San Gabriel Valley Council of Governments

REVISED AGENDA AND NOTICE

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

Wednesday, June 21, 2017, 10:00 AM

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

Water Policy Committee

Chair: Diana Mahmud
City of South Pasadena

Vice-Chair: Judy Nelson
City of Glendora

Members
Claremont
Diamond Bar
Glendora
Monrovia
Rosemead
Sierra Madre
South Pasadena

Water TAC

Chair: Shane Chapman
USGVMWD

Vice Chair: Vacant

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

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

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

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

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

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

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

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

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

PRELIMINARY BUSINESS

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

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

4. Water Committee/TAC Meeting Minutes – 5/17/2017
Recommended Action: Approve.

PRESENTATION

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

5. Election of Chair and Vice Chair for the Water Policy Committee for 2017-2018
Recommended action: receive nominations and elect Chair and Vice Chair for 2017-2018

6. Election of Chair and Vice Chair for the Water Technical Advisory Committee for 2017-2018
Recommended action: receive nominations and elect Chair and Vice Chair of the Water TAC for 2017-2018

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

7. Legislative Updates
- State Legislation
  - AB 1654 (Rubio)
- Federal Legislation
  - HR 2355 WIFA
  - HR 2510 WQP&JCA

Recommended Action: for discussion.

INFORMATION ITEMS

8. Regulatory Updates
- Report on Waste Discharge/MS4 Permit update.
- 303(d) List
- Waters of the United States Informal Comment Submission

Recommended Action: for information.

9. Water Boards Update
- State Board
- Regional Board:

Recommended Action: for information.

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

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

Recommended Action: for information.

12. Litigation Update
Recommended Action: for information.

13. Stormwater Outreach Updates
- Flood Control Tour w/ Congresswoman Napolitano, TBD
- Supervisor Barger, June 22nd
- South Bay Cities COG, July 27

Recommended Action: for information.

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

EXECUTIVE DIRECTOR'S COMMENTS

CHAIR'S REPORT

ANNOUNCEMENTS

The next LA Water Board meeting will be on July 6th.
The next Water Policy/TAC meeting will be on July 19th. (dark?)

ADJOURN

SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes

Date: May 17, 2017
Time: 10:00 AM
Location: Upper San Gabriel Valley Municipal Water District
602 E. Huntington Drive, Monrovia, CA

PRELIMINARY BUSINESS

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

2. Roll Call

Water Policy Committee Members Present
S. Pedroza, Claremont
N. Lyons, Diamond Bar
J. Nelson, Glendora
G. Crudgington, Monrovia
M. Clark, Rosemead
J. Capoccia, Sierra Madre
D. Mahmud, South Pasadena

Water Policy Committee Members Absent

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

Water TAC Members Absent

Ex Officio Members Present
S. Green, LA County Sanitation District
R. Serna, K Gardner, SG Basin Watermaster

Ex Officio Members Absent
Foothill Municipal Water District

Guests
J. Carver, M. Cansino, Pomona
R. Tahir, TECS Environmental
B. Pence, Congresswoman Napolitano
Dr. G. Amenu, J. Hoo, LACDPW
K. Kearney, Bradbury
E. Vizcarra, LACDPW
M. Lutz

SGVCOG Staff
P. Hawkey
E. Wolf

3. Public Comment. R. Tahir gave a presentation focused on his belief that some cities may be miss-assigned to the Upper LA River EWMP. The crux of the argument has to do with the proposed delisting of metals from the 2016 303(d) list, which will likely lower EWMP compliance costs considerably. Furthermore, Tahir believes some permittees are assigned to the wrong reach within a river. He believes the delisting triggers reconsideration of

assignment to watersheds and reaches.

CONSENT CALENDAR

4. Water Committee/TAC Meeting Minutes – 4/19/2017

There was a motion to approve the minutes. (M/S: J Nelson/G. Crudgington).

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

PRESENTATION

ACTION ITEMS

5. AB 1669 (Friedman)

D. Mahmud discussed AB 1669 and AB 968 together. The Friedman bill gives the SWRCB authority to set long-term urban water use standards, whereas the Rubio bill leaves the authority in the hands of a stakeholder working group under the control of the DWR. AB 968 also allows for regional differences such as climate and population.

D. Mahmud brought to the committee's attention the fact that Governor Brown's Budget Trailer Bill includes language that is almost exactly the same as AB 1669. California budget enactment procedures require the budget to be adopted by June 15th. Members of the committee discussed the COG taking a position opposing this portion of the budget trailer bill.

6. AB 968 (Rubio)

One concern that was brought up was that 968 does not consider recycled water in the calculation of urban water use. D. Mahmud was concerned that by giving recycled water an exclusion, there is no incentive to promote the use of recycled water. For this reason, Mahmud motioned a "support if amended" position, and suggested working with the author to include recycled water in the calculation of urban water use. K. Gardner pointed out that if recycled water is included in the calculation, the demand for recycled water will go down and the cost of those projects will be relatively more expensive, meaning some of them will not be economically viable and may not be built. After discussion, Mahmud's motion was not seconded. S. Pedroza motioned that the Governing Board support AB 968 as is, with language in the resolution that makes it clear that the COG supports conservation of all water, from whatever source, including recycled water.

There was a motion to support AB 968 with inclusion of language in the resolution as proposed by S. Pedroza. (M/S: S. Pedroza/M. Clark).

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

7. EPA WOTUS Rulemaking Submission

D. Mahmud reviewed the history of WOTUS legal challenges and the consolidation of those cases at the 6th Circuit Court of Appeals. She discussed the EPA's informal call for comment in their process of revising the WOTUS definition per President Trump's February 2017 Executive Order. Mahmud asked the committee for guidance on what issues to submitted to the EPA's informal call for comments. The committee agreed on the following list:

- What constitutes a water/storm event for purposes of WOTUS? How frequently does it have to occur? How much water must be involved? What regulation applies if all (or most of) that water is controlled through the flood control system's engineering procedures?
- Create an exemption for engineered channels, built for the express purpose of flood control.
- Create and exemption for spreading grounds.
- Create an exemption for stormwater conveyance when that conveyance is for the purpose of moving stormwater to a site more advantageous for capture and infiltration.
- Define where WOTUS application begins and ends when considering stormwater conveyance; that point is theoretically somewhere between the curb and the ocean.

There was a motion to recommend that the Governing Board submit informal comments to the EPA covering the topic areas listed. (M/S: G. Crudgington/M. Clark).

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

DISCUSSION ITEMS

INFORMATION ITEMS

8. Legislative Updates

- State Legislation

  E. Wolf reviewed changes to AB 1180 (Holden). Assembly Leadership does not want to move the bill out of the Appropriations Committee over concerns about raising fees. Assembly Member Holden's staff contacted the COG to get our concurrence with gutting and amending the bill. In its new form, the bill would direct the Department of Toxic Substances Control to adopt regulations for tires containing zinc. The committee discussed the Governing Board taking a support position for the revised version of AB 1180 should the revised bill make it out of committee.
- Federal Legislation

  There was no discussion of this item.

9. Regulatory Updates

- Report on Waste Discharge/MS4 Permit update.

  In response to R. Tahir's presentation regarding the proper assignment of permittees to EWMPs, D. Mahmud discussed the impact on ROWD and permit updates due this year. She asked LACDPW to consider taking the lead in reviewing the proper formation of

the Upper LA River EWMP. P. Alva stated that the County is already the lead in the Upper San Gabriel and Marina Del Rey EWMPs, and they will look into the formation and leadership of the Upper LA River EWMP.

- Regional Board 303(d) list workshop
  G. Crudgington reported on the Regional Board's 303(d) list workshop. She thanked the Sanitation District and County Public Works for their thorough comment letters. Crudgington noted that Regional Board officers were dissatisfied with the work of their staff, especially the many mistakes that were pointed out by stakeholders at the workshop. Dr. Amenu, County Public Works, noted that on the positive side, the Board did agree to update their database to include some of the information County provided to them; and they agreed that concrete channels should be treated differently when considering biological impairments. Unfortunately, the Regional Board was not swayed to reconsider how it applies variations in temperature or toxicity.
  The Regional Board directed their staff to continue working on the list to address discrepancies but it was clear that due to SWRCB imposed time limits, the list would be forwarded to the State Water Board as is, and that any additional concerns of permittees would have to be addressed when the State Board opens its comment period.

10. Water Boards Update

- State Board: STORMS Seminar Series: Municipal Finance of Stormwater Projects
  - Video: https://youtu.be/iGjbpVqzjUU
  - Slides: https://www.waterboards.ca.gov/STORMS

  There was no discussion on this item.
- Regional Board: May 4 meeting
  Board Chairwoman, Irma Munoz, has been expanding her "listening campaign" to include businesses. The Board discussed its difficulty in monitoring industrial permittees due to limited staff and stated that they may rely on cities to help with that function.

11. LA County Water Resilience Update

J. Nelson and D. Mahmud attended the last meeting where the Director of LACDPW, Marc Pestrella, gave a presentation and updated members. The meeting covered:

Education. The County will initiate a public education campaign.

Stormwater Capture. Pestrella stated that the County will construct and operate stormwater capture and infiltration facilities.

Polling. Polling shows that residents believe cities are already complying with stormwater regulations and therefore, they must have enough money.

Nelson and Mahmud advocated that any fee or tax increase must include a local return component.

12. Water Supply Update

- Upper District Update
  M. Gouveia provided handouts showing the status of water/snow pack throughout the state.
- Watermaster Update
  K. Gardner discussed the Water Resource Development Fee, approved by the Watermaster Board of Directors last month. The additional fee will increase retail water suppliers' rates by increments over the next five years in order to pay for imported water to replenish the Main San Gabriel Basin. She stated that there is currently testing being conducted to determine if invasive quagga mussels are in our local water supplies. Gardner stated that despite the record amount of rainfall this winter and spring, the Key Well peaked in February and has declined since then. This

is due to the fact that the ground was so dry that it soaked up much of the rainfall; rainfall never made it through to the aquifer.

13. Litigation Update

There was no discussion of this item.

14. Stormwater Outreach Updates

- EPA/Regional Board/LACDPW meeting
- Supervisor Barger

There was no discussion of these item.

15. E/WMP Updates

There was no discussion of this item.

EXECUTIVE DIRECTOR'S COMMENTS

CHAIR'S REPORT

ANNOUNCEMENTS

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

ADJOURN

The meeting adjourned at 12:10 P.M.

REPORT

DATE: June 21, 2017

TO: Water Policy Committee, Water Technical Advisory Committee

FROM: Eric Wolf, Senior Management Analyst

RE: ASSEMBLY BILL 1654 (RUBIO), URBAN WATER MANGEMENT PLANNING

RECOMMENDED ACTION

For information and discussion.

BACKGROUND

Existing law requires urban water suppliers to prepare and adopt an Urban Water Management Plan (UWMP). Those plans must include an assessment that describes the reliability of water supplies and the vulnerability to seasonal and climate changes. To address those contingencies, urban water suppliers must conduct a Water Shortage Contingency Analysis (WSCA). The analysis will include stages of action to be taken in response to water supply shortages, including up to a 50% reduction in water use. Consumption reduction methods must be described in the UWMP.

ASSEMBLY BILL 1654

AB 1654 makes several changes to the UWMP and WSCA in order to address times of drought and/or water shortage. It requires water suppliers to report to DWR the status of water resources and whether those supplies will be adequate to meet projected customer demand. If not, what responses will be implemented. It requires triggers for anticipated stages of action, communication strategies associated with those stages, anticipated actions to balance water supply and demand for each stage, anticipated process for ensuring compliance with prohibitions, and a description of the authority for implementing actions. The two major provisions of the bill are protections for urban water suppliers against state-wide reduction mandates and the definition of a new category of water, "emergency supply." The bill prohibits, during a drought or water shortage, an urban water supplier from being required to reduce its use or reliance on any water supply available, or to take additional actions beyond those specified in its WSCA. It would add to the UWMP a description of how an emergency water supply has been established to increase water supply reliability during times of shortage.

This is one approach of several, to strengthen drought response. The general framework of all of the approaches is to require urban water suppliers to apply a more stringent test of reliability of water supply in UWMPs and create triggered stages of response to a projected or current water shortage. This bill differs in that it creates a new category of water supply, an emergency supply, which can be identified as an existing or planned source of water. An emergency supply must be a supply that is in addition to supplies used during non-shortage times. Specifically calling out emergency supply will encourage investment in those supplies. Virtually any source of supply could qualify as an emergency supply: desalination, recycled water, and groundwater banking.

DISCUSSION

By creating the emergency water supply category and incorporating it into UWMPs, water suppliers would now be credited for investing in these sources. This could possibly spur research, innovation, and investment in this area. Capture and infiltration of stormwater at a regional level is an approach that the COG has been pursuing. This approach could qualify as ground water banking under the emergency supply category. SB 1654 aligns with the goals of the COG.

Prepared by: _____
Eric Wolf
Senior Management Analyst

Approved by: _____
Marisa Creter
Assistant Executive Director

ATTACHMENTS

Attachment A – AB 1654 (Rubio)
Attachment B – AB 1654 (Rubio) Assembly Floor Analysis

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1654

Introduced by Assembly Member ~~Cooper~~ *Rubio*

February 17, 2017

An act to amend ~~Section 10608 of~~ *Sections 10621, 10631, 10632, and 10635 of, to repeal Section 10631.7 of, to add Sections 10613.5 and 10658 to, and to add Part 2.56 (commencing with Section 10609) to Division 6 of,* the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1654, as amended, ~~Cooper~~ *Rubio*. Water ~~conservation.~~ *shortage: urban water management planning.*

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

This bill would require the update of a plan on or before July 1, in years ending in one and 6. The bill would require each urban retail water supplier to report annually by June 15 to the Department of Water Resources the status of its water supplies for that year and whether the supplies will be adequate to meet projected customer demand, as prescribed. The bill would require the urban retail water supplier to implement the appropriate responses as described in its water shortage contingency analysis if the urban retail water supplier reports that all available water supplies for the applicable water year will not be adequate to meet projected customer demand. The bill would require

the urban retail water supplier to continue to implement the mandatory demand reduction measures described in its water shortage contingency analysis until certain conditions have changed to the point that the urban retail water supplier finds that it is able to meet projected customer demand over the next 12 months without continued implementation of the measures. The bill would require an urban retail water supplier to file a certain report with the department by the 15th day of each month during a period that the urban retail water supplier is implementing mandatory demand reduction measures. The bill would require the department to establish an electronic portal through which an urban retail water supplier is required to provide these reports to the department and would require the department to provide the State Water Resources Control Board with access to the reports and data.

