EBMUD

BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT

375 – 11th Street, Oakland, CA 94607 Office of the Secretary: (510) 287-0440

# AGENDA
## Legislative/Human Resources Committee
## Tuesday, April 9, 2019
## 10:15 a.m.
## Training Resource Center

**(Committee Members: Directors Coleman {Chair}, McIntosh and Patterson)**

**ROLL CALL:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

**DETERMINATION AND DISCUSSION:**

1. Legislative Update (Dumaine)
   - Receive Legislative Report No. 02-19 and consider positions on the following bills: AB 292 (Quirk) Recycled Water: Raw Water and Groundwater Augmentation; AB 834 (Quirk) Freshwater and Estuarine Harmful Algal Bloom Program; AB 1180 (Friedman) Water: Recycled Water; AB 1672 (Bloom) Solid Waste: Flushable Products; SB 1 (Atkins) California Environmental, Public Health, and Workers Defense Act of 2019; SB 332 (Hertzberg) Wastewater Treatment: Recycled Water; and SB 785 (Committee on Natural Resources and Water) Public Resources: Parklands, Freshwater Resources, and Coastal Resources
   - Update on Legislative Issues of Interest to the District

2. Electrical Engineer Recruitment and Retention Efforts (Irias)

**Disability Notice**

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**Document Availability**

*Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11th Street, Oakland, California, during normal business hours, and can be viewed on our website at www.ebmud.com.*

**EAST BAY MUNICIPAL UTILITY DISTRICT**

DATE: April 4, 2019

MEMO TO: Board of Directors

FROM: Alexander R. Coate, General Manager ARC

SUBJECT: Legislative Report No. 02-19

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on April 9, 2019.

## RECOMMENDED ACTION

Approve positions on the following bills: 1) Support AB 292 (Quirk) Recycled Water: raw water and groundwater augmentation; 2) Support AB 834 (Quirk) Freshwater and Estuarine Harmful Algal Bloom Program; 3) Support AB 1180 (Friedman) Water: recycled water; 4) Support AB 1672 (Bloom) Solid waste: flushable products; 5) Support in Concept SB 1 (Atkins) California Environmental, Public Health, and Workers Defense Act of 2019; 6) Oppose Unless Amended SB 332 (Hertzberg) Wastewater treatment: recycled water; and 7) Support SB 785 (Committee on Natural Resources and Water) Public Resources: parklands, freshwater resources, and coastal resources.

| STATE LEGISLATION | | RECOMMENDED POSITION |
|---|---|---|
| **AB 292 (Quirk)** | **RECYCLED WATER: RAW WATER AND GROUNDWATER AUGMENTATION** | **SUPPORT** |

Existing law requires the State Water Resources Control Board to adopt uniform water recycling criteria for direct potable reuse through raw water augmentation on or before December 31, 2023. Existing law also defines direct potable reuse and indirect potable reuse.

AB 292 (Quirk), as amended on March 6, 2019, is intended to facilitate the use of recycled water by updating the recycled water terminology in state law. Specifically, AB 292 would eliminate the confusing terms of "indirect" and "direct" when referring to potable reuse while maintaining definitions for the four types of potable reuse projects: groundwater augmentation, reservoir augmentation, raw water augmentation, and treated drinking water augmentation.

The terms "indirect" and "direct" in the context of potable reuse can create confusion. For example, under current law groundwater augmentation is a type of direct potable reuse even

though it is referred to in law as "indirect potable reuse for groundwater recharge." According to the author, "AB 292 will update and simplify the definition of potable reuse thereby facilitating communication with ratepayers, stakeholders and the public."

EBMUD is a strong proponent of recycled water and has a long track record of recycling its wastewater for non-potable uses. EBMUD began using recycled water for various industrial purposes and to irrigate landscaping at its own facilities in the 1970s and has been distributing recycled water to customers since the 1980s. In addition, EBMUD has developed several landmark projects including the Richmond Advanced Recycled Expansion Water Project, the East Bayshore Recycled Water Project, and the San Ramon Valley Recycled Water Program.

Currently, EBMUD has a recycled water production capacity of approximately 9 million gallons per day (mgd). EBMUD's updated Recycled Water Master Plan includes the goal of increasing recycled water use in its service area to 20 mgd by 2040 through continuing to expand and implement non-potable reuse projects. Projects and opportunities for potable reuse will be periodically re-evaluated as EBMUD's water supply needs and potable reuse regulations are updated.

AB 292 is intended to assist water and wastewater agencies, including EBMUD, by clarifying the definition of potable reuse to reduce confusion about potable reuse projects and allow for more precise public outreach and communication regarding those projects.

With regard to anticipated costs and benefits to EBMUD and its ratepayers, additional costs are not anticipated to accrue as a result of AB 292. Benefits are anticipated in terms of furthering outreach and communication with regard to any future potable reuse projects.

EBMUD has historically supported measures intended to facilitate the use of recycled water. In 2017, EBMUD supported AB 574 (Quirk) that, among other things, updated the definition of potable reuse to include four distinct types of potable reuse projects. AB 574 was signed into law (Chapter 528 of 2017). Between 2010 and 2013, EBMUD supported two measures designed to aid the investigation into the feasibility of developing criteria for direct potable reuse; SB 322 (Hueso) and SB 918 (Pavley). Both measures were signed into law (Chapter 627 of 2013 and Chapter 700 of 2010, respectively).

The official list of support and opposition to AB 292 is shown below.

<u>Support</u>
Association of California Water Agencies California
Association of Sanitation Agencies
Eastern Municipal Water District
Metropolitan Water District of Southern California
Silicon Valley Clean Water
WateReuse California

Opposition
None received

**AB 834 (Quirk)** **FRESHWATER AND ESTUARINE HARMFUL ALGAL BLOOM PROGRAM** **SUPPORT**

The California Safe Drinking Water Act requires the State Water Resources Control Board (SWRCB) to administer provisions relating to the regulation of drinking water to protect public health.

AB 834 (Quirk), as introduced on February 20, 2019, is intended to help address water quality issues related to harmful algal blooms, and would require the SWRCB to establish a Freshwater and Estuarine Harmful Algal Bloom Program.

Under AB 834, the SWRCB would work in coordination with various other state departments to: 1) coordinate event incident response, including notifications regarding where harmful algal blooms are occurring; 2) conduct and support field assessment and ambient monitoring to evaluate harmful algal blooms; 3) determine the regions, watersheds, or waterbodies experiencing or at risk of experiencing harmful algal blooms to prioritize those regions, watersheds, or waterbodies for assessment, monitoring, remediation, or risk management; 4) conduct applied research and develop tools for decision-support; 5) provide outreach and education and maintain a centralized website for information and data related to harmful algal blooms; and 6) post on the SWRCB website a report that includes information on incidents of, and response to, harmful algal blooms; as well as actions the SWRCB has taken, and recommendations for additional actions that should be taken to protect water quality and public health from harmful algal blooms. The bill would also authorize the SWRCB to contract with public or private entities to aid in incident response.

Algal blooms are a natural phenomenon. Certain conditions, such as low-water levels, limited circulation, nutrient runoff, and persistent warm, calm climate conditions, can cause algal blooms, some of which may contain toxins that can have severe health impacts. Not all algal blooms are "harmful," and it is unclear what triggers the production and release of toxins. According to the SWRCB, harmful algal blooms are increasing in California and may be caused by increasing water temperatures, high-nutrient concentrations, and changing precipitation patterns caused by climate change.

According to the author, over 100 harmful algal blooms were reported in California in 2018. The SWRCB has established an ad hoc interagency workgroup – the California Cyanobacteria and Harmful Algal Bloom Network – to coordinate statewide response to harmful algal blooms. However, the workgroup is run on a volunteer basis and lacks the resources to adequately gain an understanding of the increase of and impact from harmful algal blooms and how these blooms can best be mitigated.

EBMUD operates seven reservoirs used for water supply, five of which are open for public recreation. In recent years, harmful algal blooms were identified in several of these reservoirs though there have been no drinking water quality issues. EBMUD worked directly with its recreation service partners, to investigate the algal blooms, test and monitor water quality, improve signage and notification, and promote compliance with requirements banning visitors and their pets from having bodily contact with the water bodies. In addition, EBMUD developed a cyanotoxin management plan to guide its efforts to prevent and address harmful algal blooms, which include water quality monitoring, public notification, access control, and other measures as appropriate.

AB 834 is intended to promote the protection of water quality and public health from harmful algal blooms by establishing a dedicated program to coordinate the actions necessary for effective protection of public and environmental health related to harmful algal blooms. AB 834 is consistent with EBMUD's mission to manage the natural resources it is entrusted with and provide high-quality drinking water to its customers, as well as EBMUD's cyanotoxin management plan.

With regard to anticipated costs and benefits to EBMUD and its ratepayers, additional costs are not anticipated to accrue as a result of AB 834. Benefits could accrue if AB 834 results in additional understanding about harmful algal blooms and provides recommendations for remediation and prevention of harmful algal blooms.

EBMUD has previously supported legislation intended to promote the protection of water quality and public health related to algal blooms. In 2018, EBMUD supported AB 2053 (Quirk), which was substantially similar to AB 834. AB 2053 failed to advance out of the legislature.

The official support and opposition to AB 834 is shown below.

Support
Karuk Tribe

Opposition
None listed

**AB 1180 (Friedman)** **WATER: RECYCLED WATER** **SUPPORT**

Existing law requires the State Water Resources Control Board (SWRCB) to establish uniform statewide recycling criteria for each category of recycled water where the use involves the protection of public health. In addition, the SWRCB is required to regulate drinking water to protect public health and adopt standards for backflow protection and cross-connection control through the adoption of a policy handbook.

AB 1180 (Friedman) is intended to facilitate the use of recycled water. As amended on March 28, 2019, AB 1180 would require the SWRCB to update regulations for non-potable recycled water by January 1, 2023, if the SWRCB has sufficient funding to do so. In addition, the measure would require the SWRCB, when updating backflow protection and cross-connection regulations, to include provisions allowing the use of a changeover device "to supply potable water to a dual-plumbed system during an interruption in recycled water service."

According to the author, the regulations for non-potable recycled water have not been updated for 19 years. "An update to these regulations, incorporating the knowledge and lessons learned from nearly two decades of non-portable water recycling, will help the state to achieve" its goals for recycled water use. In addition, the regulations governing backflow protection and cross-connection do not specifically allow the use of a changeover device to allow an easy and cost-effective way to switch between potable and non-potable water when necessary for testing of the water systems or other recycled water shutdowns. The use of a changeover device will eliminate a barrier to building owners using recycled water.

EBMUD is a strong proponent of recycled water and has a long track record of recycling its wastewater. EBMUD began using recycled water for various industrial purposes and to irrigate landscaping at its own facilities in the 1970s and has been distributing recycled water to customers since the 1980s. Recycled water is an important part of the water supply portfolio and, in accordance with EBMUD's Policy 9.05 – Non-Potable Water, customers may be required to use recycled water for non-potable uses if feasible. In addition, EBMUD has developed several landmark projects including the Richmond Advanced Recycled Expansion Water Project, the East Bayshore Recycled Water Project, and the San Ramon Valley Recycled Water Program.

Currently, EBMUD has a recycled water production capacity of approximately 9 million gallons per day (mgd). EBMUD's updated Recycled Water Master Plan includes the goal of increasing recycled water use in its service area to 20 mgd by 2040 through continuing to expand and implement non-potable reuse projects. Projects and opportunities for potable reuse will be periodically re-evaluated as EBMUD's water supply needs and potable reuse regulations are updated.

AB 1180's provisions would assist the state to encourage additional recycled water use by requiring contemporary regulations and allowing the use of a changeover device to simplify the process to switch between recycled and potable water supplies during times of recycled water service interruptions.

With regard to anticipated benefits and costs to EBMUD and its ratepayers, the measure may benefit EBMUD by promoting increased use of recycled water, consistent with the objectives set forth in EBMUD's Recycled Water Master Plan. Some additional costs may accrue as a result of an increase in backflow protection inspections staff must conduct as well as the need for staff to respond when a switch between a building's non-potable recycled water system and the potable water system is needed. The benefit to EBMUD and its ratepayers is expected to outweigh the anticipated costs.

EBMUD has historically supported measures intended to facilitate the use of recycled water. In 2017, EBMUD supported AB 574 (Quirk) to, among other things, update the definition of potable reuse to include four distinct types of potable reuse projects. AB 574 was signed into law (Chapter 528 of 2017). In 2013, EBMUD supported SB 322 (Hueso), which aided the investigation of the feasibility of developing criteria for direct potable reuse. SB 322 was signed into law (Chapter 637 of 2013). In 2010, EBMUD supported SB 918 (Pavley), which promoted the use of recycled water by requiring the development of uniform criteria for indirect potable reuse projects and investigation into the feasibility of developing criteria for direct potable reuse projects.

The official support and opposition to AB 1180 is shown below.

Support
Association of California Water Agencies
California Municipal Utilities Association
Las Virgenes – Triunfo Joint Powers Authority
Las Virgenes Municipal Water District
Natural Systems Utilities
Upper San Gabriel Valley Municipal Water District
WateReuse Association

Opposition
None listed

**AB 1672 (Bloom)** **SOLID WASTE: FLUSHABLE PRODUCTS** **SUPPORT**

Existing law establishes the California Environmental Protection Agency (CalEPA) and vests the agency with authority over various environmental matters. Existing law generally regulates the disposal, management, and recycling of solid waste.

AB 1672 (Bloom), as amended on March 28, 2019, is intended to provide clear labeling requirements for both flushable and non-flushable wet wipes so consumers know how to properly dispose of wet wipes. AB 1672 would prohibit wet wipes intended for distribution in California from being labeled as safe to flush, safe for sewer systems, or safe for septic systems, unless the product is a flushable wipe that meets certain criteria. The bill would require non-flushable products to be labeled clearly and conspicuously to communicate that they should not be flushed. The bill would authorize CalEPA to enforce these provisions and impose administrative penalties of up to $500 per day for each violation, as well as allow the attorney general to sue for civil penalties not to exceed $2,500 for each violation.

According to the California Association of Sanitation Agencies, "there has been a proliferation of single use wet wipe products that have come onto the retail market. These convenience driven

single use products are available for a variety of applications including personal hygiene, household cleaning, baby and child care, cosmetic, and many other purposes. Most of these products are intended to be disposed of in the trash can." However, more and more of these products are marketed as flushable or safe for disposal in sewers and septic systems though there are no standards in place that a manufacturer must follow to make this claim. As a result, products can be labeled as flushable regardless of whether it breaks down like toilet paper or may cause harm to sewer systems.

When items, such as wet wipes, that are not designed for safe disposal in the sewer system are flushed, these items can cause sewer blockages, which damage sewer lines and lead to costly sanitary sewer overflows. These materials can also clog machinery at the wastewater treatment plant, resulting in increased costs for sewage treatment.

For EBMUD, significant amounts of fibrous material have been found when cleaning the digesters at the Main Wastewater Treatment Plant (MWWTP). This material is likely the result of non-flushable materials, such as wet wipes, being flushed into the system. The fibrous material catches grit and retains it in the digesters, causing problems for digester operations.

AB 1672 would help reduce the amount of non-flushable wet wipes being disposed into sewer systems, including EBMUD's wastewater treatment system, by ensuring that wet wipes are properly labeled as flushable or non-flushable.

With regard to anticipated costs and benefits to EBMUD and its ratepayers, benefits are anticipated in terms of reducing the amount of maintenance required for cleaning pumps and other equipment that is currently required to deal with non-flushable material. Some cost savings could accrue as a result of less required maintenance, as well as decreased disposal costs if less wet wipes have to be removed from the treatment system and the MWWTP. Any costs to EBMUD and its ratepayers are expected to be nominal.

EBMUD has previously supported measures intended to reduce the amount of unsuitable materials that are flushed into the sewer system. In 2010, EBMUD supported AB 2256 (Huffman) which would have required products labeled as "flushable" to meet certain criteria. AB 2256 failed to advance out of the legislature. In 2008, EBMUD supported AB 2347 (Ruskin), to reduce the amount of mercury from thermometers that is flushed into the sewer system. AB 2347 was signed into law in 2008 (Chapter 572).

An official support/opposition list for AB 1672 is not yet available.

**SB 1 (Atkins)** **CALIFORNIA ENVIRONMENTAL, PUBLIC HEALTH, AND WORKERS DEFENSE ACT OF 2019** **SUPPORT IN CONCEPT**

Existing state law includes various statutes intended to preserve and protect the environment and natural resources. Current law regulates the discharge of air pollutants into the atmosphere and

discharges of pollutants into the waters of the state. There are several existing federal laws, including the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Endangered Species Act (ESA), that are similar to, but not the same as, state law.

SB 1 (Atkins), as introduced on December 3, 2018, is intended to ensure that there are no gaps between state law and federal law if Congress and the federal administration move to weaken key federal environmental and worker safety statutes. SB 1 would provide mechanisms to make a number of federal laws enforceable under state law if the federal laws are weakened. SB 1 would designate federal laws, as they existed on January 19, 2017, meant to protect the environment, natural resources, and public health as "baseline federal standards." These baseline federal standards would include the CAA, the SDWA, the Federal Water Pollution Control Act, the ESA, and the regulations implementing these federal laws. SB 1 would remain in effect until January 20, 2025.

