San Gabriel Valley Council of Governments

REVISED AGENDA AND NOTICE

OF THE JOINT MEETING OF THE WATER POLICY COMMITTEE & WATER TECHNICAL ADVISORY COMMITTEE (TAC)

Wednesday, May 17, 2017, 10:00 AM

Upper San Gabriel Valley Municipal Water District – 602 E. Huntington Dr., Monrovia, CA

Water Policy Committee
Chair
Diana Mahmud
City of South Pasadena

Vice-Chair
Judy Nelson
City of Glendora

Members
Claremont
Diamond Bar
Glendora
Monrovia
Rosemead
Sierra Madre
South Pasadena

Water TAC

Members
Alhambra
Arcadia
Covina
Monrovia
Sierra Madre
LA County DPW
Upper San Gabriel Valley MWD

Ex-Officio Members
Foothill MWD
LA County Sanitation Districts
SG Basin Watermaster

Thank you for participating in today's meeting. The Water Committee encourages public participation and invites you to share your views on agenda items.

MEETINGS: ***Regular Meetings of the Water Committee are held on the third Wednesday of each month at 10:00 AM at the Upper San Gabriel Valley Municipal Water District Offices 602 E. Huntington Drive, Suite B Monrovia, CA 91016.*** The agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvcog.org. Copies are available via email upon request (sgv@sgvcog.org). Documents distributed to a majority of the Committee after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

CITIZEN PARTICIPATION: Your participation is welcomed and invited at all Water Committee and Water TAC meetings. Time is reserved at each regular meeting for those who wish to address the Committee. SGVCOG requests that persons addressing the Committee refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE COMMITTEE: At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Water Committee and Water TAC may not discuss or vote on items not on the agenda.**

AGENDA ITEMS: The Agenda contains the regular order of business of the Water Committee and the Water TAC. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the WRWG Committee can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Committee member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Committee.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.

PRELIMINARY BUSINESS

1. Call to Order
2. Roll Call
3. Public Comment *(If necessary, the Chair may place reasonable time limits on all comments)*

CONSENT CALENDAR *(It is anticipated that the Water Committee/TAC may act on the following matters)*

4. Water Committee/TAC Meeting Minutes – 4/19/2017
Recommended Action: Approve.

PRESENTATION

ACTION ITEMS *(It is anticipated that the Water Committee/TAC may act on the following matters)*

5. AB 1669 (Friedman)
Recommended Action: for discussion

6. AB 968 (Rubio)
Recommended Action: for discussion

7. EPA WOTUS Rulemaking Submission
Recommended Action: Recommend that the Governing Board approve WOTUS Rulemaking submission.

DISCUSSION ITEMS *(It is anticipated that the Water Committee/TAC may act on the following matters)*
INFORMATION ITEMS

8. Legislative Updates
- State Legislation
- Federal Legislation

Recommended Action: for information.

9. Regulatory Updates
- Report on Waste Discharge/MS4 Permit update.
- Regional Board 303(d) list workshop

Recommended Action: for information.

10. Water Boards Update
- State Board: STORMS Seminar Series: Municipal Finance of Stormwater Projects
  - Video: https://youtu.be/iGjbpVqzjUU
  - Slides: https://www.waterboards.ca.gov/STORMS
- Regional Board: May 4 meeting

Recommended Action: for information.

11. LA County Water Resilience Update
Recommended Action: for information.

12. Water Supply Update
- Upper District Update
- Watermaster Update

Recommended Action: for information.

13. Litigation Update
Recommended Action: for information.

14. Stormwater Outreach Updates
- EPA/Regional Board/LACDPW meeting
- Supervisor Barger

Recommended Action: for information.

15. E/WMP Updates
Recommended Action: for information.

EXECUTIVE DIRECTOR'S COMMENTS

CHAIR'S REPORT

ANNOUNCEMENTS

The next Water Policy/TAC meeting will be on June 21st.
The next LA Water Board meeting will be on June 1st.

ADJOURN

SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes

Date: April 19, 2017
Time: 10:00 AM
Location: Upper San Gabriel Valley Municipal Water District
602 E. Huntington Drive, Monrovia, CA

PRELIMINARY BUSINESS

1. Call to Order: The meeting was called to order at 10:01 AM.

2. Roll Call

Water Policy Committee Members Present
J. Nelson, Glendora
G. Crudgington, Monrovia
J. Capoccia, Sierra Madre
N. Lyons, Diamond Bar
M. Clark, Rosemead

Water Policy Committee Members Absent
Claremont
South Pasadena

Water TAC Members Present
D. Dolphin, Alhambra
V. Hevener, P. Crammer, Arcadia
A. Tachiki, Monrovia
J. Carlson, Sierra Madre
M. Lombos, M. Adhami, LACDPW
S. Chapman, M. Gouveia, USGVMWD

Water TAC Members Absent
Covina

Ex Officio Members Present
R. Serna, K Gardner, SG Basin Watermaster

Ex Officio Members Absent
Foothill Municipal Water District
LACSD

Guests
J. Carver, M. Cansino, Pomona
R. Tahir, TECS Environmental
B. Pence, Congresswoman Napolitano
Dr. G. Amenu, J. Hoo, LACDPW
M. Lutz
L. Mustafa, Claremont
M. Lyons, Assembly Member Holden
J. Shimmin, South Pasadena
P. Pena, San Gabriel

SGVCOG Staff
P. Hawkey
C. Cruz

3. Public Comment. R. Tahir commented on Hertzberg bill.

CONSENT CALENDAR

4. Water Committee/TAC Meeting Minutes – 2/15/2017
There was a motion to approve the minutes. (M/S: J. Capoccia/M. Clark).

AYES:	Glendora, Monrovia, Rosemead, Sierra Madre, Alhambra, Arcadia, Monrovia, Sierra Madre, LACDPW, USGVMWD

NOES:	
ABSTAIN:	
ABSENT:	Claremont, Covina, South Pasadena, Diamond Bar

PRESENTATIONS

5. Upper LA River E/WMP: Presentation by Dawn Petschauer, Water Biologist, City of Los Angeles

ACTION ITEMS

6. SB 633 (Portantino)

There was a motion to recommend that the Governing Board support SB 633. (M/S: M. Clark/J. Capoccia).

AYES:	Glendora, Monrovia, Rosemead, Sierra Madre, Alhambra, Arcadia, Monrovia, Sierra Madre, LACDPW, USGVMWD
NOES:	
ABSTAIN:	
ABSENT:	Claremont, Covina, South Pasadena, Diamond Bar

7. SB 231 (Hertzberg). J. Capoccia commented that this bill is a run around the Proposition 218 right to vote on tax and fee increases. M. Clark commented that the League of California Cities has not taken a position. J. Nelson commented that Contract Cities has taken an oppose position.

There was a motion to recommend that the Governing Board oppose SB 231. (M/S: M. Clark/N. Lyons).

AYES:	Diamond Bar, Glendora, Rosemead, Sierra Madre
NOES:	
ABSTAIN:	Monrovia
ABSENT:	Claremont, South Pasadena,

8. Legislative Updates

- State Legislation. J. Nelson commented that D. Mahmud and E. Wolf were in Sacramento speaking in Senate committees for support of SB 589, SB 633, and SB 541. G. Crudgington commented that she and Monrovia City Manager, O. Chi, were in Sacramento earlier in the week speaking at a Senate committee in favor of AB 1190 which successfully passed in committee.
- Federal Legislation. P. Hawkey commented on commented on the COG's legislative trip to D.C. and the meeting they had with Federal EPA to discuss the inability of municipalities in LA County to use existing infrastructure to convey stormwater due to the Regional Board's interpretation of storm channels as WOTUS. He reported that Fed. EPA directed the EPA Director for our region, David Smith, to hold a meeting with us, Regional Board members and LAC DPW to discuss this problem.

9. Regulatory Updates

- Report on Waste Discharge/MS4 Permit update. J. Nelson reminded that report on waste discharge is due June 28th.
- LACDPW response to 303(d) list. M. Lombos, LACDWP, gave an update on the County's response to the 303(d) list. A copy of their comment letter was included in

the agenda packet. J. Nelson asked members to attend the Regional Board meeting on May 4th and submit their comments.

10. Water Boards Update

- State Board. J. Nelson reported that there are two newly elected State Water Board Members. Their background information was briefly discussed.
- Regional Board. J. Nelson reported on the City of Glendora's meeting with Regional Board which focused on their inability to use existing LACFCD infrastructure for stormwater capture.

11. Stormwater Outreach Updates

EPA/Regional Board/LACDPW meeting. J. Nelson and P. Hawkey commented on the upcoming EPA meeting with regional board staff on May 2nd emanating from a meeting with the EPA in Washington, D.C. in March facilitated by Congresswoman Napolitano. At that meeting the application of WOTUS status to regional stormwater infrastructure will be discussed.

12. LA County Water Resilience Proposal

J. Nelson reported that there have been no recent updates or meetings with the cities about the LA County Drought Resiliency Plan. D. Mahmud has spoken with the individuals who are leading the development of the plan, indicating the importance of cities to be involved in the development process.

13. Water Supply Update

S. Chapman indicated that storage for the imported water system is expected to store upwards of 1.2 million acre feet.

14. Litigation Update

J. Nelson reported that there has been limited movement however, there is a scheduled hearing for Gardena and Duarte's litigation on August 28th.

15. E/WMP Updates

It was commented that the Upper San Gabriel River EWMP has been working on revised projects that will lower costs by 80-90%.

CHAIR'S REPORT

No report given.

ANNOUNCEMENTS

S. Chapman announced the Upper Water District's Annual Water 101 workshop will be on May 16th from 9 to 11 A.M.

ADJOURN

The meeting adjourned at 11:49 P.M.

REPORT

DATE: May 18, 2017

TO: SGVCOG Governing Board

FROM: Phil Hawkey, Executive Director

RE: ASSEMBLY BILL 1669 (FRIEDMAN)

RECOMMENDED ACTION

Discuss and provide direction to staff

BACKGROUND

Existing law requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable method of use of water be prevented, and that conservation be exercised. Furthermore, the Water Conservation Act of 2009 requires the state to achieve a 20% reduction in urban per capita water use by December 31, 2020. To achieve a 20% reduction, urban retail water suppliers are required to develop urban water use targets using one of three formulas. The three formulas give the retailers some flexibility in how they develop their targets, taking into consideration local conditions such as geography, climate, and population.

ASSEMBLY BILL 1669

There are currently seven policy bills and a budget trailer bill that directly relate to long-term water efficiency. These bills, under the umbrella of Governor Brown's "Making Water Conservation a Way of Life" policy, take different approaches to the development of long-term efficiency. The general framework of all the approaches is to require a baseline level of water conservation. There is disagreement however over whether long-term targets should be amended, who should amend them, and how the amendment process should be done. Among the stakeholder community they disagree as to whether policies should be developed through legislation or through the regulatory process.

Assembly Bill 1669 requires the State Water Resources Control Board (SWRCB), in consultation with the Department of Water Resources (DWR), to adopt long-term standards for urban water conservation and water use. It grants the SWRCB the authority to set customized water use targets for water suppliers taking into consideration microclimates and land use. Once those targets are set, suppliers would be able to decide how to meet them. The SWRCB would have the authority to set standards for water conservation that are in addition to, or exceed the 20% standard should they choose. Specifically, the bill:

- Specifies that the long-term standard shall include three components: indoor residential water use, outdoor irrigation water use, and industrial and commercial water use.
- Allows the SWRCB to adopt and update interim standards for urban water conservation and water use.
- Requires the long-term standards be adopted in accordance with the regular rulemaking process.

- Allows any decision or order allowed under exiting urban water conservation law and under the long-term standard that could be adopted under this bill to be subject to judicial review.

SUPPORT AND OPPOSITION

Supporters believe this bill addresses some of the deficiencies noted with the straight-line 20% reduction standard. They argue that the 20% standard did not recognize past efforts to use water more efficiently or local investments in drought resiliency supply. They believe AB 1669 is a fairer and more equitable approach to setting water use targets that incorporates local conditions, including population and climate. Since it focuses on efficient use of water rather than arbitrary percentage reductions, water suppliers receive credit for their previous investments in efficiency. The bill is supported by environmental groups.

Opponents do not support the authority this bill would grant the SWRCB in setting long-term water use standards. They argue that it is the proper role of the legislature to craft this policy. AB 1669 is opposed by water agencies.

RECOMMENDATION

Discuss and provide direction to staff

Prepared by: _____
Eric Wolf
Senior Management Analyst

Approved by: Marisa Creter
Marisa Creter
Assistant Executive Director

ATTACHMENTS

Attachment A – AB 1669 (Friedman)
Attachment B – AB 1669 (Friedman) Legislative Analysis

AMENDED IN ASSEMBLY APRIL 18, 2017

AMENDED IN ASSEMBLY MARCH 22, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1669

Introduced by Assembly Member Friedman
(Coauthor: Senator Allen)

February 17, 2017

~~An act to add Section 10608.18 to the Water Code, relating to water.~~ *An act to amend Sections 377, 1058.5, 1120, 1831, and 10608.20 of, and to add Chapter 9 (commencing with Section 10609) to Part 2.55 of Division 6 of, the Water Code, relating to water.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1669, as amended, Friedman. ~~Urban water use efficiency.~~ *Urban water conservation standards and use reporting.*

(1) Existing law requires the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. Existing law requires each urban retail water supplier to develop urban water use targets and an interim urban water use target, as specified.