(2) The act requires an adopted plan to include certain components, including, among other things, an identification and quantification of the existing and planned sources of water available to the supplier over 5-year increments, a description of the reliability of the water supply and vulnerability to seasonal or climatic shortage for an average water year, single-dry water year, and multiple-dry water years, and quantification of distribution system water loss for each of the 5 years preceding the plan update.

This bill would add to the requirements of a plan a description of how an emergency supply has been established to increase water supply reliability during times of shortage and how the supply is in addition to the supplies that the agency draws upon during nonshortage times, if an emergency supply, as defined, is identified as an existing or planned source of water available to the urban retail water supplier. The bill would require a description of the reliability and vulnerability for 5 consecutive years consisting of a repeat of the 5 consecutive historic driest years experienced by the urban retail water supplier, except as provided, rather than multiple-dry water years. The bill would specify that distribution system water loss to be included in the plan is potable distribution system water loss.

(3) The act requires the department, in consultation with the California Urban Water Conservation Council, to convene an independent technical panel to provide information and recommendations to the department and the Legislature on new demand management measures, technologies, and approaches. The act requires the panel to report to the Legislature no later than January 1, 2010, and every 5 years thereafter, and requires the department to review the

report and include in the final report to the Legislature recommendations and comments. The act deems an urban water supplier that is a member of the council and in compliance with the provisions of a certain memorandum to be in compliance with certain requirements relating to including water demand management measures in a plan.

This bill would delete these provisions.

(4) The act requires that the plan provide an urban water shortage contingency analysis that includes certain elements, including an estimate of the minimum water supply available during each of the following 3 water years based on the driest 3-year historic sequence for the agency's water supply.

This bill would revise the elements included within an analysis.

(5) The California Constitution declares the policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use of the waters in the interest of the people and for the public welfare. Existing law requires the department and the board to take all appropriate proceedings or actions to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state.

This bill would prohibit an urban water supplier, during a statewide drought, local drought, or water shortage, from being required to reduce its use or reliance on any water supply available for its use and identified in its plan or from being required to take additional actions beyond those specified in its water shortage contingency analysis for the level of water shortage, as specified.

~~Existing law requires the state to achieve a 20% reduction in urban per capita water use in California by December 31, 2020. Existing law requires agricultural water suppliers to prepare and adopt agricultural water management plans with specified components on or before December 31, 2012, and to update those plans on or before December 31, 2015, and on or before December 31 every 5 years thereafter. Existing law sets forth various findings and declarations related to water conservation.~~

~~This bill would make a nonsubstantive change in those findings and declarations.~~

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. Part 2.56 (commencing with Section 10609) is added to Division 6 of the Water Code, to read:

PART 2.56. URBAN WATER MANAGEMENT DEMAND REDUCTION MEASURES

10609. The following definitions govern the construction of this part:

(a) "Water shortage contingency analysis" means the component of an urban water management plan described in Section 10632.

(b) "Urban retail water supplier" has the meaning provided in Section 10608.12.

(c) "Urban water supplier" has the meaning provided in Section 10617.

(d) "Urban wholesale water supplier" has the meaning provided in Section 10608.12.

10609.5 (a) In addition to and separate from the urban water management plans required pursuant to Part 2.6 (commencing with Section 10610), by June 15 of each year an urban retail water supplier shall report to the department the status of its water supplies for that year and whether the supplies will be adequate to meet projected customer demand.

(b) (1) If an urban retail water supplier reports pursuant to subdivision (a) that all available water supplies for the applicable water year will not be adequate to meet projected customer demand, the urban retail water supplier shall implement the appropriate responses as described in its water shortage contingency analysis. If demand is projected to exceed all available supply sources and mandatory water demand reduction measures are required, the annual report shall describe the water supply shortage stage and the measures that the supplier will take to reduce water demand consistent with its water shortage contingency analysis.

(2) If an urban retail water supplier determines that it cannot meet demands with all available water suppliers and is required to implement mandatory water demand reduction measures as described in its water shortage contingency analysis pursuant to

paragraph (1), the urban retail water supplier shall do both of the following:

(A) Continue to implement the mandatory demand reduction measures as described in its water shortage contingency analysis until hydrologic, water supply, or other conditions have changed to the point that the supplier finds that it will be able to meet projected customer demand over the next 12 months without continued implementation of the mandatory demand reduction measures.

(B) During the period that the urban retail water supplier is implementing the mandatory demand reductions measures described in its water shortage contingency analysis, the supplier shall file a report with the department by the 15th day of each month that describes how the supplier is implementing the measures.

(3) If an urban retail water supplier reports pursuant to subdivision (a) that supplies are adequate to meet projected customer demand, the urban retail water supplier, at its sole discretion, may declare any stage of its water shortage contingency analysis to balance supply and demand through the augmentation of supplies or to encourage water demand reduction as a precautionary measure. If an urban retail water supplier declares a stage of its water shortage contingency analysis pursuant to this paragraph, the urban retail water supplier shall not have an additional obligation to report to the department on the implementation of its plan.

(c) Multiple urban retail water suppliers within the same hydrologic region may file a joint report with the department if those urban retail water suppliers' water supplies are interrelated and if each urban retail water supplier determines that a joint report most accurately reflects the condition of their respective water supplies. Regardless of whether a joint report is submitted, an urban retail water supplier may submit an individual report to the department.

(d) An urban wholesale water supplier shall provide its retail agencies with information on the status of the urban wholesale water supplier's water supplies annually so that an urban retail water supplier reliant on the wholesale supply has sufficient data to comply with subdivision (a). An urban retail water supplier shall provide an urban wholesale water supplier with information

regarding its estimated annual demand for water from each wholesaler annually. An urban retail water supplier and its urban wholesale water suppliers shall meet and determine the process and dates by which they will comply with the requirements of this subdivision.

(e) An urban water supplier shall not be required to comply with any requirement in Part 2.6 (commencing with Section 10610) for any action taken or report made pursuant to this section. An action taken or report made pursuant to this section shall not be considered part of, amendments to, or changes to, an urban water management plan.

(f) The department shall establish an electronic portal through which suppliers shall provide the reports required by this section. The department shall provide the board with access to the reports and data submitted through the portal.

SEC. 2. Section 10613.5 is added to the Water Code, to read:

10613.5. "Emergency supply" means a water supply identified in the urban water management plan of an urban water supplier that has been developed to increase an urban water supplier's water supply reliability during times of shortage, including, but not limited to, unplanned service disruptions, and is in addition to the water supplies that the agency draws upon during nonshortage times to meet water demands within its service area.

SEC. 3. Section 10621 of the Water Code is amended to read:

10621. (a) Each urban water supplier shall update its plan at least once every five years on or before ~~December 31,~~ *July 1,* in years ending in ~~five and zero, except as provided in subdivisions (d) and (e).~~ *one and six.*

(b) Every urban water supplier required to prepare a plan pursuant to this part shall, at least 60 days before the public hearing on the plan required by Section 10642, notify any city or county within which the supplier provides water supplies that the urban water supplier will be reviewing the plan and considering amendments or changes to the plan. The urban water supplier may consult with, and obtain comments from, any city or county that receives notice pursuant to this subdivision.

(c) The amendments to, or changes in, the plan shall be adopted and filed in the manner set forth in Article 3 (commencing with Section 10640).

~~(d) Each urban water supplier shall update and submit its 2015 plan to the department by July 1, 2016.~~

~~(e) Each urban water supplier shall update and submit its 2020 plan to the department by July 1, 2021.~~

SEC. 4. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter that shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a). ~~If~~

(1) If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

~~(1)~~

(A) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

~~(2)~~

(B) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For basins that a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

~~(3)~~

(C) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

~~(4)~~

(D) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(2) If an emergency supply is identified as an existing or planned source of water available to the supplier, the supplier shall describe how the supply has been established to increase water supply reliability during times of shortage and how the supply is in addition to the supplies that the agency draws upon during nonshortage times to meet water demands within its service area.

(c) (1) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(A) An average water year.

(B) A single-dry water year.

~~(C) Multiple-dry water years.~~

(C) Five consecutive dry years consisting of a repeat of the five consecutive historic driest years that the urban water supplier has experienced, unless the urban water supplier finds that a shorter multiple-year dry period would more severely impact its water supplies, in which case the urban water supplier shall use that shorter period.

(2) For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses

among water use sectors, including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(J) ~~Distribution~~ *Potable distribution* system water loss.

(2) The water use projections shall be in the same five-year increments described in subdivision (a).

(3) (A) ~~For the 2015 urban water management plan update, the distribution system water loss shall be quantified for the most recent 12-month period available. For all subsequent updates, the~~ *The potable* distribution system water loss shall be quantified for each of the five years preceding the plan update.

(B) The *potable* distribution system water loss quantification shall be reported in accordance with a worksheet approved or developed by the department through a public process. The water loss quantification worksheet shall be based on the water system balance methodology developed by the American Water Works Association.

(4) (A) If available and applicable to an urban water supplier, water use projections may display and account for the water savings estimated to result from adopted codes, standards, ordinances, or transportation and land use plans identified by the urban water supplier, as applicable to the service area.

(B) To the extent that an urban water supplier reports the information described in subparagraph (A), an urban water supplier shall do both of the following:

(i) Provide citations of the various codes, standards, ordinances, or transportation and land use plans utilized in making the projections.

(ii) Indicate the extent that the water use projections consider savings from codes, standards, ordinances, or transportation and

land use plans. Water use projections that do not account for these water savings shall be noted of that fact.

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) (A) For an urban retail water supplier, as defined in Section 10608.12, a narrative description that addresses the nature and extent of each water demand management measure implemented over the past five years. The narrative shall describe the water demand management measures that the supplier plans to implement to achieve its water use targets pursuant to Section 10608.20.

(B) The narrative pursuant to this paragraph shall include descriptions of the following water demand management measures:

(i) Water waste prevention ordinances.

(ii) Metering.

(iii) Conservation pricing.

(iv) Public education and outreach.

(v) Programs to assess and manage *potable* distribution system real loss.

(vi) Water conservation program coordination and staffing support.

(vii) Other demand management measures that have a significant impact on water use as measured in gallons per capita per day, including innovative measures, if implemented.

(2) For an urban wholesale water supplier, as defined in Section 10608.12, a narrative description of the items in clauses (ii), (iv), (vi), and (vii) of subparagraph (B) of paragraph (1), and a narrative description of its distribution system asset management and wholesale supplier assistance programs.

(g) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use, as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single-dry, and multiple-dry water years. The description shall identify specific projects and include a description of the increase in water supply that is expected to be available from each project. The description shall include an

estimate with regard to the implementation timeline for each project or program.

(h) Describe the opportunities for development of desalinated water, including, but not limited to, ocean water, brackish water, and groundwater, as a long-term supply.

~~(i) For purposes of this part, urban water suppliers that are members of the California Urban Water Conservation Council shall be deemed in compliance with the requirements of subdivision (f) by complying with all the provisions of the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated December 10, 2008, as it may be amended, and by submitting the annual reports required by Section 6.2 of that memorandum.~~

~~(j)~~

(i) An urban water supplier that relies upon a wholesale agency for a source of water shall provide the wholesale agency with water use projections from that agency for that source of water in five-year increments to 20 years or as far as data is available. The wholesale agency shall provide information to the urban water supplier for inclusion in the urban water supplier's plan that identifies and quantifies, to the extent practicable, the existing and planned sources of water as required by subdivision (b), available from the wholesale agency to the urban water supplier over the same five-year increments, and during various water-year types in accordance with subdivision (c). An urban water supplier may rely upon water supply information provided by the wholesale agency in fulfilling the plan informational requirements of subdivisions (b) and (c).

SEC. 5. Section 10631.7 of the Water Code is repealed.

~~10631.7. The department, in consultation with the California Urban Water Conservation Council, shall convene an independent technical panel to provide information and recommendations to the department and the Legislature on new demand management measures, technologies, and approaches. The panel shall consist of no more than seven members, who shall be selected by the department to reflect a balanced representation of experts. The panel shall have at least one, but no more than two, representatives from each of the following: retail water suppliers, environmental organizations, the business community, wholesale water suppliers, and academia. The panel shall be convened by January 1, 2009,~~

~~and shall report to the Legislature no later than January 1, 2010, and every five years thereafter. The department shall review the panel report and include in the final report to the Legislature the department's recommendations and comments regarding the panel process and the panel's recommendations.~~

SEC. 6. Section 10632 of the Water Code is amended to read:

10632. ~~(a)~~ The plan shall provide an urban water shortage contingency analysis that includes each of the following elements that are within the authority of the urban water supplier:

~~(1) Stages~~

(a) Anticipated stages of action to be undertaken by the urban water supplier in response to water supply shortages, including up to a 50 percent reduction in water supply, and an outline of specific water supply conditions that ~~are applicable to~~ *would trigger* each stage.

~~(2) An estimate of the minimum water supply available during each of the next three water years based on the driest three-year historic sequence for the agency's water supply.~~

(b) Communications strategies to inform customers, state agencies, elected officials, and others whenever water supply shortage conditions require the implementation of the stages of action described in subdivision (a).

~~(3) Actions~~

(c) Anticipated actions to be undertaken by the urban water supplier to prepare for, and implement during, a catastrophic interruption of water supplies including, but not limited to, a regional power outage, an earthquake, or other disaster.

~~(4) Additional, mandatory prohibitions against specific water use practices during water shortages, including, but not limited to, prohibiting the use of potable water for street cleaning.~~

~~(5) Consumption reduction methods in the most restrictive stages. Each urban water supplier may use any type of consumption reduction methods in its water shortage contingency analysis that would reduce water use, are appropriate for its area, and have the ability to achieve a water use reduction consistent with up to a 50 percent reduction in water supply.~~

~~(6) Penalties or charges for excessive use, where applicable.~~

(d) Additional anticipated mandatory prohibitions against specific water use practices during water shortages.

(e) Anticipated actions to balance water supply and demand for each water supply shortage stage, including the use of emergency supplies, demand reduction methods, reoperation, or any combination of these actions. Each urban water supplier may use any type of consumption reduction, reoperation approach, or supply augmentation methods in its water shortage contingency analysis that would balance supply and demand, are appropriate for its area, and have the ability to successfully respond to each water supply shortage stage. If an urban water supplier has established an emergency supply, the supplier shall include in the description of actions to be taken when the emergency supply will be used to balance water supply and demand, and the quantity of water from the emergency supply that is planned to be used. An emergency supply designated for use during a water supply shortage shall be fully available for use by the supplier during a shortage and its use shall be at the sole discretion of the urban water supplier.