Under SB 1, the California Air Resources Board and the State Water Resources Control Board would be required to regularly assess proposed and final changes to federal laws and regulations to determine if such a change would result in a negative impact to the environment or public health or welfare in California, and determine whether to adopt the federal baseline standards in order to maintain protections as least as stringent as the baseline federal standards.

SB 1 would also require that in the event a species is removed from the federal endangered species list and the species is eligible under the California Endangered Species Act (CESA), the California Fish and Game Commission determine whether to list the federally delisted species under CESA. SB 1 would also require that CESA would apply to the United States Bureau of Reclamation's operation of the Central Valley Project (CVP), regardless of whether there is any weakening of the ESA.

SB 1 also includes provisions intended to insure that federal baseline standards pertaining to workers' rights and worker safety standards are maintained in California. SB 1 would allow the emergency regulation process to be used for changes to state regulations and rules intended to maintain the federal baseline standards. Under SB 1, private citizens would be allowed to sue for violations of state standards adopted to maintain the baseline federal standards.

According to SB 1's findings, California has long relied on federal laws, including the CAA, the SDWA, the Federal Water Pollution Control Act, and the ESA, along with their implementing regulations, to protect California's public health, environment, and natural resources. These "federal laws establish standards that serve as the baseline levels of public health and environmental protection, while expressly authorizing states like California to adopt more protective measures." However, with the administration signaling potential challenges to these federal laws, it is necessary "to enact legislation that will ensure continued protections for the environment, natural resources, and public health in the state even if the federal laws…are undermined, amended, or repealed."

SB 1's intent, to ensure that current federal environmental and natural resources laws and regulations to preserve, protect, and enhance the environment and natural resources in California are not weakened, is consistent with EBMUD's mission "to manage the natural resources with which the District is entrusted; to provide reliable, high-quality water and wastewater services at fair and reasonable rates for the people of the East Bay; and to preserve and protect the environment for future generations." SB 1 is similar to 2017's SB 49 (De León), on which EBMUD adopted a "Support in Concept" position.

Similar to SB 45, SB 1 seeks to address very complex issues in a comprehensive manner. The bill is early in the legislative process and refinement is likely over the coming months. Areas of specific interest to EBMUD include those described below.

- The measure should include language to make clear that a single violation, such as a single water quality violation, would not be subject to litigation for both failing to comply with state law and for failing to comply with rules or regulations adopted pursuant to SB 1.
- Clarification is needed as to whether implementation of SB 1's CESA provisions includes a means of compliance that acknowledges existing federal compliance mechanisms, such as existing federal agreements that allow for the incidental take of specified species.
- Clarification is needed on the effect of the bill's CESA provision on CVP operations, including existing CVP contracts.
- Including public review and comment as part of the process state agencies would undergo to adopt regulations and rules to maintain federal standards could avoid the inadvertent adoption of rules and regulations that are more stringent than the baseline federal standards.

Overall, the concepts of SB 1 to preserve and protect critical environmental and natural resources laws and regulations are commendable and consistent with EBMUD's core mission, though there are areas of the bill that need refinement. Consistent with EBMUD's position on 2017's SB 49 (De León), staff is recommending a "support in concept" position. Staff will continue to review the measure as it progresses through the legislative process and work with the author and stakeholders in an effort to address these issues.

With regard to cost benefit, it is expected that SB 1 would indirectly benefit EBMUD ratepayers by ensuring that current federal environmental and natural resources laws and regulations remain in place in California. Given that areas of the bill may need refinement it is unclear at this time if the bill would impose additional cost burdens on EBMUD ratepayers.

EBMUD previously took a "support in concept" position on SB 49 (De León) in 2017 which was similar to SB 1 and was intended to ensure that there were no gaps between state and federal law if Congress and the administration moved to weaken key federal environmental and worker safety statutes. SB 49 failed to advance out of the legislature.

The official support and opposition to SB 1 is shown below:

Support
Audubon California
Breast Cancer Prevention Partners
California Association of Professional Scientists (CAPS)
California Coastal Protection Network
California Coastkeeper Alliance
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Interfaith Power & Light
California Labor Federation
California League of Conservation Voters
California Product Stewardship Council
California ReLEAF
California State Parks Foundation
California Teamsters
Californians Against Waste
CALSTART
Central Valley Air Quality Coalition
Clean Water Action
Coachella Valley Waterkeeper
Coalition for Clean Air
Defenders of Wildlife
Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO
Environment California
Environmental Defense Fund
Environmental Water Caucus
Environmental Working Group
Fossil Free California
Friends Committee on Legislation in California
Heal the Bay
Humboldt Baykeeper
Inland Empire Waterkeeper
League of Women Voters of California
Los Angeles Waterkeeper
Los Cerritos Wetlands Land Trust
Mono Lake Committee
Monterey Coastkeeper
Mountain Lion Foundation
National Stewardship Action Council
Natural Resources Defense Council
Nextgen California
Orange County Coastkeeper
PawPAC
Pesticide Action Network
Planning and Conservation League
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Protect American River Canyons
Restore the Delta
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Save Our Shores
Save The Bay
Seventh Generation Advisors
Sierra Club California
South Coast Air Quality Management District
Southern California Watershed Alliance
State Building & Construction Trades Council
Surfrider Foundation
The 5 Gyres Institute
The Nature Conservancy
The Otter Project
The Trust for Public Land
Utility Workers of America
Voices for Progress
WILDCOAST
Yuba River Waterkeeper
Zero Waste USA

Opposition
California Agricultural Aircraft Association
California Association of Realtors
California Association of Winegrape Growers
California Building Industry Association
California Business Properties Association

California Chamber of Commerce
California Citrus Mutual
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association, Inc.
California Farm Bureau Federation
California Forestry Association
California Independent Petroleum Association
California League of Food Producers
California Metals Coalition
CAWA- Representing the Automotive Parts Industry
Household & Commercial Products Association
NAIOP
National Federation of Independent Business
Nisei Farmers League
West Coast Lumber & Building Material Association
Western Agricultural Processors Association
Western Growers Association
Western Independent Refiners Association
Western Plant Health Association
Western Wood Preservers' Institute
Western States Petroleum Association

**SB 332 (Hertzberg)** **WASTEWATER TREATMENT: RECYCLED WATER** **OPPOSE UNLESS AMENDED**

The California Constitution requires the reasonable and beneficial use of water. Existing law declares that the use of potable domestic water for certain non-potable uses is a waste or an unreasonable use of water if the State Water Resources Control Board (SWRCB) determines recycled water meeting specified conditions is available. Existing law deems the SWRCB and the California regional water quality control boards responsible for regulating wastewater discharges to surface waters in accordance with the federal National Pollutant Discharge Elimination System (NPDES) permit program established by the federal Clean Water Act and the state's Porter-Cologne Water Quality Control Act.

SB 332 (Hertzberg), as introduced on February 19, 2019, is intended to increase the amount of wastewater that is recycled by essentially eliminating wastewater discharges to saline waters including oceans, bays, and estuaries, and requiring that the flow of wastewater that would otherwise be discharged to saline water be recycled or be reduced through water conservation and efficiency measures. To accomplish this, SB 332 would do six things, as described below:

1) Declare that the discharge of treated wastewater from ocean outfalls, as defined in the bill, constitutes waste and unreasonable use of water.
2) Require wastewater treatment facilities that discharge through an ocean or bay outfall (outfall) to reduce overall volume of the facility's annual flow as compared to the average annual wastewater discharge baseline volume, by at least 50 percent by 2030 and at least 95 percent by 2040. SB 332 specifies that these mandated reductions could be made by recycling or by working with affiliated water suppliers to reduce inflow via water conservation and efficiency measures.
3) Require wastewater treatment facilities with NPDES permits authorizing the discharge of wastewater through an outfall to, in conjunction with affiliated water suppliers, submit a

plan for meeting the bill's requirements to the SWRCB by July 1, 2022, and to provide an updated plan to the SWRCB by January 1, 2026.

4) Require wastewater treatment facilities with NPDES permits authorizing the discharge of wastewater through an outfall and affiliated water suppliers to submit to the SWRCB, on or before January 1, 2024, and every five years thereafter, a report summarizing the actions that have been taken and remain to be taken in order to meet the bill's requirements.
5) Require the SWRCB to report to the governor and the legislature by July 1, 2025, and every five years thereafter, on the state's progress in implementing SB 332 and any obstacles to continued progress, including instances of substantial noncompliance.
6) Establish penalties of $2,000 per acre-foot of water that is discharged above the required discharge reductions. The penalties would be imposed on both the wastewater treatment facility with an NPDES permit and affiliated water suppliers. In addition, SB 332 would establish a penalty of up to $10,000 for failing to submit reports required by the bill or for late submittal. Entities failing to submit required reports would also be ineligible for state loans and grants until the report has been submitted.

SB 332 applies to wastewater treatment facilities that discharge to saline waters, including the ocean, bays and estuaries. In addition, SB 332 applies to affiliated water suppliers, defined as "all water suppliers that provide water that is disposed of in the collection system of a particular wastewater treatment facility that discharges through an ocean outfall." EBMUD would be subject to SB 332's requirements both as a wastewater treatment facility and an affiliated water supplier.

Under SB 332, EBMUD would be required to essentially recycle all the wastewater treated at the Main Wastewater Treatment Plant (MWWTP) and to work with the other wastewater facilities that discharge in EBMUD's drinking water service territory to recycle their treated wastewater for use in EBMUD's service territory.

EBMUD is a strong proponent of recycled water and has a long track record of recycling its wastewater. EBMUD began using recycled water for various industrial purposes and to irrigate landscaping at its own facilities in the 1970s and has been distributing recycled water to customers since the 1980s. Recycled water is an important part of the water supply portfolio and, in accordance with EBMUD's Policy 9.05 – Non-Potable Water, customers may be required to use recycled water for non-potable uses if feasible. In addition, EBMUD has developed several landmark projects where the use of recycled water for landscape irrigation, and industrial purposes has reduced the demand on high-quality drinking water and can reduce the amount of treated wastewater that is discharged into the San Francisco Bay. These projects include the Richmond Advanced Recycled Expansion Water Project, the East Bayshore Recycled Water Project, and the San Ramon Valley Recycled Water Program.

Currently, EBMUD has a recycled water production capacity of approximately 9 million gallons per day (mgd), and EBMUD has a goal of increasing recycled water use in its service area to 20 mgd by 2040. EBMUD's updated Recycled Water Master Plan (RWMP), completed in February

2019, evaluated the existing recycled water program and identified and assessed opportunities for non-potable and potable reuse to identify a path forward toward the 2040 goal. Given the high cost for potable reuse projects, the RWMP maintained that EBMUD's recycled water goal should be met through continuing to expand and implement non-potable reuse projects, though projects and opportunities for potable reuse will be periodically re-evaluated as EBMUD's water supply need and potable reuse regulations are updated.

SB 332 is intended to facilitate the development of recycled water projects and increase the use of recycled water. However, a statewide mandate to essentially eliminate wastewater discharges into the ocean and bays is premature. Such a mandate is currently not feasible to implement, cost-prohibitive, and raises the significant policy issues discussed below.

- Incomplete regulatory framework
- No place to put the recycled water
- Excessive cost and rate impact
- Lack of sufficient funding
- Interference with necessary infrastructure investment
- Increased greenhouse gas emissions
- Significant public acceptance hurdle
- Potential to create environmental justice issues
- Other issues

Incomplete regulatory framework

Achieving the mandate in SB 332 on a statewide level would require the use of all potable reuse projects, including groundwater recharge, reservoir augmentation, raw water augmentation, and treated water augmentation, which would necessitate new and expanded recycled water facilities and infrastructure, funding, and comprehensive regulatory frameworks.

However, California's recycled water framework is neither comprehensive nor complete and is insufficient to accommodate SB 332's ambitious mandate. The current regulatory framework limits recycled water use to non-potable uses, such as irrigation and industrial use, and limited potable reuse through groundwater recharge and reservoir augmentation. These uses would account for only a fraction of the recycled water that is currently discharged and are limited by seasonal demand, industrial need, and the access to recharge areas.

Regulations for raw water augmentation (e.g., placing recycled water into pipelines or aqueducts that delivers raw water to a drinking water treatment plant) and treated drinking water augmentation (e.g., placing recycled water directly into a drinking water distribution system) are not certain in the near future. Beyond the need for additional potable reuse regulations, future regulations would also be necessary to address the disposal of the brine stream that is inherent to water recycling. Currently, disposal is managed through blending with treated wastewater discharge and the bill's requirement to reduce discharge by 95 percent would not be sufficient to allow for this disposal method. Therefore, the bill's practical impact is to prohibit all wastewater discharges by 2040.

A regulatory framework that allows all potential uses for recycled water and addresses the issue of brine disposal must be in place before SB 332's mandate could be reasonably contemplated in the context of numerous other concerns. It is not clear when California will have a comprehensive regulatory framework for all recycled water uses in place.

No place to put the recycled water

The types of recycled water projects allowed today could not accommodate the volume of recycled water that would result if SB 332 is enacted.

EBMUD's MWWTP treats, on average, about 60 million gallons per day (MGD) of wastewater, or about 67,000 acre feet per year. In addition, as an "affiliated water supplier" under SB 332 EBMUD would be required to work with other wastewater treatment facilities in EBMUD's drinking water service area to recycle and reuse their treated wastewater. SB 332 does not provide specifics for how the obligations would be split between the wastewater treatment facilities and affiliated water suppliers. As an affiliate water supplier, EBMUD would be required to work with approximately nine wastewater dischargers to recycle and reuse approximately 25 MGD of treated wastewater, or about 28,000 acre feet per year. Combined with EBMUD's own wastewater flows, this means EBMUD would be required to recycle and reuse at least 85 mgd, or 95,000 acre feet per year, of treated wastewater. This is based on average discharges and does not take into account the potential for having to reuse additional recycled water from other wastewater treatment facilities or wet weather discharges. To put this in perspective, 85 mgd would account for over half of EBMUD's average water production of about 165 mgd.

The types of recycled water projects that are permitted under the current and near-term regulatory framework are limited to non-potable recycled water, groundwater recharge, and reservoir augmentation.

*Non-potable recycled water*

With regard to the recycled water uses that are allowed today, there is an insufficient market for non-potable recycled water to accommodate the volume that would be required by SB 332.

*Groundwater recharge*

There is limited capacity for groundwater recharge in EBMUD's service area. The physical constraints of the groundwater basin in EBMUD's service area severely limits the capacity of any small groundwater recharge project that may be possible to a level that is a small fraction of the amount of wastewater that would be required to be recycled by SB 332.

*Reservoir Augmentation*

Reservoir augmentation would involve moving the recycled water from the MWWTP, and other wastewater treatment facilities, to EBMUD's surface water reservoirs located within the service area where it would be mixed with non-recycled water. This would be a highly inefficient and costly approach in terms of investment and environmental impact. While these local surface

water reservoirs theoretically have the capacity to accommodate the additional recycled water that would be produced under SB 332, due to dilution requirements the surface water reservoirs may not be able to accommodate all of the recycled water that would be produced by EBMUD and the other wastewater treatment facilities. In addition, all of these surface water reservoirs have other purposes that include capturing local runoff and storing water from other sources, such as those accessed through the Freeport Regional Water Facility.

Using EBMUD's local surface water reservoirs for reservoir augmentation would require an overly burdensome capital investment to build the infrastructure necessary to pump and transport the water from the treatment plants to the reservoirs.

Moving the water to the surface water reservoirs would result in increased energy demand and associated indirect greenhouse gas (GHG) emissions. Placing the water into the surface water reservoirs would likely require changes to reservoir operations to accommodate the recycled water and due to dilution requirements the surface water reservoirs may not be able to accommodate all the recycled water. In addition, in very wet years the costly recycled water would have to be released (spill) to make room for local precipitation.

With regard to the two potential future uses – raw water augmentation and treated water augmentation – while the SWRCB could potentially approve individual projects there is no clear path forward for these uses without statewide regulations in place. The SWRCB is required to develop regulations for raw water augmentation by December 31, 2023, though it is not clear that this deadline will be met. Until those regulations are in place it will be nearly impossible for agencies to plan for, let alone, implement raw water augmentation projects that might assist with meeting SB 332's mandate. Even if regulations are adopted on time, agencies would have a relatively short time frame (seven years) to plan, approve, execute and operate new infrastructure in order to use these projects to meet SB 332's mandate. Considering the complexity of such projects, this would be an ambitious timeline. In addition, it is unknown when or if regulations for treated water augmentation would be put in place. In short, EBMUD would have nowhere feasible to put all its recycled water if EBMUD had to comply with SB 332.

Excessive cost and rate impact

To put the cost associated with SB 332's mandate into perspective, staff estimates EBMUD's costs to be on the order of $8 billion to address this one mandate. To put that figure in context, EBMUD's five year Capital Improvement Program is approximately $1.9 billion and addresses multiple aspects of EBMUD's operations including but not limited to water loss control via the replacement of water distribution pipelines, seismic protection via upgrades to water treatment plants, and reliability improvements via the rehabilitation of distribution reservoirs and pumping plants.

The $8 billion cost to comply with SB 332 assumes reservoir augmentation would be used for both the recycled water from the MWWTP and the other wastewater treatment facilities in EBMUD's drinking water service area. This would necessitate, among other things, additional treatment for the wastewater and the construction of pipelines and pump stations to transport the

treated wastewater to EBMUD's reservoirs. Additional annual operations and maintenance costs are estimated at over $270 million.

