

SCAP

SOUTHERN CALIFORNIA ALLIANCE OF
PUBLICLY OWNED TREATMENT WORKS



Submitted via Electronic Mail to Michael.Bedard@sen.ca.gov

January 12, 2016

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

Subject: **SB 163 (Hertzberg): Recycled Water Mandate
for Ocean Dischargers**

Dear Senator Hertzberg,

The Southern California Alliance of Publically Owned Treatment Works (SCAP) appreciates the opportunity to submit comments and share our concerns with many of the provisions of SB 163 pertaining to recycled water and ocean discharge. We are aware that you previously asked the California Association of Sanitation Agencies (CASA) to delineate several of their concerns in a formal letter to you, and we readily support their concerns and suggestions, along with several of our own for your consideration.

SCAP is a regional association representing more than 82 municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, renewable energy generation and water recycling services to millions of Californians. Collectively our members environmentally treat more than 2 billion gallons of wastewater each day and, in the process, convert wastes into resources such as recycled water and renewable energy. Like CASA, our membership includes almost all of the ocean dischargers who would be directly impacted by the approach currently outlined in the bill, and many more who are interested in issues pertaining to recycled water production throughout the state.

The wastewater community is highly supportive of developing recycled water projects and invested in seeing increased recycled water production in the future. We appreciate your interest in finding ways to promote this vital renewable resource and initiating this important policy discussion. Unfortunately, the statewide ocean discharge prohibition currently contemplated by SB 163 is simply not feasible, practical, or cost effective. The proposed mandate on all ocean dischargers is counter-productive and does not take into account the numerous barriers that currently exist to beneficially using this water.

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Moreover, we believe consideration of a blanket mandate approach is premature given current and ongoing regulatory efforts that have not yet been completed, and the fact that recycled water production is expected to increase significantly over the next decade absent a mandate. SCAP member agencies are already producing hundreds of thousands of acre-feet of recycled water each year, and with recent funding initiatives and the potential for additional incentives down the road, wastewater agencies are well on the way to meeting the goals set forth by the State Water Resources Control Board (State Water Board) to increase recycled water use by 1,000,000 acre-feet per year by 2020 and 2,000,000 acre-feet per year by 2030.

Specifics regarding technical concerns with the mandate approach and suggestions for more effective alternatives that were developed by CASA, and supported by our SCAP members, are provided below:

One Hundred Percent Beneficial Reuse is Not Feasible

As currently drafted, SB 163 would require each wastewater treatment facility that discharges through an ocean outfall to achieve at least 50 percent reuse of the facility's actual annual flow for beneficial purposes by 2026 and 100 percent by 2036. This type of blanket mandate approach is counter-productive and unattainable for a variety of reasons. Perhaps most importantly, in many cases, the regional demand simply does not exist to beneficially reuse 100 percent of an agency's ocean discharge. Every watershed, region, treatment facility and outfall is different, and the capability for beneficial reuse of water varies among facilities that would be subject to this mandate.

The numerous factors relevant to determining how much recycled water an agency can beneficially reuse include, but are certainly not limited to: (1) availability and variety of potential beneficial uses in the region (demand), (2) proximity of a discharger to groundwater recharge sites or surface water reservoirs that could facilitate indirect potable reuse, (3) access to willing water supply purveyors and/or a consolidation of treatment and supply functions in certain agencies, (4) pre-existing levels of treatment at a facility and existing recycled water distribution infrastructure, (5) susceptibility of the local community to development of purple pipes and other distribution infrastructure, and (6) the cost-benefit analysis associated with financing the necessary infrastructure and ongoing operations and maintenance expenses, including the availability of local, state, and private financing options for agencies and their ratepayers. These and a myriad of other factors make each ocean discharger's ability to recycle a set percentage of their wastewater highly variable both in terms of practicality and cost. A blanket mandate on all ocean dischargers to recycle 100 percent of their wastewater does not take any of these nuanced and important factors into account, and allows for no regional variability.