(f) Anticipated processes for monitoring and ensuring compliance by customers with mandatory prohibitions against specific water use practices and mechanisms to enforce compliance. The analysis shall include a description of the urban water supplier's established method to identify and discourage excessive water use as required by Sections 366 and 367.

~~(7)~~

(g) An analysis of the impacts of each of the actions and conditions described in ~~paragraphs (1) to (6),~~ *subdivisions (a) to (f),* inclusive, on the revenues and expenditures of the urban water supplier, and proposed measures to overcome those impacts, such as the development of reserves and rate adjustments.

~~(8) A draft water shortage contingency resolution or ordinance.~~

(h) A description of the water supplier's source of authority for implementing the water shortage actions, as identified in subdivision (e), including any adopted resolutions or ordinances.

~~(9) A mechanism for determining actual reductions in water use pursuant to the urban water shortage contingency analysis.~~

~~(b) Commencing with the urban water management plan update due July 1, 2016, for purposes of developing the water shortage contingency analysis pursuant to subdivision (a), the urban water supplier shall analyze and define water features that are artificially supplied with water, including ponds, lakes, waterfalls, and~~

~~fountains, separately from swimming pools and spas, as defined in subdivision (a) of Section 115921 of the Health and Safety Code.~~

SEC. 7. Section 10635 of the Water Code is amended to read:

10635. (a) Every urban water supplier shall include, as part of its urban water management plan, an assessment of the reliability of its water service to its customers during normal, dry, and multiple dry water years. This water supply and demand assessment shall compare the total water supply sources available to the water supplier with the total projected water use over the next 20 years, in five-year increments, for a normal water year, a single dry water year, ~~and multiple dry water years.~~ *and, in accordance with subparagraph (C) of paragraph (1) of subdivision (c) of Section 10631, five consecutive dry years or a shorter multiple-year dry period.* The water service reliability assessment shall be based upon the information compiled pursuant to Section 10631, including available data from state, regional, or local agency population projections within the service area of the urban water supplier.

(b) The urban water supplier shall provide that portion of its urban water management plan prepared pursuant to this article to any city or county within which it provides water supplies no later than 60 days after the submission of its urban water management plan.

(c) Nothing in this article is intended to create a right or entitlement to water service or any specific level of water service.

(d) Nothing in this article is intended to change existing law concerning an urban water supplier's obligation to provide water service to its existing customers or to any potential future customers.

SEC. 8. Section 10658 is added to the Water Code, to read:

10658. (a) It is the intent of the Legislature in enacting this section to do all of the following:

(1) Encourage continued investment in water supply reliability and diversification.

(2) Incentivize new and protect existing local investments made by urban water suppliers in drought resiliency and drought resilient supplies in order to better prepare local communities and the state for drought and times of shortage.

(3) Incentivize new and protect existing local investments in water recycling and potable reuse.

(4) Encourage local agencies to develop emergency supplies, including storage of flood flows in water banks throughout the state, to better protect California from the effects of drought.

(5) Encourage local agencies to take steps to prepare for the effects of climate change.

(6) Ensure that urban water suppliers have adequate supplies or take appropriate measures to reduce demand during times of drought.

(b) During a statewide drought, local drought, or water shortage, an urban water supplier shall not be required to reduce its use or reliance on any water supply available for its use and identified in its urban water management plan, or be required to take additional actions beyond those specified in its water shortage contingency analysis for the level of shortage that is anticipated in the annual report required by Section 10609 or the level of shortage that it is currently experiencing, whichever is greater.

~~SECTION 1. Section 10608 of the Water Code is amended to read:~~

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

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

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

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

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

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

~~(f) Improvements in technology and management practices offer the potential for increasing water efficiency in California over time, providing an essential water management tool to meet the need for water for urban, agricultural, and environmental uses.~~

~~(g) The Governor has called for a 20 percent per capita reduction in urban water use statewide by 2020.~~

~~(h) The factors used to formulate water use efficiency targets can vary significantly from location to location based on factors including weather, patterns of urban and suburban development, and past efforts to enhance water use efficiency.~~

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

O

ASSEMBLY THIRD READING
AB 1654 (Rubio)
As Amended March 28, 2017
Majority vote

Committee	Votes	Ayes	Noes
Water	15-0	Eduardo Garcia, Gallagher, Bigelow, Choi, Chu, Friedman, Gloria, Bocanegra, Harper, Levine, Mathis, Rubio, Salas, Thurmond, Wood	
Appropriations	16-0	Gonzalez Fletcher, Bigelow, Bloom, Bocanegra, Bonta, Brough, Calderon, McCarty, Quirk, Fong, Friedman, Gallagher, Eduardo Garcia, Gray, Obernolte, Reyes	

SUMMARY: Creates a new drought response plan by recasting the requirements of a water shortage contingency analysis (WSCA), and creates a new annual water supply reporting requirement for urban water suppliers. Specifically, **this bill**:

1) Prohibits, during a drought or water shortage, an urban water supplier from being required to reduce its use or reliance on any water supply available for its use or be required to take additional actions beyond those specified in its WSCA for the greater level of shortage that the urban water supplier reports or is experiencing.

2) Defines an "emergency supply" as water supply identified in the urban water management plan (UWMP) of an urban water supplier that has been developed to increase an urban water supplier's water supply reliability during times of shortage. If an emergency supplier is identified as a source of water for an urban water supplier, requires the supplier to describe in its UWMP how the emergency supply has been established to increase water supply reliability during times of shortage and how the supply is, in addition to, the supplies drawn upon during nonshortage times.

3) Requires, by June 15 of each year, an urban retail water supplier to report to the Department of Water Resources (DWR) if its water supplies will be adequate to meet projected customer demand. Requires a series of actions, as specified, based on the urban retail water supplier's WSCA, if the urban retail water supplier reports that available water supplies will not be adequate to meet projected customer demand. Does not consider the reports to be part of an UWMP.

4) Requires an urban retail water supplier that reports water supplies will not be adequate to meet projected customer demand, to describe the water supply shortage stage and the measures the water supplier will take to reduce water demand.

5) If an urban retail supplier is required under its WSCA to implement mandatory water demand reduction measures, it shall report on the implementation of those measures to the DWR by

the 15th day of each month, and continue to implement the mandatory measures until the supplier finds that it will meet projected customer demand over the next 12 months

6) Allows multiple urban retail suppliers in the same hydrologic region to file a joint report. Also requires an urban wholesale water supplier to provide its retail agencies with information on the status of the urban wholesale water supplier's water supplies annually.

7) Specifies that an UWMP provide data on reliability of an urban water suppliers' supply for the five consecutive historic driest years, or a shorter period if it had a more severe impact on supplies. Limits the required projected water use analysis in an UWMP on distribution to only potable distribution.

8) Alters the existing elements in a WSCA in numerous ways as specified.

9) States the intent to encourage continued investment in water supply reliability and diversification, incentivize new and protect existing drought resilient supplies, incentivize new and protect existing investments in water recycling, encourage development of emergency supplies, encourage preparation for the effects of climate change, ensure adequate supplies or take appropriate measures to reduce demand during drought.

10) Strikes obsolete portions of existing law related to the California Urban Water Conservation Council.

EXISTING LAW:

1) Defines an "urban water supplier" as a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually.

2) Requires every urban water supplier to prepare and adopt an UWMP. Requires the UWMP be updated at least once every five years on or before December 31, in years ending in five and zero.

3) Makes an urban water supplier that does not prepare, adopt, and submit an UWMP, ineligible to receive drought assistance from the state until the UWMP is submitted.

4) Requires UWMPs to include an assessment that describes the reliability of water supply to its customers and vulnerability to seasons or climatic shortage in an average water year, a single-dry water year, and multiple-dry water years.

5) Requires the UWMPs provide an urban WSCA. Requires the WSCA to include stages of action to be taken in response to water supply shortages, including up to a 50% reduction in water supply.

6) Requires the WSCA to include an estimate of minimum water supply available during each of the next three water years based on the driest three-year historic sequence. Requires the WSCA to include actions to be undertaken during a catastrophic interruption of water supplies. Requires the WSCA to include mandatory prohibitions of water use. Requires the WSCA to include consumption reduction methods to achieve a water use reduction consistent with up to a 50 percent reduction in water supply. Requires the WSCA to include

an analysis of the impacts of the implementation of actions in the WSCA on revenues and expenditures of the water supplier.

7) Requires the DWR to submit a report to the Legislature summarizing the status of adopted UWMPs by July 1, 2017, for UWMPs due in 2015.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

1) Increased DWR costs of $150,000 (General Fund) to update guidance documents.

2) Minor, absorbable State Water Resources Control Board (SWRCB) costs.

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

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

For the first time in the state's history, the Governor issued an executive order in April of 2015, requiring SWRCB to implement mandatory restrictions to achieve a 25% statewide reduction in urban potable use, over 2013 levels of use. There are approximately 410 urban water suppliers that serve approximately 90% of the population of the state.

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

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

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

There is widespread agreement that progress must be made in the areas of long-term water use efficiency and drought response, but there is not yet consensus on the specific requirements that will best achieve progress in each area.

Currently, there are five policy bills and a budget trailer bill that directly relate to long-term efficiency and drought response. These "Making Water Conservation a Way of Life" bills take different approaches to the development of long-term efficiency and drought response policy. Because long-term efficiency impacts what the future drought response will be, the two subjects are closely related but are addressed separately in the different bills. There is disagreement among the stakeholder community as to whether the policy should be heard through the legislative process or be addressed in a budget trailer bill. There is also disagreement over the extent to which the policies should be developed in legislation or through the regulatory process.

This bill is one approach, of several, to strengthen drought response. The general framework of all of the approaches to strengthen drought response is to require urban water suppliers to apply a more stringent test of reliability of water supply in UWMPs and create triggered stages of response to a projected or current water shortage. Beyond that general framework, this bill differs from other approaches in several significant ways.

This bill creates a new category of water supply, an emergency supply, which can be identified as an existing or planned source of water in an UWMP. An emergency supply must be a supply that is in addition to supplies used during non-shortage times. Specifically calling out emergency supply will encourage investment in emergency supplies. As defined, any supply that is available to a water supplier that is not used during non-shortage times will qualify as an emergency supply. This means that virtually any source of supply will be eligible, including desalination, recycled water, and groundwater banking.

This bill changes what is required of a WSCA in several ways. It requires triggers for anticipated stages of action, communication strategies associated with those stages, anticipated actions to balance water supply and demand for each stage, anticipated process for ensuring compliance with prohibitions, and a description of the authority for implementing actions.

This bill requires a new annual report from water suppliers to DWR on the ability of the water supplier to meet demand. If the report shows that supplies cannot meet demand, this will trigger other actions, including possibly implementing mandatory reductions identified in the WSCA and monthly reporting to DWR. This is similar to the "stress test" reporting that had been required by SWRCB in 2016, with the significant difference that actions as the result of the report are predetermined.

Analysis Prepared by: Ryan Ojakian / W., P., & W. / (916) 319-2096 FN: 0000583

REPORT

DATE: June 21, 2017

TO: Water Policy Committee, Water Technical Advisory Committee

FROM: Eric Wolf, Senior Management Analyst

RE: HOUSE RESOLUTION 2355/SENATE 692, WATER INFRASTRUCTURE FLEXIBILITY ACT

RECOMMENDED ACTION

For information and discussion.

HOUSE RESOLUTION 2355/SENATE 692

HR 2355 and S 692 are identical companion bills. These bills would amend the Clean Water Act (CWA) in several ways. First, they would require the Environmental Protection Agency (EPA) (or the state) to inform municipalities of the opportunity to develop an integrated water plan. (Integrated plans may combine multiple water/wastewater/stormwater-related requirements into a single plan that addresses combined sewer overflow; sanitary sewer collection; municipal stormwater discharge; municipal wastewater discharge; and water quality-based effluent limitations.) The bills would allow CWA permits that incorporate integrated plans to be implemented over more than one permit term (currently the term is 5-years). HR 2355 and S 692 would allow communities under existing consent decrees to request modifications so that they incorporate federal and/or state approved integrated plans. In addition to these changes to the CWA, the legislation would direct the EPA to review its existing Financial Capability Guidance. Finally, the bills call for the creation of a municipal ombudsman within EPA and provide authority for the increased use of green infrastructure in permitting programs.

DISCUSSION

The SGVCOG Stormwater Policy adopted in November 2016 specifically includes the creation of a municipal ombudsman position and the use of Financial Capability Assessment as strategies to pursue. Moreover, these two strategies were included in the COG's legislative objectives for this year but to this point, we have not been successful in carrying this legislation.

Prepared by: _____
Eric Wolf
Senior Management Analyst

Approved by: Marisa Creter
Marisa Creter
Assistant Executive Director

ATTACHMENTS

Attachment A – HR 2355
Attachment B – S 692 Senate Committee on Environment and Public Works Report

115TH CONGRESS
1ST SESSION

H. R. 2355

To provide for integrated plan permits, to establish an Office of the Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2017

Mr. LATTA (for himself, Mr. JOYCE of Ohio, Mrs. NAPOLITANO, Mrs. BUSTOS, Mr. SMUCKER, and Ms. FUDGE) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for integrated plan permits, to establish an Office of the Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Water Infrastructure Flexibility Act".

SEC. 2. DEFINITION OF ADMINISTRATOR.

In this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. INTEGRATED PLANS.

(a) INTEGRATED PLANS.—Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

"(s) INTEGRATED PLAN PERMITS.—

"(1) DEFINITIONS.—In this subsection:

"(A) GREEN INFRASTRUCTURE.—The term 'green infrastructure' means the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.

"(B) INTEGRATED PLAN.—The term 'integrated plan' has the meaning given in Part III of the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.

"(C) MUNICIPAL DISCHARGE.—

"(i) IN GENERAL.—The term 'municipal discharge' means a discharge from a

1 treatment works (as defined in section
2 212) or a discharge from a municipal
3 storm sewer under subsection (p).
4 "(ii) INCLUSION.—The term 'munic-
5 ipal discharge' includes a discharge of
6 wastewater or storm water collected from
7 multiple municipalities if the discharge is
8 covered by the same permit issued under
9 this section.
10 "(2) INTEGRATED PLAN.—
11 "(A) IN GENERAL.—The Administrator (or
12 a State, in the case of a permit program ap-
13 proved under subsection (b)) shall inform a mu-
14 nicipal permittee or multiple municipal permit-
15 tees of the opportunity to develop an integrated
16 plan.
17 "(B) SCOPE OF PERMIT INCORPORATING
18 INTEGRATED PLAN.—A permit issued under
19 this subsection that incorporates an integrated
20 plan may integrate all requirements under this
21 Act addressed in the integrated plan, including
22 requirements relating to—
23 "(i) a combined sewer overflow;

"(ii) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;

"(iii) a municipal stormwater discharge;

"(iv) a municipal wastewater discharge; and

"(v) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

"(3) COMPLIANCE SCHEDULES.—

"(A) IN GENERAL.—A permit for a municipal discharge by a municipality that incorporates an integrated plan may include a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented over more than one permit term if the compliance schedules are authorized by State water quality standards.