When viewed in the context of rates, in complying with SB 332 the combined water and wastewater bill for an average single-family residence would go from about $170 every two months to approximately $450 to $500 every two months. This is based on a 30-year payback period for capital costs. Imposing a cost burden of this magnitude on ratepayers will impact low-income ratepayers the hardest and make drinking water and wastewater treatment unaffordable for many.

All estimated costs are based on the average dry-weather wastewater discharge and do not contemplate wet weather flows. Costs for having the necessary facilities to recycle wet weather flows would be much higher.

Lack of sufficient funding

Even if all potential uses of recycled water were allowed, SB 332's mandate would require significant new infrastructure for treatment and distribution of recycled water including, but not limited to, treatment facilities, pumping stations, and distribution systems. It is unclear where the money would come from, particularly at this time when state and local water agencies are grappling with the high costs associated with addressing aging infrastructure and meeting the needs of low-income ratepayers, among other things. An investment of many tens of billions of dollars will be needed by the state and federal government to implement SB 332's mandate. To date, that level of funding commitment has not been evident.

Interference with necessary infrastructure investment

Agencies consider a host of factors when prioritizing capital expenditures, including projects critical to public health and safety and environmental protection. SB 332's mandates would require such a high capital investment that many water and wastewater agencies would have to reduce or halt spending on other infrastructure because of the tremendous cost burden SB 332 would place on ratepayers. This will only serve to hamper the ability of agencies to provide high-quality services to customers and to proactively replace and repair aging infrastructure before it fails, including replacing pipelines and repairing leaks. For EBMUD, which has a robust capital improvement program that focuses on infrastructure rehabilitation, repair and replacement, the costs associated with complying with SB 332 could require significantly reducing investments in current infrastructure programs and projects, such as the annual infrastructure replacement, aqueduct improvements, and the Regional EBMUD Seismic Component Upgrade. This would have the practical effect of reducing the discretion of local boards in directing infrastructure investment in the community.

Increased greenhouse gas emissions

California is a leader on climate change mitigation and adaptation and has a goal of reducing GHG emissions 30 percent, to 1990 levels, by 2020 and to reduce GHG emissions by 80 percent below 1990 levels by 2050. In addition, EBMUD's Policy 7.07 – Energy contains a goal to be carbon-free for indirect GHG emissions and reduce direct emissions by 50 percent compared to

2000 levels by 2040. SB 332 could adversely impact California's and EBMUD's GHG emission reduction efforts as recycling water and moving that water will result in increased energy demand and associated indirect GHG emissions.

For EBMUD, recycling and moving 60 mgd of treated wastewater would require about four times the current energy demand of the MWWTP. EBMUD's indirect GHG emissions would increase by about two and a half times over EBMUD's 2017 indirect emissions. Additional energy demand and GHG emissions would be expected as a result of working with the other wastewater treatment facilities in EBMUD's service territory to recycle and reuse their treated wastewater.

Significant public acceptance hurdle

Public acceptance of expanding the use of recycled water through potable reuse is not guaranteed. The success of recycled water projects to date has been the result of extensive, ongoing public outreach that has been necessary to overcome what is sometimes called the "yuck factor." A statewide mandate imposed on communities will require a significant and concerted state effort to assist local agencies to secure public acceptance of such a mandate.

Potential to create environmental justice issues

Compliance with SB 332 could create environmental justice concerns if recycled water produced as a result of the bill's mandate is not distributed to all customers in a drinking water service area. For example, to comply with SB 332's mandate, at this time EBMUD would need to use reservoir augmentation which would involve moving recycled water to EBMUD's local surface water reservoirs. Due to the configuration of EBMUD's local surface water reservoirs and drinking water system each local surface water reservoir serves portions of the service area and it would not be possible to distribute the recycled water used for reservoir augmentation among all district customers and communities. This could create significant environmental justice issues that would make reservoir augmentation as the primary recycling method infeasible. In the absence of a complete regulatory framework, this would essentially render EBMUD unable to comply with SB 332's mandate. It should be noted that while the measure provides a reduction in water use as a method to comply, this is not a feasible avenue to achieve full compliance as there will always be some wastewater generated via indoor water use.

Other issues

SB 332 raises other issues as well, including jurisdictional issues and potential waste disposal issues that will be required if brine discharge is not allowed. SB 332's mandate will require that wastewater agencies and water agencies work together but does not account for the jurisdictional issues that must be worked out, nor does it take into account that brine disposal will not be allowed and that the crystallization process needed to dispose of the brine will result in waste that may need special handling and disposal which would add to the costs already discussed. Finally, SB 332 would declare that the discharge of treated wastewater from ocean outfalls constitutes waste and unreasonable use of water. This raises questions of potential water rights implications that are not clear.

Cost/benefit

With regard to cost/benefit to EBMUD and its ratepayers, the benefits that would be expected to accrue as a result of this measure include the addition of more recycled water to EBMUD's water supply portfolio thus potentially increasing EBMUD's water supply resiliency, as well as the potential elimination of NPDES discharges and the associated regulatory requirements. SB 332 would result in a significant cost burden for EBMUD and its ratepayers that outweighs the benefit of recycling essentially all of the wastewater generated in EBMUD's service area at this time.

Conclusion

Though SB 332's objective, to increase the use of recycled water, is consistent with EBMUD's efforts to increase recycled water use in its service area, the bill takes a siloed approach that fails to recognize the integrated nature of water management that is necessary to achieve reliability. The bill fails to acknowledge the severe constraints that would render many water and wastewater agencies unable to comply with the strict mandates and thus subject to enforcement. These constraints include but are not limited to an incomplete regulatory framework, no place to put the recycled water, excessive cost and rate impact, lack of sufficient funding, potential harm to necessary infrastructure investment, increased GHG emissions, significant public acceptance hurdle, potential to create environmental justice issues, and jurisdictional issues.

These are serious hurdles that clearly indicate SB 332's proposed mandates are entirely premature and would interfere with a local agency's, including EBMUD's, ability to set its own infrastructure priorities.

Significant amendments are needed to address the concerns raised above. To achieve the broad goal of increasing the use of recycled water, the bill should be recast in a manner that eliminates the mandates, the associated enforcement provisions, and the declaration of waste and unreasonable use, and instead focus on eliminating the substantial and real barriers that exist to increasing the use of recycled water in the state. This could be accomplished in a variety of ways. For example, the SWRCB could be required to identify barriers and develop clear recommendations and a specific timeline to eliminate those barriers. In doing so the SWRCB should be required to consider local and regional factors, such as groundwater basins, topography, climate, and markets; the impact of a significant increase in recycled water on water and wastewater rates and the effect of these increases on low-income ratepayers; the availability of state and federal funding to advance recycled water projects; the effect on climate change mitigation efforts including changes in GHG emissions; gaps in the state's regulatory framework; the degree of public acceptance and what role the state should have in increasing it; and jurisdictional and water rights issues. In carrying out this obligation, the SWRCB should also be required to work with stakeholders via a formal process such as a task force.

EBMUD has previously taken positions on legislation related to recycling treated wastewater discharged into oceans and bays. In 2016, EBMUD had an "oppose unless amended" position on SB 163 (Hertzberg), which was similar to SB 332 and would have imposed a statewide mandate to reduce treated wastewater discharges through ocean and bay outfalls by 50 percent. SB 163

was subsequently amended to address a different subject matter. In 2009, the Board took a "support if amended" position on SB 565 (Pavley) to identify impediments to increased recycling and direct potable reuse and set a statewide recycling goal of 50 percent of the wastewater discharged into the ocean. EBMUD sought amendments to remove the 50 percent goal until barriers had been identified and a plan to remove them was developed. SB 565 was subsequently amended to a different subject matter.

The official support and opposition to SB 332 is shown below:

Support
Ceres
Clean Water Action
Coachella Valley Waterkeeper
Environmental Water Caucus
Friends of the River
Humboldt Baykeeper
Inland Empire Waterkeeper
Los Angeles Waterkeeper
Monterey Coastkeeper
Orange County Coastkeeper
Planning and Conservation League
Residents for Responsible Desalination
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Sierra Club California
Southern California Watershed Alliance
The Otter Project
Yuba River Waterkeeper

Opposition
Association of California Water Agencies
California Association of Sanitation Agencies
California Municipal Utilities Association
California Special Districts Association
Carpinteria Sanitary District
City of Camarillo
Crockett Community Services District
Dublin San Ramon Services District
Las Gallinas Valley Sanitary District
Leucadia Wastewater District
Napa Sanitation District
North Main Water District
Olivenhain Municipal Water District

Rodeo Sanitary District
Stege Sanitary District
Union Sanitary District
Vallecitos Water District
WaterReuse California

| | | |
|---|---|---|
| **SB 785 (Committee on Natural Resources and Water)** | **PUBLIC RESOURCES: PARKLANDS FRESHWATER RESOURCES AND COASTAL RESOURCES** | **SUPPORT** |

Existing law authorizes the Department of Fish and Wildlife (DFW) to address the control and eradication of quagga and zebra mussels, also known as dreissenid mussels, from infested water bodies in California. DFW has the authority to inspect, quarantine, and take other necessary actions to prevent the spread of these invasive mussels. Owners or operators of infested water supply facilities are required to develop and implement a control and eradication plan. Current law provides for the imposition of administrative, criminal, or civil liability penalties for the failure to develop and implement the plan, or for the spread of dreissenid mussels from an infested water body. However, these provisions of law sunset, or will be repealed, on January 1, 2020.

SB 785, as introduced on March 11, 2019, would, among other things, extend the sunset date on the provisions of law governing the control and eradication of quagga and zebra mussels to January 1, 2030, thereby ensuring that programs and efforts to control and eradicate these invasive mussels can continue. SB 785 is an omnibus committee bill that contains several other non-controversial provisions that are not expected to affect EBMUD.

Dreissenid mussels originated in the Ukraine and Black and Caspian Sea drainages and first appeared in North America in the 1980s as a result of transatlantic cargo ship traffic in the Great Lakes region. In January 2007, quagga mussels were found in Lake Mead, the first detection west of the Continental Divide. Subsequent surveys discovered quagga mussels in the Colorado River and Aqueduct, and at least ten reservoirs in Nevada, Arizona, and Southern California, prompting emergency actions by impacted water utilities. In January 2008, zebra mussels were discovered in Northern California in the San Justo Reservoir in San Benito County.

Dreissenid mussels spread in water by clinging to the outer surfaces of boats and other aquatic equipment or by the microscopic mussel larva, known as veligers, drifting or otherwise entering into water bodies. Once a water body becomes infested it is extremely costly to control the infestation and, to date, no reliable method of eradication has been identified.

EBMUD is a leader in helping prevent the spread of dreissenid mussels in California. In 2008, EBMUD sponsored the successful legislation that requires the owners and operators of recreational reservoirs that are <u>not</u> infested with dreissenid mussels to implement a mussel

prevention program, AB 2065 (Hancock). EBMUD has also had an aggressive prevention and monitoring program for its water system in place since 2008. The prevention program, in place at all six reservoirs on which recreational boating is allowed, includes a vessel history survey and physical inspection. In addition, a new boat decontamination station has been added at Camanche Reservoir allowing boat owners to pay for a high pressure hot-water treatment to ensure that boats that may have been exposed to quagga or zebra mussels do not have quagga or zebra mussels on or in them. Boats that fail either the survey or inspection may not be launched into EBMUD reservoirs unless they complete this decontamination process. To date, neither quagga nor zebra mussels have been found within EBMUD's water system.

By extending the sunset provision in existing law, SB 785 would enable DFW to retain its authority and continue its critical efforts to control and eradicate quagga and zebra mussels and is consistent with EBMUD's efforts to prevent the spread of quagga and zebra mussels to EBMUD reservoirs.

With regard to cost benefit to EBMUD, this measure could benefit EBMUD by helping prevent the spread of quagga and zebra mussels in California, including to EBMUD's reservoirs. The measure is not expected to impose additional cost burdens on EBMUD ratepayers.

EBMUD has previously supported legislation to address the threat of dreissenid mussels. In 2016, EBMUD supported AB 2549 (Committee on Water, Parks, and Wildlife), which among other things, extended the sunset date from January 1, 2017 to January 1, 2020, to provide DFW continued authorization to control and eradicate zebra and quagga mussels. AB 2549 was signed into law (Chapter 201 of 2016). In 2012, EBMUD supported AB 2443 (Williams), which established a statewide funding mechanism to support quagga and zebra mussel prevention and eradication efforts. AB 2443 was signed into law (Chapter 485 of 2012). In 2011, EBMUD supported SB 215 (Huff), which extended the sunset date from January 1, 2012 to January 1, 2017, to provide the Department of Fish and Game (now DFW) continued authorization to control and eradicate zebra and quagga mussels from mussel-infested waters. SB 215 was signed into law (Chapter 332 of 2011).

An official support/opposition list for SB 785 is not yet available.

ARC:MD:JW

AMENDED IN ASSEMBLY MARCH 6, 2019

AMENDED IN ASSEMBLY MARCH 4, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

# ASSEMBLY BILL No. 292

**Introduced by Assembly Member Quirk**

January 28, 2019

An act to amend Sections 10608.12, 10633, 13263.7, 13561, 13561.2, 13570, and 13578 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 292, as amended, Quirk. Recycled water: raw water and groundwater augmentation.

Existing law requires the State Water Resources Control Board, on or before December 31, 2023, to adopt uniform water recycling criteria for direct potable reuse through raw water augmentation, as specified. Existing law defines "direct potable reuse" and "indirect potable reuse for groundwater recharge" for these purposes.

This bill would eliminate the definition of "direct potable reuse" and instead would substitute the term "groundwater augmentation" for "indirect potable reuse for groundwater recharge" in these definitions. The bill would revise the definition of "treated drinking water augmentation." The bill would require, on or before December 31, 2023, the state board to adopt uniform water recycling criteria for raw water augmentation. The bill would make conforming changes in other areas relating to potable reuse.

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 10608.12 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) "CII water use" means water used by commercial water users, industrial water users, institutional water users, and large landscape water users.

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

(f) "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.

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

(h) "Gross water use" means the total volume of water, whether treated or untreated, entering the distribution system of an 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.

(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, except as otherwise provided in subdivision (f) of Section 10608.24.

(i) "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.

(j) "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.

(k) "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.

(*l*) "Large landscape" means a nonresidential landscape as described in the performance measures for CII water use adopted pursuant to Section 10609.10.

(m) "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.

(n) "Performance measures" means actions to be taken by urban retail water suppliers that will result in increased water use efficiency by CII water users. Performance measures may include,

but are not limited to, educating CII water users on best management practices, conducting water use audits, and preparing water management plans. Performance measures do not include process water.

(o) "Potable reuse" includes raw water augmentation, treated drinking water augmentation, groundwater augmentation, or reservoir water augmentation as those terms are defined in Section 13561.

(p) "Process water" means water used by industrial water users for producing a product or product content or water used for research and development. Process water includes, but is not limited to, continuous manufacturing processes, and water used for testing, cleaning, and maintaining equipment. Water used to cool machinery or buildings used in the manufacturing process or necessary to maintain product quality or chemical characteristics for product manufacturing or control rooms, data centers, laboratories, clean rooms, and other industrial facility units that are integral to the manufacturing or research and development process is process water. Water used in the manufacturing process that is necessary for complying with local, state, and federal health and safety laws, and is not incidental water, is process water. Process water does not mean incidental water uses.

(q) "Recycled water" means recycled water, as defined in subdivision (n) of Section 13050.

(r) "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.

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

(t) "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.

(u) "Urban water use objective" means an estimate of aggregate efficient water use for the previous year based on adopted water use efficiency standards and local service area characteristics for that year, as described in Section 10609.20.

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

(w) "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.

SEC. 2. Section 10633 of the Water Code is amended to read:

10633. The plan shall provide, to the extent available, information on recycled water and its potential for use as a water source in the service area of the urban water supplier. The preparation of the plan shall be coordinated with local water, wastewater, groundwater, and planning agencies that operate within the supplier's service area, and shall include all of the following:

(a) A description of the wastewater collection and treatment systems in the supplier's service area, including a quantification of the amount of wastewater collected and treated and the methods of wastewater disposal.

(b) A description of the quantity of treated wastewater that meets recycled water standards, is being discharged, and is otherwise available for use in a recycled water project.

(c) A description of the recycled water currently being used in the supplier's service area, including, but not limited to, the type, place, and quantity of use.

(d) A description and quantification of the potential uses of recycled water, including, but not limited to, agricultural irrigation, landscape irrigation, wildlife habitat enhancement, wetlands, industrial reuse, potable reuse, and other appropriate uses, and a determination with regard to the technical and economic feasibility of serving those uses.

(e) The projected use of recycled water within the supplier's service area at the end of 5, 10, 15, and 20 years, and a description of the actual use of recycled water in comparison to uses previously projected pursuant to this subdivision.

(f) A description of actions, including financial incentives, which may be taken to encourage the use of recycled water, and the projected results of these actions in terms of acre-feet of recycled water used per year.

(g) A plan for optimizing the use of recycled water in the supplier's service area, including actions to facilitate the installation of dual distribution systems, to promote recirculating uses, to facilitate the increased use of treated wastewater that meets recycled water standards, and to overcome any obstacles to achieving that increased use.