This bill would require the State Water Resources Control Board, in consultation with the Department of Water Resources, to adopt long-term standards for urban water conservation and water use by May 20, 2021. The bill would authorize the board, in consultation with the department, to adopt interim standards for urban water conservation and water use by emergency regulation. The bill would require the board, before adopting an emergency regulation, to provide at least 60 days for the public to review and comment on the proposed regulation and would require the board to hold a public hearing. The bill would

authorize a court or public entity to hold a person civilly liable in an amount not to exceed $10,000 for a violation of a regulation adopted under these provisions, unless the regulation provides otherwise.

The bill would also authorize the board to issue a regulation or informational order requiring a distributor of a public water supply to submit information relating to water production, water use, or water conservation.

(2) Existing law establishes procedures for reconsideration and amendment of specified decisions and orders of the board. Existing law authorizes any party aggrieved by a specified decision or order of the board to file, not later than 30 days from the date of final board action, a petition for writ of mandate for judicial review of the decision or order.

This bill would apply these procedures to decisions and orders of the board issued pursuant to the provisions described in paragraph (1), including existing provisions and those added by this bill.

(3) Existing law authorizes the board to issue a cease and desist order in response to a violation or threatened violation of certain requirements, including specified emergency regulations adopted by the board. Under existing law, a person who violates a cease and desist order of the board may be liable for each day in which the violation occurs, as specified. Revenue generated from these penalties is deposited in the Water Rights Fund. The moneys in the Water Rights Fund are available, upon appropriation by the Legislature, for, among other things, the administration of the board's water rights program.

This bill would authorize the board to issue a cease and desist order in response to a violation or threatened violation of any regulation adopted by the board.

~~Existing law requires the state to achieve a 20% reduction in urban per capita water use on or before December 31, 2020, and to make incremental progress toward that state target by reducing urban per capita water use by at least 10% on or before December 31, 2015.~~

~~This bill, on or before January 1, 2019, would require the State Water Resources Control Board, in consultation with the Department of Water Resources and other appropriate state agencies, to establish and adopt a process to increase urban water use efficiency through incremental urban water use efficiency standards and in that regard to establish an urban water use efficiency standard to be achieved by urban water suppliers by January 1, 2025. The bill would require the state board to~~

~~review and consider updates to the urban water use efficiency standard every 5 years.~~

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 377 of the Water Code is amended to read:

377. (a) From and after the publication or posting of any ordinance or resolution pursuant to Section 376, a violation of a requirement of a water conservation program adopted pursuant to Section 376 is a misdemeanor. A person convicted under this subdivision shall be punished by imprisonment in the county jail for not more than 30 days, or by a fine not exceeding one thousand dollars ($1,000), or by both.

(b) A court or public entity may hold a person civilly liable in an amount not to exceed ten thousand dollars ($10,000) for a violation of any of the following:

(1) An ordinance or resolution adopted pursuant to Section 376.

(2) ~~An emergency~~ *A* regulation adopted by the board under Section ~~1058.5,~~ *1058.5 or Chapter 9 (commencing with Section 10609) of Part 2.55 of Division 6,* unless the board regulation provides that it cannot be enforced under this ~~section.~~ *section or provides for a lesser applicable penalty.*

(c) Commencing on the 31st day after the public entity notified a person of a violation described in subdivision (b), the person additionally may be civilly liable in an amount not to exceed ten thousand dollars ($10,000) plus five hundred dollars ($500) for each additional day on which the violation continues.

(d) Remedies prescribed in this section are cumulative and not alternative, except that no liability shall be recoverable under this section for any violation of paragraph (2) of subdivision (b) if the board has filed a complaint pursuant to Section 1846 alleging the same violation.

(e) A public entity may administratively impose the civil liability described in subdivisions (b) and (c) after providing notice and an opportunity for a hearing. The public entity shall initiate a proceeding under this subdivision by a complaint issued pursuant to Section 377.5. The public entity shall issue the complaint at

least 30 days before the hearing on the complaint and the complaint shall state the basis for the proposed civil liability order.

(f) (1) In determining the amount of civil liability to assess, a court or public entity shall take into consideration all relevant circumstances, including, but not limited to, the nature and persistence of the violation, the extent of the harm caused by the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.

(2) The civil liability calculated pursuant to paragraph (1) for the first violation of subdivision (b) by a residential water user shall not exceed one thousand dollars ($1,000) except in extraordinary situations where the court or public entity finds all of the following:

(A) The residential user had actual notice of the requirement found to be violated.

(B) The conduct was intentional.

(C) The amount of water involved was substantial.

(g) Civil liability imposed pursuant to this section shall be paid to the public entity and expended solely for the purposes of this chapter.

(h) An order setting administrative civil liability shall become effective and final upon issuance of the order and payment shall be made. Judicial review of any final order shall be pursuant to Section 1094.5 of the Code of Civil Procedure.

(i) In addition to the remedies prescribed in this section, a public entity may enforce water use limitations established by an ordinance or resolution adopted pursuant to this chapter, or as otherwise authorized by law, by a volumetric penalty in an amount established by the public entity.

SEC. 2. Section 1058.5 of the Water Code is amended to read:

1058.5. (a) This section applies to any emergency regulation adopted by the board for which the board makes both of the following findings:

(1) The emergency regulation is adopted to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports.

(2) The emergency regulation is adopted in response to conditions which exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions.

(b) Notwithstanding Sections 11346.1 and 11349.6 of the Government Code, any findings of emergency adopted by the board, in connection with the adoption of an emergency regulation under this section, are not subject to review by the Office of Administrative Law.

(c) An emergency regulation adopted by the board under this section may remain in effect for up to ~~270 days,~~ *one year,* as determined by the board, and is deemed repealed immediately upon a finding by the board that due to changed conditions it is no longer necessary for the regulation to remain in effect. An emergency regulation adopted by the board under this section may be renewed if the board determines that the conditions specified in paragraph (2) of subdivision (a) are still in effect.

(d) In addition to any other applicable civil or criminal penalties, any person or entity who violates a regulation adopted by the board pursuant to this section is guilty of an infraction punishable by a fine of up to five hundred dollars ($500) for each day in which the violation occurs.

(e) (1) Notwithstanding subdivision (b) of Section 1551 or subdivision (e) of Section 1848, a civil liability imposed under Chapter 12 (commencing with Section 1825) of Part 2 of Division 2 by the board or a court for a violation of an emergency conservation regulation adopted pursuant to this section shall be deposited, and separately accounted for, in the Water Rights Fund. Funds deposited in accordance with this subdivision shall be available, upon appropriation, for water conservation activities and programs.

(2) For purposes of this subdivision, an “emergency conservation regulation” means an emergency regulation that requires an end user of water, a water retailer, or a water wholesaler to conserve water or report to the board on water conservation. Water conservation includes restrictions or limitations on particular uses

of water or a reduction in the amount of water used or served, but does not include curtailment of diversions when water is not available under the diverter's priority of right or reporting requirements related to curtailments.

SEC. 3. Section 1120 of the Water Code is amended to read:

1120. This chapter applies to any decision or order issued under this part or Section 275, Part 2 (commencing with Section 1200), Part 2 (commencing with Section 10500) of Division 6, *Part 2.55 (commencing with Section 10608) of Division 6, or* Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, or the public trust doctrine.

SEC. 4. Section 1831 of the Water Code is amended to read:

1831. (a) When the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation.

(b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.

(c) The board may issue a cease and desist order only after notice and an opportunity for hearing pursuant to Section 1834.

(d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

(3) Any decision or order of the board issued under this part, Section 275, Chapter *9 (commencing with Section 10609) of Part 2.55 of Division 6, or Chapter* 11 (commencing with Section 10735) of Part 2.74 of Division 6, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

(4) A regulation adopted ~~under Section 1058.5.~~ *by the board.*

(5) Any extraction restriction, limitation, order, or regulation adopted or issued under Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6.

(6) Any diversion or use of water for cannabis cultivation if any of the following applies:

(A) A license is required, but has not been obtained, under Article 6 (commencing with Section 19331) of Chapter 3.5 of Division 8 of the Business and Professions Code.

(B) The diversion is not in compliance with an applicable limitation or requirement established by the board or the Department of Fish and Wildlife under Section 13149.

(C) The diversion or use is not in compliance with a requirement imposed under subdivision (d) or (e) of Section 19332.2 of the Business and Professions Code.

(e) This article does not alter the regulatory authority of the board under other provisions of law.

SEC. 5. Section 10608.20 of the Water Code is amended to read:

10608.20. (a) (1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by July 1, 2011. Urban retail water suppliers may elect to determine and report progress toward achieving these targets on an individual or regional basis, as provided in subdivision (a) of Section 10608.28, and may determine the targets on a fiscal year or calendar year basis.

(2) It is the intent of the Legislature that the urban water use targets described in paragraph (1) cumulatively result in a 20-percent reduction from the baseline daily per capita water use by December 31, 2020.

(b) An urban retail water supplier shall adopt one of the following methods for determining its urban water use target pursuant to subdivision (a):

(1) Eighty percent of the urban retail water supplier's baseline per capita daily water use.

(2) The per capita daily water use that is estimated using the sum of the following performance standards:

(A) For indoor residential water use, 55 gallons per capita daily water use as a provisional standard. Upon completion of the department's 2016 report to the Legislature pursuant to Section 10608.42, this standard may be adjusted by the Legislature by statute.

(B) For landscape irrigated through dedicated or residential meters or connections, water efficiency equivalent to the standards

of the Model Water Efficient Landscape Ordinance set forth in Chapter 2.7 (commencing with Section 490) of Division 2 of Title 23 of the California Code of Regulations, as in effect the later of the year of the landscape's installation or 1992. An urban retail water supplier using the approach specified in this subparagraph shall use satellite imagery, site visits, or other best available technology to develop an accurate estimate of landscaped areas.

(C) For commercial, industrial, and institutional uses, a 10-percent reduction in water use from the baseline commercial, industrial, and institutional water use by 2020.

(3) Ninety-five percent of the applicable state hydrologic region target, as set forth in the state's draft 20x2020 Water Conservation Plan (dated April 30, 2009). If the service area of an urban water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

(4) A method that shall be identified and developed by the department, through a public process, and reported to the Legislature no later than December 31, 2010. The method developed by the department shall identify per capita targets that cumulatively result in a statewide 20-percent reduction in urban daily per capita water use by December 31, 2020. In developing urban daily per capita water use targets, the department shall do all of the following:

(A) Consider climatic differences within the state.

(B) Consider population density differences within the state.

(C) Provide flexibility to communities and regions in meeting the targets.

(D) Consider different levels of per capita water use according to plant water needs in different regions.

(E) Consider different levels of commercial, industrial, and institutional water use in different regions of the state.

(F) Avoid placing an undue hardship on communities that have implemented conservation measures or taken actions to keep per capita water use low.

(c) If the department adopts a regulation pursuant to paragraph (4) of subdivision (b) that results in a requirement that an urban retail water supplier achieve a reduction in daily per capita water use that is greater than 20 percent by December 31, 2020, an urban retail water supplier that adopted the method described in paragraph

(4) of subdivision (b) may limit its urban water use target to a reduction of not more than 20 percent by December 31, 2020, by adopting the method described in paragraph (1) of subdivision (b).

(d) The department shall update the method described in paragraph (4) of subdivision (b) and report to the Legislature by December 31, 2014. An urban retail water supplier that adopted the method described in paragraph (4) of subdivision (b) may adopt a new urban daily per capita water use target pursuant to this updated method.

(e) An urban retail water supplier shall include in its urban water management plan due in 2010 pursuant to Part 2.6 (commencing with Section 10610) the baseline daily per capita water use, urban water use target, interim urban water use target, and compliance daily per capita water use, along with the bases for determining those estimates, including references to supporting data.

(f) When calculating per capita values for the purposes of this chapter, an urban retail water supplier shall determine population using federal, state, and local population reports and projections.

(g) An urban retail water supplier may update its 2020 urban water use target in its 2015 urban water management plan required pursuant to Part 2.6 (commencing with Section 10610).

(h) (1) The department, through a public process and in consultation with the California Urban Water Conservation Council, shall develop technical methodologies and criteria for the consistent implementation of this part, including, but not limited to, both of the following:

(A) Methodologies for calculating base daily per capita water use, baseline commercial, industrial, and institutional water use, compliance daily per capita water use, gross water use, service area population, indoor residential water use, and landscaped area water use.

(B) Criteria for adjustments pursuant to subdivisions (d) and (e) of Section 10608.24.

(2) The department shall post the methodologies and criteria developed pursuant to this subdivision on its Internet Web site, and make written copies available, by October 1, 2010. An urban retail water supplier shall use the methods developed by the department in compliance with this part.