"(B) INCLUSION.—Actions subject to a compliance schedule under subparagraph (A) may include green infrastructure if implemented as part of a water quality-based effluent limitation.

"(C) REVIEW.—A schedule of compliance may be reviewed each time the permit is renewed.

"(4) EXISTING AUTHORITIES RETAINED.—

"(A) APPLICABLE STANDARDS.—Nothing in this subsection modifies any obligation to comply with applicable technology and water quality-based effluent limitations under this Act.

"(B) FLEXIBILITY.—Nothing in this subsection reduces or eliminates any flexibility available under this Act, including the authority of—

"(i) a State to revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (or a successor regulation), subject to the approval of the Administrator under section 303(c); and

"(ii) the Administrator or a State to authorize a schedule of compliance that extends beyond the date of expiration of a permit term if the schedule of compliance meets the requirements of section 122.47 of title 40, Code of Federal Regulations

(as in effect on the date of enactment of this subsection).

"(5) CLARIFICATION OF STATE AUTHORITY.—

"(A) IN GENERAL.—Nothing in section 301(b)(1)(C) precludes a State from authorizing in the water quality standards of the State the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan.

"(B) TRANSITION RULE.—In any case in which a discharge is subject to a judicial order or consent decree as of the date of enactment of this subsection resolving an enforcement action under this Act, any schedule of compliance issued pursuant to an authorization in a State water quality standard shall not revise a schedule of compliance in that order or decree unless the order or decree is modified by agreement of the parties and the court.".

(b) MUNICIPAL OMBUDSMAN.—

(1) ESTABLISHMENT.—There is established within the Office of the Administrator an Office of the Municipal Ombudsman.

1 (2) GENERAL DUTIES.—The duties of the mu-
2 nicipal ombudsman shall include the provision of—
3 (A) technical assistance to municipalities
4 seeking to comply with the Federal Water Pol-
5 lution Control Act (33 U.S.C. 1251 et seq.) and
6 the Safe Drinking Water Act (42 U.S.C. 300f
7 et seq.); and
8 (B) information to the Administrator to
9 help the Administrator ensure that agency poli-
10 cies are implemented by all offices of the Envi-
11 ronmental Protection Agency, including regional
12 offices.
13 (3) ACTIONS REQUIRED.—The municipal om-
14 budsman shall work with appropriate offices at the
15 headquarters and regional offices of the Environ-
16 mental Protection Agency to ensure that the munici-
17 pality seeking assistance is provided information—
18 (A) about available Federal financial as-
19 sistance for which the municipality is eligible;
20 (B) about flexibility available under the
21 Federal Water Pollution Control Act (33 U.S.C.
22 1251 et seq.) and, if applicable, the Safe Drink-
23 ing Water Act (42 U.S.C. 300f et seq.); and
24 (C) regarding the opportunity to develop
25 an integrated plan, as defined in section

402(s)(1)(B) of the Federal Water Pollution Control Act (as added by subsection (a)).

(4) INFORMATION SHARING.—The municipal ombudsman shall publish on the website of the Environmental Protection Agency—

(A) general information relating to—

(i) the technical assistance referred to in paragraph (2)(A);

(ii) the financial assistance referred to in paragraph (3)(A);

(iii) the flexibility referred to in paragraph (3)(B); and

(iv) any resources related to integrated plans developed by the Administrator; and

(B) a copy of each permit, order, or judicial consent decree that implements or incorporates an integrated plan.

(c) MUNICIPAL ENFORCEMENT.—Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319) is amended by adding at the end the following:

"(h) IMPLEMENTATION OF INTEGRATED PLANS THROUGH ENFORCEMENT TOOLS.—

"(1) IN GENERAL.—In conjunction with an enforcement action under subsection (a) or (b) relating

1 to municipal discharges, the Administrator shall in-
2 form a municipality of the opportunity to develop an
3 integrated plan, as defined in section 402(s).
4 "(2) MODIFICATION.—Any municipality under
5 an administrative order under subsection (a) or set-
6 tlement agreement (including a judicial consent de-
7 cree) under subsection (b) that has developed an in-
8 tegrated plan consistent with section 402(s) may re-
9 quest a modification of the administrative order or
10 settlement agreement based on that integrated
11 plan.".
12 (d) REPORT TO CONGRESS.—Not later than 2 years
13 after the date of enactment of this Act, the Administrator
14 shall submit to the Committee on Environment and Public
15 Works of the Senate and the Committee on Transpor-
16 tation and Infrastructure of the House of Representatives
17 and make publicly available a report on each integrated
18 plan developed and implemented through a permit, order,
19 or judicial consent decree since the date of publication of
20 the "Integrated Municipal Stormwater and Wastewater
21 Planning Approach Framework" issued by the Environ-
22 mental Protection Agency and dated June 5, 2012, includ-
23 ing a description of the control measures, levels of control,
24 estimated costs, and compliance schedules for the require-
25 ments implemented through an integrated plan.

1 **SEC. 4. GREEN INFRASTRUCTURE PROMOTION.**

2 Title V of the Federal Water Pollution Control Act
3 (33 U.S.C. 1361 et seq.) is amended—

4 (1) by redesignating section 519 (33 U.S.C.
5 1251 note) as section 520; and

6 (2) by inserting after section 518 (33 U.S.C.
7 1377) the following:

8 **"SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN**
9 **INFRASTRUCTURE PROMOTION.**

10 "(a) IN GENERAL.—The Administrator shall ensure
11 that the Office of Water, the Office of Enforcement and
12 Compliance Assurance, the Office of Research and Devel-
13 opment, and the Office of Policy of the Environmental
14 Protection Agency promote the use of green infrastructure
15 in and coordinate the integration of green infrastructure
16 into, permitting programs, planning efforts, research,
17 technical assistance, and funding guidance.

18 "(b) DUTIES.—The Administrator shall ensure that
19 the Office of Water—

20 "(1) promotes the use of green infrastructure in
21 the programs of the Environmental Protection Agen-
22 cy; and

23 "(2) coordinates efforts to increase the use of
24 green infrastructure with—

25 "(A) other Federal departments and agen-
26 cies;

"(B) State, tribal, and local governments; and

"(C) the private sector.

"(c) REGIONAL GREEN INFRASTRUCTURE PROMOTION.—The Administrator shall direct each regional office of the Environmental Protection Agency, as appropriate based on local factors, and consistent with the requirements of this Act, to promote and integrate the use of green infrastructure within the region that includes—

"(1) outreach and training regarding green infrastructure implementation for State, tribal, and local governments, tribal communities, and the private sector; and

"(2) the incorporation of green infrastructure into permitting and other regulatory programs, codes, and ordinance development, including the requirements under consent decrees and settlement agreements in enforcement actions.

"(d) GREEN INFRASTRUCTURE INFORMATION-SHARING.—The Administrator shall promote green infrastructure information-sharing, including through an Internet website, to share information with, and provide technical assistance to, State, tribal, and local governments, tribal communities, the private sector, and the public regarding green infrastructure approaches for—

"(1) reducing water pollution;

"(2) protecting water resources;

"(3) complying with regulatory requirements; and

"(4) achieving other environmental, public health, and community goals.".

SEC. 5. FINANCIAL CAPABILITY GUIDANCE.

(a) DEFINITIONS.—In this section:

(1) AFFORDABILITY.—The term "affordability" means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, as determined by the Administrator.

(2) FINANCIAL CAPABILITY.—The term "financial capability" means the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

(3) GUIDANCE.—The term "guidance" means the guidance published by the Administrator entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, as applicable to the combined sewer overflows and sanitary sewer

1 overflows guidance published by the Administrator
2 entitled "Financial Capability Assessment Frame-
3 work" and dated November 24, 2014.
4 (b) USE OF MEDIAN HOUSEHOLD INCOME.—The
5 Administrator shall not use median household income as
6 the sole indicator of affordability for a residential house-
7 hold.
8 (c) REVISED GUIDANCE.—
9 (1) IN GENERAL.—Not later than 1 year after
10 the date of completion of the National Academy of
11 Public Administration study to establish a definition
12 and framework for community affordability required
13 by Senate Report 114–70, accompanying S. 1645
14 (114th Congress), the Administrator shall revise the
15 guidance described in subsection (a)(3).
16 (2) USE OF GUIDANCE.—Beginning on the date
17 on which the revised guidance referred to in para-
18 graph (1) is finalized, the Administrator shall use
19 the revised guidance in lieu of the guidance de-
20 scribed in subsection (a)(3).
21 (d) CONSIDERATION AND CONSULTATION.—
22 (1) CONSIDERATION.—In revising the guidance,
23 the Administrator shall consider—
24 (A) the recommendations of the study re-
25 ferred to in subsection (c) and any other rel-

1 evant study, as determined by the Adminis-
2 trator;
3 (B) local economic conditions, including
4 site-specific local conditions that should be
5 taken into consideration in analyzing financial
6 capability;
7 (C) other essential community investments;
8 (D) potential adverse impacts on distressed
9 populations, including the percentage of low-in-
10 come ratepayers within the service area of a
11 utility and impacts in communities with dis-
12 parate economic conditions throughout the en-
13 tire service area of a utility;
14 (E) the degree to which rates of low-in-
15 come consumers would be affected by water in-
16 frastructure investments, the use of rate struc-
17 tures, and customer assistance programs to ad-
18 dress the rates of low-income consumers;
19 (F) an evaluation of an array of factors,
20 the relative importance of which may vary
21 across regions and localities; and
22 (G) the appropriate weight for economic,
23 public health, and environmental benefits asso-
24 ciated with improved water quality.

1 (2) CONSULTATION.—Any revised guidance
2 issued to replace the guidance shall be developed in
3 consultation with stakeholders.
4 (e) PUBLICATION AND SUBMISSION.—
5 (1) IN GENERAL.—On completion of the revi-
6 sion of the guidance, the Administrator shall publish
7 in the Federal Register and submit to the Com-
8 mittee on Environment and Public Works of the
9 Senate and the Committee on Transportation and
10 Infrastructure of the House of Representatives the
11 revised guidance.
12 (2) EXPLANATION.—If the Administrator
13 makes a determination not to follow one or more
14 recommendations of the study referred to in sub-
15 section (c)(1), the Administrator shall include in the
16 publication and submission under paragraph (1) an
17 explanation of that decision.
18 (f) EFFECT.—Nothing in this section preempts or
19 interferes with any obligation to comply with any Federal
20 law, including the Federal Water Pollution Control Act
21 (33 U.S.C. 1251 et seq.).

○

Calendar No. 109

115TH CONGRESS *1st Session* | SENATE | REPORT 115–87

WATER INFRASTRUCTURE FLEXIBILITY ACT

MAY 25, 2017.—Ordered to be printed

Mr. BARRASSO, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 692]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 692) to provide for integrated plan permits, to establish the Office of Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

In 2012, the Environmental Protection Agency (EPA) issued an integrated permitting and planning policy to address the need for municipalities to undertake updated wastewater and stormwater control measures under the Clean Water Act. EPA established this policy in response to the challenges and cost implications municipalities are facing to address water quality and infrastructure problems. Many state and local governments face difficult economic challenges with limited resources and financial capability to meet the Clean Water Act requirements related to stormwater and wastewater. On average, the U.S. Conference of Mayors finds that municipalities spend between 6 to 7 cents of every tax dollar on water and sewer systems, making water infrastructure the third-largest expense for cities behind education and emergency personnel.

S. 692 would address these issues by requiring EPA to allow municipalities to develop plans that integrate multiple Clean Water

69–010

Act requirements and implement those plans through the Act's permitting process or through enforcement tools. The bill also would establish an Office of the Municipal Ombudsman within EPA to ensure that municipalities receive assistance regarding compliance with the Clean Water Act and the Safe Drinking Water Act. The bill directs EPA to promote green infrastructure (measures like landscaping or permeable pavement that reduce storm water flows into sewer systems or surface waters) by conducting outreach and training through the agency's regional offices. Finally, the bill would direct the EPA to revise how it evaluates the financial capability of a community to make investments necessary to make water quality or drinking water improvements.

OBJECTIVES OF THE LEGISLATION

The objective of the legislation is to allow integrated plans, to establish the Office of Municipal Ombudsman, to promote green infrastructure, and to require the revision of financial capability guidance.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Sec. 2. Definition

Sec. 3. Integrated plans

Requires the Administrator to inform municipalities of the opportunity to prepare an integrated plan.

Authorizes permits to incorporate integrated plans, which may combine requirements related to a combined sewer overflow; a capacity, management, operation, and maintenance program for sanitary sewer collection systems; a municipal stormwater discharge; a municipal wastewater discharge; and a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

Authorizes effluent limitations to be met through the use of green infrastructure.

Authorizes compliance schedules in permits incorporating an integrated plan for any water quality standard, if authorized by a State in its water quality standards regulations.

Establishes an Office of Municipal Ombudsman.

Directs the EPA to notify communities of the opportunity to prepare integrated plans in the context of consent decrees or administrative orders. Establishes an integrated plan as a basis for a request to modify an administrative order or consent decree.

Requires information sharing and a report to Congress.

Sec. 4. Green infrastructure promotion

Directs the Administrator to ensure that EPA offices promote the integration of green infrastructure into, permitting programs, planning efforts, research, technical assistance, and funding guidance. The Committee notes that green infrastructure can provide multiple environmental benefits, as well as economic and public health benefits.

Sec. 5. Financial capability guidance

Defines affordability and financial capability. Prohibits the use of median household income as the sole indicator of affordability for a residential household.

Requires EPA to update its 1997 Financial Capability guidance and 2014 Financial Capability Assessment Framework within one year of the completion of a National Academy of Public Administration (NAPA) study to establish a definition and framework for community affordability required by Senate Report 114–70. The Committee notes that the scope of work issued by EPA for that study asked NAPA for recommendations to supplement the 1997 Financial Capability guidance. S. 692 requires revision and replacement of that guidance. In addition, the Committee encourages the Administrator to consider updates to the 1995 Interim Economic Guidance for Water Quality Standards at the same time that it updates the 1997 guidance.