SEC. 3. Section 13263.7 of the Water Code is amended to read:

13263.7. (a) Compliance with effluent limitations and any other permit or waste discharge requirements, as appropriate, for the release or discharge of recycled water determined to be suitable for potable reuse, as defined in Section ~~13561,~~ *10608.12,* into a conveyance facility may be determined at the point where the recycled water enters the conveyance facility but prior to commingling with any raw water.

(b) Before the discharge may be allowed, consent must be obtained from the owner or operator of the conveyance facility that directly receives the recycled water.

(c) This section does not limit or restrict the authority of the state board.

(d) For purposes of this section, "raw water" means surface water or groundwater in its naturally occurring state prior to treatment.

SEC. 4. Section 13561 of the Water Code is amended to read:

13561. For purposes of this chapter, the following terms have the following meanings:

(a) "Department" or "state board" means the State Water Resources Control Board.

(b) "Raw water augmentation" means the planned placement of recycled water into a system of pipelines or aqueducts that deliver raw water to a drinking water treatment plant that provides water to a public water system, as defined in Section 116275 of the Health and Safety Code.

(c) "Treated drinking water augmentation," means the planned placement of recycled water directly into a finished water distribution system of a public water system, as defined in Section 116275 of the Health and Safety Code.

(d) "Groundwater augmentation" means the planned use of recycled water for replenishment of a groundwater basin or an aquifer that has been designated as a source of water supply for a public water system, as defined in Section 116275 of the Health and Safety Code.

(e) "Reservoir water augmentation" means the planned placement of recycled water into a raw surface water reservoir used as a source of domestic drinking water supply for a public water system, as defined in Section 116275 of the Health and Safety Code, or into a constructed system conveying water to such a reservoir.

(f) "Uniform water recycling criteria" has the same meaning as in Section 13521.

SEC. 5. Section 13561.2 of the Water Code is amended to read:

13561.2. (a) On or before December 31, 2023, the state board shall adopt uniform water recycling criteria for raw water augmentation. In adopting the initial uniform recycling criteria for raw water augmentation, the state board shall comply with all of the following:

(1) The state board shall develop the uniform water recycling criteria for raw water augmentation using information from the recommended research described in subdivision (b) of Section 13560.5 after soliciting stakeholder input from water agencies, wastewater agencies, local public health officers, environmental organizations, environmental justice organizations, public health nongovernmental organizations, and the business community.

(2) Before adopting uniform water recycling criteria for raw water augmentation, the state board shall submit the proposed criteria to the expert review panel established pursuant to subdivision (c). The expert review panel shall review the proposed criteria and shall adopt a finding as to whether, in its expert opinion, the proposed criteria would adequately protect public health.

(3) The state board shall not adopt uniform water recycling criteria for raw water augmentation pursuant to this subdivision unless and until the expert review panel adopts a finding that the proposed criteria would adequately protect public health.

(4) If the state board finds it will be unable to adopt the uniform water recycling criteria by December 31, 2023, the state board

may, by June 30, 2023, extend the uniform water recycling criteria deadline by up to 18 months.

(5) If the state board finds that it needs longer than the deadline that has been extended pursuant to paragraph (4), the state board shall do all of the following:

(A) Post on its internet website the date by which it intends to adopt the uniform water recycling criteria.

(B) If the state board determines that the recommended research described in subdivision (b) of Section 13560.5 is insufficient, consult with the expert review panel described in subdivision (c) regarding the research and, if necessary, the need for additional scientific and technical research. The expert review panel shall also determine the scientific and technical research necessary for the state board to complete the uniform water recycling criteria, including an estimated timeframe needed to conduct the scientific and technical research.

(C) No later than June 30, 2024, post on its internet website the findings and determinations made, if any, by the expert review panel described in subdivision (c) under subparagraph (B).

(b) Nothing in this section shall prohibit the state board from using its existing authority to permit projects pursuant to Section 116550 of the Health and Safety Code before the adoption of uniform recycling criteria pursuant to this section.

(c) (1) Before adopting the initial uniform water recycling criteria for raw water augmentation, the state board shall establish and administer an expert review panel for purposes of subdivision (a) and, if the state board deems it necessary, to provide additional scientific and technological research or to recommend a source of either existing research or research to be produced on raw water augmentation. After the state board has adopted the initial uniform water recycling criteria for raw water augmentation, the state board may reconvene or reestablish the expert review panel, if the state board deems it necessary, to provide additional scientific and technological research or to recommend a source of either existing research or research to be produced on raw water augmentation. In establishing and administering an expert review panel, the state board may contract with public or nonprofit research entities.

(2) Each member of the expert review panel shall receive one hundred dollars ($100) for each day the member attends a meeting of the expert review panel or of the state board plus actual and

necessary travel expenses, including expenses for lodging and meals, and for each day the member spends conducting other official business of the expert review panel.

SEC. 6. Section 13570 of the Water Code is amended to read:

13570. (a) As used in this section, "advanced purified demonstration water" means product water from an advanced water purification facility that satisfies both of the following requirements:

(1) The product water is treated by means of all of the following treatment processes:

(A) Microfiltration, ultrafiltration, or other filtration processes to remove particulates before reverse osmosis.

(B) Reverse osmosis.

(C) Advanced oxidation.

(2) The product water meets or exceeds all federal and state drinking water standards and is produced in accordance with the advanced treatment criteria for purified water specified in Section 60320.201 of Title 22 of the California Code of Regulations.

(b) As used in this section, "advanced water purification facility" means a water recycling treatment plant that produces advanced purified demonstration water in accordance with the advanced treatment criteria specified in Section 60320.201 of Title 22 of the California Code of Regulations.

(c) As used in this section, "batch" means an increment of advanced purified treatment water that has completed the treatment process, is separate from incoming water, and is not receiving any additional source water.

(d) Except as expressly set forth in this section, the operator of an advanced water purification facility may cause advanced purified demonstration water to be bottled and distributed as samples for educational purposes and to promote water recycling, without complying with the requirements of Article 12 (commencing with Section 111070) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code. The volume of advanced purified demonstration water in each bottle shall not exceed eight ounces.

(e) Any operator of an advanced water purification facility seeking to bottle advanced purified demonstration water shall collect water samples from the batch prior to the commencement of the bottling process, and test that batch in accordance with

Section 111165 of the Health and Safety Code. Advanced purified demonstration water shall not be distributed unless the following requirements are met:

(1) The water meets or exceeds all federal and state drinking water standards, including all maximum contaminant levels applicable to public drinking water systems.

(2) The advanced water purification facility meets or exceeds all purification requirements imposed by regulatory agencies to produce the advanced purified demonstration water, including the removal of constituents of emerging concern where the removal is otherwise required of an advanced water purification facility.

(3) The water is produced using a treatment process that is consistent with the advanced treatment criteria for purified water specified in Section 60320.201 of Title 22 of the California Code of Regulations and, if established by the state board, in accordance with any uniform statewide water recycling criteria developed for the potable reuse of recycled water.

(f) (1) Advanced purified demonstration water may be bottled only at a licensed water-bottling plant in compliance with Sections 111070.5, 111080, 111120, 111145, and 111155 of the Health and Safety Code.

(2) Before bottling advanced purified demonstration water, an advanced water purification facility shall follow all pretreatment and labeling regulations for water bottling, including the requirements described in Section 111070.5 of the Health and Safety Code and the requirements for bottled water and vended water pursuant to Section 111080 of the Health and Safety Code.

(g) Advanced purified demonstration water shall be handled from the point of production to the completion of bottling in accordance with all regulations governing the transportation, bottling, labeling, and handling of bottled water, as defined in subdivision (a) of Section 111070 of the Health and Safety Code, including, but not limited to, subdivisions (a), (b), (f), and (h) of Section 111075 of the Health and Safety Code and Section 111070.5 of the Health and Safety Code. A water-bottling plant that bottles advanced purified demonstration water in accordance with this section may also bottle potable water, subject to compliance with Article 12 (commencing with Section 111070) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(h) An advanced water purification facility shall not provide bottled advanced purified demonstration water to any person under 18 years of age without the consent of that person's parent or legal guardian.

(i) An advanced water purification facility shall not provide advanced purified demonstration water for human consumption, as defined in Section 116275 of the Health and Safety Code, including, but not limited to, in bottles, to more than 25 individuals per day for 60 or more days in a calendar year.

(j) Advanced purified demonstration water shall be bottled in nonreturnable (one-way) bottles or packages with labels containing the following information in an easily readable format that complies with all of the following:

(1) The label shall state "sample water--not for sale" and "Advanced Purified Water Sourced From Wastewater."

(2) The label shall set forth the name, address, telephone number, and internet website of the operator of the facility producing the advanced purified demonstration water.

(3) The label shall include a brief description of the advanced purified demonstration water, including its source and the treatment processes to which the water is subjected.

(k) A single advanced water purification facility shall not cause more than 1,000 gallons of advanced purified demonstration water to be bottled in a calendar year.

(*l*) Advanced purified demonstration water shall not be sold or otherwise distributed in exchange for financial consideration.

(m) Any operator of an advanced water purification facility seeking to bottle advanced purified demonstration water shall establish a collection and recycling program for distributed bottles.

(n) The operator of an advanced water purification facility that is bottling advanced purified demonstration water shall do all of the following:

(1) Maintain a daily record of the number of individuals to whom advanced purified demonstration water is distributed, served, made available, or otherwise provided, including, but not limited to, from a bottle.

(2) Compile a report of all daily records described in paragraph (1) for each calendar year.

(3) Certify under penalty of perjury that the report is accurate.

(4) Provide the report within 45 days of the end of the calendar year for which the report was made to the deputy director of the Division of Drinking Water of the State Water Resources Control Board.

(o) This section does not exempt an advanced water purification facility from any standard for bottling water imposed pursuant to federal law.

SEC. 7. Section 13578 of the Water Code is amended to read:

13578. (a) In order to achieve the statewide goal for recycled water use established in Section 13577 and to implement the Governor's Advisory Drought Planning Panel Critical Water Shortage Contingency Plan recommendations, Section F2, as submitted December 29, 2000, the department shall identify and report to the Legislature on opportunities for increasing the use of recycled water, as defined in paragraph (3) of subdivision (b) of Section 13575, and identify constraints and impediments, including the level of state financial assistance available for project construction, to increasing the use of recycled water.

(b) The department shall convene a task force, to be known as the 2002 Recycled Water Task Force, to advise the department in implementation of subdivision (a), including making recommendations to the Legislature regarding the following:

(1) How to further the use of recycled water in industrial and commercial applications, including, but not limited to, those applications set forth in Section 13552.8. The task force shall evaluate the current regulatory framework of state and local rules, regulations, ordinances, and permits to identify the obstacles and disincentives to industrial and commercial reuse. Issues to be investigated include, but are not limited to, applicability of visual inspections instead of pressure tests for cross-connections between potable and nonpotable water systems, dual piping trenching restrictions, fire suppression system design, and backflow protections.

(2) Changes in the Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, that are appropriate to facilitate the use of recycled water in industrial and commercial settings. The department shall make recommendations to the California Building Standards Commission with regard to suggested revisions to the California Plumbing Code necessary to incorporate the changes identified by the task force.

(3) Changes in state statutes or the current regulatory framework of state and local rules, regulations, ordinances, and permits appropriate to increase the use of recycled water for commercial laundries and toilet and urinal flushing in structures including, but not limited to, those defined in subdivision (c) of Section 13553. The department shall identify financial incentives to help offset the cost of retrofitting privately and publicly owned structures.

(4) The need to reconvene the California Potable Reuse Committee established by the department in 1993 or convene a successor committee to update the committee's finding that planned potable reuse of recycled water by augmentation of surface water supplies would not adversely affect drinking water quality if certain conditions were met.

(5) The need to augment state water supplies using water use efficiency strategies identified in the CALFED Bay-Delta Program. In its report pursuant to subdivision (a), the department shall identify ways to coordinate with CALFED to assist local communities in educating the public with regard to the statewide water supply benefits of local recycling projects and the level of public health protection ensured by compliance with the uniform statewide water recycling criteria developed by the State Department of Public Health in accordance with Section 13521.

(6) Impediments or constraints, other than water rights, related to increasing the use of recycled water in applications for agricultural, environmental, or irrigation uses, as determined by the department.

(c) (1) The task force shall be convened by the department and be comprised of one representative from each of the following state agencies:

(A) The department.

(B) The State Department of Public Health.

(C) The state board.

(D) The California Environmental Protection Agency.

(E) The CALFED Bay-Delta Program.

(F) The Department of Food and Agriculture.

(G) The California Building Standards Commission.

(H) The University of California.

(I) The Natural Resources Agency.

(2) The task force shall also include one representative from a recognized environmental advocacy group and one representative

from a consumer advocacy group, as determined by the department, and one representative of local agency health officers, one representative of urban water wholesalers, one representative from a groundwater management entity, one representative of water districts, one representative from a nonprofit association of public and private members created to further the use of recycled water, one representative of commercial real estate, one representative of land development, one representative of industrial interests, and at least two representatives from each of the following as defined in Section 13575:

(A) Recycled water producer.

(B) Recycled water wholesaler.

(C) Retail water supplier.

(d) The department and the task force shall report to the Legislature not later than July 1, 2003.

(e) The department shall carry out the duties of this section only to the extent that funds pursuant to Section 79145, enacted as part of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (Division 26 (commencing with Section 79000)), are made available for the purposes of this section.

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# ASSEMBLY BILL No. 834

**Introduced by Assembly Member Quirk**

February 20, 2019

An act to add Section 13182 to the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 834, as introduced, Quirk. Freshwater and Estuarine Harmful Algal Bloom Program

Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with regulatory authority over water quality.

The State Civil Service Act authorizes state agencies to enter into personal services contracts if prescribed conditions are met, including a clear demonstration by the contracting agency that the proposed contract will result in actual overall cost savings to the state, compared to the cost to the state of providing the same services, and award of the contract through a publicized, competitive bidding process. Existing law generally requires state agencies to obtain at least 3 competitive bids for each contract. Under existing law, this requirement does not apply under certain circumstances, including, among others, in cases of emergency, as defined, where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property.

This bill would require the state board to establish a Freshwater and Estuarine Harmful Algal Bloom Program to protect water quality and public health from algal blooms. The bill would require the state board,

in consultation with specified entities, among other things, to coordinate immediate and long-term algal bloom event incident response, as provided, and conduct and support algal bloom field assessment and ambient monitoring at the state, regional, watershed, and site-specific waterbody scales. The bill would require the state board, on or before January 1, 2020, to post on its Internet Web site information including, among other things, the incidence of, and response to, freshwater and estuarine algal blooms in the state during the previous 3 years and actions taken by the state board related to harmful algal blooms, as provided. The bill would authorize the state board, if the state board determines that the occurrence of harmful algal blooms is an emergency, as defined, to enter into contracts to procure goods and services to aid in incident response without meeting the conditions prescribed for personal services contracts under the State Civil Service Act, including the requirement for a competitive bidding process, or any other competitive bidding requirements under existing law.

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. The Legislature finds and declares all of the following:

(a) Cyanobacteria are small microbes that live in nearly every habitat on land and in the water. They have existed for millions of years as essential components of freshwater ecosystems and form the foundation of most aquatic food chains. However, when environmental conditions favor cyanobacteria growth, they can multiply very rapidly, creating nuisance blooms. When these nuisance blooms are dominated by toxin-producing cyanobacteria, they are referred to as harmful algal blooms. In recent years, harmful algal blooms are increasing in incidence, duration, and toxicity statewide and, as a result, health impacts on humans, domestic animals, dogs and livestock in particular, and wildlife are increasing in prevalence.

(b) Increased prevalence of harmful algal blooms has been attributed to various anthropogenic factors, the most significant of which include degradation of watersheds, nutrient loading, hydrologic alteration, and impacts from climate change. Toxins from harmful algal blooms, both benthic and planktonic, can

accumulate in recreational and drinking bodies of water and can be transported hundreds of miles from freshwater to estuarine and marine environments where they accumulate in marine shellfish.

(c) The California Cyanobacteria and Harmful Algal Bloom (CCHAB) Network is a multientity workgroup of the California Water Quality Monitoring Council established pursuant to Section 13181 of the Water Code. The CCHAB Network is charged with the development and maintenance of a comprehensive, coordinated program to identify and address the causes and impacts of cyanobacteria and harmful algal blooms in California. The CCHAB Network maintains a centralized public Internet Web site to receive incident reports, provide incident report data, and provide information and tools to the public and decisionmakers on freshwater and estuarine harmful algal blooms.

SEC. 2. Section 13182 is added to the Water Code, to read:

13182. (a) To protect water quality and public health from harmful algal blooms, the state board shall establish a Freshwater and Estuarine Harmful Algal Bloom Program and, in consultation with the California Water Quality Monitoring Council, Office of Environmental Health Hazard Assessment, State Department of Public Health, Department of Water Resources, Department of Fish and Wildlife, Department of Parks and Recreation, other appropriate state and federal agencies, and California Native American tribes, as defined in Section 21073 of the Public Resources Code, shall do all of the following:

(1) Coordinate immediate and long-term event incident response, including notification to state and local decisionmakers and the public regarding where harmful algal blooms are occurring, waters at risk of developing harmful algal blooms, and threats posed by harmful algal blooms.

(2) Conduct and support field assessment and ambient monitoring to evaluate harmful algal bloom extent, status, and trends at the state, regional, watershed, and site-specific waterbody scales.