(i) (1) The department shall adopt regulations for implementation of the provisions relating to process water in

accordance with subdivision (*l*) of Section 10608.12, subdivision (e) of Section 10608.24, and subdivision (d) of Section 10608.26.

(2) The initial adoption of a regulation authorized by this subdivision is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code. After the initial adoption of an emergency regulation pursuant to this subdivision, the department shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1 of the Government Code.

(j) (1) An urban retail water supplier is granted an extension to July 1, 2011, for adoption of an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) due in 2010 to allow the use of technical methodologies developed by the department pursuant to paragraph (4) of subdivision (b) and subdivision (h). An urban retail water supplier that adopts an urban water management plan due in 2010 that does not use the methodologies developed by the department pursuant to subdivision (h) shall amend the plan by July 1, 2011, to comply with this part.

(2) An urban wholesale water supplier whose urban water management plan prepared pursuant to Part 2.6 (commencing with Section 10610) was due and not submitted in 2010 is granted an extension to July 1, 2011, to permit coordination between an urban wholesale water supplier and urban retail water suppliers.

(k) Nothing in this part limits the authority of the board to adopt standards for water conservation that are in addition to, or exceed, the standards provided under this part.

SEC. 6. Chapter 9 (commencing with Section 10609) is added to Part 2.55 of Division 6 of the Water Code, to read:

Chapter 9. Urban Water Conservation Standards and Use Reporting

10609. (a) The board, in consultation with the department, shall adopt long-term standards for urban water conservation and water use by May 20, 2021. The standards shall include, but are not limited to, standards for all of the following:

(1) Indoor residential water use.

(2) Outdoor irrigation in connection with domestic, industrial, institutional, or commercial water use.

(3) Industrial, institutional, and commercial water use.

(b) The board, in consultation with the department, may adopt interim standards for urban water conservation and water use pending the adoption of long-term standards pursuant to subdivision (a). The board, in consultation with the department, may update the interim standards as it determines to be reasonably necessary for purposes of this section, except that the board may not set new or revised standards under this subdivision after the board adopts long-term standards pursuant to subdivision (a) or May 20, 2021, whichever occurs first.

(c) (1) Long-term standards, and any amendments to those standards, adopted by the board pursuant to subdivision (a) shall be adopted in accordance with the regular rulemaking process provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) Except for long-term standards, and any amendment to those standards, adopted pursuant to subdivision (a), regulations adopted by the board pursuant to this chapter, and any amendment or subsequent adjustment to those regulations, shall be adopted by the board as emergency regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of regulations pursuant to this paragraph shall be deemed an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the board pursuant to this paragraph shall remain in effect until revised by the board.

(B) Before adopting an emergency regulation pursuant to this paragraph, the board shall provide at least 60 days for the public to review and comment on the proposed regulation and shall hold a public hearing.

(d) Notwithstanding Section 15300.2 of Title 14 of the California Code of Regulations, an action of the board taken under this chapter shall be deemed to be a Class 8 action, within the meaning

of Section 15308 of Title 14 of the California Code of Regulations, if the action does not involve relaxation of existing water conservation or water use standards.

10609.2. The board may issue a regulation or informational order requiring a distributor of a public water supply, as that term is used in Section 350, to submit information relating to water production, water use, or water conservation.

~~SECTION 1. Section 10608.18 is added to the Water Code, to read:~~

~~10608.18. On or before January 1, 2019, the board, in consultation with the department and other appropriate state agencies, shall establish and adopt a process to increase urban water use efficiency through incremental urban water use efficiency standards and in that regard shall establish an urban water use efficiency standard to be achieved by urban water suppliers by January 1, 2025. Every five years, the board shall review and consider updates to the urban water use efficiency standard for the upcoming five years.~~

O

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE
Eduardo Garcia, Chair
AB 1669 (Friedman) – As Amended April 18, 2017

SUBJECT: Urban water conservation standards and use reporting

SUMMARY: Requires the State Water Resources Control Board (SWRCB) in consultation with the Department of Water Resources (DWR) to adopt long-term standards for urban water conservation and water use by May 20, 2021. Specifically, **this bill**:

1) Specifies that the long-term standard shall include indoor residential water use, outdoor irrigation water use, as specified; and industrial, institutional and commercial water use.

2) Allows the SWRCB, in consultation with the DWR, to adopt and update interim standards for urban water conservation and water use. Prohibits the SWRCB from setting new or revised standards after the board adopts long-term standards.

3) Requires the long-term standards be adopted in accordance with the regular rulemaking process. Requires the interim standards and any amendments or adjustments to those regulations be adopted as emergency regulations.

4) Provides that a person who violates a long-term standard regulation may be held civilly liable in an amount not to exceed ten thousand dollars.

5) Extends a drought or water waste emergency regulation adopted by the SWRCB from 270 days to one year.

6) Allows any decision or order allowed under existing urban water conservation law and under the long-term standards that could be adopted under this bill to be subject to judicial review.

7) Allows the SWRCB to issue a cease and desist order to a person violating or threatening to violate a long-term standard that could be adopted under this bill.

EXISTING LAW:

1) Declares that because of the conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be excercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

2) Requires a 20 percent reduction in urban per capita water use on or before December 31, 2020.

3) Requires each urban retail water supplier to develop an urban water use target based on one of the following methods:

    a. Water use of 80 percent of the urban retail water supplier's baseline per capita water use.

b. A water budget based on indoor use, outdoor use, and commercial, industrial and institutional uses.
c. Water use of 95 percent of the applicable state hydrologic region target.
d. A method developed by the DWR.

4) Defines "base daily per capita water use" as the average of gross water use over a period of time that is no longer than 15 continuous years and no shorter than five continuous years beginning no earlier than December 31, 1989, and ending no later than December 31, 2010. Establishes the standard period to be the 10 continuous years from December 31, 2004, through December 31, 2010. Allows five additional years for an urban water supplier that meets at least 10 percent of its 2008 retail demand through recycled water.

5) Defines "gross water use" as the total volume of water entering the distribution system of an urban retail water supplier, excluding among other things, recycled water.

6) Defines "recycled water" as water, which as a result of treatment of waste, is suitable for a direct beneficial use that would not otherwise occur, that is used to offset potable demand.

7) Requires the SWRCB to adopt rules requiring an urban retail water suppliers to meet performance standards for the volume of water loss no later than July 1, 2020.

FISCAL EFFECT: Unknown.

COMMENTS: Requires the SWRCB, in consultation with the DWR, to adopt long-term standards for urban water conservation and water use by May 20, 2021.

Author's Statement.

Water powers California's economy, sustains our communities, and nourishes our environment. But we can no longer take it for granted. California's water supply is under intense pressure from climate change, increasing population and aging infrastructure. The financial demands from communities around the state for additional water and wastewater infrastructure currently exceed the available state and federal budgetary resources. Thus, it is essential that all California communities use existing water supplies as efficiently as possible.

The "20x2020" Water Conservation Act of 2009, established the need for long term conservation goals and set a statewide goal of reducing urban water demand by 20 percent by 2020. The implementation of "20x2020" also highlighted concerns about the fairness of applying a singular target to water suppliers with diverse local climates, land uses, and past investments in conservation. Additionally, percentage reduction targets, like those required by 20x2020 and the 2015 emergency regulations by the State Water Resources Control Board, work to reduce overall water use, but don't ensure water is being used efficiently.

California needs a new framework for water use efficiency standards that is fair and flexible and addresses each of the concerns expressed by water suppliers regarding the state's previous conservation efforts. The new standards should recognize that each community has unique water needs and savings potential, but require everyone to do their part to ensure there is enough water to go around. They need to go beyond the existing 20

percent by 2020 requirement, because the latest research demonstrates that our potential for affordably realizing efficiency gains is much greater than it was when that legislation was enacted 7 years ago.

Governor Brown recognizes the need to strengthen standards for the next round of water use targets as detailed in the public review draft report, "Making Water Conservation a California Way of Life: Implementing Executive Order B-37-16" (November 2016), that was prepared by state agencies in response to his Executive Order B-37-16 from May 2016.

An urban conservation framework needs to be based on local control and local conditions. Each water supplier should have a customized water use target that takes microclimates and land use into account. Targets should be based on strengthened standards in three areas: indoor residential water use, outdoor irrigation for all customers, and water distribution system leaks. Once the local target has been set, water suppliers will be able to decide how to meet it.

Background. ***Water Shortage Response In the Recent Drought.*** California experienced the worst drought in modern times from 2012-2016, with the first four years having been estimated to be the driest four-year period in the last 450 years. While the most recent drought was historic, current climate change models predict that severe drought will become a more common occurrence in the future.

The drought had significant impacts on the environment, agricultural water supply, and urban water supply. 2014 and 2015 were two of the driest years on record. During the drought, the State Water Project and federal Central Valley Project, which supply water to more than 25 million Californians and 3 million acres of agricultural land, provided limited water deliveries with approximately 15% and zero deliveries respectively in 2015.

In January of 2014, the Governor issued an executive order declaring a drought state of emergency and requesting a voluntary 20% reduction in urban potable water use. For the first time in the state's history, the Governor issued an executive order in April of 2015, requiring the State Water Resources Control Board (SWRCB) implement mandatory restrictions to achieve a 25% statewide reduction in urban potable use, over 2013 levels of use. There are approximately 410 urban water suppliers that serve approximately 90 percent of the population of the state.

In May of 2015, the SWRCB adopted an emergency regulation placing each urban water supplier in a conservation tier ranging between 4% and 36%. In May of 2016, the SWRCB adopted an emergency regulation that replaced the percentage reduction requirement with a localized "stress test" requiring urban water suppliers to ensure a three-year supply of water to their customers under drought conditions. The "stress test" requirement mandated monthly reporting by water suppliers to the SWRCB. For the most part, all actions associated with the 2012-2106 drought were ended when the Governor declared the drought emergency over on April 7, 2017.

Lessons Learned From the Drought. The response to the drought was unprecedented because the severity of the drought was unprecedented. It was evident, from the necessity to have an emergency response, that the water supply system was not as prepared as it needed to be for a drought of the severity experienced in 2012-2016. There is widespread agreement that the

SWRCB having to step in on an emergency basis is not an ideal plan for drought response. There is also widespread recognition that climate change will cause the drought of 2012-2016 to become a more typical event in the future.

The actions taken by the SWRCB in 2015 and 2016, were criticized by some, as not recognizing past efforts to use water more efficiently, supporting investments in drought resilient supply, and in some instances not being applied in a way that would produce water savings that could reasonably benefit other regions of the state. The 2016 "stress test" approach was also criticized as not being a meaningful enough step to prevent shortages should 2017 have become another dry year. There was widespread agreement that there could be a better approach moving forward for how the state is prepared for and responds to future drought.

In May of 2016, the Governor issued an executive order on "making water conservation a way of life." In broad terms the executive order initiated a public process of five state departments, notably the DWR and the SWRCB, to develop a conservation framework that would advance long-term water use efficiency and develop a meaningful drought response tool.

Specifically in relation to drought response, the May 2016 executive order required the DWR to strengthen the requirements for drought response. It required that a WSCA include adequate actions to respond to droughts lasting at least five years, and that the WSCA remain customized for local conditions while also allowing for them to be quickly utilized during drought.

Progressing but No Consensus. While there is widespread agreement that progress must be made in the areas of long-term water use efficiency and drought response, there is not yet consensus on the specific requirements that will best achieve progress in each area. As of this writing, there are seven policy bills and a budget trailer bill that directly relate to long-term efficiency and drought response. These "making water conservation a way of life" bills take several different approaches to the development of long-term efficiency and drought response policy. Because long-term efficiency impacts what future drought response will be, the two subjects are closely related but are generally addressed separately in the different bills. There is disagreement among the stakeholder community as to whether the policy should be heard through the legislative process or be addressed in a budget trailer bill. There is also disagreement over the extent to which the policies should be developed in legislation or through the regulatory process.

With the latest amendments, this bill closely aligns with the approach in the budget trailer bill on long-term efficiency. This bill is one approach, of several, to strengthen long-term water use efficiency. The general framework of all of the approaches to strengthen long-term efficiency is to require a baseline of water use that must be met, but permits the urban water supplier flexibility in how to meet that baseline. Beyond that general framework, this bill and the budget trailer bill differs from other approaches in several significant ways.

Policy Through Regulation. This bill would give the SWRCB broad authority to develop long-term standards for urban water conservation and water use. It would subject those standards to a potential court challenge. It, however does not put the legislature in the position of developing this significant water use policy. Where important and difficult questions would not be developed and resolved in the legislative process.

What Target Should be the Target? The current "20X2020" provided four options. Notably, AB 968 (Rubio), would maintain and enhance three of those options. The administration in the report it issued on "making water conservation a way of life", selected one option the water budget option. The water budget in that report would be based on a standard indoor use statewide; a variable, outdoor water use standard depending on the local climate; and water loss through leaks. It would leave it to individual water suppliers to meet the budget. The language in this bill is similar to what was in the "making water conservation a way of life" report, but appears to include a required standard for industrial, institutional, and commercial water use. Water suppliers have questioned how outdoor standards will be developed, and have asked that the basis for those standards be validated prior to an outdoor standard being implemented. The industrial, institutional, and commercial use standard is not developed in the "making water conservation a way of life" report and questions remain if a water budget approach can work in this sector or if best practices would be more appropriate. AB 968 (Rubio) would require a task force to recommend water efficient measures for various segments of the industrial, institutional, and commercial water use sector.