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In addition, the ability or authority of a wastewater ocean discharger to purvey recycled water is of particular concern and can present some significant logistical problems. Agencies that produce recycled water are not always authorized water purveyors, and the relationship between water and wastewater entities varies widely in different regions. Some agencies are authorized to perform both functions, though many are not. Some are authorized to serve in some areas, but not in others, due to service duplication concerns. Some dischargers would only have to work with a single water purveyor, while others would be required to work with numerous purveyors.

The bill does not take into account existing water supply planning efforts being conducted by water purveyors, and could result in the development of additional supplies with no actual nexus to water demands in a particular area. In other words, a reliable and feasible outlet for recycled water is not always available, and is dependent on factors other than simply the ocean discharger's technical ability to produce recycled water.

Moreover, the idea that a recycled water "market" might develop in areas where it is difficult to find willing partners to purvey the water fails to account for the transactional realities of providing water and wastewater service. If a mandate were to take effect, as currently contemplated by SB 163, then there is no true "market" transaction available because wastewater agencies with ocean outfalls would simply be *required* to produce and provide the underlying commodity. This is a one-sided market in which wastewater agencies would be hard pressed to recoup any of the costs associated with increasing recycled water production.

The Infrastructure Costs Associated With 100 Percent Mandatory Reuse Are Prohibitive

Even if there were an unlimited supply of beneficial uses for all recycled water currently being discharged to the ocean, which is not the case, the cost of implementing such a mandate would be in the billions of dollars. Some ocean dischargers would be required to develop advanced treatment infrastructure at a cost of hundreds of millions of dollars, and nearly all agencies would be required to develop additional distribution infrastructure to deliver this new water (e.g. purple pipes, pumps, etc.). Depending on the region, this too could be in the hundreds of millions of dollars per agency, contingent on some of the factors identified above. In some areas, this could be entirely cost prohibitive. Despite recent increases in grant and low interest loan funds provided for recycled water through Proposition 1 and the State Revolving Fund (SRF) Loan program, the current level of assistance is nowhere near enough to make the 100 percent mandate affordable for local ratepayers.

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The Mandate is Premature in Light of Pending Regulatory Efforts

Aside from the practical and cost implications of moving to a 100 percent mandate for ocean dischargers, the effort is premature in light of pending regulatory efforts intended to lay the foundation for additional recycled water production and beneficial uses moving forward. Specifically, there is an existing “regulatory gap” that needs to be filled before wastewater agencies can determine what methods and processes are available to increase recycled water production and identify all avenues for beneficial reuse.

For example, the State Water Board is currently conducting meetings of an advisory group on the feasibility of developing criteria for direct potable reuse (DPR). Depending on the results of that process and any regulations or actions that arise therefrom, the suite of options for wastewater agencies to beneficially reuse their water could change dramatically. As another example, the State Water Board is also pursuing the adoption of regulations regarding surface water augmentation with recycled water. That process will inform available options for those agencies not in close proximity to a groundwater recharge basins, and could change the dynamics of decision making at certain agencies. These regulatory processes need to be finalized before agencies can fully evaluate their options as it relates to appropriate levels of treatment, available outlets for recycled water, and the best “fit” for a particular discharger. Adopting a mandate in advance of the completion of these regulations and processes would require agencies to pursue paths that might not be the most beneficial to the agency, the ratepayers, or water supply in the state.

A Blanket Mandate Fails to Account for Several Other Significant Legal, Practical and Water Quality Considerations

In addition to the practical and financial barriers to implementing a mandate on all ocean dischargers, and the fact that such an effort is premature in light of ongoing regulatory processes, there are several other issues that do not receive adequate consideration in SB 163. For example, many Southern California agencies use ocean outfalls as part of their salinity management options, and the disposal of brine from more inland areas to the ocean is sometimes the only reasonable and cost effective means of maintaining or improving water quality. Mandating reuse of 100 percent of all wastewater from ocean outfalls essentially eliminates that option, creating potential water quality problems for inland agencies and having a potentially negative impact on the environment. For those agencies using these “brine lines”, some discharge from ocean outfalls will always be necessary to cost effectively manage salinity. Without the availability of ocean discharge as an avenue for brine disposal, other options would need to be pursued, many of which are far more controversial, expensive, energy intensive and less environmentally desirable.