(3) Determine the regions, watersheds, or waterbodies experiencing or at risk of experiencing harmful algal blooms to prioritize those regions, watersheds, or waterbodies for assessment, monitoring, remediation, and risk management.

(4) Conduct applied research and develop tools for decision-support.

(5) Provide outreach and education, and maintain a centralized Internet Web site for information and data related to harmful algal blooms.

(6) On or before July 1, 2020, post on the state board's Internet Web site a report including the following information:

(A) The incidence of, and response to, freshwater and estuarine harmful algal blooms in the state during the previous three years.

(B) Actions taken by the state board as required pursuant to paragraphs (1) to (5), inclusive.

(C) Recommendations, by the state board and other entities participating the Freshwater and Estuarine Harmful Algal Bloom Program, for additional actions that should be taken to protect water quality and public health from harmful algal blooms, including recommendations for statutory or regulatory changes that are needed to achieve that goal.

(b) (1) If the state board determines that an occurrence of harmful algal blooms is an emergency, as defined in Section 1102 of the Public Contract Code, the state board may enter into contracts with public or private entities to procure goods and services to aid in incident response, including contracts to monitor harmful algal blooms and to communicate the risk of harmful algal blooms to the public. The aggregate cost of contracts entered into pursuant to this paragraph in a fiscal year shall not exceed one hundred thousand dollars ($100,000).

(2) Contracts authorized by paragraph (1) shall not be subject to Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code and, notwithstanding any other law, shall be exempt from competitive bidding requirements.

(3) The authority in this subdivision is in addition to, and does not supersede or limit, the authority of the state board pursuant to any other law.

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AMENDED IN ASSEMBLY MARCH 28, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

# ASSEMBLY BILL No. 1180

**Introduced by Assembly Member Friedman**

February 21, 2019

An act to amend Section 116407 of the Health and Safety Code, and to add Section 13521.2 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1180, as amended, Friedman. Water: recycled water.

(1) Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law requires, on or before January 1, 2020, the state board to adopt standards for backflow protection and cross-connection control through the adoption of a policy handbook, as specified.

This bill would require that handbook to include provisions for the use of a swivel or changeover device to supply potable water to a dual-plumbed system during an interruption in recycled water service.

(2) Existing law requires the state board to establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health.

This bill would ~~require, on or before January 1, 2023, the state board~~ *require the state board, on or before January 1, 2023, as specified,* to update the uniform statewide criteria for nonpotable recycled water uses.

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. The Legislature finds and declares all of the following:

(a) On December 11, 2018, the State Water Resources Control Board unanimously adopted an amendment to the policy for water quality control for recycled water, which included a goal to increase the use of recycled water in the state from 714,000 acre-feet per year in 2015 to 1,500,000 acre-feet per year by 2020 and 2,500,000 acre-feet per year by 2030.

(b) Section 13521 of the Water Code requires the state board to establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health.

(c) The regulations establishing the uniform statewide criteria for recycled water uses are set forth in Chapter 3 (commencing with Section 60301.050) of Division 4 of Title 22 of the California Code of Regulations. The regulations that pertain to nonpotable recycled water uses have not been updated since 2000.

(d) The regulations relating to backflow protection and cross-connection control for recycled water are set forth in Article 1 (commencing with Section 7583) and Article 2 (commencing with Section 7601) of Group 4 of Subchapter 1 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations. These regulations have not been updated since 1987.

(e) Section 1 of Chapter 533 of the Statutes of 2017 (Assembly Bill 1671 of the 2017–18 Regular Session) ~~required,~~ *requires,* on or before January 1, 2020, the state board to adopt backflow protection and cross-connection control standards and ~~authorized~~ *authorizes their* implementation through a policy handbook.

(f) In order to maximize the amount of recycled water California can safely use for beneficial purposes, it is necessary to update the uniform statewide criteria for nonpotable recycled water uses and specify certain associated backflow protection and cross-connection control provisions.

SEC. 2. Section 116407 of the Health and Safety Code is amended to read:

116407. (a) On or before January 1, 2020, the state board shall adopt standards for backflow protection and cross-connection control.

(b) (1) The state board may implement subdivision (a) through the adoption of a policy handbook that is not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The policy handbook shall include standards for backflow protection and cross-connection control. In developing the standards and any amendments to those standards, the state board shall consult with state and local agencies and other persons whom the state board has identified as having expertise in the subject of backflow protection and cross-connection control. The state board shall hold at least two public hearings before adopting the policy handbook. The policy handbook shall be posted on the board's internet website.

(2) (A) The policy handbook described in this subdivision shall include provisions for the use of a swivel or changeover device to supply potable water to a dual-plumbed system during an interruption in recycled water service.

(B) The use of a swivel or changeover device shall be consistent with any notification and backflow protection provisions contained in the policy handbook.

(c) (1) Upon the effective date of a policy handbook adopted by the state board pursuant to subdivision (b), the regulations set forth in Article 1 (commencing with Section 7583) and Article 2 (commencing with Section 7601) of Group 4 of Subchapter 1 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations shall become inoperative, and, 90 days thereafter, are repealed, unless the state board makes a determination not to repeal a specific regulation.

(2) If the state board determines not to repeal a specific regulation pursuant to paragraph (1), the state board shall provide to the Office of Administrative Law and the Secretary of State written notice of its determination, including identification of the specific regulation that is not repealed. That regulation, upon the provision of that written notice to the Office of Administrative Law and the Secretary of State, shall become operative.

SEC. 3. Section 13521.2 is added to the Water Code, to read:

13521.2. On or before January 1, 2023, the state board shall update the uniform statewide criteria for nonpotable recycled water uses established in Chapter 3 (commencing with Section 60301.050) of Division 4 of Title 22 of the California Code of

Regulations. *The deadline imposed by this section is mandatory only if the Legislature has appropriated sufficient funds, as determined by the executive director of the state board, in the annual Budget Act or otherwise to cover the state board's costs associated with the performance of the duties imposed by this section.*

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AMENDED IN ASSEMBLY MARCH 28, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

# ASSEMBLY BILL No. 1672

**Introduced by Assembly Member Bloom**

February 22, 2019

An act ~~relating to product labeling.~~ *to add Part 9 (commencing with Section 49650) to Division 30 of the Public Resources Code, relating to solid waste.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1672, as amended, Bloom. ~~Product labeling:~~ *Solid waste:* flushable products.

*Existing law establishes the California Environmental Protection Agency under the supervision of the Secretary for Environmental Protection, and vests the agency with authority over various environmental matters. Existing law generally regulates the disposal, management, and recycling of solid waste.*

*This bill would, among other things, prohibit a covered entity, as defined, from labeling a covered product as safe to flush, safe for sewer systems, or safe for septic systems, unless the product is a flushable wipe that meets certain performance standards. The bill would require nonflushable products to be labeled clearly and conspicuously to communicate that they should not be flushed, as specified. The bill would authorize the California Environmental Protection Agency to enforce these provisions and impose administrative penalties of up to $500 per day for each violation, to be deposited in the Flushable Wipes Fund, which the bill would create. The bill would authorize the Attorney General to enjoin a violation in a court of competent jurisdiction and seek the assessment of civil penalties, as specified.*

~~Existing law regulates the labeling requirements on various consumer products.~~

~~This bill would express the intent of the Legislature to enact legislation to prohibit the sale or advertisement of any nonwoven disposable product labeled as "flushable" or "sewer and septic safe" if that product fails to meet specified performance standards.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

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

*SECTION 1. The Legislature finds and declares all of the following:*

*(a) The intent of the Legislature in enacting this legislation is to protect public health, the environment, water quality, and public infrastructure used for the collection, transport, and treatment of wastewater.*

*(b) Nonwoven disposable products are increasingly being marketed by manufacturers as flushable and, as a result, are being flushed down the toilet more frequently by consumers.*

*(c) Nonwoven disposable products often contain microplastics.*

*(d) Flushing these products presents a growing problem caused by nonwoven disposable products not breaking down after being flushed down the toilet. These products can entangle with tree roots, fats, oils, grease, and other nondispersible products, causing clogs in sewer pipes. These clogs damage public infrastructure and can lead to costly and environmentally damaging sanitary sewer overflows that are a threat to public health.*

*(e) Nonwoven disposable products that do not disperse rapidly in the sewer can also cause damage to private sewer laterals that result in sewage backups and overflow. These products can also cause clogging in septic systems.*

*(f) Wastewater treatment plants are not designed to capture microplastic materials, which can pass through sewage treatment facilities into the natural environment. These microplastic materials have been shown to have negative impacts on marine life.*

*(g) Consequently, nonwoven disposable products that contain synthetic plastic fibers or other microplastic materials should not be marketed as flushable or sewer and septic safe.*

*(h) The increased maintenance needed to clean accumulations of flushed nonwoven disposable products from pipes and pumps is very costly to the public.*

*(i) In June 2018, a group of international wastewater infrastructure experts, known as the International Water Services Flushability Group, adopted reliable criteria for the quality and characteristics of products that can be appropriately disposed of using sanitary sewer systems.*

*(j) In April 2017, a group of international nonwoven fabric industry experts, known as the Association of the Nonwoven Fabrics Industry and the European Disposables and Nonwovens Association, adopted baseline labeling requirements for nonwoven disposable products.*

*(k) To prevent nondispersable nonwoven disposable products from entering sewer systems and potentially causing overflows, it is the intent of the Legislature to create labeling requirements that will enable consumers to easily identify which nonwoven disposable products are safe to dispose of using sanitary sewer systems.*

*(l) It is the intent of the Legislature in enacting this legislation to provide clear direction to manufacturers by setting performance requirements for nonwoven disposable products that are marketed for disposal to the sanitary sewer system.*

*SEC. 2. Part 9 (commencing with Section 49650) is added to Division 30 of the Public Resources Code, to read:*

*PART 9. FLUSHABLE WIPES*

*49650. For purposes of this part, the following definitions shall apply:*

*(a) "Covered entity" means the manufacturer of a covered product that is sold in this state or brought into the state for sale. "Covered entity" does not include a wholesaler, supplier, or retailer that is not responsible for the labeling or packaging of a covered product.*

*(b) "Covered product" means a nonwoven disposable product that is sold in this state or brought into the state for sale, and that is constructed from nonwoven sheets, including moist toilet tissue or cloth, that is designed, marketed, or commonly used for personal hygiene or cleaning purposes, including, but not limited to, diaper*

*wipes, toilet wipes, household cleaning wipes, personal care wipes, and facial wipes.*

*(c) "Enforcing agency" means the California Environmental Protection Agency.*

*(d) "Flushable wipe" means a nonwoven disposable product that meets the performance standards set forth in subdivision (g).*

*(e) "Labeling requirements" means the labeling standards contained in the Code of Practice of the Association of the Nonwoven Fabrics Industry and the European Disposables and Nonwovens Association, titled Communicating Appropriate Disposal Pathways for Nonwoven Wipes to Protect Wastewater Systems, second edition, as published in April 2017.*

*(f) "Nonflushable wipe" means a nonwoven disposable product that does not meet the performance standards set forth in subdivision (g).*

*(g) "Performance standards" means the International Water Services Flushability Group testing methods and criteria for flushability, as published in June 2018, as set forth in publicly available specification (PAS) documents 1, 2, and 3, and as summarized in chapters 6 and 7 of PAS document 1.*

*49651. (a) On and after January 1, 2020, a covered entity shall not label a covered product as safe to flush, safe for sewer systems, or safe for septic systems, unless the product is a flushable wipe.*

*(b) (1) Unless a product is a flushable wipe, a covered entity shall not, in any manner, make any of the following representations regarding a covered product:*

*(A) The product can be flushed.*

*(B) The product is safe for sewer systems.*

*(C) The product is safe for septic systems.*

*(D) The product breaks apart shortly after flushing.*

*(E) The product will not clog household plumbing systems.*

*(F) The product will not clog household septic systems.*

*(G) The product is safe for plumbing.*

*(H) The product is safe to flush.*

*(I) The product will dissolve or disperse in interaction with water.*

*(2) For purposes of this subdivision, representations include, among other things, product names, labels, endorsements, depictions, illustrations, trademarks, and trade names.*

*49652. (a) (1) On and after January 1, 2020, a covered product that does not meet the performance standards shall be labeled clearly and conspicuously in adherence with the labeling requirements to communicate that it should not be flushed, and this label shall be in a high contrast font and color respective to the surrounding wording and space on the packaging and shall be in a location that is visible when individual wipes are dispensed from the product packaging.*

*(2) For products sold in bulk at retail, both the package purchased in the store and the individual packages contained within shall comply with the requirements in paragraph (1).*

*(b) A covered entity, directly or through any corporation, partnership, subsidiary, division, trade name, or association in connection to the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of a covered product, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, illustration, trademark, or trade name, about the flushable attributes, benefits, performance, or efficacy of a nonflushable wipe.*

*49653. (a) On and after January 1, 2020, a covered entity shall test and maintain self-certification records that verify that its covered products meet the performance standards and comply with the labeling requirements specified in Section 49650.*

*(b) The records demonstrating a flushable wipe's compliance with the performance standards shall be made available by the covered entity upon request of the enforcing agency, free of charge, within 30 days of the request.*

*(c) Verification of a nonflushable wipe's compliance with the labeling requirements shall be made available by the covered entity upon request of the enforcing agency, free of charge, within 30 days of the request.*

*(d) (1) A covered entity that does not properly label flushable wipes or nonflushable wipes that will be sold in California, or are reasonably expected to be sold in California, shall be issued a notice of violation by the enforcing agency, providing 30 days for the noncompliant products to be recalled. The covered entity may be subject to an administrative penalty every day thereafter that those products remain available for purchase at retail or otherwise are distributed in the state.*

*(2) In issuing an administrative penalty pursuant to this subdivision, the enforcing agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed penalty, and the effect that the proposed penalty would have on the violator and the community as a whole.*

*(3) The penalty imposed under this subdivision shall not exceed five hundred dollars ($500) per day.*

*(4) Penalties collected under this subdivision shall be deposited into the Flushable Wipes Fund, which is hereby created. Moneys in the fund shall be subject to appropriation by the Legislature for purposes of enforcing this part.*

*(e) (1) A covered entity that violates or threatens to violate this part may be enjoined by the Attorney General in any court of competent jurisdiction, and civil penalties may be assessed and recovered in a civil action brought in any court of competent jurisdiction in an amount not to exceed two thousand five hundred dollars ($2,500) for each violation.*

*(2) Moneys collected by the Attorney General pursuant to this subdivision shall be deposited into the Unfair Competition Law Fund established pursuant to Section 17206 of the Business and Professions Code.*

*(f) To the extent that there is an inconsistency between this section and a local standard or an updated performance standard that imposes greater restrictions, the greater restrictions shall prevail.*

*(g) The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

~~SECTION 1. It is the intent of the Legislature to enact legislation to prohibit the sale or advertisement of any nonwoven disposable product labeled as "flushable" or "sewer and septic safe" if that product fails to meet specified performance standards.~~

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# SENATE BILL No. 1

**Introduced by Senators Atkins, Portantino, and Stern**

December 3, 2018

An act to add and repeal Title 24 (commencing with Section 120000) of the Government Code, relating to state prerogative.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as introduced, Atkins. California Environmental, Public Health, and Workers Defense Act of 2019.

(1) The federal Clean Air Act regulates the discharge of air pollutants into the atmosphere. The federal Clean Water Act regulates the discharge of pollutants into water. The federal Safe Drinking Water Act establishes drinking water standards for drinking water systems. The federal Endangered Species Act of 1973 generally prohibits activities affecting threatened and endangered species listed pursuant to that act unless authorized by a permit from the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

Existing state law regulates the discharge of air pollutants into the atmosphere. The Porter-Cologne Water Quality Control Act regulates the discharge of pollutants into the waters of the state. The California Safe Drinking Water Act establishes standards for drinking water and regulates drinking water systems. The California Endangered Species Act requires the Fish and Game Commission to establish a list of endangered species and a list of threatened species, and generally prohibits the taking of those species.

This bill would require specified agencies to take prescribed actions regarding certain federal requirements and standards pertaining to air, water, and protected species, as specified. By imposing new duties on local agencies, this bill would impose a state-mandated local program.

(2) Existing law provides for the enforcement of laws regulating the discharge of pollutants into the atmosphere and waters of the state. Existing law provides for the enforcement of drinking water standards. Existing law provides for the enforcement of the California Endangered Species Act.

This bill would authorize a person acting in the public interest to bring an action to enforce certain federal standards and requirements incorporated into certain of the above-mentioned state laws if specified conditions are satisfied.

(3) Existing federal law generally establishes standards for workers' rights and worker safety.

Existing state law generally establishes standards for workers' rights and worker safety.

This bill would require specified agencies to take prescribed actions regarding certain requirements and standards pertaining to worker's rights and worker safety. The bill would authorize a person acting in the public interest to enforce standards and requirements related to worker's rights and worker safety, as provided.

(5) This bill would make its provisions inoperative as of January 20, 2025, and would repeal them as of January 1, 2026.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Title 24 (commencing with Section 120000) is added to the Government Code, to read:

# TITLE 24. CALIFORNIA ENVIRONMENTAL, PUBLIC HEALTH, AND WORKERS DEFENSE ACT OF 2019

## DIVISION 1. GENERAL PROVISION

120000. This title shall be known, and may be cited, as the California Environmental, Public Health, and Workers Defense Act of 2019.