How Should Recycled Water be Treated? Existing law excludes recycled water from water budget calculation on water use reduction. AB 968 (Rubio) and AB 869 (Rubio) would continue that exemption. There have been other proposals that would require recycled water to be treated the same as all other sources of water. The "making water conservation a way of life" plan treated recycled water as something between the level of efficiency required for other potable sources of water and exempting it. This bill is silent on how the regulations could treat recycled water, but would appear to leave the development of the standard solely up to the SWRCB in consultation with the DWR. Recycled water is an evolving source of water. The SWRCB, this year, will be coming out with uniform standards for the augmentation of surface water reservoirs with recycled water, and AB 574 (Quirk), 2017, would require the next step for recycled water becoming a potable source of water by December 31, 2021.

Adjustments to the Target? The existing "20x2020" law allows for adjustments to be made from the target. AB 968 (Rubio), 2017, would establish a different adjustment from target process. This bill would leave the questions of the inclusion of adjustments solely up to the water board.

Prior and Related Legislation.

- SB 7 x7 (Steinberg), Chapter 4, Statutes of 2009, Seventh Extraordinary Session, requires the state to achieve a 20 percent reduction in urban per capita water use by December 31, 2020, and promotes expanded development of sustainable water supplies at the regional level.

- AB 968 (Rubio), 2017, establishes a new 2025 water use efficiency requirement for urban retail water suppliers.

- AB 1323 (Weber), 2017, requires a stakeholder workgroup to be convened no later than February 1, 2018, to develop, evaluate, and recommend proposals for establishing new water use targets for urban water suppliers.

- AB 869 (Rubio), 2017, excludes recycled water from the calculation of any water use or water efficiency target established after 2020.

- AB 574 (Quirk), 2017, establishes new definitions for the use of recycled water and requires the SWRCB to develop uniform criteria for raw water augmentation of recycled water by December 31, 2021.

Supporting Arguments. As California grapples with the impacts of climate change on our water supply, it is imperative that we do all we can to use our existing supplies efficiently. This bill provides a long-term water efficiency plan for California's future. While this bill does not explicitly address recycled water, it is critical to include recycled water use in targets. This bill reflects a fair and equitable approach to setting water use targets. It incorporates local conditions, including population and climate. And since it focuses on efficient use of water rather than arbitrary percentage reductions, water suppliers effectively receive credit for their precious investments in efficiency.

Opposing Arguments. Opponents maintain that policy as far-reaching and consequential as California's long-term water use must be vetted through the full legislative process. Opponents do not support the authority this bill would grant the SWRCB in setting long-term water use standards. It is the proper role of the legislature at this time to craft long-term water use standards.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coastkeeper Alliance
Ceres
Climate Resolve
Community Water Center
Environmental Justice Coalition for Water
Natural Resources Defense Council
Pacific Institute
WaterNow Alliance

Opposition

Association of California Water Agencies
Desert Water Agency
East Valley Water District
El Dorado Irrigation District

Analysis Prepared by: Ryan Ojakian / W., P., & W. /

REPORT

DATE: May 18, 2017

TO: SGVCOG Governing Board

FROM: Phil Hawkey, Executive Director

RE: ASSEMBLY BILL 968 (RUBIO)

RECOMMENDED ACTION

Discuss and provide direction to staff

BACKGROUND

Existing law requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable method of use of water be prevented, and that conservation be exercised. Furthermore, the Water Conservation Act of 2009 requires the state to achieve a 20% reduction in urban per capita water use by December 31, 2020. To achieve a 20% reduction, urban retail water suppliers are required to develop urban water use targets using one of three formulas. The three formulas give the retailers some flexibility in how they develop their targets, taking into consideration local conditions such as geography, climate, and population.

ASSEMBLY BILL 968

There are currently seven policy bills and a budget trailer bill that directly relate to long-term water efficiency. These bills, under the umbrella of Governor Brown's "Making Water Conservation a Way of Life" policy, take different approaches to the development of long-term efficiency. The general framework of all the approaches is to require a baseline level of water conservation. There is disagreement however over whether long-term targets should be amended, who should amend them, and how the amendment process should be done. Among the stakeholder community they disagree as to whether policies should be developed through legislation or through the regulatory process.

Assembly Bill 968 maintains the 2020 standard and process but establishes a new process for developing water efficiency targets for 2025 in a manner that accounts for local conditions. It essentially puts the development of these new standards in the hands of water suppliers by establishing a stakeholder process. Specifically, the bill:

- Defines "water efficiency target" as a target developed by an urban retail water supplier for 2025.
- Requires each urban retail water supplier to adopt one of three methods for determining water efficiency targets.
- Permits the urban water supplier to adjust and update the water efficiency target based on population, irrigable landscape acreage, and other factors that affect water use.
- Requires DWR to convene an urban stakeholder committee to develop standardized variances permitted within the retail-level water efficiency target.

SUPPORT AND OPPOSITION

Supporters believe the factors used to formulate long-term water use efficiency targets vary significantly at the local level therefore, the use of local and regional efficiency measures that reflect the unique water supply and demand conditions of the community should be taken into account. They believe water suppliers are in the best position to balance actions to achieve greater water use efficiency and protect the financial position of the water system. Additionally, they believe this bill credits water suppliers that have made capital investments in water use efficiency and sustainable drought resilient supplies. Finally, supporters note that AB 968 preserves the legislature's authority over long-term water use target setting. The bill is supported by numerous water districts and cities.

Opponents believe the bill will lead to overall weaker water use targets and less water efficiency. They argue a regional approach could allow some communities to use water inefficiently while being shielded by other communities in the same region that are conserving water. They believe there should be one standard for the state. The bill is opposed by environmental organizations.

RECOMMENDATION

Discuss and provide direction to staff

Prepared by: _____
Eric Wolf
Senior Management Analyst

Approved by: _____
Marisa Creter
Assistant Executive Director

ATTACHMENTS

Attachment A – AB 968 (Rubio)
Attachment B – AB 968 (Rubio) Legislative Analysis

AMENDED IN ASSEMBLY APRIL 17, 2017

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 968

Introduced by Assembly Member Rubio

February 16, 2017

An act to amend ~~Section 10608 of,~~ *Sections 10608, 10608.4, 10608.8, 10608.12, 10608.20, 10608.24 of, to add Sections 10608.25, 10608.46, and 10608.47 to,* and to add and repeal Section 10608.45 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 968, as amended, Rubio. Urban ~~retail~~ water use: water ~~efficiency targets.~~ *efficiency.*

Existing law requires the state to achieve a 20% reduction in urban per capita water use on or before December 31, 2020, and to make incremental progress toward that state target by reducing urban per capita water use by at least 10% on or before December 31, 2015. *Existing law requires each urban retail water supplier to develop urban water use targets and an interim urban water use target, in accordance with specified requirements.*

This ~~bill would require the Department of Water Resources to submit to the Legislature by December 31, 2018, a report that states preliminary water efficiency targets for 2025 for each of the state's hydrologic regions with per capita daily water use targets based on and considering specified factors. The bill would require the department to consult with a representative task force with members designated by the department by July 1, 2018.~~ *bill would revise the definitions of "gross water use"*

and "recycled water" for these purposes. The bill would require the Department of Water Resources to reconvene its Urban Stakeholder Committee by April 1, 2018, composed as specified, and would require, by July 1, 2019, the department, in consultation with the committee, to develop certain methodologies. The bill would require the committee, by January 1, 2020, and every 5 years thereafter, to develop a report to provide information and recommendations to the department and the Legislature about new demand management measures, technologies, and approaches, and would require the department to review the committee report and include the department's recommendations and comments in a final report to the Legislature. The bill would require, by December 31, 2025, the committee, in consultation with the department and the State Water Resources Control Board, to submit a report to the Legislature recommending for potential adjustments to water efficiency targets and commercial, industrial, and institutional performance measures, as defined.

The bill would require the department, in consultation with the board, to convene a commercial, industrial, and institutional water use efficiency task force by July 1, 2018, to recommend appropriate water efficiency measures for various segments of the commercial, industrial, and institutional water use sector and would require the task force, by December 31, 2019, in consultation with the department and the board, to submit a specified report to the Legislature.

Existing law, the Urban Water Management Planning Act, requires every public and private urban water supplier that directly or indirectly provides water for municipal purposes to prepare and adopt an urban water management plan and to update its plan once every 5 years on or before December 31 in years ending in 5 and zero, except as specified.

This bill would require each urban retail water supplier to develop a water efficiency target, as defined, for 2025 in its 2020 urban water management plan required to be submitted by July 1, 2021, and to achieve that target. The bill would authorize an urban retail water supplier to adjust and update the water efficiency target, as appropriate, when the supplier reports its compliance in achieving the water efficiency targets and its implementation of the identified performance measures in its 2025 urban water management plan required to be submitted by July 1, 2026. The bill would require each urban retail water supplier to meet its adjusted 2025 water efficiency target by

December 31, 2025, unless the supplier makes a certain report to the department.

The bill would require the department, by July 1, 2019, to provide to urban retail water suppliers in electronic form a database of validated aerial imagery and measured irrigable area, as specified, and to conduct a statistically valid review of the accuracy of the information in the database before providing the database to an urban retail water supplier. The bill would extend the deadline for an urban retail water supplier to submit its urban water management plan if the department does not release the database by July 1, 2019, as prescribed.

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 10608 of the Water Code is amended to read:

10608. The Legislature finds and declares all of the following:

(a) Water is a public resource that the California Constitution protects against waste and unreasonable use.

(b) Growing population, climate change, and the need to protect and grow California's economy while protecting and restoring our fish and wildlife habitats make it essential that the state manage its water resources as efficiently as possible.

(c) Diverse regional water supply portfolios will increase water supply reliability and reduce dependence on the Delta.

(d) Reduced water use through long-term water use efficiency and conservation provides significant energy and environmental benefits, and can help protect water quality, improve streamflows, and reduce greenhouse gas emissions.

(e) The success of state and local water use efficiency programs ~~to increase efficiency of water use~~ is best determined on the basis of measurable outcomes related to water use or efficiency.

(f) Strengthening local and regional drought resilience is essential to increasing water supply reliability and the sustainable management of the state's water resources.

(g) Improvements in technology, infrastructure, and management practices offer the potential for increasing water efficiency in California over time, providing an essential water management

tool to meet the need for water for urban, agricultural, and environmental uses.

(h) The Governor has called for implementation of the comprehensive California Water Action Plan.

(i) The factors used to formulate long-term water use efficiency targets can vary significantly from location to location based on factors including ~~weather,~~ *climate,* patterns of urban and suburban development, water supplies, and past efforts to enhance water use efficiency. Therefore, it is necessary to *plan for and* implement water use efficiency measures at the regional and local level to reflect and best meet the water supply needs of each community and achieve effective water ~~shortage contingency~~ planning and management.

(j) Per capita water use is one measure of ~~a water provider's~~ *an urban water supplier's* efforts to ~~reduce urban water use~~ *improve water use efficiency* within its service area. However, per capita water use is less useful for measuring relative water use efficiency between different water providers. Differences in ~~weather,~~ *climate,* historical patterns of urban and suburban development, and density of housing in a particular location need to be considered when assessing per capita water use as a measure of efficiency.

~~SEC. 2. Section 10608.45 is added to the Water Code, to read:~~

~~10608.45. (a) By December 31, 2018, the department shall submit to the Legislature a report that states preliminary water efficiency targets for 2025 for each of the state's hydrologic regions. The report shall include per capita daily water use targets based on, and the department shall explain in the report how it considered, factors that include, but are not limited to, all of the following:~~

~~(1) A uniform statewide standard for per capita indoor water use, based on current conditions affecting indoor water use.~~

~~(2) Outdoor water use standards that reflect the variable climates, land use densities, and age of building stock within urban retail water suppliers' service areas in each hydrologic region.~~

~~(3) The amount of reductions in water use in each hydrologic region that can be expected as a result of a normal rate of improvement in plumbing facilities and the development of new residential, commercial, and other structures that reflect state-of-the-art water efficiency methods and facilities.~~

~~(4) The regional target determination methodology used in the state's 20x2020 Water Conservation Plan (dated February 2010).~~

~~(b) In developing the report pursuant to subdivision (a), the department shall consult with a representative task force consisting of academic experts, urban retail water suppliers representing each of the state's hydrologic regions, economic development interests, business community representatives, environmental organizations, commercial water users, industrial water users, and institutional water users. The department shall designate the task force's members by July 1, 2018.~~

~~(c) (1) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.~~

~~(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2023.~~

SEC. 2. Section 10608.4 of the Water Code is amended to read:

10608.4. It is the intent of the Legislature, by the enactment of this part, to do all of the following:

(a) Require all water suppliers to ~~increase the efficiency of~~ *promote the efficient* use of this essential resource.