In developing a revised guidance, EPA must consider various factors and consult with stakeholders. The Committee notes that measures to address Clean Water Act requirements include operation and maintenance actions as well as capital investments and costs or savings associated with alternative measures in both categories are relevant to an affordability analysis.

LEGISLATIVE HISTORY

The language similar to this bill was included last Congress in the Water Resources Development Act of 2016, S. 2848. S. 2848 was reported by the Committee on June 20, 2016. S. 2848 passed the Senate on September 15, 2016 by a vote of 95 to 3.

On March 21, 2017, Senator Fischer and Senator Brown introduced S. 692, the "Water Infrastructure Flexibility Act of 2017." Co-sponsors include Environment and Public Works committee members Senator Cardin, Senator Boozman, Senator Booker, and Senator Inhofe. The bill was referred to the Committee on Environment and Public Works. On April 5, 2017, the Committee considered S. 692 and the bill was ordered to be reported favorably by voice vote.

On April 5, 2017, the Committee considered S. 692 and adopted by voice vote an amendment in the nature of a substitute that made technical and non-controversial changes to the bill. The bill, as amended, was ordered to be reported favorably by voice vote.

HEARINGS

On March 28, 2017, the Committee held a legislative hearing that included a review of this legislation.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 692 on April 5, 2017. The bill was ordered favorably reported by voice vote. No rollcall votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that S. 692 does not cre-

ate any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee notes that the Congressional Budget Office found that S. 692 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

APRIL 18, 2017.

Hon. JOHN BARRASSO,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 692, the Water Infrastructure Flexibility Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

KEITH HALL.

Enclosure.

S. 692—Water Infrastructure Flexibility Act

S. 692 would require the Environmental Protection Agency (EPA) to promote green infrastructure (measures like landscaping or permeable pavement that reduce storm water flows into sewer systems or surface waters) by conducting outreach and training through the agency's regional offices. The bill also would establish an Office of the Municipal Ombudsman within the EPA to provide technical assistance to municipalities seeking to comply with the Clean Water Act, to promote integrated planning as part of that act's permitting process, and to disseminate information to eligible entities about the availability of financial assistance. Finally, the bill would direct the EPA to revise the factors that municipalities should consider when measuring the financial capability of households to pay for future investments in a community's water infrastructure.

Based on an analysis of information provided by the agency, CBO estimates that implementing S. 692 would cost about $3 million per year for additional personnel and related administrative expenses to meet the bill's requirements. In total, CBO estimates that the EPA would spend about $15 million over the 2018–2022 period; that spending would be subject to the availability of appropriated funds.

Enacting S. 692 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 692 would not increase net direct spending or on-

budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 692 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jon Sperl. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * * * *

Federal Water Pollution Control Act

TITLE III—STANDARDS AND ENFORCEMENT

* * * * * * *

SEC. 309. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this Act in a permit issued by a State under an approved permit program under section 402 or 404 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

* * * * * * *

(g) ADMINISTRATIVE PENALTIES.—

(1) VIOLATIONS.—Whenever on the basis of any information available—

(A) * * *

* * * * * * *

(h) IMPLEMENTATION OF INTEGRATED PLANS THROUGH ENFORCEMENT TOOLS.—

(1) IN GENERAL.—In conjunction with an enforcement action under subsection (a) or (b) relating to municipal discharges, the Administrator shall inform a municipality of the opportunity to develop an integrated plan, as defined in section 402(s).

(2) MODIFICATION.—Any municipality under an administrative order under subsection (a) or settlement agreement (including a judicial consent decree) under subsection (b) that has developed an integrated plan consistent with section 402(s) may request a modification of the administrative order or settlement agreement based on that integrated plan.

TITLE IV—PERMITS AND LICENSES

* * * * * * *

SEC. 402. (a)(1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(2) * * *

* * * * * * *

(s) INTEGRATED PLAN PERMITS.—

(1) DEFINITIONS.—In this subsection:

(A) GREEN INFRASTRUCTURE.—The term 'green infrastructure' means the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.

(B) INTEGRATED PLAN.—The term 'integrated plan' has the meaning given in Part III of the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.

(C) MUNICIPAL DISCHARGE.—

(i) IN GENERAL.—The term 'municipal discharge' means a discharge from a treatment works (as defined in section 212) or a discharge from a municipal storm sewer under subsection (p).

(ii) INCLUSION.—The term 'municipal discharge' includes a discharge of wastewater or storm water collected from multiple municipalities if the discharge is covered by the same permit issued under this section.

(2) INTEGRATED PLAN.—

(A) IN GENERAL.—The Administrator (or a State, in the case of a permit program approved under subsection (b)) shall inform a municipal permittee or multiple municipal permittees of the opportunity to develop an integrated plan.

(B) SCOPE OF PERMIT INCORPORATING INTEGRATED PLAN.—A permit issued under this subsection that incorporates an integrated plan may integrate all requirements under this Act addressed in the integrated plan, including requirements relating to—

(i) a combined sewer overflow;

(ii) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;

(iii) a municipal stormwater discharge;

(iv) a municipal wastewater discharge; and

(v) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

(3) COMPLIANCE SCHEDULES.—

(A) IN GENERAL.—A permit for a municipal discharge by a municipality that incorporates an integrated plan may include a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented over more than 1 permit term if the compliance schedules are authorized by State water quality standards.

(B) INCLUSION.—Actions subject to a compliance schedule under subparagraph (A) may include green infrastructure if implemented as part of a water quality-based effluent limitation.

(C) REVIEW.—A schedule of compliance may be reviewed each time the permit is renewed.

(4) EXISTING AUTHORITIES RETAINED.—

(A) APPLICABLE STANDARDS.—Nothing in this subsection modifies any obligation to comply with applicable technology and water quality-based effluent limitations under this Act.

(B) FLEXIBILITY.—Nothing in this subsection reduces or eliminates any flexibility available under this Act, including the authority of—

(i) a State to revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (or a successor regulation), subject to the approval of the Administrator under section 303(c); and

(ii) the Administrator or a State to authorize a schedule of compliance that extends beyond the date of expiration of a permit term if the schedule of compliance meets the requirements of section 122.47 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

(5) CLARIFICATION OF STATE AUTHORITY.—

(A) IN GENERAL.—Nothing in section 301(b)(1)(C) precludes a State from authorizing in the water quality standards of the State the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan.

(B) TRANSITION RULE.—In any case in which a discharge is subject to a judicial order or consent decree as of the date of enactment of the Water Infrastructure Flexibility Act resolving an enforcement action under this Act, any schedule of compliance issued pursuant to an authorization in a State water quality standard shall not revise a schedule of compliance in that order or decree unless the order or decree is modified by agreement of the parties and the court.

* * * * * * *

TITLE V—GENERAL PROVISIONS

* * * * * * *

ADMINISTRATION

SEC. 501. (a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act.

(b) * * *

* * * * * * *

SEC. 518. INDIAN TRIBES.

(a) POLICY.—Nothing in this section shall be construed to affect the application of section 101(g) of this Act, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 101(g). Indian tribes shall be treated as States for purposes of such section 101(g).

(b) * * *

* * * * * * *

SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN INFRASTRUCTURE PROMOTION.

(a) IN GENERAL.—The Administrator shall ensure that the Office of Water, the Office of Enforcement and Compliance Assurance, the Office of Research and Development, and the Office of Policy of the Environmental Protection Agency promote the use of green infrastructure in and coordinate the integration of green infrastructure into, permitting programs, planning efforts, research, technical assistance, and funding guidance.

(b) DUTIES.—The Administrator shall ensure that the Office of Water—

(1) promotes the use of green infrastructure in the programs of the Environmental Protection Agency; and

(2) coordinates efforts to increase the use of green infrastructure with—

(A) other Federal departments and agencies;

(B) State, tribal, and local governments; and

(C) the private sector.

(c) REGIONAL GREEN INFRASTRUCTURE PROMOTION.—The Administrator shall direct each regional office of the Environmental Protection Agency, as appropriate based on local factors, and consistent with the requirements of this Act, to promote and integrate the use of green infrastructure within the region that includes—

(1) outreach and training regarding green infrastructure implementation for State, tribal, and local governments, tribal communities, and the private sector; and

(2) the incorporation of green infrastructure into permitting and other regulatory programs, codes, and ordinance development, including the requirements under consent decrees and settlement agreements in enforcement actions.

(d) GREEN INFRASTRUCTURE INFORMATION SHARING.—The Administrator shall promote green infrastructure information sharing, including through an Internet website, to share information with, and provide technical assistance to, State, tribal, and local governments, tribal communities, the private sector, and the public regarding green infrastructure approaches for—

(1) reducing water pollution;

(2) protecting water resources;

(3) complying with regulatory requirements; and

(4) achieving other environmental, public health, and community goals.

SEC. [519] *520*. This Act may be cited as the "Federal Water Pollution Control Act" (commonly referred to as the Clean Water Act).

○

REPORT

DATE: June 21, 2017

TO: Water Policy Committee, Water Technical Advisory Committee

FROM: Eric Wolf, Senior Management Analyst

RE: HOUSE RESOLUTION 2510, WATER QUALITY PROTECTION AND JOB CREATION ACT

RECOMMENDED ACTION

For information and discussion.

HOUSE RESOLUTION 2510

In 1987, Congress authorized the Clean Water State Revolving Fund to address water infrastructure and pollution. Although the authorization expired in 1993, Congress continues to fund the program through annual authorizations. This year, House Resolution 2510, the Water Quality Protection and Job Creation Act, authorizes appropriations for state water pollution control revolving funds in two categories: Water Quality Financing, and Grants. Overall, it provides approximately $25 billion in direct infrastructure investment over the next five years to fund construction, repair, and replacement of wastewater and stormwater conveyance and treatment facilities.

In the category of Water Quality Financing, HR 2510 authorizes $20 billion in federal grants to capitalize state revolving funds. These funds provide low-interest loans and subsidies to communities for wastewater infrastructure. The bill also includes $1.5 billion for grants for state water pollution control agencies. It provides $600 million for clean water pilot programs for watershed-based or system-wide efforts to address wet weather discharges, to promote stormwater best management practices, to undertake integrated water resource management, and to increase the resiliency of treatment works to natural or man-made disasters. Finally, HR 2510 includes economic incentives to encourage the adoption of energy and water efficient technologies.

The second category included in HR 2510 is grants. Here the bill authorizes $2.5 billion for grants to address combined sanitary sewer overflows, and recapture and reuse of stormwater. It also authorizes $375 million in grants for alternative water source projects, including projects that reuse wastewater and stormwater to augment the existing sources of water.

DISCUSSION

In November 2016, the SGVCOG adopted our Stormwater Policy which included a goal of identifying stormwater funding. HR 2510 includes a host of funding options that address stormwater through pilot programs, infrastructure grants, and technologies. It includes money for stormwater capture and augmentation of ground water.

Prepared by: _____
Eric Wolf
Senior Management Analyst

Approved by: _____
Marisa Creter
Assistant Executive Director

ATTACHMENTS

Attachment A – HR 2510
Attachment B – HR 2510 Fact Sheet

115TH CONGRESS
1ST SESSION

H. R. 2510

To amend the Federal Water Pollution Control Act to authorize appropriations for State water pollution control revolving funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2017

Mr. DEFAZIO (for himself, Mr. DUNCAN of Tennessee, and Mrs. NAPOLITANO) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

---

A BILL

To amend the Federal Water Pollution Control Act to authorize appropriations for State water pollution control revolving funds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Protection and Job Creation Act of 2017".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

1 **SEC. 2. AMENDMENT OF FEDERAL WATER POLLUTION CON-**
2 **TROL ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Federal Water Pollution
8 Control Act (33 U.S.C. 1251 et seq.).

TITLE I—WATER QUALITY FINANCING

Subtitle A—Technical and Management Assistance

SEC. 101. TECHNICAL ASSISTANCE.

(a) TECHNICAL ASSISTANCE FOR RURAL AND SMALL TREATMENT WORKS.—Section 104(b) (33 U.S.C. 1254(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following:

"(8) make grants to nonprofit organizations—

"(A) to provide technical assistance to rural, small, and tribal municipalities for the purpose of assisting, in consultation with the State in which the assistance is provided, such municipalities and tribal governments in the planning, developing, and acquisition of financing for eligible projects described in section 603(c);

"(B) to provide technical assistance and training for rural, small, and tribal publicly owned treatment works and decentralized

wastewater treatment systems to enable such treatment works and systems to protect water quality and achieve and maintain compliance with the requirements of this Act; and

"(C) to disseminate information to rural, small, and tribal municipalities and municipalities that meet the affordability criteria established under section 603(i)(2) by the State in which the municipality is located with respect to planning, design, construction, and operation of publicly owned treatment works and decentralized wastewater treatment systems.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 104(u) (33 U.S.C. 1254(u)) is amended—

(1) by striking "and (6)" and inserting "(6)"; and

(2) by inserting before the period at the end the following: "; and (7) not to exceed $100,000,000 for each of fiscal years 2018 through 2022 for carrying out subsections (b)(3), (b)(8), and (g), except that not less than 20 percent of the amounts appropriated pursuant to this paragraph in a fiscal year shall be used for carrying out subsection (b)(8)".

SEC. 102. STATE MANAGEMENT ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 106(a) (33 U.S.C. 1256(a)) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the semicolon at the end of paragraph (2) and inserting "; and"; and

(3) by inserting after paragraph (2) the following:

"(3) such sums as may be necessary for each of fiscal years 1991 through 2017, and $300,000,000 for each of fiscal years 2018 through 2022;".

(b) TECHNICAL AMENDMENT.—Section 106(e) (33 U.S.C. 1256(e)) is amended by striking "Beginning in fiscal year 1974 the" and inserting "The".

SEC. 103. WATERSHED PILOT PROJECTS.

Section 122(c) is amended to read as follows:

"(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $120,000,000 for each of fiscal years 2018 through 2022.".

SEC. 104. NONPOINT SOURCE MANAGEMENT PROGRAMS.

Section 319(j) (33 U.S.C. 1329(j)) is amended by striking "$70,000,000" and all that follows through "fis-

cal year 1991" and inserting "$200,000,000 for each of fiscal years 2018 through 2022".

Subtitle B—State Water Pollution Control Revolving Funds

SEC. 121. CAPITALIZATION GRANT AGREEMENTS.

Section 602(b) (33 U.S.C. 1382(b)) is amended—

(1) in paragraph (13)(B)(iii), by striking "; and" and inserting a semicolon;

(2) in paragraph (14), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(15) the State will use at least 15 percent of the amount of each capitalization grant received by the State under this title after September 30, 2017, to provide assistance to municipalities of fewer than 10,000 individuals that meet the affordability criteria established by the State under section 603(i)(2) for projects or activities included on the State's priority list under section 603(g), to the extent that there are sufficient applications for such assistance.".