## DIVISION 2. ENVIRONMENT, NATURAL RESOURCES, AND PUBLIC HEALTH

### CHAPTER 1. FINDINGS AND DECLARATIONS

120010. The Legislature finds and declares all of the following:

(a) For over four decades, California and its residents have relied on federal laws, including the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 et seq.), the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), along with their implementing regulations and remedies, to protect our state's public health, environment, and natural resources.

(b) These federal laws establish standards that serve as the baseline level of public health and environmental protection, while expressly authorizing states like California to adopt more protective measures.

(c) Beginning in 2017, a new presidential administration and United States Congress have signaled a series of direct challenges to these federal laws and the protections they provide, as well as to the underlying science that makes these protections necessary, and to the rights of the states to protect their own environment, natural resources, and public health as they see fit.

(d) It is therefore necessary for the Legislature to enact legislation that will ensure continued protections for the environment, natural resources, and public health in the state even if the federal laws specified in subdivision (a) are undermined, amended, or repealed.

120011. The purposes of this division are to do all of the following:

(a) Retain protections afforded under the federal laws specified in subdivision (a) of Section 120010 and regulations implementing those federal laws in existence as of January 19, 2017, regardless of actions taken at the federal level.

(b) Protect public health and welfare from any actual or potential adverse effect that reasonably may be anticipated to occur from pollution, including the effects of climate change.

(c) Preserve, protect, and enhance the environment and natural resources in California, including, but not limited to, the state's national parks, national wilderness areas, national monuments, national seashores, and other areas with special national or regional natural, recreational, scenic, or historic value.

(d) Ensure that economic growth will occur in a manner consistent with the protection of public health and the environment and preservation of existing natural resources.

(e) Ensure that any decision made by a public agency that may adversely impact public health, the environment, or natural resources is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

## Chapter 2. General Provisions

120030. (a) A state agency may adopt standards or requirements pursuant to this title, including, but not limited to, by emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(b) The adoption of emergency regulations in furtherance of this title shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, emergency regulations adopted by a state agency under this title shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised or repealed by the state agency, or January 20, 2021, whichever comes first.

## Chapter 3. Operative Provisions

### Article 1. Air

120040. For purposes of this article, the following definitions apply:

(a) "Air district" means an air quality management or air pollution control district.

(b) "Baseline federal standards" means federal standards in effect as of January 19, 2017.

(c) "Federal standards" means federal laws or federal regulations implementing the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) including federal requirements for a state implementation plan, federal requirements for the transportation conformity program, and federal requirements for the prevention of significant deterioration.

(d) "State analogue statute" means the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) or Division 26 (commencing with Section 39000) of the Health and Safety Code.

(e) "State board" means the State Air Resources Board.

120041. Except as otherwise authorized by state law, all of the following apply:

(a) The state board shall regularly assess proposed and final changes to the federal standards.

(b) (1) At least quarterly, the state board shall publish a list of changes made to the federal standards and provide an assessment on whether a change made to the federal standards is more or less stringent than the baseline federal standards.

(2) If the state board determines that a change to the federal standards is less stringent than the baseline federal standards, the state board shall consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protections to be at least as stringent as the baseline federal standards.

(3) The state board shall publish its list, assessment, and consideration for adoption at least 30 days prior to a vote on adoption on its internet Web site for public comment.

(c) If the state board decides to adopt a measure pursuant to subdivision (b), the state board shall adopt the measure by either of the following procedures:

(1) As an emergency regulation in accordance with Section 120030.

(2) By promulgation or amendment of a state policy, plan, or regulation.

(d) Notwithstanding any other law, the state board, when adopting a measure under paragraph (2) of subdivision (c) may adopt those measures in accordance with Section 100 of Title 1 of the California Code of Regulations and the measures shall be deemed to be a change without regulatory effect pursuant to paragraph (6) of subdivision (a) of that section and not subject to additional notice, procedural, or other considerations contained in state analogue statutes identified in this article. Nothing in this chapter shall affect the imposition of sanctions under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(e) In the event that the citizen suit provision set forth in Section 7604 of Title 42 of the United States Code is amended to restrict, condition, abridge, or repeal the citizen suit provision, the state board may consider the amendment as a change to the federal standards and may adopt the baseline federal standards pursuant to subdivision (c).

(f) This article does not prohibit the state board or air districts from establishing rules and regulations for California that are more stringent than the baseline federal standards.

120042. (a) An action may be brought by a person in the public interest exclusively to enforce baseline federal standards adopted as a measure pursuant to subdivision (c) of Section 120041 if all of the following requirements are met:

(1) At least 60 days prior to initiating the action, a complainant provides a written notice to the Attorney General and the counsel for the state board, a district attorney, county counsel, counsel of the air district, and prosecutor in whose jurisdiction the violation is alleged to have occurred, and the defendant identifying the specific provisions of the measure alleged to be violated.

(2) The Attorney General, a district attorney, a city attorney, county counsel, counsel of the state board, counsel of an air district, or a prosecutor has not commenced an action or has not been diligently prosecuting the action.

(b) Upon filing the action, the complainant shall notify the Attorney General that the action has been filed.

(c) The court may award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, and expert fees and court costs pursuant to Section 1032 of the Code of Civil Procedure, as appropriate, for an action brought pursuant to this section.

(d) This section does not limit other remedies and protections available under state or federal law.

## Article 2. Water

120050. For purposes of this article, the following definitions apply:

(a) "Baseline federal standards" means federal standards in effect as of January 19, 2017, including water quality standards, effluent limitations, and drinking water standards.

(b) "Board" means the State Water Resources Control Board.

(c) "Federal standards" means federal laws or federal regulations implementing the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) in effect as of January 19, 2017, including water quality standards, effluent limitations, and drinking water standards.

(d) "Regional board" means a regional water quality control board.

(e) "State analogue statute" mean the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) or the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 103 of the Health and Safety Code).

120051. Except as otherwise authorized by state law, all of the following apply:

(a) The board shall regularly assess proposed and final changes to the federal standards.

(b) (1) At least quarterly, the board shall publish a list of changes made to the federal standards and provide an assessment on whether a change made to the federal standards is more or less stringent than the baseline federal standards.

(2) If the board determines that a change to the federal standards is less stringent than the baseline federal standards, the board shall

consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protections to be at least as stringent as the baseline federal standards.

(3) The state board shall publish its list, assessment, and consideration for adoption at least 30 days prior to a vote on adoption on its Internet Web site for public comment.

(c) If the board decides to adopt a measure pursuant to subdivision (b), the board shall adopt the measure by either of the following procedures:

(1) As an emergency regulation in accordance with Section 120030.

(2) By promulgation or amendment of a state policy for water quality control, a water quality control plan, or regulation.

(d) Notwithstanding any other law, the board, when adopting a measure under paragraph (2) of subdivision (c) may adopt those measures in accordance with Section 100 of Title 1 of the California Code of Regulations and the measures shall be deemed to be a change without regulatory effect pursuant to paragraph (6) of subdivision (a) of that section and not subject to additional notice, procedural, or other considerations contained in state analogue statutes identified in this article. Nothing in this chapter shall affect the imposition of sanctions under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(g) (1) In the event that the citizen suit provision set forth in Section 1365 of Title 33 of the United States Code is amended to restrict, condition, abridge, or repeal the citizen suit provision, the board may consider the amendment as a change to the federal standards and may adopt the baseline federal standards pursuant to subdivision (c).

(2) In the event that the citizen suit provision set forth in Section 300j-8 of Title 42 of the United States Code is amended to restrict, condition, abridge, or repeal the citizen suit provision, the board may consider the amendment as a change to the federal standards and may adopt the baseline federal standards pursuant to subdivision (c).

(h) This article does not prohibit the board or the regional boards from establishing rules and regulations for California that are more stringent than the baseline federal standards.

120052. (a) An action may be brought by a person in the public interest exclusively to enforce baseline federal standards adopted

as a measure pursuant to subdivision (c) of Section 120051 if all of the following requirements are met:

(1) At least 60 days prior to initiating the action, a complainant provides a written notice to the Attorney General and the counsel for the board, a district attorney, county counsel, counsel of the regional board, and prosecutor in whose jurisdiction the violation is alleged to have occurred, and the defendant identifying the specific provisions of the measure alleged to be violated.

(2) The Attorney General, a district attorney, a city attorney, county counsel, counsel of the board, counsel of a regional board, or a prosecutor has not commenced an action or has not been diligently prosecuting the action.

(b) Upon filing the action, the complainant shall notify the Attorney General that the action has been filed.

(c) The court may award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, and expert fees and court costs pursuant to Section 1032 of the Code of Civil Procedure, as appropriate, for an action brought pursuant to this section.

(d) This section does not limit other remedies and protections available under state or federal law.

Article 3. Endangered and Threatened Species

120060. For purposes of this article, "baseline federal standards" means the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) in effect as of January 19, 2017, its implementing regulations, and any incidental take permits, incidental take statements, or biological opinions in effect as of January 19, 2017.

120061. Except as otherwise authorized by state law, the following apply:

(a) To ensure no backsliding as a result of any change to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or its implementing regulations, in the event of the federal delisting of a species that is eligible for protection under the California Endangered Species Act and which is listed as endangered or threatened pursuant to the federal Endangered Species Act of 1973 as of January 1, 2017, or a change in the legally protected status of such a species, including through a change in listing from endangered to threatened, the adoption of

a rule pursuant to Section 4(d) of the federal Endangered Species Act, or any amendment to the federal Endangered Species Act of 1973 or its implementing regulations, or any exemption from the application of the federal Endangered Species Act of 1973 to a federally listed species as of January 1, 2017, the Fish and Game Commission shall determine whether to list, in accordance with subdivision (b), that species under the California Endangered Species Act pursuant to this section.

(b) The Fish and Game Commission shall list the affected species identified in subdivision (a), pursuant to subdivision (c) and without following the regular listing process set forth in Article 2 (commencing with Section 2070) of Chapter 1.5 of Division 3 of the Fish and Game Code, no later than the conclusion of its second regularly scheduled meeting or within three months, whichever is shorter, after the occurrence of the event described in subdivision (a) unless either the Fish and Game Commission determines that listing of the species is not warranted because it does not meet the criteria in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code or its implementing regulations or the Department of Fish and Wildlife recommends that the species undergo the regular listing process. If the Department of Fish and Wildlife makes a recommendation that the species undergo the regular listing process, the Fish and Game Commission shall either accept the recommendation, in which event the Fish and Game Commission shall be deemed to have accepted a petition for listing the species pursuant to paragraph (2) of subdivision (e) of Section 2074.2 of the Fish and Game Code, or reject the recommendation and immediately list the species pursuant to this subdivision.

(c) Notwithstanding any other law or regulation, because a decision by the Fish and Game Commission to list a species without following the regular listing process becomes effective immediately, the Fish and Game Commission shall add that species to the list of endangered or threatened species pursuant to Section 100 of Title 1 of the California Code of Regulations, and the addition of that species to the list shall be deemed to be a change without regulatory effect pursuant to paragraph (6) of subdivision (a) of that section.

(d) (1) Upon the listing of any species under this section, the Fish and Game Commission or the Department of Fish and Wildlife

may authorize the taking of such species as otherwise provided for in the Fish and Game Code. In lieu of authorizing take under the provisions of Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code, the Fish and Game Commission or the Department of Fish and Wildlife may adopt the terms and conditions of any rule promulgated under Section 4(d) of the federal Endangered Species Act, federal incidental take statement, incidental take permit, or biological opinion in effect at the time of the event described in subdivision (a).

(2) The Department of Fish and Wildlife shall ensure that protections remain in place pursuant to regulation, incidental take permit, or consistency determination that are at least as stringent as required by the baseline federal standards, as determined by the Department of Fish and Wildlife.

(3) This subdivision does not prohibit the Department of Fish and Wildlife from establishing conditions that are more stringent than the baseline federal standards.

(e) Any species listed pursuant to this section shall be subject to the provisions in the California Endangered Species Act in the same manner as any other listed species, including those provisions related to a change in listing status or delisting.

(f) For those species that the Fish and Game Commission lists pursuant to subdivision (b), or for which baseline federal standards are retained pursuant to subdivision (d), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply.

(g) The provisions of the California Endangered Species Act are measures "relating to the control, appropriation, use, or distribution of water" within the meaning of Section 8 of the federal Reclamation Act of 1902 (43 U.S.C. Section 383) and shall apply to the United States Bureau of Reclamation's operation of the federal Central Valley Project.

## DIVISION 3. LABOR STANDARDS

### CHAPTER 1. DEFINITIONS

120100. For purposes of this division, the following definitions apply:

(a) "Baseline federal standards" means federal standards in effect as of January 1, 2017.

(b) "Board" means the Occupational Safety and Health Standards Board.

(c) "Department" means the Department of Industrial Relations.

(d) "Federal standards" means the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. Sec. 201 et seq.), the federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Sec. 651 et seq.), the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. Sec. 801 et seq.), or regulations established pursuant to those federal statutes.

## Chapter 2. Operative Provisions

120110. Except as otherwise authorized by state law, all of the following apply:

(a) The board and the department shall regularly assess proposed and final changes to the federal standards.

(b) (1) At least quarterly, the board and the department shall publish a list of changes made to the federal standards and provide an assessment on whether a change made to the federal standards is more or less stringent than the baseline federal standards.

(2) If the board or the department, as appropriate, determines that a change to the federal standards is less stringent than the baseline federal standards, the board shall consider whether it should adopt the baseline federal standards as a measure in order to maintain the state's protections to be at least as stringent as the baseline federal standards.

(3) The board and the department shall publish its list, assessment, and consideration for adoption at least 30 days prior to a vote on adoption on its Internet Web site for public comment.

(c) If the board or the department, as appropriate, decides to adopt a measure pursuant to subdivision (b), the board or the department shall adopt the measure by an emergency regulation in accordance with Section 120030.

(d) Notwithstanding any other law, the board or department, when adopting a measure under subdivision (c) may adopt those measures in accordance with Section 100 of Title 1 of the California Code of Regulations and the measures shall be deemed to be a change without regulatory effect pursuant to paragraph (6)

of subdivision (a) of that section and not subject to additional notice, procedural, or other considerations contained in state analogue statutes.

(e) This division does not prohibit the board or the department from establishing rules and regulations for California that are more stringent than the baseline federal standards.

120111. (a) An action may be brought by a person in the public interest exclusively to enforce a measure adopted pursuant to subdivision (c) of Section 120110 if all of the following requirements are met:

(1) At least 60 days prior to initiating the action, a complainant provides a written notice to the Attorney General and the counsels for the board or department, as appropriate, a district attorney, a city attorney, county counsel, and a prosecutor in whose jurisdiction the violation is alleged to have occurred, and the defendant identifying the specific provisions of the measure alleged to be violated.

(2) The Attorney General, a district attorney, a city attorney, county counsel, the counsel for the board or department, as appropriate, or a prosecutor has not commenced an action or has not been diligently prosecuting the action.

(b) Upon filing the action, the complainant shall notify the Attorney General that the action has been filed.

(c) The court may award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure, and expert fees and court costs pursuant to Section 1032 of the Code of Civil Procedure, as appropriate, for an action brought pursuant to this section.

(d) This section does not limit other remedies and protections available under state or federal law.

## DIVISION 4. MISCELLANEOUS

120200. The provisions of this title are severable. If any provision of this title or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

120202. (a) This title shall become inoperative on January 20, 2025, and, as of January 1, 2026, is repealed.

# SENATE BILL No. 332

**Introduced by Senators Hertzberg and Wiener**

February 19, 2019

An act to add Section 13557.5 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 332, as introduced, Hertzberg. Wastewater treatment: recycled water.

The California Constitution 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. Existing law declares that the use of potable domestic water for certain nonpotable uses is a waste or an unreasonable use of water if recycled water is available, as determined by the State Water Resources Control Board, and other requirements are met.

Under existing law, the state board and the 9 California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act.

This bill would declare, except in compliance with the bill's provisions, that the discharge of treated wastewater from ocean outfalls is a waste and unreasonable use of water. The bill would require each wastewater treatment facility that discharges through an ocean outfall and affiliated water suppliers to reduce the facility's annual flow as compared to the average annual wastewater discharge baseline volume, as prescribed, by at least 50% on or before January 1, 2030, and by at least 95% on or before January 1, 2040. The bill would subject the owner or operator of a wastewater treatment facility, as well as the

affiliated water suppliers, to a civil penalty of $2,000 per acre-foot of water above the required reduction in overall volume discharge for the failure to meet these deadlines.

The bill would require a holder of a NPDES permit authorizing the discharge of wastewater through an ocean outfall and affiliated water suppliers to submit and update a plan to meet these requirements to the executive director of the state board, as specified. The bill would also require this NPDES permitholder and affiliated water suppliers to submit on or before January 1, 2024, and by January 1 every 5 years thereafter, to the executive director of the state board a certain report containing, among other things, the progress toward meeting the reduction in annual flow deadlines. The bill would subject a permitholder and affiliated water suppliers to a penalty of up to $10,000 for failing to submit a report by its deadline. The bill would require the state board to submit a report to the Governor and the Legislature on or before July 1, 2025, and by July 1 every 5 years thereafter, on the implementation of these provisions. The bill would make a permitholder and affiliated water suppliers that fail to timely submit a report ineligible for a state loan or grant until the delinquent report has been submitted.