(b) Establish a *long-term* framework ~~to meet the state targets~~ for urban water ~~conservation identified in this part and called for by the Governor.~~ *use efficiency.*

~~(c) Measure increased efficiency of urban water use on a per capita basis.~~

~~(d) Establish a method or methods for urban retail water suppliers to determine targets for achieving increased water use efficiency by the year 2020, in accordance with the Governor's goal of a 20-percent reduction.~~

~~(e)~~

(c) Establish consistent water use efficiency planning and implementation standards for urban water suppliers and agricultural water suppliers.

~~(f)~~

(d) Promote urban water ~~conservation standards that are~~ *use efficiency that is* consistent with ~~the California Urban Water Conservation Council's adopted best management practices and~~ the requirements for demand management in Section 10631.

~~(g)~~

(e) Establish standards that recognize and provide credit to water suppliers that made substantial capital investments in urban water ~~conservation~~ *use efficiency, sustainable drought resilient supplies, and emergency supplies* since the drought of the early 1990s.

~~(h)~~

(f) Recognize and account for the investment of urban retail water suppliers in providing recycled water for ~~beneficial uses.~~ *both potable and nonpotable beneficial uses, and the need for greater investment in water recycling and other sustainable drought-resilient supplies.*

(g) Recognize that water recycling is an efficient use of water and the application of recycled water in landscape irrigation is extensively regulated, which ensures its efficient use.

~~(i)~~

(h) Require implementation of specified efficient water management practices for agricultural water suppliers.

~~(j)~~

(i) Support the economic productivity of California's agricultural, commercial, and industrial sectors.

~~(k)~~

(j) Advance regional water resources management.

(k) Empower water suppliers to utilize local and regional water use efficiency measures that reflect their unique water supply and demand circumstances that best meet the needs of their individual communities.

(l) Ensure that a water supplier retains the same legal access to its water supplies as the water supplier possessed before January 1, 2018, as provided under law to enhance local and regional water supply reliability and drought resilience as well as to voluntarily contribute to water supply reliability in other regions of the state, as appropriate under law.

SEC. 3. Section 10608.8 of the Water Code is amended to read:

10608.8. (a) *(1) Nothing in this part alters existing water rights law or authorizes or enhances the authority of the board to alter any existing water rights beyond its powers to do so before January 1, 2018.*

(2) Water use efficiency measures adopted and implemented pursuant to this part or Part 2.8 (commencing with Section 10800) are water conservation measures subject to the protections provided under Section 1011.

~~(2)~~

(3) Because an urban agency is not required to meet its urban water use target until 2020 pursuant to subdivision (b) of Section 10608.24, an urban retail water supplier's failure to meet those targets shall not establish a violation of law for purposes of any state administrative or judicial proceeding prior to January 1, 2021. Nothing in this paragraph limits the use of data reported to the department or the board in litigation or an administrative proceeding. This paragraph shall become inoperative on January 1, 2021.

(4) Because an urban agency is not required to meet its urban water efficiency target until 2025 pursuant to subdivision (d) of Section 10608.25, an urban retail water supplier's failure to meet that target shall not establish a violation of law for purposes of any state administrative or judicial proceeding before January 1, 2026. Nothing in this paragraph limits the use of data reported to the department or the board in litigation or an administrative proceeding.

~~(3)~~

(5) To the extent feasible, the department and the board shall provide for the use of water conservation reports required under this part to meet the requirements of Section 1011 for water conservation reporting.

(b) This part does not limit or otherwise affect the application of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) This part does not require a reduction in the total water used in the agricultural or urban sectors, because other factors, including, but not limited to, changes in agricultural economics or population growth may have greater effects on water use. This part does not limit the economic productivity of California's agricultural, commercial, or industrial sectors.

(d) The requirements of this part do not apply to an agricultural water supplier that is a party to the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, during the period within which the Quantification Settlement Agreement remains in effect. After the expiration of the Quantification Settlement Agreement, to the

extent conservation water projects implemented as part of the Quantification Settlement Agreement remain in effect, the conserved water created as part of those projects shall be credited against the obligations of the agricultural water supplier pursuant to this part.

SEC. 4. Section 10608.12 of the Water Code is amended to read:

10608.12. Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) "Agricultural water supplier" means a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water. "Agricultural water supplier" includes a supplier or contractor for water, regardless of the basis of right, that distributes or sells water for ultimate resale to customers. "Agricultural water supplier" does not include the department.

(b) "Base daily per capita water use" means any of the following:

(1) The urban retail water supplier's estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous 10-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.

(2) For an urban retail water supplier that meets at least 10 percent of its 2008 measured retail water demand through recycled water that is delivered within the service area of an urban retail water supplier or its urban wholesale water supplier, the urban retail water supplier may extend the calculation described in paragraph (1) up to an additional five years to a maximum of a continuous 15-year period ending no earlier than December 31, 2004, and no later than December 31, 2010.

(3) For the purposes of Section 10608.22, the urban retail water supplier's estimate of its average gross water use, reported in gallons per capita per day and calculated over a continuous five-year period ending no earlier than December 31, 2007, and no later than December 31, 2010.

(c) "Baseline commercial, industrial, and institutional water use" means an urban retail water supplier's base daily per capita water use for commercial, industrial, and institutional users.

(d) "Commercial water user" means a water user that provides or distributes a product or service.

(e) "Compliance daily per capita water use" means the gross water use during the final year of the reporting period, reported in gallons per capita per day.

(f) "Disadvantaged community" means a community with an annual median household income that is less than 80 percent of the statewide annual median household income.

(g) "Gross water use" means the total volume of water, whether treated or untreated, entering the distribution system of an urban retail water supplier, *as the distribution system is defined by the urban retail water supplier,* excluding all of the following:

(1) Recycled water that is delivered within the service area of an urban retail water supplier or its urban wholesale water ~~supplier.~~ *supplier, or recycled water used to augment water supplies, including, but not limited to, recycled water used to augment a surface water reservoir or recycled water percolated or injected into a groundwater basin for the purposes of augmenting the common groundwater supply and then extracted by an urban retail water supplier.*

(2) The net volume of water that the urban retail water supplier places into long-term storage.

(3) The volume of water the urban retail water supplier conveys for use by another urban water supplier.

(4) The volume of water ~~delivered for agricultural use,~~ *the urban retail water supplier delivers for commercial or noncommercial agricultural purposes,* except as otherwise provided in subdivision (f) of Section 10608.24.

(h) "Industrial water user" means a water user that is primarily a manufacturer or processor of materials as defined by the North American Industry Classification System code sectors 31 to 33, inclusive, or an entity that is a water user primarily engaged in research and development.

(i) "Institutional water user" means a water user dedicated to public service. This type of user includes, among other users, higher education institutions, schools, courts, churches, hospitals, government facilities, and nonprofit research institutions.

(j) "Interim urban water use target" means the midpoint between the urban retail water supplier's base daily per capita water use and the urban retail water supplier's urban water use target for 2020.

(k) "Locally cost effective" means that the present value of the local benefits of implementing an agricultural efficiency water management practice is greater than or equal to the present value of the local cost of implementing that measure.

(l) "Performance measures" means best management practices that improve the efficiency of water use within the commercial, industrial, and institutional sector, including the use of new technologies and improvements in water management as identified in the report developed pursuant to subdivision (b) of Section 10608.45.

~~(l)~~

(m) "Process water" means water used for producing a product or product content or water used for research and development, including, but not limited to, continuous manufacturing processes, water used for testing and maintaining equipment used in producing a product or product content, and water used in combined heat and power facilities used in producing a product or product content. Process water does not mean incidental water uses not related to the production of a product or product content, including, but not limited to, water used for restrooms, landscaping, air conditioning, heating, kitchens, and laundry.

~~(m)~~

(n) "Recycled water" means recycled water, as defined in subdivision (n) of Section 13050, that is used to offset potable demand, ~~including~~ *including, but not limited to,* recycled water supplied for *nonpotable reuse, recycled water supplied for the uses identified and defined in Section 13561, or recycled water supplied for* direct use and indirect potable reuse, ~~that~~ *that, where applicable,* meets the following requirements, ~~where applicable:~~ *for reservoir augmentation and groundwater recharge, including recharge through spreading basins or injections:*

~~(1) For groundwater recharge, including recharge through spreading basins, water supplies that are all of the following:~~

~~(A) Metered.~~

(1) The use of the water supply is metered.

~~(B)~~

(2) Developed through planned investment by the urban water ~~supplier~~ *supplier, a water replenishment district,* or a wastewater treatment agency.

~~(C)~~

(3) Treated to a minimum tertiary level.

~~(D)~~

(4) Delivered within the service area of an urban retail water supplier or its urban wholesale water supplier that helps an urban retail water supplier meet its urban water use target.

~~(2) For reservoir augmentation, water supplies that meet the criteria of paragraph (1) and are conveyed through a distribution system constructed specifically for recycled water.~~

~~(n)~~

(o) "Regional water resources management" means sources of supply resulting from watershed-based planning for sustainable local water reliability or any of the following alternative sources of water:

(1) The capture and reuse of stormwater or rainwater.

(2) The use of recycled water.

(3) The desalination of brackish groundwater.

(4) The conjunctive use of surface water and groundwater in a manner that is consistent with the safe yield of the groundwater basin.

~~(o)~~

(p) "Reporting period" means the years for which an urban retail water supplier reports compliance with the urban water use targets.

~~(p)~~

(q) "Urban retail water supplier" means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes.

~~(q)~~

(r) "Urban water use target" means the urban retail water supplier's targeted future daily per capita water use.

~~(r)~~

(s) "Urban wholesale water supplier," means a water supplier, either publicly or privately owned, that provides more than 3,000 acre-feet of water annually at wholesale for potable municipal purposes.

(t) "Water efficiency target" means the target established by an urban retail water supplier pursuant to Section 10608.25.

(u) "Water loss" means the difference between the potable distribution system input volume and authorized consumption as

consistent with the American Water Works Association's third edition of Water Audits and Loss Control Programs, Manual M36 and subsequent editions in accordance with Section 10608.34.

SEC. 5. Section 10608.20 of the Water Code is amended to read:

10608.20. (a) (1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by July 1, 2011. Urban retail water suppliers may elect to determine and report progress toward achieving these targets on an individual or regional basis, as provided in subdivision (a) of Section 10608.28, and may determine the targets on a fiscal year or calendar year basis.

(2) It is the intent of the Legislature that the urban water use targets described in paragraph (1) cumulatively result in a 20-percent reduction from the baseline daily per capita water use by December 31, 2020.

(b) An urban retail water supplier shall adopt one of the following methods for determining its *2020* urban water use target pursuant to subdivision (a):

(1) Eighty percent of the urban retail water supplier's ~~baseline~~ *base* per capita daily water use.

(2) The per capita daily water use that is estimated using the sum of the following performance standards:

(A) For indoor residential water use, 55 gallons per capita daily water use as a provisional standard. Upon completion of the department's 2016 report to the Legislature pursuant to Section 10608.42, this standard may be adjusted by the Legislature by statute.

(B) For landscape irrigated through dedicated or residential meters or connections, water efficiency equivalent to the standards of the Model Water Efficient Landscape Ordinance set forth in Chapter 2.7 (commencing with Section 490) of Division 2 of Title 23 of the California Code of Regulations, as in effect the later of the year of the landscape's installation or 1992. An urban retail water supplier using the approach specified in this subparagraph shall use satellite imagery, site visits, or other best available technology to develop an accurate estimate of landscaped areas.

(C) For commercial, industrial, and institutional uses, a 10-percent reduction in water use from the baseline commercial, industrial, and institutional water use by 2020.

(3) Ninety-five percent of the applicable state hydrologic region target, as set forth in the state's draft 20x2020 Water Conservation Plan (dated April 30, 2009). If the service area of an urban water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

(4) A method that shall be identified and developed by the department, through a public process, and reported to the Legislature no later than December 31, 2010. The method developed by the department shall identify per capita targets that cumulatively result in a statewide 20-percent reduction in urban daily per capita water use by December 31, 2020. In developing urban daily per capita *2020* water use targets, the department shall do all of the following:

(A) Consider climatic differences within the state.

(B) Consider population density differences within the state.

(C) Provide flexibility to communities and regions in meeting the targets.

(D) Consider different levels of per capita water use according to plant water needs in different regions.

(E) Consider different levels of commercial, industrial, and institutional water use in different regions of the state.

(F) Avoid placing an undue hardship on communities that have implemented conservation measures or taken actions to keep per capita water use low.

(c) If the department adopts a regulation pursuant to paragraph (4) of subdivision (b) that results in a requirement that an urban retail water supplier achieve a reduction in daily per capita water use that is greater than 20 percent by December 31, 2020, an urban retail water supplier that adopted the method described in paragraph (4) of subdivision (b) may limit its urban water use target to a reduction of not more than 20 percent by December 31, 2020, by adopting the method described in paragraph (1) of subdivision (b).