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Moreover, water use (including recycled water use) is seasonally variable and requires sufficient storage facilities to meet distribution needs. Adequate recycled water storage may not be available (or could be cost prohibitive to develop) in some cases, and may be simply unreasonable when the storage must account for 100 percent of a facility's discharge.

In addition, a whole host of issues associated with water rights are raised by mandating 100 percent reuse, particularly in areas where there is an adjudicated basin or frequent disputes related to water supply. A mandate that does not take into account these regional considerations is certain to result in greater confusion and litigation. Moreover, declaring that "the discharge of treated wastewater from ocean outfalls constitutes waste and unreasonable use of water" as that term has been used in Article X of the California Constitution has potentially significant and meaningful consequences for all waste dischargers. These consequences need to be considered by a variety of interested parties before being included in any part of the bill.

Finally, public acceptance of beneficial reuse of wastewater, both for direct potable and indirect potable reuses, still remains an obstacle for agencies to fully take advantage of recycled water production and distribution. While wastewater agencies and others are actively seeking to educate the public and dispel any misconceptions regarding the safety of recycled water, this remains an issue that needs to be addressed. Local resistance to beneficial reuse, or restrictions on the types of uses to which recycled water can be put, could prevent agencies with ocean outfalls from recycling 100 percent of their effluent, and result in customer and ratepayer backlash. All of these technical issues need to be fully addressed before this concept could practically be implemented, and the examples above demonstrate why these decisions need to be made locally and regionally rather than as a blanket statewide mandate.

Efforts to Promote Increased Recycled Water Production Should Focus on Known Gaps: Increased Infrastructure Funding and Information Gathering on Recycled Water Potential

CASA along with SCAP and the wastewater community support the underlying motivation of SB 163, which we understand to be finding ways to increase the production and distribution of recycled water in the state of California. Recycled water can provide a reliable and sustainable water supply solution to meet at least a portion of the state's water supply needs. While we fundamentally disagree with the mandate approach that is currently in the bill, there are two areas in which legislation might be useful in increasing recycled water production and beneficial reuse in the state.

The first is increased funding for non-potable recycled water and associated storage projects as well as funding for potable reuse projects beginning with advanced planning. Recycled water and potable reuse infrastructure funding is needed to get many if not most of these projects off

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the ground, and a bill to incentivize these projects through increased funding would always be welcome. The second is a bill that focuses on information gathering and planning for future use of recycling and potable reuse at the local and regional level. There is currently a lack of high quality and comprehensive information regarding what the actual capacity is for reusing water in the state and indeed in each watershed and region. Early planning efforts are essential to successful project implementation and funding for such efforts would allow water and wastewater agencies to work together in an integrated fashion. Perhaps the use of IRWD groups to help coordinate and facilitate regional involvement could be a consideration. It is possible a dedicated effort at the State Water Board, with the participation of ocean dischargers, to look into this issue would be warranted prior to the consideration of any mandate. These alternatives are a starting point for language that SCAP and CASA could ultimately consider supporting, and are a far more productive and effective approach to promoting recycled water in the state.

We appreciate your efforts to promote the recycling and reuse of water and address critical water supply shortages through beneficial reuse, and we look forward to working with you and your staff on SB 163 in the coming year. Should you have any questions or discuss any of the matters identified above in greater detail, please do not hesitate to contact me at (760) 479-4121 or jpastore@scap1.org. Thank you for your consideration of SCAP's concerns.

Sincerely,

John Pastore, Executive Director

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