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. The Legislature finds and declares all of the following:

(a) Severe drought conditions persisted in California from 2012 to 2016, inclusive, and 2015 was the state's driest calendar year on record.

(b) During the drought lasting from 2012 to 2016, inclusive, California's water supplies dipped to alarmingly low levels indicated by a very limited snowpack in the Sierra Nevada Mountains, declining water levels in the state's largest water reservoirs, reduced surface water flows in major river systems, and historically low groundwater levels. Many of these water supplies continue to be severely depleted following the drought lasting from 2012 to 2016, inclusive.

(c) Based on the projected impact of climate change on California's snowpack, extremely dry conditions and drought

similar to those experienced in 2012 to 2016, inclusive, will likely become more common and occur more regularly in the future.

(d) Continuous severe drought conditions present urgent challenges across the state, including, but not limited to, water shortages in communities and for agricultural production, increased risk of wildfires, degraded habitat for fish and wildlife, and threat of saltwater contamination in large fresh water supplies.

(e) Water reuse is one of the most efficient and cost-effective ways to improve drought resilience in California communities.

(f) The State Water Resources Control Board has established goals of recycling 1,500,000 acre-feet of wastewater by 2020 and 2,500,000 acre-feet of wastewater by 2030, however, California is not on track to meet the board's goals.

(g) The State Water Resources Control Board has established a goal to reuse all dry weather discharges of treated municipal wastewater that can be reasonably put to a beneficial use.

(h) The discharge of treated wastewater from ocean outfalls constitutes the waste and unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution, considering the opportunities to recycle this water for further beneficial use.

(i) By requiring substantial reductions in ocean discharges from wastewater treatment plants, California could dramatically accelerate the adoption of water recycling and thus increase water supplies available for beneficial use.

(j) Water recycling can reduce California's dependence on diversions from surface rivers and streams that are subject to variable climate and regulatory conditions.

(k) In addition to water supply benefits, requiring water recycling for further beneficial use eliminates ocean wastewater discharges, decreasing pollutant loadings to ocean waters and reducing ocean acidification, thereby improving coastal water quality and benefiting the aquatic environment and local economies that depend on those coastal resources.

SEC. 2. Section 13557.5 is added to the Water Code, to read:

13557.5. (a) The Legislature hereby finds and declares that the discharge of treated wastewater from ocean outfalls, except in compliance with the provisions of this section, is a waste and unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution.

(b) As used in this section, the following terms have the following meanings:

(1) "Affiliated water suppliers" means all water suppliers that provide water that is disposed of in the collection system of a particular wastewater treatment facility that discharges through an ocean outfall.

(2) "Average annual wastewater discharge baseline volume" means the average annual volume of treated waste water discharging through a facility's ocean outfall as determined by the state board using monitoring data available for calendar years 2010 to 2020, inclusive.

(3) "Ocean outfall" means a point source at the point where raw, partially treated, or treated wastewater may be discharged from a wastewater treatment facility or associated collection system to saline waters, including the ocean, bays, and estuaries.

(4) "Point source" has the meaning provided by Section 122.2 of Title 40 of the Code of Federal Regulations.

(c) Each wastewater treatment facility that discharges through an ocean outfall and affiliated water suppliers shall reduce the overall volume of the facility's annual flow, as follows, as compared to the average annual wastewater discharge baseline volume, by treating the water to be beneficially reused or by reducing inflow through water conservation and efficiency measures:

(1) By January 1, 2030, by at least 50 percent.

(2) By January 1, 2040, by at least 95 percent.

(d) (1) Each holder of a national pollutant discharge elimination system (NPDES) permit authorizing the discharge of wastewater through an ocean outfall as of January 1, 2020, in conjunction with affiliated water suppliers, shall submit to the executive director of the state board, on or before July 1, 2022, a plan to meet the requirements of this section, directly or by contract. The plan shall contain all of the following:

(A) An identification of all land acquisition and facilities necessary to provide for treatment, transport, and reuse of treated wastewater.

(B) Identification and projection of all wastewater reductions due to implementation of conservation and efficiency measures in the facilities service area.

(C) An analysis of the costs to meet the requirements of this section.

(D) A financing plan for meeting the requirements of this section, including identifying any actions necessary to implement the financing plan, such as bond issuance or other borrowing, assessments, rate increases, fees, charges, or other financing mechanisms.

(E) A detailed schedule for the completion of all necessary actions.

(F) Supporting data and other documentation accompanying the plan.

(2) On or before January 1, 2026, each holder of a NPDES permit authorizing the discharge of wastewater through an ocean outfall and affiliated water suppliers, shall update and submit to the executive director a plan, as described in paragraph (1), to include any refinements or changes in the costs, actions, or financing necessary to achieve the requirements of this section or a written statement that the plan is current and accurate.

(e) On or before January 1, 2024, and every January 1 every five years thereafter, the holder of a NPDES permit authorizing the discharge of wastewater through an ocean outfall, in conjunction with affiliated water suppliers, shall submit to the executive director of the state board a report summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of this section. The report shall include progress toward meeting the deadlines set forth in subdivisions (c) and (d) and specifically include the detailed schedule for, and status of, the following:

(1) Evaluation of reuse and disposal options.

(2) Preparation of preliminary design reports.

(3) Preparation and submission of permit applications.

(4) Construction initiation.

(5) Construction progress milestones.

(6) Construction completion.

(7) Initiation of operation.

(8) Continuing operation and maintenance.

(f) (1) On or before July 1, 2025, and by July 1 every five years thereafter, the state board shall submit a report to the Governor and the Legislature on the implementation of this section. The report shall summarize the progress to date, including, but not

limited to, the increased amount of reclaimed water provided and potable water offsets achieved, and shall identify any obstacles to continued progress, including all instances of substantial noncompliance.

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(g) (1) Failure to meet the deadlines in subdivision (c) shall subject the owner or operator of the wastewater treatment facility, as well as affiliated water suppliers, to a penalty of two thousand dollars ($2,000) per acre-foot of water above the required reduction in overall volume discharged.

(2) The failure of an NPDES permitholder and affiliated water suppliers to submit a report required pursuant to subdivision (d) or (e) by the report's deadline shall result in a penalty of up to ten thousand dollars ($10,000).

(3) Moneys collected from the civil penalties levied pursuant to this subdivision shall be available, upon appropriation by the Legislature.

(h) The failure of an NPDES permitholder and affiliated water suppliers to submit a report required pursuant to subdivision (d) or (e) shall make the permitholder and suppliers ineligible for a state loan or grant until the delinquent report has been submitted.

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# SENATE BILL No. 785

**Introduced by Committee on Natural Resources and Water (Senators Stern (Chair), Allen, Borgeas, Caballero, Hertzberg, Hueso, Jackson, Jones, and Monning)**

March 11, 2019

An act to amend Section 2301 of the Fish and Game Code, and to amend Sections 31013 and 31116 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as introduced, Committee on Natural Resources and Water. Public resources: parklands, freshwater resources, and coastal resources.

(1) Existing law, until January 1, 2020, generally prohibits a person from possessing, importing, shipping, or transporting in the state, or from placing, planting, or causing to be placed or planted in any water within the state, dreissenid mussels, and authorizes the Director of Fish and Wildlife or the director's designee to engage in various enforcement activities with regard to dreissenid mussels. Among those activities, existing law authorizes the director to conduct inspections of waters of the state and facilities located within waters of the state that may contain dreissenid mussels and, if those mussels are detected or may be present, order the closure of the affected waters or facilities to conveyances or otherwise restrict access to the affected waters or facilities, with the concurrence of the Secretary of the Natural Resources Agency.

This bill would extend to January 1, 2030, the repeal date of those provisions.

Under existing law, a violation of these provisions is a crime. By extending the operation of these provisions, this bill would impose a state-mandated local program.

(2) Existing law establishes the State Coastal Conservancy in state government, and prescribes the powers and duties of the conservancy with regard to the protection, preservation, and enhancement of specified coastal lands in the coastal zone, as defined. Existing law requires the conservancy to implement various coastal protection programs and projects, and, for purposes of those provisions, defines a "nonprofit organization" to mean any private, nonprofit organization, that qualifies under a specified provision of the United States Internal Revenue Code and whose purposes are consistent with specified provisions related to the conservancy.

This bill would remove the requirement from that definition that the nonprofit organization's purpose be consistent with specified provisions related to the conservancy.

Existing law authorizes the State Coastal Conservancy to grant funds to a nonprofit organization under specified coastal protection programs and projects if the nonprofit organization enters into an agreement with the conservancy, subject to terms and conditions specified by the conservancy. Existing law requires any funds collected from a nonprofit organization pursuant to an agreement regarding a grant issued by the conservancy to be deposited in the Nonprofit Organization Land Trust Account in the State Coastal Conservancy Fund.

This bill would remove the requirement that any funds collected from a nonprofit organization pursuant to an agreement regarding a grant be deposited in the Nonprofit Organization Land Trust Account in the State Coastal Conservancy Fund, and would remove the provisions establishing the account in the fund.

(3) The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, among other things, authorized the issuance of grants to local governments from the sale of bonds for the acquisition, development, restoration, and enhancement of local parks, pursuant to the State General Obligation Bond Law, in specified amounts.

This bill would authorize the County of San Diego to transfer a specified parcel of park property, acquired with those bond funds, to the San Diego County Water Authority and would authorize the county to accept a transfer of a different specified parcel from the California Department of Transportation, if certain conditions are satisfied, including that the county signs an agreement with the Department of Parks and Recreation that ensures that the parcel transferred to the county is maintained and operated in perpetuity for park purposes, as

provided. The bill would state that the transfer of the state property is not a sale or other disposition of surplus state property within the meaning of the California Constitution.

This bill would make legislative findings and declarations as to the necessity of a special statute pertaining to the lands in the County of San Diego that are involved in the above-described transfer.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 2301 of the Fish and Game Code is amended to read:

2301. (a) (1) Except as authorized by the department, a person shall not possess, import, ship, or transport in the state, or place, plant, or cause to be placed or planted in any water within the state, dreissenid mussels.

(2) The director or ~~his or her~~ *the director's* designee may do all of the following:

(A) Conduct inspections of conveyances, which include vehicles, boats and other watercraft, containers, and trailers, that may carry or contain adult or larval dreissenid mussels. Included as part of this authority to conduct inspections is the authority to temporarily stop conveyances that may carry or contain adult or larval dreissenid mussels on any roadway or waterway in order to conduct inspections.

(B) Order that areas in a conveyance that contain water be drained, dried, or decontaminated pursuant to procedures approved by the department.

(C) Impound or quarantine conveyances in locations designated by the department for up to five days or the period of time necessary to ensure that dreissenid mussels can no longer live on or in the conveyance.

(D) (i) Conduct inspections of waters of the state and facilities located within waters of the state that may contain dreissenid

mussels. If dreissenid mussels are detected or may be present, the director or ~~his or her~~ *the director's* designee may order the affected waters or facilities closed to conveyances or otherwise restrict access to the affected waters or facilities, and shall order that conveyances removed from, or introduced to, the affected waters or facilities be inspected, quarantined, or disinfected in a manner and for a duration necessary to detect and prevent the spread of dreissenid mussels within the state.

(ii) For the purpose of implementing clause (i), the director or ~~his or her~~ *the director's* designee shall order the closure or quarantine of, or restrict access to, these waters, areas, or facilities in a manner and duration necessary to detect and prevent the spread of dreissenid mussels within the state. ~~No~~ *A* closure, quarantine, or restriction shall *not* be authorized by the director or ~~his or her~~ *the director's* designee without the concurrence of the Secretary of the Natural Resources Agency. If a closure lasts longer than seven days, the department shall update the operator of the affected facility every 10 days on efforts to address the dreissenid *mussel* infestation. The department shall provide these updates in writing and also post these updates on the department's ~~Internet Web site~~ *internet website* in an easily accessible manner.

(iii) The department shall develop procedures to ensure proper notification of affected local and federal agencies, and, as appropriate, the Department of Water Resources, the Department of Parks and Recreation, and the State Lands Commission in the event of a decision to close, quarantine, or restrict a facility pursuant to this paragraph. These procedures shall include the reasons for the closure, quarantine, or restriction, and methods for providing updated information to those affected. These procedures shall also include protocols for the posting of the notifications on the department's ~~Internet Web site~~ *internet website* required by clause (ii).

(iv) When deciding the scope, duration, level, and type of restrictions, and specific location of a closure or quarantine, the director shall consult with the agency, entity, owner, or operator with jurisdiction, control, or management responsibility over the marina, boat launch facility, or other facility, in order to focus the closure or quarantine to specific areas and facilities so as to avoid or minimize disruption of economic or recreational activity in the vicinity.

(b) (1) Upon a determination by the director that it would further the purposes of this section, other state agencies, including, but not limited to, the Department of Parks and Recreation, the Department of Water Resources, the Department of Food and Agriculture, and the State Lands Commission, may exercise the authority granted to the department in subdivision (a).

(2) A determination made pursuant to paragraph (1) shall be in writing and shall remain in effect until withdrawn, in writing, by the director.

(c) (1) Except as provided in paragraph (2), Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the implementation of this section.

(2) An action undertaken pursuant to subparagraph (B) of paragraph (2) of subdivision (a) involving the use of chemicals other than salt or hot water to decontaminate a conveyance or a facility is subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) (1) A public or private agency that operates a water supply system shall cooperate with the department to implement measures to avoid infestation by dreissenid mussels and to control or eradicate any infestation that may occur in a water supply system. If dreissenid mussels are detected, the operator of the water supply system, in cooperation with the department, shall prepare and implement a plan to control or eradicate dreissenid mussels within the system. The approved plan shall contain the following minimum elements:

(A) Methods for delineation of infestation, including both adult mussels and veligers.

(B) Methods for control or eradication of adult mussels and decontamination of water containing larval mussels.

(C) A systematic monitoring program to determine any changes in conditions.

(D) The requirement that the operator of the water supply system permit inspections by the department as well as cooperate with the department to update or revise control or eradication measures in the approved plan to address scientific advances in the methods of controlling or eradicating mussels and veligers.

(2) If the operator of water delivery and storage facilities for public water supply purposes has prepared, initiated, and is in compliance with all the elements of an approved plan to control

or eradicate dreissenid mussels in accordance with paragraph (1), the requirements of subdivision (a) do not apply to the operation of those water delivery and storage facilities, and the operator is not subject to any civil or criminal liability for the introduction of dreissenid mussel species as a result of those operations. The department may require the operator of a facility to update its plan, and if the plan is not updated or revised as described in subparagraph (D) of paragraph (1), subdivision (a) shall apply to the operation of the water delivery and storage facilities covered by the plan until the operator updates or revises the plan and initiates and complies with all of the elements of the updated or revised plan.

(e) Any entity that discovers dreissenid mussels within this state shall immediately report the discovery to the department.

(f) (1) In addition to any other penalty provided by law, any person who violates this section, violates any verbal or written order or regulation adopted pursuant to this section, or who resists, delays, obstructs, or interferes with the implementation of this section, is subject to a penalty, in an amount not to exceed one thousand dollars ($1,000), that is imposed administratively by the department.

(2) A penalty shall not be imposed pursuant to paragraph (1) unless the department has adopted regulations specifying the amount of the penalty and the procedure for imposing and appealing the penalty.

(g) The department may adopt regulations to carry out this section.

(h) Pursuant to Section 818.4 of the Government Code, the department and any other state agency exercising authority under this section shall not be liable with regard to any determination or authorization made pursuant to this section.

(i) This section shall remain in effect only until January 1, ~~2020,~~ *2030,* and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2020,~~ *2030,* deletes or extends that date.

SEC. 2. Section 31013 of the Public Resources Code is amended to read:

31013. "Nonprofit organization" means any private, nonprofit ~~organization,~~ *organization* that qualifies under Section 501(c)(3)

of the United States Internal Revenue ~~Code, and whose purposes are consistent with this division.~~ *Code of 1986.*

SEC. 3. Section 31116 of the Public Resources Code is amended to read:

31116. (a) Funds may be granted to a nonprofit organization under this division if the nonprofit organization enters into an agreement with the conservancy, ~~on such~~ *subject to* terms and conditions ~~as the conservancy specifies.~~ *specified by the conservancy.*

(b) In the case of a grant for land acquisition, the agreement shall provide all of the following:

(1) The purchase price of any interest in land acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the conservancy.

(2) The conservancy shall approve the terms under which the interest in land is acquired.

(3) The interest in land acquired pursuant to a grant from the conservancy may not be used as security for any debt to be incurred by the nonprofit organization unless the conservancy approves the transaction.

(4) The transfer of land acquired pursuant to a conservancy grant shall be subject to the approval of the conservancy and a new agreement sufficient to protect the interest of the people of California shall be entered into with the transferee.

(5) If any essential term or condition is violated, title to all interest in real property acquired with state funds shall immediately vest in the state.

(6) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state unless another appropriate public agency or nonprofit organization is identified by the conservancy and agrees to accept title to all interests in real property.

~~Any~~

*(c) Any* deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall set forth the reversionary interest of the state.

~~(c)~~

*(d)* The conservancy shall also require an agreement sufficient to protect the public interest in any improvement or development

constructed under a grant to a nonprofit organization for improvement and development of a project under this division. The agreement shall particularly describe any real property ~~which~~ *that* is subject to the agreement, and it shall be recorded by the conservancy in the county in which the real property is located.