(d) The department shall update the method described in paragraph (4) of subdivision (b) and report to the Legislature by December 31, 2014. An urban retail water supplier that adopted the method described in paragraph (4) of subdivision (b) may adopt a new urban daily per capita water use target pursuant to this updated method.

(e) An urban retail water supplier shall include in its urban water management plan due in 2010 pursuant to Part 2.6 (commencing with Section 10610) the baseline daily per capita water use, urban water use target, interim urban water use target, and compliance daily per capita water use, along with the bases for determining those estimates, including references to supporting data.

(f) When calculating per capita values for the purposes of this chapter, an urban retail water supplier shall determine population using *a combination of* federal, state, and local population reports and projections.

(g) An urban retail water supplier may update its 2020 urban water use target in its 2015 urban water management plan required pursuant to Part 2.6 (commencing with Section 10610).

(h) (1) The department, through a public process and in consultation with the California Urban Water Conservation Council, shall develop technical methodologies and criteria for the consistent implementation of this part, including, but not limited to, both of the following:

(A) Methodologies for calculating base daily per capita water use, baseline commercial, industrial, and institutional water use, compliance daily per capita water use, gross water use, service area population, indoor residential water use, and landscaped area water use.

(B) Criteria for adjustments pursuant to subdivisions (d) and (e) of Section 10608.24.

(2) The department shall post the methodologies and criteria developed pursuant to this subdivision on its Internet Web site, and make written copies available, by October 1, 2010. An urban retail water supplier shall use the methods developed by the department in compliance with this part.

(i) (1) The department shall adopt regulations for implementation of the provisions relating to process water in accordance with subdivision (*l*) of Section 10608.12, subdivision (e) of Section 10608.24, and subdivision (d) of Section 10608.26.

(2) The initial adoption of a regulation authorized by this subdivision is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1 of the Government Code. After the initial adoption of an emergency

regulation pursuant to this subdivision, the department shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1 of the Government Code.

(j) (1) An urban retail water supplier is granted an extension to July 1, 2011, for adoption of an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) due in 2010 to allow the use of technical methodologies developed by the department pursuant to paragraph (4) of subdivision (b) and subdivision (h). An urban retail water supplier that adopts an urban water management plan due in 2010 that does not use the methodologies developed by the department pursuant to subdivision (h) shall amend the plan by July 1, 2011, to comply with this part.

(2) An urban wholesale water supplier whose urban water management plan prepared pursuant to Part 2.6 (commencing with Section 10610) was due and not submitted in 2010 is granted an extension to July 1, 2011, to permit coordination between an urban wholesale water supplier and urban retail water suppliers.

SEC. 6. Section 10608.24 of the Water Code is amended to read:

10608.24. (a) Each urban retail water supplier shall meet its interim urban water use target by December 31, 2015.

(b) Each urban retail water supplier shall meet its *2020* urban water use target by December 31, 2020.

(c) An urban retail water supplier's compliance daily per capita water use shall be the measure of progress toward achievement of its *2020* urban water use target.

(d) (1) When determining compliance daily per capita water use, an urban retail water supplier may consider the following factors:

(A) Differences in evapotranspiration and rainfall in the baseline period compared to the compliance reporting period.

(B) Substantial changes to commercial or industrial water use resulting from increased business output and economic development that have occurred during the reporting period.

(C) Substantial changes to institutional water use resulting from fire suppression services or other extraordinary events, or from new or expanded operations, that have occurred during the reporting period.

(2) If the urban retail water supplier elects to adjust its estimate of compliance daily per capita water use due to one or more of the factors described in paragraph (1), it shall provide the basis for, and data supporting, the adjustment in the report required by Section 10608.40.

(e) When developing the *2020* urban water use target pursuant to Section 10608.20, an urban retail water supplier that has a substantial percentage of industrial water use in its service area may exclude process water from the calculation of gross water use to avoid a disproportionate burden on another customer sector.

(f) (1) An urban retail water supplier that includes agricultural water use in an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) may include the agricultural water use in determining gross water use. An urban retail water supplier that includes agricultural water use in determining gross water use and develops its urban water use target pursuant to paragraph (2) of subdivision (b) of Section 10608.20 shall use a water efficient standard for agricultural irrigation of 100 percent of reference evapotranspiration multiplied by the crop coefficient for irrigated acres.

(2) An urban retail water supplier, that is also an agricultural water supplier, is not subject to the requirements of Chapter 4 (commencing with Section 10608.48), if the agricultural water use is incorporated into its urban water use target pursuant to paragraph (1).

SEC. 7. Section 10608.25 is added to the Water Code, to read:

10608.25. (a) After December 31, 2020, an urban retail water supplier shall achieve a water efficiency target as provided for in this section.

(b) Each urban retail water supplier shall develop a water efficiency target for 2025 in its 2020 urban water management plan required to be submitted by July 1, 2021, pursuant to Section 10621. An urban retail water supplier may determine the water efficiency target on a fiscal year or calendar year basis. An urban retail water supplier may adjust and update the water efficiency target, as appropriate, based upon population growth, changes in irrigable landscape acreage, and other changes that affect water use when the supplier reports its compliance in achieving the water efficiency targets and its implementation of the identified performance measures in its 2025 urban water management plan

required to be submitted by July 1, 2026, pursuant to Section 10621.

(c) An urban retail water supplier shall adopt one of the following methods for determining its water efficiency target pursuant to subdivision (b):

(1) Seventy-five percent of the urban retail water supplier's base daily per capita water use calculated using the methodology developed by the department pursuant to Section 10608.20.

(2) (A) Establishment of a retail-level water efficiency target that is the sum of the following:

(i) The residential population multiplied by 55 gallons of water use per person per day.

(ii) For irrigable landscape served by a residential or dedicated irrigation meter, an estimate of total irrigation demands within the supplier's service area, based on the following factors:

(I) Evapotranspiration adjustment factor of 1.0 for parcels developed before 1992 and for special landscape areas.

(II) Evapotranspiration adjustment factor of 0.8 for parcels developed between January 1, 1992, and December 31, 2009.

(III) Evapotranspiration adjustment factor of 0.7 for parcels developed between January 1, 2010, and December 31, 2015.

(IV) Evapotranspiration adjustment factor of 0.55 for residential parcels developed after January 1, 2016.

(V) evapotranspiration adjustment factor of 0.45 for commercial parcels developed after January 1, 2016.

(VI) Parcels in commercial or noncommercial agricultural use may be included by the urban retail water supplier, at its sole discretion, using an evapotranspiration factor of 1.0 in the calculation of the water use efficiency target or in the calculation for compliance of the target.

(iii) A volume of water to account for the variances taken by the water supplier due to unique situations within the water supplier's service area and developed pursuant to subdivision (f).

(B) An urban retail water supplier that adopts the method described in subparagraph (A) for determining its water efficiency target shall identify proposed performance measures, as appropriate, for efficient water use by its commercial, industrial, and institutional customers consistent with the recommendations identified in the report required pursuant to subdivision (b) of

Section 10608.45 in the water supplier's 2020 urban water management plan.

(3) Ninety percent of the applicable hydrologic region target, as set forth in the state's 20x2020 Water Conservation Plan, dated February 2010. If the service area of an urban retail water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

(d) Each urban retail water supplier shall meet its adjusted 2025 water efficiency targets by December 31, 2025, unless the supplier reports to the department that economic or hydrologic conditions beyond the water supplier's control rendered it impossible for the water supplier to do so. An urban retail water supplier may elect to determine and report progress toward achieving its 2025 water efficiency target on an individual or regional basis, as provided in subdivision (a) of Section 10608.28. An urban retail water supplier shall report on its compliance with this section in its 2025 urban water management plan required to be submitted by July 1, 2026, pursuant to Section 10621.

(e) An urban retail water supplier shall base its adjusted water efficiency target and compliance with that adjusted target on the best available information concerning population, irrigable landscape acreage, and other factors that affect water use within its service area. An urban retail water supplier shall calculate its compliance with subdivision (d) based on the method by which it set its water efficiency target, as follows:

(1) An urban retail water supplier with a water efficiency target determined pursuant to paragraph (1) of subdivision (c) shall calculate its compliance with subdivision (d) by comparing the adjusted water efficiency target with the urban retail water supplier's compliance daily per capita water use.

(2) An urban retail water supplier with a water efficiency target determined pursuant to paragraph (2) of subdivision (c) shall calculate its compliance with subdivision (d) by comparing the water efficiency target with the total volume of gross water use measured through residential and dedicated irrigation meters during the final year of the reporting period. The urban retail water supplier shall include in its report on compliance with subdivision (d) a report on the urban retail water supplier's implementation of the performance measures for efficiency

commercial, industrial, and institutional water use identified in its urban water management plan. If an urban retail water supplier includes parcels in agricultural use in its water efficiency target, the urban retail water supplier shall include water use for those parcels in its compliance calculation.

(3) An urban retail water supplier with a water efficiency target determined pursuant to paragraph (3) of subdivision (c) shall calculate its compliance with subdivision (d) by comparing the adjusted water efficiency target with the urban retail water supplier's compliance daily per capita water use.

(4) Water use or loss caused by conditions of disaster or extreme peril to the safety of persons and property, including, but not limited to, conditions, whether natural or human caused, of fire, flood, storm, drought, epidemic, riot, earthquake, or other condition, shall be excluded from the calculation of compliance with the water efficiency target.

(5) The deadline for an urban retail water supplier to submit its plan pursuant to subdivision (e) of Section 10621 shall be extended if the department does not release the final database pursuant to Section 10608.47 on or before July 1, 2019. The extension shall equal the length of time between July 1, 2019 and the date of the department's release of the final database.

(6) Each urban retail water supplier shall have the discretion to achieve its water efficiency target under this section and to design and utilize any rate structure in any manner consistent with that supplier's legal authority.

(7) Each urban retail water supplier shall have the discretion to measure progress toward achieving its water efficiency target under this section by considering the factors described in subdivisions (d) to (f), inclusive, of Section 10608.24.

(8) Notwithstanding the method used by an urban retail water supplier to calculate compliance with subdivision (c), each urban retail water supplier shall address water loss within its service area pursuant to Section 10608.34.

(f) The department, in consultation with the Urban Stakeholder Committee, shall develop all of the following and any other factors as may be identified by the committee:

(1) Standardized variance methodologies for all of the following:

(A) Livestock.

(B) Swamp coolers.

(C) Significant transient population increases.

(D) Construction water for soil compaction and dust control.

(E) Potable water use to supplement ponds and lakes to sustain wildlife.

(F) Vegetation irrigated for fire protection.

(G) Landscapes irrigated with recycled water having high levels of total dissolved solids.

(H) Other water quality concerns.

(2) A methodology to calculate the irrigable area associated with special landscape areas by aerial imagery or date of parcel establishment so that an urban retail water supplier may develop appropriate water efficiency targets as described in paragraph (2) of subdivision (c).

(3) A process for the submission of supporting documentation for other variances that shall be included into the calculation of the urban retail water supplier's water efficiency target as described in paragraph (2) of subdivision (c).

(g) For purposes of this section, "special landscape area" means an area of the landscape dedicated solely to edible plants, recreational areas, areas irrigated with recycled water, or water features using recycled water designed within and having the same evapotranspiration adjustment factor as contained in the model water efficient landscape ordinance set forth in Chapter 2.7 (commencing with Section 490) of Division 2 of Title 23 of the California Code of Regulations, adopted on September 15, 2015.

SEC. 8. Section 10608.45 is added to the Water Code, to read:

10608.45. (a) By July 1, 2018, the department, in consultation with the board, shall convene a commercial, industrial, and institutional water use efficiency task force to recommend appropriate water efficiency measures for various segments of the commercial, industrial, and institutional water use sector. The task force shall consist of all of the following:

(1) Urban retail water suppliers, including a broad spectrum of commercial, industrial, and institutional customers throughout the state and the representation of combined retail water and wastewater agencies.

(2) Urban wholesale water suppliers.

(3) Academic experts.

(4) Economic development interests.

(5) Business community representatives.

(6) Environmental organizations.
(7) Commercial water users.
(8) Industrial water users.
(9) Institutional water users.
(b) By December 31, 2019, the task force, in consultation with the department and the board, shall submit a report to the Legislature that shall include, but is not limited to, all of the following:
(1) Recommendations of appropriate performance measures for commercial, industrial, or institutional water use that shall rely, to the extent appropriate, on the 2013 report to the Legislature by the CII Task Force entitled "Water Use Best Management Practices" and support the economic productivity of California's commercial, industrial, and institutional sectors.
(2) Appropriate commercial, industrial, and institutional classifications that address significant uses of water and are consistent with the classifications and standards developed by the North American Industry Classification System published by the United States Office of Management and Budget.
(3) Recommendations for appropriate thresholds by which urban water suppliers could require commercial, industrial, and institutional water users to participate in audits and the development of water management plans.
(4) An evaluation of feasability criteria and cost-effectiveness of separating mixed-use meters and equivalent technologies and recommendations on when separating mixed-use meters should not be required.
(c) Using available funds, the department shall provide technical and financial assistance to the task force to enable the completion of the report within the required time frame and to assist water suppliers and water users to comply with any new requirements resulting from implementation of the report recommendations.
(d) (1) A report to be submitted pursuant to subdivision (b) shall be submitted in compliance with Section 9795 of the Government Code.
(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2024.
SEC. 9. Section 10608.46 is added to the Water Code, to read:
10608.46. (a) The department shall reconvene its Urban Stakeholder Committee by April 1, 2018. The committee shall

consist of a mix of small, medium, and large urban retail water suppliers from throughout the state, including at least one representative from each hydrologic region. The committee shall also include academic experts, urban wholesale water suppliers, business organizations, as well as representation of combined retail water and wastewater agencies.