SEC. 122. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

Section 603(d) (33 U.S.C. 1383(d)) is amended—

1 (1) by striking "and" at the end of paragraph
2 (6);
3 (2) by striking the period at the end of para-
4 graph (7) and inserting a semicolon; and
5 (3) by adding at the end the following:
6 "(8) to provide grants to owners and operators
7 of treatment works that serve a population of
8 10,000 or fewer for obtaining technical and planning
9 assistance and assistance in financial management,
10 user fee analysis, budgeting, capital improvement
11 planning, facility operation and maintenance, equip-
12 ment replacement, and other activities to improve
13 wastewater treatment plant management and oper-
14 ations, except that the total amount provided by the
15 State in grants under this paragraph for a fiscal
16 year may not exceed one percent of the total amount
17 of assistance provided by the State from the fund in
18 the preceding fiscal year, or 2 percent of the total
19 amount received by the State in capitalization grants
20 under this title in the preceding fiscal year, which-
21 ever amount is greatest; and
22 "(9) to provide grants to owners and operators
23 of treatment works for conducting an assessment of
24 the energy and water consumption of the treatment
25 works, and evaluating potential opportunities for en-

1 ergy and water conservation through facility oper-
2 ation and maintenance, equipment replacement, and
3 projects or activities that promote the efficient use
4 of energy and water by the treatment works, except
5 that the total amount provided by the State in
6 grants under this paragraph for a fiscal year may
7 not exceed one percent of the total amount of assist-
8 ance provided by the State from the fund in the pre-
9 ceding fiscal year, or 2 percent of the total amount
10 received by the State in capitalization grants under
11 this title in the preceding fiscal year, whichever
12 amount is greatest.".

13 **SEC. 123. STATE PLANNING ASSISTANCE.**

14 Section 604(b) (33 U.S.C. 1384(b)) is amended by
15 striking "1 percent" and inserting "2 percent".

16 **SEC. 124. INTENDED USE PLAN.**

17 (a) INTEGRATED PRIORITY LIST.—Section 603(g)
18 (33 U.S.C. 1383(g)) is amended to read as follows:

19 "(g) PRIORITY LIST.—

20 "(1) IN GENERAL.—For fiscal year 2019 and
21 each fiscal year thereafter, a State shall establish or
22 update a list of projects and activities for which as-
23 sistance is sought from the State's water pollution
24 control revolving fund. Such projects and activities
25 shall be listed in priority order based on the method-

1 ology established under paragraph (2). The State
2 may provide financial assistance from the State's
3 water pollution control revolving fund only with re-
4 spect to a project or activity included on such list.
5 In the case of projects and activities eligible for as-
6 sistance under subsection (c)(2), the State may in-
7 clude on such list a category or subcategory of
8 nonpoint sources of pollution to be addressed.

9 "(2) METHODOLOGY.—

10 "(A) IN GENERAL.—Not later than 1 year
11 after the date of enactment of this paragraph,
12 and after providing notice and opportunity for
13 public comment, each State shall establish a
14 methodology for developing a priority list under
15 paragraph (1).

16 "(B) PRIORITY FOR PROJECTS AND AC-
17 TIVITIES THAT ACHIEVE GREATEST WATER
18 QUALITY IMPROVEMENT.—In developing the
19 methodology, the State shall seek to achieve the
20 greatest degree of water quality improvement,
21 taking into consideration—

22 "(i) the requirements of section
23 602(b)(5);

"(ii) whether such water quality improvements would be realized without assistance under this title; and

"(iii) whether the proposed projects and activities would address water quality impairments associated with existing treatment works.

"(C) CONSIDERATIONS IN SELECTING PROJECTS AND ACTIVITIES.—In determining which projects and activities will achieve the greatest degree of water quality improvement, the State shall consider—

"(i) information developed by the State under sections 303(d) and 305(b);

"(ii) the State's continuing planning process developed under sections 205(j) and 303(e);

"(iii) whether such project or activity may have a beneficial impact related to the purposes identified under section 302(a);

"(iv) the State's management program developed under section 319; and

"(v) conservation and management plans developed under section 320 with re-

1 spect to an estuary lying in whole or in
2 part within the State.
3 "(D) NONPOINT SOURCES.—For categories
4 or subcategories of nonpoint sources of pollu-
5 tion that a State may include on its priority list
6 under paragraph (1), the State shall consider
7 the cumulative water quality improvements as-
8 sociated with projects or activities carried out
9 pursuant to the listing of such categories or
10 subcategories.
11 "(E) EXISTING METHODOLOGIES.—If a
12 State has previously developed, after providing
13 notice and an opportunity for public comment,
14 a methodology that meets the requirements of
15 this paragraph, the State may use the method-
16 ology for the purposes of this subsection.".
17 (b) INTENDED USE PLAN.—Section 606(c) (33
18 U.S.C. 1386(c)) is amended—
19 (1) in the matter preceding paragraph (1) by
20 inserting "and publish" after "each State shall an-
21 nually prepare";
22 (2) by striking paragraph (1) and inserting the
23 following:
24 "(1) the State's priority list developed under
25 section 603(g);";

(3) in paragraph (4), by striking "and" at the end;

(4) by striking the period at the end of paragraph (5) and inserting "; and"; and

(5) by adding at the end the following:

"(6) if the State does not fund projects and activities in the order of the priority established under section 603(g), an explanation of why such a change in order is appropriate.".

(c) TRANSITIONAL PROVISION.—Before completion of a priority list based on a methodology established under section 603(g) of the Federal Water Pollution Control Act (as amended by this section), a State shall continue to comply with the requirements of sections 603(g) and 606(c) of such Act, as in effect on the day before the date of enactment of this Act.

SEC. 125. TECHNICAL ASSISTANCE.

Section 607 is amended to read as follows:

"SEC. 607. TECHNICAL ASSISTANCE.

"(a) SIMPLIFIED PROCEDURES.—Not later than 1 year after the date of enactment of this section, the Administrator shall assist the States in establishing simplified procedures for treatment works to obtain assistance under this title.

"(b) PUBLICATION OF MANUAL.—Not later than 2 years after the date of the enactment of this section, and after providing notice and opportunity for public comment, the Administrator shall publish a manual to assist treatment works in obtaining assistance under this title and publish in the Federal Register notice of the availability of the manual.".

SEC. 126. AUTHORIZATION OF APPROPRIATIONS.

Title VI (33 U.S.C. 1381 et seq.) is amended by adding at the end the following:

"SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out the purposes of this title $4,000,000,000 for each of fiscal years fiscal year 2018 through 2022.".

TITLE II—ALTERNATIVE WATER SOURCE AND SEWER OVERFLOW AND STORMWATER GRANTS

SEC. 201. PILOT PROGRAM FOR ALTERNATIVE WATER SOURCE PROJECTS.

(a) SELECTION OF PROJECTS.—Section 220(d) (33 U.S.C. 1300(d)) is amended by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(b) COMMITTEE RESOLUTION PROCEDURE.—Section 220 (33 U.S.C. 1300(e)) is amended by striking sub-

1 section (e) and redesignating subsections (f) through (j)
2 as subsections (e) through (i), respectively.

3 (c) DEFINITIONS.—Section 220(h)(1) (as redesig-
4 nated by subsection (c) of this section) is amended by
5 striking "or wastewater or by treating wastewater" and
6 inserting ", wastewater, or stormwater or by treating
7 wastewater or stormwater".

8 (d) AUTHORIZATION OF APPROPRIATIONS.—Section
9 220(i) (as redesignated by subsection (c) of this section)
10 is amended by striking "$75,000,000 for fiscal years 2002
11 through 2004" and inserting "$75,000,000 for each of fis-
12 cal years 2018 through 2022".

13 **SEC. 202. SEWER OVERFLOW CONTROL GRANTS.**

14 Section 221 (33 U.S.C. 1301) is amended—

15 (1) by amending the section heading to read as
16 follows: "**SEWER OVERFLOW AND STORMWATER**
17 **REUSE MUNICIPAL GRANTS**";

18 (2) by amending subsection (a) to read as fol-
19 lows:

20 "(a) IN GENERAL.—

21 "(1) GRANTS TO STATES.—The Administrator
22 may make grants to States for the purpose of pro-
23 viding grants to a municipality or municipal entity
24 for planning, design, and construction of treatment
25 works to intercept, transport, control, treat, or reuse

1 municipal combined sewer overflows, sanitary sewer
2 overflows, or stormwater.
3 "(2) DIRECT MUNICIPAL GRANTS.—Subject to
4 subsection (g), the Administrator may make a direct
5 grant to a municipality or municipal entity for the
6 purposes described in paragraph (1).";
7 (3) by amending subsection (e) to read as fol-
8 lows:
9 "(e) ADMINISTRATIVE REQUIREMENTS.—A project
10 that receives assistance under this section shall be carried
11 out subject to the same requirements as a project that
12 receives assistance from a State water pollution control
13 revolving fund under title VI, except to the extent that
14 the Governor of the State in which the project is located
15 determines that a requirement of title VI is inconsistent
16 with the purposes of this section. For the purposes of this
17 subsection, a Governor may not determine that the re-
18 quirements of title VI relating to the application of section
19 513 are inconsistent with the purposes of this section.";
20 (4) by amending subsection (f) to read as fol-
21 lows:
22 "(f) AUTHORIZATION OF APPROPRIATIONS.—
23 "(1) IN GENERAL.—There is authorized to be
24 appropriated to carry out this section $500,000,000
25 for each of fiscal years 2018 through 2022.

"(2) MINIMUM ALLOCATIONS.—To the extent there are sufficient eligible project applications, the Administrator shall ensure that a State uses not less than 20 percent of the amount of the grants made to the State under subsection (a) in a fiscal year to carry out projects to intercept, transport, control, treat, or reuse municipal combined sewer overflows, sanitary sewer overflows, or stormwater through the use of green infrastructure, water and energy efficiency improvements, and other environmentally innovative activities."; and

(5) by amending subsection (g) to read as follows:

"(g) ALLOCATION OF FUNDS.—

"(1) FISCAL YEAR 2018.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2018 for making grants to municipalities and municipal entities under subsection (a)(2) in accordance with the criteria set forth in subsection (b).

"(2) FISCAL YEAR 2019 AND THEREAFTER.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2019 and each fiscal year thereafter for making grants to States under subsection

1 (a)(1) in accordance with a formula to be established
2 by the Administrator, after providing notice and an
3 opportunity for public comment, that allocates to
4 each State a proportional share of such amounts
5 based on the total needs of the State for municipal
6 combined sewer overflow controls, sanitary sewer
7 overflow controls, and stormwater identified in the
8 most recent survey conducted pursuant to section
9 516 and any other information the Administrator
10 considers appropriate.".

○

H.R. ____
The Water Quality Protection and Job Creation Act of 2017
Introduced by T&I Committee Ranking Member Peter DeFazio, T&I Committee Vice Chair John J. Duncan, and Water Resources Subcommittee Ranking Member Grace Napolitano

May 16, 2017

EXECUTIVE SUMMARY

H.R. ____, the "Water Quality Protection and Job Creation Act of 2017", provides approximately $25 billion in direct infrastructure investment over the next five years to address America's crumbling wastewater infrastructure and local water quality challenges.

This **bipartisan bill** renews the Federal commitment to addressing local water quality challenges by providing an infusion of Federal assistance for the construction, repair, and replacement of the Nation's network of wastewater and stormwater conveyance and treatment facilities. The *Water Quality Protection and Job Creation Act of 2017* significantly increases the amount of Federal assistance made available to States and communities through the successful Clean Water State Revolving Fund program—the primary source of Federal assistance for wastewater infrastructure construction.

WATER INFRASTRUCTURE NEEDS

America's water infrastructure is in dire need of renewed Federal investment. According to the American Society of Civil Engineers (ASCE) *2017 Infrastructure Report Card*, America's wastewater treatment infrastructure receives a grade of D+, which is only the slightest improvement from its previous grade of D in the 2013 ASCE Report Card.

Currently, municipalities face a **backlog of more than $40 billion** in clean water infrastructure projects and, according to the Environmental Protection Agency, these communities **need close to $300 billion of investment over the next 20 years[1] to bring their systems to a state of good repair.** Given the current lack of Federal investment to address these needs, communities are forced to cover more than 95 percent of the cost of clean water projects.

As recent events in Flint, Michigan, Toledo, Ohio, and Charleston, West Virginia, have shown, the need for greater Federal investment in our Nation's water infrastructure is clear, and the benefits are numerous. Investing in clean water creates thousands of new, domestic jobs in the construction industry and reduces the overall costs of constructing and maintaining that infrastructure. According to the National Utility Contractors Association, **every $1 billion invested in our Nation's water infrastructure creates or sustains 27,000 jobs in communities across America**, while improving public health and the environment at the same time. It is clear that the status quo fails to meet the needs of the Nation, and that a renewed Federal commitment to financing clean water infrastructure projects is necessary.

[1] https://www.epa.gov/cwns/clean-watersheds-needs-survey-cwns-2012-report-and-data

THE CLEAN WATER STATE REVOLVING FUND

Congress authorized the Clean Water State Revolving Fund ("Clean Water SRF") in the Water Quality Act of 1987 (Pub. L. 100-4). Although the authorization of appropriations for the Clean Water SRF expired in 1993, Congress continues to fund this critical investment in our Nation's wastewater infrastructure—providing more than $40 billion in Federal capitalization assistance to States since 1987. In turn, this infusion of Federal capital to State revolving funds has leveraged approximately $120 billion in direct assistance to communities through individual SRFs over this period.

In addition, in 2000, Congress authorized two supplemental Federal Clean Water grant programs to address combined and sanitary sewer overflows (section 221 of the Clean Water Act), and alternative sources of water, including reclaimed wastewater, in drought prone areas (section 220 of the Clean Water Act). These separate Clean Water grant programs provide other financial tools to communities facing local water quality and water availability challenges.

THE WATER QUALITY PROTECTION AND JOB CREATION ACT OF 2017

H.R. ___ renews the Federal commitment to addressing our Nation's substantial needs for wastewater infrastructure by **investing $20 billion over five years** in wastewater infrastructure through the Clean Water State Revolving Fund and other efforts to improve water quality. In addition, H.R. ___ reauthorizes the sewer overflow and alternative water source grant authorities to aid communities seeking to augment local water supplies through water reuse, and to address local sewer overflows and stormwater concerns.