~~(d) Any funds collected from a nonprofit organization pursuant to an agreement regarding a grant shall be deposited in the Nonprofit Organization Land Trust Account, which is hereby created, in the State Coastal Conservancy Fund.~~

SEC. 4. (a) For purposes of this section, the following terms have the following meanings:

(1) "Caltrans" means the California Department of Transportation.

(2) "County" means the County of San Diego.

(3) "Department" means the Department of Parks and Recreation.

(4) "SDCWA" means the San Diego County Water Authority.

(5) "SDCWA mitigation program" means the acquisition and development of sensitive habitat lands for compensatory mitigation purposes for biological resources impacts, in advance of impacts that will result from SDCWA's future capital projects or maintenance actions, consistent with its Department of Fish and Wildlife-approved Natural Community Conservation Plan.

(6) "SR 76" means the State Route 76 highway located in the county.

(7) "Parcel 1" means the parcel of property (Assessor Parcel Number 125-080-20) owned by the county, which is a 2.11-acre portion of a 69-acre property located west of the western terminus of 4500 Dulin Road in Fallbrook, California (92028), in the county, purchased for park purposes with the assistance of two million five hundred thousand dollars ($2,500,000) in grants from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Chapter 1.696 (commencing with Section 5096.600) of Division 5 of the Public Resources Code).

(8) "Parcel 2" means the parcel of property (Assessor Parcel Number 125-080-13) owned by Caltrans, which is a 2.11-acre portion of property located at 4141 Pala Road in Fallbrook, California (92028), in the county.

(9) "Parcel 3" means the parcel of property owned by SDCWA, which is a 2.76-acre portion consisting of fee and easement over

property located in the county on a portion of Assessor Parcel Numbers 125-080-19 and 125-090-36 impacted by Caltrans SR 76 highway improvement project.

(b) The Legislature finds and declares both of the following:

(1) Through a land exchange to be achieved through this act, the county proposes to transfer Parcel 1 to SDCWA because the county cannot utilize the parcel as it is geographically split from the rest of the county's 67 acres by the San Luis Rey River. SDCWA needs Parcel 1 because it is adjacent to the SDCWA mitigation program.

(2) The county further proposes that Caltrans transfer Parcel 2 to the county on behalf of SDCWA because Parcel 2 is not needed for transportation purposes but is adjacent to the county's remaining 67 acres. Caltrans is part of the exchange because it owes SDCWA compensation for receiving Parcel 3 for the construction of the SR 76 highway improvement project.

(c) Notwithstanding Chapter 2.5 (commencing with Section 5400) of Division 5 of the Public Resources Code, the county may transfer Parcel 1 to SDCWA and the county may accept Caltrans transfer of Parcel 2 to the county if all of the following conditions are satisfied:

(1) The county and Caltrans each provide an independent assessor's valuation of fair market value, conducted on or after January 1, 2018, of Parcel 1 and Parcel 2, respectively, to the department on or before May 1, 2020.

(2) The independent assessor's valuation of the fair market value of Parcel 2 is the same as or greater than the independent assessor's valuation of the fair market value of Parcel 1.

(3) Caltrans receives the approval of the California Transportation Commission for the transfer to the county of Parcel 2 as soon as is practicable.

(4) The county signs an agreement with the department on or before March 31, 2020, that includes all of the following provisions:

(A) All ongoing obligations of the county connected with Parcel 1 in accordance with the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Chapter 1.656 (commencing with section 5096.600) of Division 5 of the Public Resources Code) and any grant agreements entered into pursuant thereto will be transferred to Parcel 2.

(B) The county ensures that Parcel 2 is maintained and operated in perpetuity for park purposes.

(5) All costs associated with the transfers of Parcels 1 and 2 shall be borne by, or reimbursed by, the county on or before July 31, 2020.

SEC. 5. The Legislature finds and declares that the transfer of state property authorized in Section 4 of this act does not constitute a sale of state property as set forth in Section 9 of Article III of the California Constitution or subdivision (g) of Section 11011 of the Government Code.

SEC. 6. The Legislature finds and declares that, with respect to Section 4 of this act, a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances applicable to the lands in the County of San Diego described in Section 4 of this act.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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**EAST BAY MUNICIPAL UTILITY DISTRICT**

DATE: April 4, 2019

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager ARC

FROM: Xavier J. Irias, Director of Engineering and Construction XJI

SUBJECT: Electrical Engineer Recruitment and Retention Efforts

## INTRODUCTION

This memo provides an update on the District's efforts to recruit and retain electrical engineers in response to concerns raised by Local 2019 at the February 26, 2019 Board meeting about contracting out electrical engineering resources and staffing issues. This information will be discussed at the April 9, 2019 Legislative/Human Resources Committee meeting.

## SUMMARY

Retention and recruitment statistics for the past six years indicate positive long-term staffing trends for District electrical engineers in the Engineering and Operations and Maintenance (O&M) Departments. This is evidenced by relatively low turnover, "grow our own" success stories, and a high rate of internal promotions of electrical engineers in Engineering. Despite these positive long-term trends in retention and recruitment, specific areas of continued focus include recruitment of experienced external applicants and retention in the Wastewater Department. To address those issues and to further improve the District's overall recruitment efforts, a number of initiatives have been implemented and additional alternatives are being considered.

## DISCUSSION

### Electrical Engineer Staffing and Retention Trends

The District has ramped up its in-house electrical engineering capabilities in recent years. Figure 1 (attached) shows that the total number of District Associate Electrical Engineer positions (filled and vacant) from FY05 to FY18 increased from 10 to 18 FTE in the Engineering and O&M Departments, which encompasses the majority of the District's electrical engineers. Additionally, the District piloted a new commissioning group and based on the proposed budget for FY20-21, this group and its electrical engineers will now be a permanent resource.

Staff retention for the total 28 regular (permanent) electrical engineers in the Engineering and O&M Departments is also generally very good, as shown by Figure 2 (attached). There were only

two electrical engineer resignations from FY14 to FY19 within these departments. This corresponds to a low annual average turnover rate of only 1.2 percent. This is lower than the District-wide rate of 1.7 percent over the same time period. Figure 2 also shows that the turnover rate associated with the four electrical engineers in the Wastewater Department is higher at 12.5 percent. Figure 2 also indicates that the rates of probationary releases for electrical engineers in Engineering, O&M, and Wastewater are higher than the District's average. This may be indicative of challenges in recruitment for those specific positions. Factors and challenges impacting the recruitment of electrical engineers are discussed in more detail below.

**Initiatives Supporting Retention of Electrical Engineers**

The overall high rate of retention in the Engineering and O&M Departments may be explained in part by the significant investments that the District makes in staff including electrical engineers. Those investments include three major aspects: a strong career ladder starting with Engineering Aides, a rotation program and other cross-division collaboration to build skills and promotability, and significant technical training. Each is discussed below.

A strong career ladder, by which an engineer may grow at the District over their entire career, is foundational to the District's "grow our own" approach. The career ladder begins at the level of Engineering Aide, and continues to Junior Engineer, Assistant Engineer, Associate Engineer, and Senior Engineer. This approach has been extremely successful for electrical engineers in the Engineering Department, which includes a majority of the District's electrical engineer positions. The Wastewater Department has a small number of electrical engineers, which could partially explain the higher turnover in that department. Career paths and promotional opportunities are available across departments, as demonstrated by several electrical engineers who were successfully promoted over the years in positions outside of their department. Three current Associate Electrical Engineers and one Junior Engineer began their careers as Engineering Aides.

The District's voluntary rotation program maximizes opportunities for staff to build skills that can enhance promotability. In recent years, four electrical engineers from the Engineering Department have participated in the rotation program and two more are scheduled to participate in the near future. Additionally, two engineers from the O&M Department will be working alongside Design Division and Honeywell engineers to install and connect the new control system. Continued expansion of the rotation program is planned.

Training is a final element of staff investment, and the District invests heavily. For example, in 2017 and 2018, the District invested over 1,000 hours of technical training, or over 30 hours on average per electrical engineer per year. Technical training covered a wide range of topics that support the "grow our own" approach and reduce the District's overall reliance on consultants.

**Electrical Engineer Recruitment Trends**

While recruitment for regular (permanent) positions is usually successful, the following challenges are worth noting:

- In the current hot job market, qualified electrical engineers may not be willing to leave their current jobs for the temporary positions sometimes offered by the District.
- A significant number of experienced electrical engineers are not licensed and thereby are unable to meet the District's minimum qualification to apply for an associate position.
- The District's job announcements require a very wide range of desired skills and experience, including electrical engineering design, industrial control system engineering, and commissioning, and many applicants have a more limited subset of skills.
- Few universities have a formal curriculum in power engineering, a particular branch of electrical engineering, which is reflected at the District by difficulties in hiring electrical engineers with power experience.

The District has sometimes seen relatively low numbers of qualified external applicants for regular electrical engineer positions at the assistant and associate levels. It should be noted that other public agencies have experienced similar challenges in recruiting experienced electrical engineers. Nevertheless, the District has been successful in filling many of its electrical engineer positions through internal promotions. Examples of internal promotions in the Engineering Department within the last three years include one Assistant Engineer promoted to an Associate Electrical Engineer and three Associate Electrical Engineers promoted to Senior Electrical Engineer. This is evidence of success in the District's "grow our own" strategy.

**Forward-Looking Initiatives**

A number of initiatives have been successfully implemented and options are being considered to further improve the District's recruitment efforts including:

***Design Division Reorganization:*** The District's Design Division recently reorganized to enable workgroups to focus on electrical engineering design, industrial control system engineering, and commissioning services.

***Targeted Recruitments:*** Prior to the reorganization, recruitment efforts targeted resources with a wide breadth of skills in the electrical engineering field. The reorganization allows recruitment efforts to target specific skill sets required for each workgroup, which is expected to increase the number of qualified applications received for these positions.

***Work Requiring Electrical Engineer vs. Technician-Level Skills:*** There is a body of work currently done by District electrical engineers that does not necessarily require an engineering education and licensure. For example, some of the tasks associated with inspection, field testing, trouble-shooting, and/or programming of electrical equipment, such as building/testing displays,

may be done by a trained, qualified technician or "specialist." As one example, establishment of a new classification for an industrial control systems specialist would allow the District to recruit a diverse group of highly talented employees to perform critical work for the District, and provide a promotional path for instrument technicians who have the aptitude and talent for this type of work. These specialists would work under the direction of licensed engineers.

***Flex Staffing as a Pathway to Licensure:*** The District requires a Professional Engineering (PE) license to qualify for an Associate Electrical Engineer position. This requirement is not consistent with private industry practice which does not require licensure for some engineering specialties, such as industrial control systems engineers. Options currently being explored to address this issue include flexibly staffing some positions as assistant engineer/associate engineer. This could help attract higher quality applicants by providing a potential (though still not guaranteed) pathway to the associate level.

**NEXT STEPS**

The District will continue to pursue different initiatives discussed in this memorandum, in an effort to further improve its electrical engineering recruitment and retention efforts. Next steps and other avenues and initiatives that will be explored include:

- Continued dialogue with the unions on ideas and options that could be pursued to improve recruitment and development, including how to provide a good mix of work, including office and field experience, while also permitting specialization.
- More flexing of positions to enable hiring well qualified external candidates to begin at the District without a license.
- More formalized training and rotational assignments for junior and assistant engineers to gain field experience working with District electricians.
- Further discussions on establishing an industrial control systems specialist job classification to perform critical work for the District.
- Broader outreach efforts, including to various professional electrical engineering organizations, outside of the Bay Area, and through different networking sites like LinkedIn, for future recruitments.

ARC:XJI:svt

Attachment

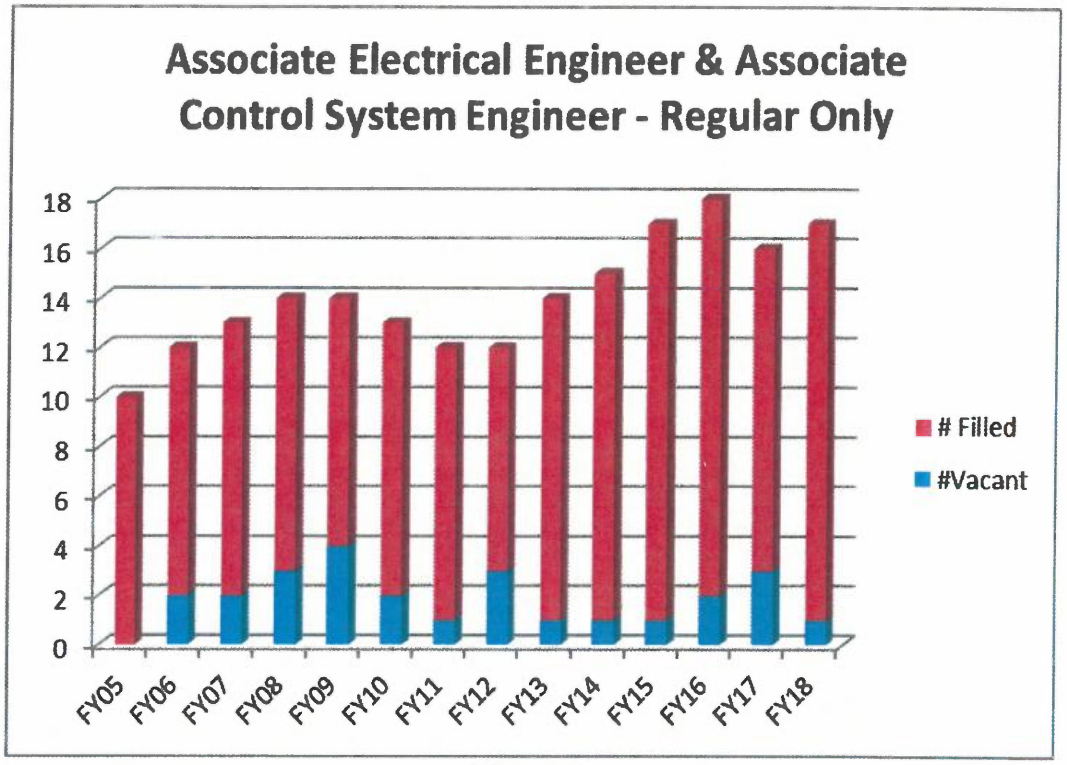


**Figure 1**
**Associate Electrical and Control System Engineers Staffing Trends**

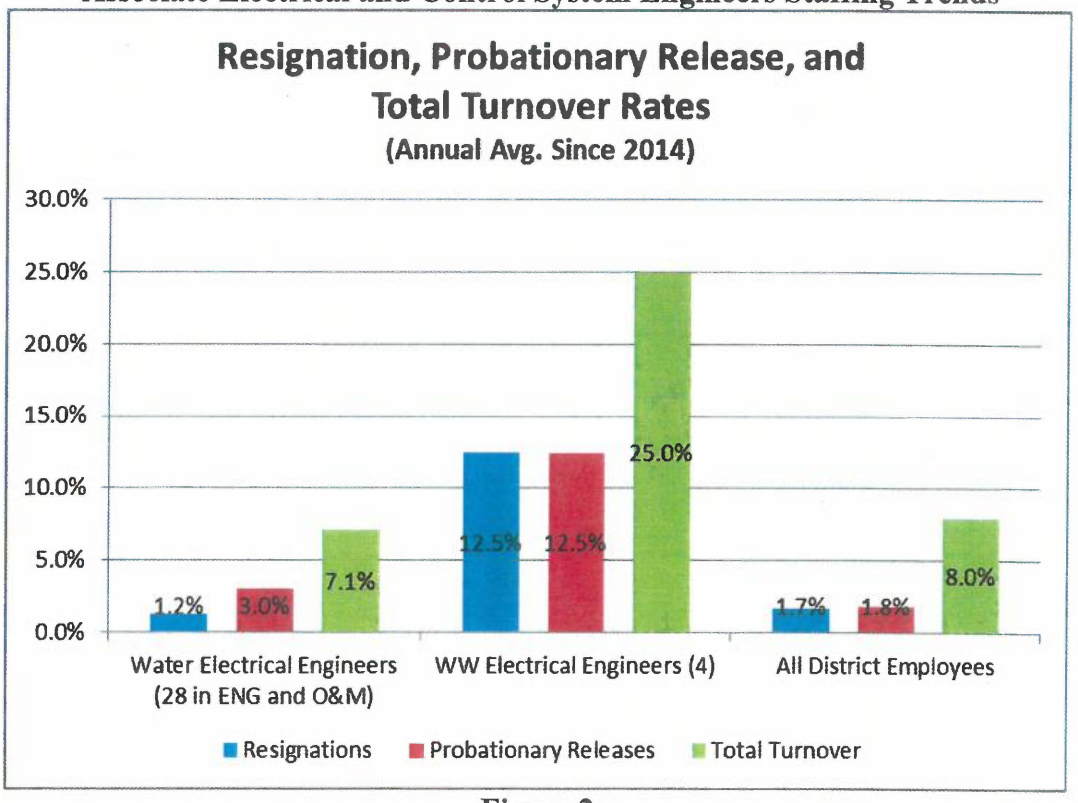


**Figure 2**
**Electrical Engineers Separation History and Total Turnover Rates**
**Includes all Junior, Assistant, Associate, and Senior Electrical Engineers – Regular Only**
**(Including electrical engineers in BU554, 555, 739, 783, and 929)**