(b) By July 1, 2019, the department shall consult with the committee to develop the methodologies required by subdivision (f) of Section 10608.25.

(c) By January 1, 2020, and every five years thereafter, the committee shall develop a report to provide information and recommendations to the department and the Legislature about new demand management measures, technologies, and approaches. The department shall review the committee report and include in the final report to the Legislature the department's recommendations and comments regarding the committee process and the committee's recommendations.

(d) By December 31, 2025, the committee, in consultation with the department and the board, shall submit a report to the Legislature recommending for potential adjustments to water efficiency targets and commercial, industrial, and institutional performance measures, consistent with the report provided to the Legislature pursuant to subdivision (b) of Section 10608.45, for implementation no sooner than 2030. If the committee recommends a change in the water efficiency targets or performance measures, the report shall do both of the following:

(1) State the technical changes or scientific basis that justifies a change in the targets or performance measures.

(2) Evaluate potential unintended consequences created by the proposed changes that could negatively impact California's economy, wastewater infrastructure, or local investments in water infrastructure and supplies, including specific impacts to the amount of recycled water or desalinated water available within the state.

(e) Using available funds, the department shall provide technical and financial assistance to the committee to enable the completion of the reports pursuant to this section within the required time frame and assist water suppliers to comply with any new requirements resulting from implementation of the report recommendations.

(f) Nothing in this section authorizes any state agency to establish, change, or otherwise modify the water efficiency targets and commercial, industrial, and institutional performance measures established under this chapter.

(g) A report to be submitted pursuant to subdivision (c) or (d) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 10. Section 10608.47 is added to the Water Code, to read:

10608.47. (a) By July 1, 2019, the department shall provide to urban retail water suppliers, in electronic form, a database of validated aerial imagery and measured irrigable area for all residential, commercial, industrial, and institutional areas within each water supplier's service area. The database shall correlate the relevant irrigable areas with assessor parcels within each water supplier's service area and shall state the year of parcel development. The database shall contain downloadable reference evapotranspiration data with representative climate zones for all urban retail water suppliers. The database's aerial imagery data shall be suitable for determining the appropriate amount of irrigation for a variety of vegetation, including, but not limited to, large trees and irrigable area under native tree canopy. The department shall update the database by December 31, 2025, and every five years thereafter.

(b) To the extent consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the department and all urban retail water suppliers shall maintain the confidentiality of the information in the department's database.

(c) Before providing the database to urban retail water suppliers, the department shall conduct a statistically valid review of the accuracy of the information in the database. In conducting this review, the department shall consult with a representative sample of urban retail water suppliers representing each of the state's hydrologic regions.

(d) An urban retail water supplier may use its own database of validated aerial imagery, measured irrigable area, and date of parcel development for properties within its service areas for purposes of paragraph (2) of subdivision (c) of Section 10608.25, if the water supplier certifies that its database is of comparable

or better quality than the relevant information included in the department's database.

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Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE
Eduardo Garcia, Chair
AB 968 (Rubio) – As Amended April 17, 2017

SUBJECT: Urban water use: water efficiency

SUMMARY: Establishes a new 2025 water use efficiency requirement for urban retail water suppliers. Specifically, **this bill**:

1) Defines "water efficiency target" as a target developed by an urban retail water supplier for 2025 water efficiency in its 2020 urban water management plan (UWMP).

2) Requires each urban retail water supplier to adopt one of the following methods for determining water efficiency targets:

    a. 75 percent of the urban retail water suppliers base daily per capita water use, as specified through existing law.
    b. A water budget efficiency target based on indoor water use, outdoor water use, and variances, as specified.
    c. 90 percent of the applicable hydrologic region target, as specified.

3) Permits the urban water supplier to adjust and update the water efficiency target when the supplier reports its compliance. Requires the urban water supplier to base adjusted targets on population, irrigable landscape acreage, and other factors that affect water use.

4) Maintains the existing exclusion of recycled water from the calculation of base daily per capita water use.

5) Requires the department of water resources (DWR) to, by July 1, 2019, provide to urban water suppliers validated aerial imagery and measured irrigable area for areas within each water supplier's service area. Extends the date by which the 2020 UWMPs are due, if the data required by the DWR by July 1, 2019, is overdue, by the length of time the DWR data is overdue.

6) Requires the DWR in consultation with the State Water Resources Control Board (SWRCB) to, by July 1, 2018, convene a task force for the purposes of recommending appropriate performance measures for the commercial, industrial, and institutional sector. Defines performance measures as best management practices that improve the efficiency of water use within the commercial, industrial, and institutional sector.

7) Requires the DWR to reconvene the urban stakeholder committee by April 1, 2018, to develop standardized variances permitted within the retail-level water efficiency target.

8) Specifies that failure of an urban water agency to meet its water use efficiency target before January 1, 2026, shall not establish a violation.

9) Provides that no change authorized by the bill on water use efficiency authorizes or enhances the authority of the SWRCB to alter any existing water right beyond its power to do so before January 1, 2018.

10) Makes several findings and declarations, and legislative intent, to the effect of recognizing the importance of local control in meeting water supply needs, efficiency of recycled water, and maintaining legal access to water supplies.

EXISTING LAW:

1) Declares that because of the conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be excercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

2) Requires a 20 percent reduction in urban per capita water use on or before December 31, 2020.

3) Requires each urban retail water supplier to develop an urban water use target based on one of the following methods:

    a. Water use of 80 percent of the urban retail water supplier's baseline per capita water use.
    b. A water budget based on indoor use, outdoor use, and commercial, industrial and institutional uses.
    c. Water use of 95 percent of the applicable state hydrologic region target.
    d. A method developed by the DWR.

4) Defines "base daily per capita water use" as the average of gross water use over a period of time that is no longer than 15 continuous years and no shorter than five continuous years beginning no earlier than December 31, 1989, and ending no later than December 31, 2010. Establishes the standard period to be the 10 continuous years from December 31, 2004, through December 31, 2010. Allows five additional years for an urban water supplier that meets at least 10% of its 2008 retail demand through recycled water.

5) Defines "gross water use" as the total volume of water entering the distribution system of an urban retail water supplier, excluding among other things, recycled water.

6) Defines "recycled water" as water, which as a result of treatment of waste, is suitable for a direct beneficial use that would not otherwise occur, that is used to offset potable demand.

7) Requires the SWRCB to adopt rules requiring an urban retail water suppliers to meet performance standards for the volume of water loss no later than July 1, 2020.

FISCAL EFFECT: Unknown

COMMENTS: This bill establishes a new 2025 water use efficiency requirement for urban retail water suppliers.

Author's Statement:

> This bill will establish new water efficiency targets for water suppliers in a manner that accounts for local conditions, while also recognizing and incentivizing sustainable, balanced approaches to water management, including investments in recycled water. AB 968 will establish a collaborative stakeholder process to continue improvement in water use efficiency beyond 2025, and will preserve the Legislature's authority and oversight over long-term water use target setting while making conservation a way of life in California.

Background. ***Water Shortage Response In the Recent Drought.*** California experienced the worst drought in modern times from 2012-2016, with the first four years having been estimated to be the driest four-year period in the last 450 years. While the most recent drought was historic, current climate change models predict that severe drought will become a more common occurrence in the future.

The drought had significant impacts on the environment, agricultural water supply, and urban water supply. 2014 and 2015 were two of the driest years on record. During the drought, the State Water Project and federal Central Valley Project, which supply water to more than 25 million Californians and 3 million acres of agricultural land, provided limited water deliveries with approximately 15 percent and zero deliveries respectively in 2015.

In January of 2014, the Governor issued an executive order declaring a drought state of emergency and requesting a voluntary 20% reduction in urban potable water use. For the first time in the state's history, the Governor issued an executive order in April of 2015, requiring the State Water Resources Control Board (SWRCB) implement mandatory restrictions to achieve a 25% statewide reduction in urban potable use, over 2013 levels of use. There are approximately 410 urban water suppliers that serve approximately 90 percent of the population of the state.

In May of 2015, the SWRCB adopted an emergency regulation placing each urban water supplier in a conservation tier ranging between 4% and 36%. In May of 2016, the SWRCB adopted an emergency regulation that replaced the percentage reduction requirement with a localized "stress test" requiring urban water suppliers to ensure a three-year supply of water to their customers under drought conditions. The "stress test" requirement mandated monthly reporting by water suppliers to the SWRCB. For the most part, all actions associated with the 2012-2106 drought were ended when the Governor declared the drought emergency over on April 7, 2017.

Lessons Learned From the Drought. The response to the drought was unprecedented because the severity of the drought was unprecedented. It was evident, from the necessity to have an emergency response, that the water supply system was not as prepared as it needed to be for a drought of the severity experienced in 2012-2016. There is widespread agreement that the SWRCB having to step in on an emergency basis is not an ideal plan for drought response. There is also widespread recognition that climate change will cause the drought of 2012-2016 to become a more typical event in the future.

The actions taken by the SWRCB in 2015 and 2016, were criticized by some, as not recognizing past efforts to use water more efficiently, supporting investments in drought resilient supply, and in some instances not being applied in a way that would produce water savings that could

reasonably benefit other regions of the state. The 2016 "stress test" approach was also criticized as not being a meaningful enough step to prevent shortages should 2017 have become another dry year. There was widespread agreement that there could be a better approach moving forward for how the state is prepared for and responds to future drought.

In May of 2016, the Governor issued an executive order on "making water conservation a way of life." In broad terms the executive order initiated a public process of five state departments, notably the DWR and the SWRCB, to develop a conservation framework that would advance long-term water use efficiency and develop a meaningful drought response tool.

Specifically in relation to drought response, the May 2016 executive order required the DWR to strengthen the requirements for drought response. It required that a WSCA include adequate actions to respond to droughts lasting at least five years, and that the WSCA remain customized for local conditions while also allowing for them to be quickly utilized during drought.

Progressing but No Consensus. While there is widespread agreement that progress must be made in the areas of long-term water use efficiency and drought response, there is not yet consensus on the specific requirements that will best achieve progress in each area. As of this writing, there are seven policy bills and a budget trailer bill that directly relate to long-term efficiency and drought response. These "making water conservation a way of life" bills take several different approaches to the development of long-term efficiency and drought response policy. Because long-term efficiency impacts what future drought response will be, the two subjects are closely related but are generally addressed separately in the different bills. There is disagreement among the stakeholder community as to whether the policy should be heard through the legislative process or be addressed in a budget trailer bill. There is also disagreement over the extent to which the policies should be developed in legislation or through the regulatory process.

This bill is one approach, of several, on long-term water use efficiency. The general framework of all of the approaches to strengthen long-term efficiency is to require a baseline of water use that must be met, but permits the urban water supplier flexibility in how to meet that baseline. Beyond that general framework, this bill differs from other approaches in several significant ways.

Three Efficiency Methods. SB 7 x7 (Steinberg, 2009) included what is essentially the predecessor version of the three methods this bill would permit. One of the methods, the water use budget, is at the core of the proposal in AB 1669 (Friedman), and the budget trailer bill. The other two other methods of a percentage reduction and hydrologic region target allowed under existing law have been criticized as not rewarding and encouraging efficiency, and for creating a situation where good actors cover for bad actors. The bill develops the water budget method in numerous ways that could help move the discussion forward as to what will allow for an effective methodology. It also would require continued development of this method through two separate task forces.

Outdoor Irrigation. It seems as though the single largest sticking point on moving forward with the water budget methodology, is, how outdoor irrigation will be treated. There is some uncertainty at this point as to how the outdoor irrigation component will be calculated for each urban water suppliers' budget. Water suppliers' have questioned how outdoor standards will be developed. This bill would require that basis for those standards being validated.

Adjustments and Variances. SB 7 x7 (Steinberg, 2009), allows for adjustments, subject to reporting, be made. Specifically allowing adjustments for differences in evapotranspiration, substantial changes to commercial or industrial use, and for substantial changes from extraordinary events to the water use target . AB 968 would establish a new process to allow for an adjustment to include population growth, changes in irrigable landscape, and other changes that affect water use. What controls these adjustments is not defined and there is no required reporting or verification process with these adjustments. Adjustments to the water target were considered as part of the development of the "making water conservation a way of life" report and there was some stakeholder agreement. The elements that allow for adjustment in AB 968 were discussed in the report and implied to be allowed, though it was implied that the adjustments would be included in a process that would validate the basis for the adjustment. AB 968 would include variances into the water budget methodology; that concept has not been expressed in other proposals. AB 968 would require the DWR to consult with the urban stakeholder committee to develop the variances and would require a process for inclusion of the variances into a water efficiency target.