H.R. ___ will create thousands of new, domestic jobs in the construction and wastewater sectors through increased investment in wastewater infrastructure. It will reduce the cost of constructing and maintaining that infrastructure, promote energy efficiency and water efficiency, and reduce the potential long-term operation and maintenance costs of publicly owned treatment works.

In the 110th and 111th Congresses, the House of Representatives passed legislation similar to the *Water Quality Protection and Job Creation Act* by significant bipartisan majorities. In the 110th Congress, the Committee reported H.R. 720 to the House by a recorded vote of 55-13. On March 9, 2007, the House passed H.R. 720 by a recorded vote of 303-108. Similarly, in the 111th Congress, the Committee reported H.R. 1262 to the House by voice vote. On March 12, 2009, the House passed H.R. 1262 by a recorded vote of 317-101. Neither bill was considered by the Senate.

Title I – Water Quality Financing

- Authorizes **$20 billion in Federal grants over five years** to capitalize Clean Water SRFs. These funds provide low-interest loans and additional loan subsidizations (e.g., principal forgiveness and negative interest loans) to communities for wastewater infrastructure.

- Authorizes **$1.5 billion over five years** for grants for State water pollution control agencies to implement State water pollution control programs.

- Provides **$600 million over five years** for Clean Water pilot programs (including Federal technical assistance and/or grants) for watershed-based or system-wide efforts to address wet weather discharges, to promote stormwater best management practices, to undertake integrated water resource management, and to increase the resiliency of treatment works to natural or man-made disasters.

- Authorizes technical assistance to rural, small, and tribal communities to assist them in gaining access to financing wastewater infrastructure.

- Includes economic incentives to encourage the adoption of energy- and water-efficient technologies and practices to maximize the potential for efficient water use, reuse, and conservation, and energy conservation, and realize the potential corresponding cost-savings for water treatment.

Title II – Grants

- Authorizes **$2.5 billion over five years** for grants to address combined and sanitary sewer overflows and recapture and reuse of municipal stormwater under section 221 of the Clean Water Act.

- Authorizes **$375 million in grants over five years** for alternative water source projects under section 220 of the Clean Water Act, including projects that reuse wastewater and stormwater to augment the existing sources of water.

LOS ANGELES REGIONAL
WATER QUALITY CONTROL BOARD

2016 CLEAN WATER ACT SECTIONS 305(b) AND 303(d) INTEGRATED REPORT FOR THE LOS ANGELES REGION

STAFF REPORT

April 2017
Revised June 2017

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List of Acronyms and Abbreviations

Basin Plan	Water Quality Control Plan: Los Angeles Region
BPTCP	Bay Protection and Toxic Cleanup Program
BMI	Benthic Macro Invertebrates
CalWQA	California Water Quality Assessment (database)
CCC	Criteria Continuous Concentration
CCR	California Code of Regulations
CDPH	California Department of Public Health
CFR	Code of Federal Regulations
CMC	Criteria Maximum Concentration
CTR	California Toxics Rule
CWA	Clean Water Act
ºC	degrees Celsius
ºF	degrees Fahrenheit
FED	Functional Equivalent Document
DDE	Dichlorodiphenyldichloroethylene
DDT	Dichlorodiphenyltrichloroethane
DFW	Department of Fish and Wildlife, formerly Department of Fish and Game (DFG)
DO	Dissolved oxygen
dw	dry weight
ERM	Effects Range Median
HCH	Hexachlorocyclohexane
HSA	Hydrologic Sub Area
HU	Hydrologic Unit
IBI	Index of Biological Integrity
ILRP	Irrigated Lands Regulatory Program
IR	Integrated Report
kg	kilogram(s)
Listing Policy	Water Quality Control Policy for Developing California's Section 303(d) List
LOE	Line of Evidence
MCL	Maximum Contaminant Level
MDL	Method Detection Limit
mg/kg	milligrams per kilogram (parts per million)
mg/L	milligrams per liter (parts per million)
µg/g	micrograms per gram (parts per million)
µg/L	micrograms per liter (parts per billion)
MTBE	Methyl tertiary-butyl ether
MTRL	Maximum Tissue Residue Level
NAS	National Academy of Sciences
ng/g	nanograms per gram (parts per billion)
ng/L	nanograms per liter (parts per trillion)
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System

NTU	Nephelometric Turbidity Unit
oc	organic carbon
OEHHA	Office of Environmental Health Hazard Assessment
PAH	Polynuclear aromatic hydrocarbon
PBDE	Polybrominated diphenyl ethers
PCB	Polychlorinated biphenyl
PEL	Probable Effects Level
pg/L	picograms per liter
QA	Quality Assurance
QAPP	Quality Assurance Project Plan
QC	Quality Control
RBI	Relative Benthic Index
RL	Reporting Level
SCCWRP	Southern California Water Research Project
SMWP	State Mussel Watch Program
SQG	Sediment quality guideline
SWAMP	Surface Water Ambient Monitoring Program
TDS	Total Dissolved Solids
TIE	Toxicity Identification Evaluation
TMDL	Total Maximum Daily Load
TSMP	Toxic Substance Monitoring Program
TSS	Total Suspended Solids
U.S. EPA	U.S. Environmental Protection Agency
USGS	U.S. Geological Survey
WDR	Waste Discharge Requirement
WQO	Water quality objective
WQS	Water quality standard
ww	wet weight

1. Introduction

The federal Clean Water Act (CWA) gives states the primary responsibility for protecting and restoring water quality. Under CWA Section 305(b), states are required to report biennially to the United States Environmental Protection Agency (USEPA) on the water quality conditions of their surface waters. The USEPA then compiles these assessments into their biennial "National Water Quality Inventory Report" to Congress. Under CWA Section 303(d), states are required to review, makes changes as necessary, and submit to the USEPA a list identifying waterbodies not meeting water quality standards and identifying the water quality parameter (i.e., pollutant) not being met (303(d) list). Placement on this list generally triggers development of a pollution control plan called a total maximum daily load (TMDL) for each waterbody/pollutant pair on the list.

In 2002, the USEPA issued guidance to states requiring that the 305(b) water quality assessment and the 303(d) list of impaired waters be integrated into a single report. This report is called the Integrated Report, and it satisfies both the CWA Section 305(b) and Section 303(d) requirements. The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) is responsible for developing and adopting the 2016 Integrated Report for waters within the Los Angeles Region of California. Following adoption by the Los Angeles Water Board, the 2016 Integrated Report will be transmitted to the State Water Resources Control Board (State Water Board), where it will be considered by the State Water Board in combination with other Regional Water Board Integrated Reports.

The purpose of this staff report is to describe the assessment process (the procedures used by the State Water Board and Los Angeles Water Board staff to analyze data and information), provide a report of surface water quality in the Los Angeles Region as required by CWA Section 305(b), and provide Los Angeles Water Board staff recommendations for additions, deletions, and changes to the California CWA Section 303(d) List.

The results of the staff analysis are presented as staff recommendations in the form of fact sheets that contain a decision and supporting lines of evidence for each water body/pollutant pair assessed. A summary of staff recommendations can be found in Section 4. The fact sheets are available in Appendix ~~G~~ I of this Staff Report.

2. Legal Requirements and Policy

This section provides a summary of the federal and state legal requirements and applicable policies for the 2016 Integrated Report.

2.1 Federal Requirements

2.1.1 CWA Section 303(d) – Impaired Waters

Section 303(d) of the Clean Water Act requires states to identify waters that do not meet applicable water quality standards after the application of certain technology-based controls.[1] The Section 303(d) List must include a description of the pollutants causing the violation of water quality standards (40 CFR §130.7(b)(iii)(4)) and a priority ranking of the water quality limited segments, taking into account the severity of the pollution and the uses to be made of the waters.

Water quality standards include the designated beneficial uses of a waterbody, the adopted water quality objectives to protect those uses (numeric and narrative), and the State's Antidegradation Policy (State Water Board Resolution No. 68-16) (SWRCB 1968).

Federal regulation defines a "water quality limited segment" as "any segment [of a surface waterbody] where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after application of technology-based effluent limitations required by CWA Sections 301(b) or 306" (40 CFR 130.2(j)).

States are required to review the Section 303(d) List in even-numbered years, make changes as necessary, and submit the list to the USEPA for approval. A TMDL is generally developed for a water quality limited segment. A TMDL is the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources, and natural background (40 CFR 130.2(i)).

2.1.2 CWA Section 305(b) – Water Quality Assessment

Under CWA Section 305(b), states are required to report biennially to the USEPA on the water quality conditions of their surface waters. The USEPA then compiles these assessments into their biennial "National Water Quality Inventory Report" to Congress.

2.1.3 The Integrated Report and Waterbody Categories

In 2002, the USEPA issued guidance to states requiring that the 305(b) water quality assessment and the 303(d) list of impaired waters be integrated into a single report. This report is called the Integrated Report, and it satisfies both the CWA Section 305(b) and Section 303(d) requirements.

To meet CWA Section 305(b) requirements of reporting on water quality conditions, the Integrated Report places each assessed waterbody segment into one of five non-overlapping

[1] Technology-based controls are defined in CWA Section 301. They include effluent limits (primary and secondary treatment requirements) for industrial discharges and discharges from publically owned treatment works.

categories based on the overall beneficial use support of the water segment and the need for a TMDL. Water segments are evaluated for at least one of six "core" beneficial uses including: municipal and domestic supply, aquatic life support, fish consumption, shellfish harvesting, contact recreation, and non-contact recreation.

Table 1. Integrated Report Categories

Category	Description
1	All assessed beneficial uses supported and no beneficial uses known to be impaired.
2	There is insufficient information to determine beneficial use support.
3	There is insufficient data and/or information to make a beneficial use support determination but information and/or data indicates beneficial uses may be potentially threatened.
4	At least one beneficial use is not supported but TMDL is not needed.
4a	A TMDL has been developed and approved by U.S.EPA for any waterbody-pollutant combination and the approved implementation plan is expected to result in full attainment of the water quality standard within a specified time frame..
4b	Another regulatory program is reasonably expected to result in attainment of the water quality standard within a reasonable, specified time frame.
4c	The non-attainment of any applicable water quality standard for the waterbody segment is the result of pollution and is not caused by a pollutant.
5	At least one beneficial use is not supported and a TMDL is needed.

A waterbody will often have multiple pollutants impairing multiple beneficial uses. In these cases, when the waterbody has TMDLs for all the impaired uses, the waterbody is placed in category 4a; when the waterbody is lacking a TMDL for at least one impairment, the waterbody is placed in category 5.

2.2 California Requirements

On September 30, 2004, the State Water Board adopted the "Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List," also known as the Listing Policy (SWRCB 2004a) in accordance with California Water Code Section 13191.3(a). The Listing Policy identifies the process by which the State Water Board and the Regional Water Quality Control Boards will comply with the listing requirements of CWA Section 303(d). The Listing Policy became effective in December 2004. Justification of each portion of the Listing Policy is presented in the Final Functional Equivalent Document (SWRCB, 2004b) that was developed to support the provisions of the Listing Policy.

The objective of the Listing Policy is to establish a standardized approach for developing California's Section 303(d) List with the overall goal of achieving water quality standards and maintaining beneficial uses in all of California's surface waters. TMDLs will generally be developed as needed for the waters identified under the provisions of the Listing Policy.

The Listing Policy outlines a "weight of evidence" approach that provides the rules for making decisions based upon different kinds of data, an approach for analyzing data statistically, and requirements for data quality, data quantity, and the administration of the listing process. Decision rules for listing and delisting are provided for chemical-specific water quality standards; bacterial water quality standards; health advisories; bioaccumulation of chemicals in aquatic life tissues; nuisance such as trash, odor, and foam; nutrients; water and sediment toxicity; adverse biological response; and degradation of aquatic life populations and communities. The Listing Policy also requires that situation specific weight of evidence listing or delisting factors be used if available information indicates water quality standards are attained or not attained and the other decision rules do not support listing or delisting.

The Listing Policy also provides direction related to:

- The definition of readily available data and information.
- Administration of the listing process including data solicitation and fact sheet preparation.
- Interpretation of narrative water quality objectives using numeric evaluation guidelines.
- Data quality assessments.
- Data quantity assessments including waterbody specific information, data spatial and temporal representation, aggregation of data by reach/area, quantitation of chemical concentrations, evaluation of data consistent with the expression of water quality objectives or criteria, binomial model statistical evaluation, evaluation of bioassessment data, and evaluation of temperature data.

The Listing Policy requires that *all* surface waters that do not meet water quality standards be placed on the Section 303(d) List. The Policy also states that the California 303(d) List includes (1) waters still requiring a TMDL under Category 5, and (2) waters where the water quality limited segment is being addressed under Category 4. Waterbodies in the "Water Quality Limited Segments Being Addressed" category must meet either of the following conditions:

1. A TMDL has been approved by USEPA and is expected to result in full attainment of the standard within a reasonable, specified time frame (Category 4a).

2. It has been determined that an existing regulatory program is reasonably expected to result in the attainment of the water quality standard within a reasonable, specified time frame (Category 4b).

Waterbodies that are impaired by a non-pollutant source (Category 4c) do not require a TMDL and the State Water Board, in accordance with the Listing Policy, does not consider waters in Category 4c as a part of the 303(d) List. This means that, for California, waters that fall into the

Integrated Report Categories 4a, 4b, and 5 are considered part of the California 303(d) List. The USEPA considers Category 5 waterbodies as the only category that constitutes the 303(d) List.

2.3 TMDL Scheduling

In conformance with Section 5 of the Listing Policy, a TMDL completion schedule date is required for all waterbody-pollutant combinations placed on the 303(d) List. Water Board staff relied on guidance from the USEPA (1997), which states that "schedules should be expeditious and normally extend from eight to thirteen years in length, but could be shorter or slightly longer depending on State-specific factors." Therefore, the timeline for completing TMDLs for waterbodies listed for the first time as part of the 2016 Integrated Report is estimated to be no longer than thirteen years, which equates to an estimated completion date of 2029. Expected TMDL completion dates are proposed by Los Angeles Water Board staff in the fact sheets of this report (Appendix ~~G~~I).

2.4 Consequences of 303(d) listing and delisting

When a waterbody/pollutant combination is placed on the 303(d) list, it requires the Los Angeles Water Board to further evaluate the need for a TMDL to bring the waterbody into attainment status for the water quality standard within a reasonable, specified time frame.

