water supply in the region or state.

Burdening Local Agencies with "Proving an Exemption" is Not Good Policy

It is our understanding that amendments to the bill are currently under development that would provide some possible extensions for compliance deadlines based on a number of the feasibility issues outlined above. If the underlying mandate remains in place, these are simply unhelpful.

Under the anticipated approach, the burden would be on the local wastewater agency to demonstrate to the State Water Board that they meet eligibility criteria for an exemption or extension. It is not clear what would be required to make such a showing, what the State Water Board would be required to consider, how such requests would be analyzed, and how long this process might take. Establishing a mandate that clearly cannot be met by all ocean dischargers, and then asking those same local agencies to prove they are unable to comply and hope that the State Water Resources Control Board might grant them an extension or exception is simply bad public policy.

A Task Force is Needed to Examine Key Barriers to Meeting Recycling Goals

Our coalition of water and wastewater agencies has been actively working on possible alternative approaches that would help advance recycled water production, not impede it. There are several unanswered questions related to how to increase recycled water production in the state, both among ocean dischargers and other dischargers alike. Thus, our proposed alternative to the mandate is to convene a task force that would develop a roadmap for new water. The task force would be statewide in its scope, focusing on both ocean dischargers and inland dischargers, examining both potable and non-potable reuse, and identifying water-recycling issues relevant to inland and coastal areas as well as agricultural and urban interests. The task force would ultimately produce an action plan designed to increase recycled water production in California, meet the statewide water recycling goals and overcome any barriers preventing increases in recycled water production and beneficial use from being realized.

The water and wastewater community is fully supportive of recycled water projects where it makes sense, where there are opportunities for beneficial use and watershed conditions are present to maximize supplies of this water. However, the drivers for this progress will be a vision for local water supply reliability and cooperative, beneficial partnerships between water and wastewater agencies on projects that make sense.

We thank you for your consideration and urge you to oppose SB 163 (Hertzberg).

Sincerely,



California Association of Sanitation Agencies



Inland Empire Utilities Agency



Association of California Water Agencies



City of San Diego, Public Utilities Department



California Municipal Utilities Association



Irvine Ranch Water District



San Francisco Public Utilities Commission



East Bay Municipal Utility District