Management of the Commercial, Industrial, and Institutional Sector. AB 1669 (Friedman) expressly includes commercial, industrial, and institutional sectors as an area where the SWRCB in consultation with the DWR will develop long-term efficiency regulations. This bill, instead, requires the DWR in consultation with the SWRCB to convene a commercial, industrial, and institutional water use efficiency task force. The task force is then required to, by December 31, 2019, in consultation with the DWR and the SWRCB, submit a report to the legislature including, among other things, recommendations on appropriate performance measures, appropriate classifications, and recommendations for appropriate audit thresholds in the commercial, industrial, and institutional sector.

Prior and Related Legislation.

- SB 7 x7 (Steinberg), Chapter 4, Statutes of 2009, Seventh Extraordinary Session, requires the state to achieve a 20 percent reduction in urban per capita water use by December 31, 2020, and promotes expanded development of sustainable water supplies at the regional level.

- AB 1669 (Friedman), 2017, requires the SWRCB in consultation with the DWR to adopt long-term standards for urban water conservation and water use by May 20, 2021.

- AB 1323 (Weber), 2017, requires a stakeholder workgroup to be convened no later than February 1, 2018, to develop, evaluate, and recommend proposals for establishing new water use targets for urban water suppliers.

Supporting Arguments. This bill makes water use efficiency a way of life in California in a manner that accounts for local conditions, while also recognizing and incentivizing sustainable, balanced approaches to water management. The bill would acknowledge that factors used to formulate long-term water use efficiency targets can vary significantly at various location due to many factors. It is therefore optimal to utilize local and regional use efficiency measures that reflect the unique water supply and demand condition that suit the needs of their communities. The bill would establish standards that recognize and provide credit to water suppliers that made substantial capital investments in urban water use efficiency, sustainable drought resilient supplies and emergency supplies since back to 1990. Urban retail suppliers are best equipped to

operate their water systems, understand their customer base, and balance actions to achieve greater water use efficiency with protecting the financial position of the water system. The bill will establish a collaborative stakeholder process to continue improvement in water use efficiency beyond 2025. The bill will also preserve the Legislature's authority and oversight over long-term water use target setting.

Opposing Arguments. This bill directs the DWR to develop preliminary regional water use standards based on California's hydrologic regions. This will result in some communities being held to a higher standard than others, overall weaker water use targets, and less water efficiency in our state. We are concerned that the regional approach proposed in this bill could allow some communities to continue to use water inefficiently while hiding behind other communities in the same region that are doing their part and investing in programs and projects to improve local water efficiency. To address the fairness and equity concerns that have accompanied past water conservation efforts, we need one standard for every water supplier in the state that can be customized to local conditions.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Water District
Amador Water Agency
Association of California Water Agencies
Bay Area Water Supply and Conservation Agency
Bella Vista Water District
Calaveras County Water District
CalDesal
California Municipal Utilities Association
California Special Districts Association
California Water Association
Camrosa Water District
CA-NV Section of the American Water Works Association
Carlsbad Municipal Water District
Carmichael Water District
Casitas Municipal Water District
Citrus Heights Water District
City of Anaheim
City of Arcata
City of Buena Park
City of Eureka
City of Fairfield
City of Fountain Valley
City of Fullerton
City of Garden Grove
City of Huntington Beach
City of Long Beach Water Department
City of Newport Beach
City of Oceanside
City of Poway

City of Roseville
City of Sacramento
City of Sacramento Department of Utilities
City of San Diego
City of San Diego Public Utilities Department
City of Santa Ana
City of Santa Cruz Water Department
City of Santa Rosa
City of Seal Beach
City of Shasta Lake
City of Tustin
City of Yuba City
Coachella Valley Water District
Contra Costa Water District
Cucamonga Valley Water District
Desert Water Agency
East Orange County Water District
Eastern Municipal Water District
El Dorado Irrigation District
El Toro Water District
Elsinore Valley Municipal Water District
Fallbrook Public Utility District
Helix Water District
Humboldt Bay Municipal Water District
Humboldt Community Services District
Indian Wells Valley Water District
Irvine Ranch Water District (Sponsor)
Jurupa Community Services District
Laguna Beach County Water District
Lakeside Water District
Las Virgenes Municipal Water District
Long Beach Water Department
McKinleyville Community Services District
Mesa Water District
Monte Vista Water District
Monterey Peninsula Water Management District
Mountain Counties Water Resources Association
North Marin Water District
Olivenhain Municipal Water District
Orange County Water District
Otay Water District
Padre Dam Municipal Water District
Placer County Water Agency
Public Water Agencies Group
Regional Water Authority (Sponsor)
Rincon del Diablo Municipal Water District
Rio Linda/Elverta CWD
Sacramento Suburban Water District
San Diego County Water Authority

San Francisco Public Utilities Commission
San Juan Water District
Santa Margarita Water District
Scotts Valley Water District
Serrano Water District
Sonoma-Marin Saving Water Partnership
South Tahoe Public Utility District
Sweetwater Authority
Three Valleys Municipal Water District
Trabuco Canyon Water District
Vallecitos Water District
Valley Center Municipal Water District
Walnut Valley Water District
Western Municipal Water District
Yorba Linda Water District
Yuba City Water District
Zone 7 Water Agency

Opposition

Amigos de los Rios
California Coastal Protection Network
California Coastkeeper Alliance
Clean Water Action
Climate Resolve
Coastal Environmental Rights Foundation
Endangered Habitats League
Los Angeles Waterkeeper
Natural Resources Defense Council
Sierra Club
Surfrider Foundation
SYRCL & Yuba River Waterkeeper
Wholly H2O

Analysis Prepared by: Ryan Ojakian / W., P., & W. /

United States Environmental Protection Agency

The Definition of “Waters of the U.S.”

E.O. 13132 Federalism Consultation Meeting

April 19, 2017

Purpose & Agenda

Purpose:

- Initiate Federalism consultation to obtain state and local government officials' perspectives
- Provide an overview of potential changes under consideration for the definition of "Waters of the U.S."

Agenda:

- Federalism overview
- "Waters of the U.S." over time
- The Executive Order
- Proposed two-step process
  - Step 1
  - Step 2
- Discussion of Potential Approaches
- Next steps

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of "waters of the U.S."

“Waters of the U.S.” Over Time

From the 1970s through the 1990s, the majority offederal courts, as well as the agencies, consistently interpreted a broad scope of Clean Water Act jurisdiction.

Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished.

The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act.

The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability. Many stakeholders, including many states, expressed concerns with the 2015 Rule.

The agencies are now embarking on another effort to provide clarity and predictability to members of the public.

The Executive Order

On February 28, 2017, the President signed the "Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and "publish for notice and comment a proposed rule rescinding or revising the rule…."

The E.O. directs that EPA and theArmy "shall consider interpreting the term 'navigable waters'" in a manner "consistent with Justice Scalia's opinion" in *Rapanos*. Justice Scalia's opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic

Two-Step Process

The agencies are implementing the Executive Order in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule.

1. The agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule.
2. The agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore want to provide time for appropriate consultation and deliberations on the ultimate regulation.

In the meantime, the agencies will continue to implement regulatory definition in place prior to the 2015 rule, consistent with the 2003 and 2008 guidances, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the Sixth Circuit stay of the Clean Water Rule.

Step 1: Withdraw 2015 Clean Water Rule

While the Sixth Circuit stay may remain in effect for some time, its duration is uncertain.

To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Rule.

In the Step 1 proposed rule, the agencies will define “waters of the United States” using the regulatory definition in place before the Clean Water Rule, which the agencies will continue to implement according to longstanding practice, just as they are today.

The Step 1 proposed rule would maintain the approach in place for decadesuntil a revised rule with a new definition can be promulgated.

Step 2: Develop New Rule Consistent with the Executive Order

The E.O. directs the agencies to consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

The agencies are consulting with state and local government officials as we begin to develop the new definition.

Potential Approaches to "Relatively Permanent" Waters

Perennial plus streams with "seasonal" flow	Perennial plus streams with another measure of flow	Perennial streams only	Other
Current practice: seasonal flow = about 3 months (varies regionally)	Use appropriate, implementable metrics, e.g., frequency of flow, intersecting water table	Streams that carry flow throughout the year except in extreme drought	Thoughts?

Potential Approaches to Wetlands with a "Continuous Surface Connection"

Surface connection even through non-jurisdictional feature

Current practice considers directly abutting wetlands and those with a continuous surface connection, regardless of distance, to be jurisdictional

Some degree of connectivity

Use appropriate, implementable metrics, e.g., distance

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Discussion:

The change in jurisdictional waters will vary across states and localities and with the options suggested above. Given that:

1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?

2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?

3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?

4. The agencies’ economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?

Next Steps

Do you have any additional information that the EPA should be aware of?

- If so, please provide.

Do you have any other approaches that you would like the agencies to consider?

Comments will be due to the EPA in approximately 8 weeks, June 19, 2017.

Please send written comments to: CWAwotus@epa.gov and copy Hanson.Andrew@epa.gov

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REPORT

DATE: May 17, 2017

TO: SGVCOG Water Policy/Technical Advisory Committee

FROM: Eric Wolf, Senior Management Analyst

RE: EPA WOTUS Rulemaking Comment Solicitation

RECOMMENDED ACTION

Discuss and provide direction to staff

BACKGROUND

On February 28, 2017, the President signed the "Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The E.O. calls on the Environmental Protection Agency (EPA) Administrator and the Assistant Secretary of the Army for Civil Works (USACE) to review the 2015 Clean Water Rule interpretation of "Waters of the United States" and "publish for notice and comment a proposed rule rescinding or revising the rule…." The E.O. directs that EPA and the Army "shall consider interpreting the term 'navigable waters'" in a manner "consistent with Justice Scalia's opinion" in *Rapanos*. Justice Scalia's opinion indicates that the Clean Water Act's (CWA) jurisdiction includes only relatively permanent waters, and wetlands with a continuous surface connection to relatively permanent waters.

From the 1970's through the 1990's, the majority of federal courts, as well as the EPA and the USACE (the agencies), consistently interpreted a broad scope of Clean Water Act jurisdiction. Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The justices in the 2006 *Rapanos* decision were split on how this was to be accomplished. The agencies have been working since these Supreme Court decisions to provide clarification and predictability in the procedures used to identify waters that are –and are not –covered by the Clean Water Act. The 2015 Clean Water Rule was an effort to provide that needed clarification and predictability but many stakeholders, including many states, expressed concerns with the 2015 Rule. The agencies are now embarking on another effort to provide clarity and predictability on the extent of CWA jurisdiction under the definition of Waters of the United States.

EPA, USACE TWO STEP WOTUS PROCESS

The agencies are implementing the Executive Order in two steps.

1. Step One. To provide greater certainty, the agencies will move to reinstate the preexisting regulations and guidance and to withdraw the 2015 Clean Water Act Rule. Under this step, the agencies will define "Waters of the United States" using the regulatory definition in place before the Clean Water Rule. This definition will remain in place until a revised rule with a new definition can be promulgated.

2. Step Two. The E.O. directs the agencies to consider interpreting the term "navigable waters,"

as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006). Justice Scalia's opinion indicates Clean Water Act jurisdiction includes relatively permanent waters, and wetlands with a continuous surface connection to relatively permanent waters.

Presently, the agencies are informally consulting with state and local government officials as they begin to develop the new definition. To this end, they circulated the "Definition of 'Waters of the United States'" presentation (Attachment A). Later this year there will likely be a formal rescission of the 2015 Clean Water Rule, which will then make effective the 2008 guidance document issued after *Rapanos*. This will initiate the formal rulemaking process. In the meantime, the agencies welcome informal comments. In accordance with the attachment, those comments are due on June 19, 2017.

QUESTIONS FOR CONSIDERATION

The agencies are aware that the scope of CWA jurisdiction is of intense interest to many stakeholders and therefore have posed a series of questions for consideration. It is the intention of the SGVCOG to thoughtfully consider these questions and submit informal comments as applicable. Water Policy Committee officers and SGVCOG staff will develop answers to the following questions for submission to the Governing Board for approval at their June meeting. This will be followed up by formal comments submitted through the regulatory rulemaking process when the agencies open that docket.

The agencies have posed the following questions and solicit feedback from stakeholders:

1. How would you like to see the concepts of "relatively permanent" and "continuous surface connection" defined and implemented?
2. How would you like to see the agencies interpret "consistent with" Scalia?
3. Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the Step 2 proposed rule?
4. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
5. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction?
6. How would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? What types of actions do you anticipate would be needed?
7. The agencies' economic analysis for Step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?
8. Do you have any additional information that the EPA should be aware of?
9. Do you have any other approaches that you would like the agencies to consider?

RECOMMENDATION

Discuss and provide direction to staff

Prepared by: _____
Eric Wolf
Senior Management Analyst

Approved by: Marisa Creter
Marisa Creter
Assistant Executive Director

ATTACHMENTS

Attachment A – EPA Presentation: "The Definition of 'Waters of the U.S.'"