As discussed in section 2.3, the timeline for completing a TMDL, or identifying an existing regulatory program that will fully address the impairment, is no longer than 13 years. However, in that time period, because additional 303(d) assessment will be conducted and/or other regulatory actions will require assessments, the waterbody/pollutant combination will likely be reevaluated. Because this 2016 303(d) list only includes data through 2010, it is expected that the next update to the 303(d) list, scheduled for 2022, will include many revisions, which may include listing new waterbody/pollutant combinations, potentially re-listing previously delisted waterbody/pollutant combinations, and delisting existing waterbody/pollutant combinations. These revisions may result from an evaluation of more recent data or, in less frequent cases, because the evaluation guideline (i.e., water quality objective) has changed.

As a result of the "snapshot" nature of the 303(d) list and the often lengthy intervening time period between an initial listing decision and TMDL development, the Los Angeles Water Board does not depend exclusively on the 303(d) list or the data used in the listing decision when it begins TMDL development. During the initial "problem identification" stage of TMDL development, the Los Angeles Water Board evaluates all available data, including more recent data that was not assessed as part of the 303(d) listing process. In many cases, the Los Angeles Water Board will also collect additional data for a better understanding of the waterbody impairment.

Additionally, due to the large amount of data that needs to be assessed during each update of the 303(d) list, the 303(d) list data evaluations are more general. In particular, these evaluations do not include source assessments; they rely upon existing waterbody delineations without further subdivision (e.g., Santa Monica Bay); and they typically do not entail more refined analyses such

as assessing data collected during wet weather and dry weather separately. As Board staff commences TMDL development, these more temporally and spatially refined data assessments are made along with a source analysis. Based on these analyses, staff may propose a finding of no impairment with a recommendation to delist during the next 303(d) cycle, or may refine the defined scope of the impairment to be addressed by the TMDL (e.g., wet weather only). For example, during development of the Dominguez Channel and Los Angeles and Long Beach Greater Harbor Waters Toxic Pollutants TMDL, the diazinon listing for Dominguez Channel was reassessed using additional data and found to no longer be causing an impairment; as a result, the Board did not develop a TMDL for diazinon.

Lastly, delisting a waterbody/pollutant combination from the 303(d) list does not result in any change to existing TMDLs adopted by the Los Angeles Water Board or established by the U.S. EPA. TMDLs developed to address the previously listed impairment remain as regulations in the Region's Basin Plan. Nor does a delisting negate requirements to implement TMDL wasteload allocations (WLAs) and load allocations in NPDES permits, Waste Discharge Requirements (WDRs), waivers of WDRs, or any other State or Regional Water Board orders (e.g., Time Schedule Orders, Clean-up and Abatement Orders). NPDES permits must include effluent limitations to implement available WLAs from TMDLs, and NPDES permits, WDRs and waivers of WDRs must be consistent with applicable state and regional water quality control plans, including the Region's Basin Plan. Thus, WLAs and load allocations assigned to dischargers/permittees still apply and permittees must comply with permit provisions, including water quality based effluent limitations, that have been incorporated into discharge permits to implement these TMDL allocations. A change to a permit provision required by a TMDL must be preceded by a change to the TMDL. An action to revise a TMDL is a separate, independent and administratively different action from the Water Boards' action to approve the 303(d) list.

The Los Angeles Water Board often reconsiders TMDLs and, if warranted, a TMDL may be revised to eliminate a waterbody/pollutant combination from the TMDL. For example, during the reconsideration of the Ballona Creek Estuary Toxics TMDL and Ballona Creek Metals TMDL, selenium data was reassessed and selenium was found to no longer be causing an impairment; as a result, the selenium TMDL and the associated targets and allocations were eliminated. However, the Board exercises caution when making such a decision, since the purpose of a TMDL is to ensure attainment of water quality standards and, thus, maintaining the detailed program of implementation established in the TMDL is often beneficial.

2.5 2010 303(d) List of Impaired Waters

The 2010 303(d) list was adopted by the Los Angeles Water Board on July 16, 2009, in Resolution No. R09-004; adopted by the State Water Board on August 4, 2010, in Resolution No. 2010-0040; and approved by the USEPA on October 11, 2011. The 2010 list included data submitted through February 28, 2007. The 2010 303(d) list is the most recent list which included updates from the Los Angeles Region.

2.6 Changes to California's Integrated Report 303(d) and 305(b) Process

In February 2013, the State Water Board announced a new strategy for the development of the State's Integrated Report including establishing three groups of Regional Water Boards and submitting an Integrated Report for one group per listing cycle (i.e. every two years). This strategy was formally described in an *Integrated Report Update Memo* in November 2013 (SWRCB, 2013). The Listing Policy was amended to reflect this and other changes on February 3, 2015.

Therefore, the 2012 Integrated Report consisted of data submitted for the North Coast Regional Water Quality Control Board (Region 1), the Lahontan Regional Water Quality Control Board (Region 6), and the Colorado River Basin Regional Water Quality Control Board (Region 7). On July 30, 2015, the USEPA issued its final decision this update to the 303(d) list and this 2012 303(d) list replaced the 2010 303(d) list as California's current 303(d) list.

The Central Coast Regional Water Quality Control Board (Region 3), the Central Valley Regional Water Quality Control Board (Region 5), and the San Diego Regional Water Quality Control Board (Region 9) recently approved Integrated Reports including a 303(d) list for their respective regions. Region 9 approved its 303(d) list in October 2016 and Regions 3 and 5 approved their 303(d) lists in December 2016. These updates to the 303(d) list were to be approved by the State Water Board as the 2014 303(d) list.

The 2016 Integrated Report will consist of data for the San Francisco Bay Regional Water Quality Control Board (Region 2), the Los Angeles Water Board (Region 4), and the Santa Ana Regional Water Quality Control Board (Region 8). Each of these Regions is expected to approve their lists by April 2017. Until the 2014 and 2016 303(d) list updates are approved by the USEPA, the current list is the 2012 303(d) list.

Due to the volume of data received during the 2010 data solicitation period, the State Water Board determined that no additional data would be solicited or analyzed until all the 2010 data are assessed. Each of the 2012, 2014 and 2016 303(d) lists have assessed only data from the 2010 data solicitation.

In addition, changes to the procedures included in the February 2015 amendment to the Listing Policy, included a requirement that all data be submitted to the California Environmental Data Exchange Database (CEDEN); this change will significantly improve the efficiency of the listing and delisting process so that even with regional updates only once every six years, California will have a more comprehensive assessment and 303(d) list than in the past. The CEDEN website has a new page dedicated to the 303(d) list: http://www.ceden.org/303d_list.shtml.

The data solicitation for the 2018 303(d) list was released on November 3, 2016. The 2018 303(d) list will address Regions 1, 6, and 7.

The Los Angeles Water Board will develop its next Integrated Report, including an updated 303(d) list, in 2022. Los Angeles Water Board staff estimates that the 2022 303(d) list will include data submitted through 2021.

2.7 Public Review and Board Approval of the 2016 303(d) List

Pursuant to section 6.2 of the Listing Policy, waterbodies listed in Category 4a, 4b, or 5, which make up the 303(d) list, are subject to public review and approval by the Los Angeles Water Board. Waterbodies listed in Categories 1, 2, 3, or 4c are provided to the public and to the Los Angeles Water Board as additional waterbody information. All categories will be submitted to the State Water Board for inclusion into the California Integrated Report. Once compiled, the State Water Board will provide public notice of the California Integrated Report for additional public review prior to approval by the State Water Board, as outlined in section 6.3 of the Listing Policy. Waterbodies in Categories 4a, 4b, and 5 will be considered for inclusion in the California 303(d) list.

It is anticipated that the State Water Board will approve the 2014 list updates of Regional 3, 5 and 9 and the 2016 list updates of Regions 2, 4, and 8, during the same State Water Board hearing in 2017.

The California 303(d) list will require final approval by USEPA. If USEPA determines that changes are needed to the submitted report they will initiate further public review before finalizing and publishing the report.

3. Development of the 2016 Los Angeles Region 303(d) List

This section provides a review of the data analysis for the Los Angeles Region's 2016 Integrated Report.

3.1 Data Solicitation for the 2016 303(d) List

In January of 2010, the State Water Board solicited data from the public with a formal "Notice of Public Solicitation of Water Quality Data and Information for the California Integrated Report" (Notice), which was sent to interested persons subscribed to the State Water Board's Integrated Report e-mail distribution list. In addition, the Los Angeles Water Board sent the notice to persons subscribed to the Los Angeles Water Board's Basin Plan Amendments and TMDL e-mail distribution lists. Data used as part of the 2016 Integrated Report were received through August 30, 2010. Data sources include government agencies, municipalities, environmental groups, citizen groups, receiving water data from the National Pollutant Discharge Elimination System (NPDES) dischargers and data collected by the Regional and State Water Boards under the Surface Water Ambient Monitoring Program (SWAMP).

All data and information submitted are available as part of the electronic administrative record (Appendix ~~H~~J). Data and information pertaining to specific waterbody-pollutant assessments are provided in the fact sheets (Appendix ~~G~~I) and link directly to the administrative record.

3.2 Data Processing and Analysis

All readily available data and information in the administrative record was considered in the development of the 2016 Integrated Report. However, only high-quality data supported by a Quality Assurance Project Plan was used to make determinations of water quality standards attainment. In the absence of quality assurance documentation, data is used only as supporting evidence and is not the basis of a listing decision.

Fact sheets and overall beneficial use support determinations were developed in the California Water Quality Assessment (CalWQA) database. Lines of evidence (LOE) summarize: water quality data, information pertaining to where and when the water quality monitoring took place, the pollutant sampled, the beneficial use affected, the water quality objective or guideline protective of the beneficial use, the number of samples collected, and how many samples exceeded the objective or guideline. Potential sources are identified in fact sheets in some cases, otherwise, the potential source was marked “Source Unknown”.

Data were aggregated by waterbody segment following the requirements of Section 6.1.5.4 of the Listing Policy, and assessments were performed on the individual segments. Waterbodies were segmented to account for hydrologic features.
Spatial and temporal representation of data was assessed using the requirements and guidance of the Listing Policy. The available data were used to represent concentrations during the averaging period associated with the particular pollutant and water quality objective, as required by Section 6.1.5.6 of the Listing Policy. For example, if only one data point was available during a 4-day period, it was used to represent the four-day average concentration for that period.

Following data assessment, Los Angeles Water Board staff determined whether or not the waterbody was attaining relevant water quality standards. Decision recommendations were completed to summarize all relevant LOEs for a waterbody-pollutant combination and, based on the statistical evaluation described in the Listing Policy, to state if the exceedances of water quality standards constituted an impairment of a beneficial use and, thus, necessitated a 303(d) listing.

3.3 Water Quality Standards Used in the Data Assessment

Beneficial uses for waters in the Los Angeles Region are identified in Table 2-1, 2.1a and 2.3 of the Los Angeles Regional Water Quality Control Plan (Basin Plan).

Water Board staff assessed data using regulatory limits when available. The most common regulatory limits used include water quality objectives in the Basin Plan or any statewide Water Quality Control Plans applicable to the waterbody, including objectives for toxic chemicals promulgated by the USEPA under the California Toxics Rule (40 CFR §131.38). When numeric

regulatory limits were not available, evaluation guidelines were considered to interpret narrative water quality objectives. Evaluation guidelines are selected in conformance with section 6.1.3 of the Listing Policy.

3.4 Determination of Beneficial Use Support and Integrated Report Categories

To meet CWA Section 305(b) requirements of reporting on water quality conditions, the Integrated Report places each assessed waterbody segment into one of five non-overlapping categories based on the overall beneficial use support of the water segment and the need for a TMDL. Water segments were evaluated for at least one of six "core" beneficial uses including: municipal and domestic supply, aquatic life support, fish consumption, shellfish harvesting, contact recreation, and non-contact recreation. For each core beneficial use associated with each waterbody segment, a rating of fully supporting, not supporting, or insufficient information was assigned based on the assessment of readily available data and information.

Table 2. Los Angeles Integrated Report Waterbody Categories, 2016 303(d) List

Category	Description	Waterbody Segments
1	All assessed beneficial uses supported and no beneficial uses known to be impaired.	~~38~~57
2	There is insufficient information to determine beneficial use support.	~~55~~54
3	There is insufficient data and/or information to make a beneficial use support determination but information and/or data indicates beneficial uses may be potentially threatened.	~~13~~12
4	At least one beneficial use is not supported but TMDL is not needed.	
4a	A TMDL has been developed and approved by U.S.EPA for any waterbody-pollutant combination and the approved implementation plan is expected to result in full attainment of the water quality standard within a specified time frame.	~~77~~80
4b	Another regulatory program is reasonably expected to result in attainment of the water quality standard within a reasonable, specified time frame.	~~0~~4
4c	The non-attainment of any applicable water quality standard for the waterbody segment is the result of pollution and is not caused by a pollutant.	**3**
5	At least one beneficial use is not supported and a TMDL is needed.	~~134~~132
Total Waterbodies Assessed		~~320~~342

Detailed Category Reports can be found in Appendices B-~~F~~H.

Pursuant to Section 2 of the Listing Policy, waterbodies remain in Category 5 until all 303(d)-listed pollutants are addressed by USEPA-approved TMDLs or by another regulatory program that is expected to result in the reasonable attainment of the water quality standards, at which point the waterbody will be placed into Category 4a or 4b. Impaired waters are placed in Category 4c if the impairment is not caused by a pollutant but rather caused by pollution, such as flow alteration or habitat alteration. Waterbodies placed in Category 4c are not included as part of the 303(d) list and do not require the development of a TMDL.

Waterbody-pollutant combinations listed in Category 5 (Appendix B) show the TMDL requirement status. If a "TMDL is still needed" for the waterbody-pollutant combination, the TMDL requirement status is labeled 5A. If the waterbody-pollutant combination is "being addressed by a USEPA approved TMDL", the TMDL requirement status is labeled 5B. If the waterbody-pollutant combination is "being addressed by an action other than a TMDL", the TMDL requirement status is labeled 5C. These labels were created for internal tracking and are not Integrated Report sub-categories required by the USEPA.

4. Proposed Changes to the Section 303(d) List

While, due to the changes to the 303(d) process described in Section 2.5, data review was restricted to data collected prior to September 2010, a significant number of changes to the Los Angeles Region's 303(d) list are proposed. The ~~211~~ 153 proposed new listings include:

- Additional PCB and pesticide listings arising from California's Surface Water Ambient Monitoring Program (SWAMP) water quality sampling conducted in 2009 focusing on lakes and reservoirs. For example, staff has proposed new listings for Castaic Lake (PCBs), Pyramid Lake (chlordane, dieldrin, DDT and PCBs) and Echo Park Lake (dieldrin).

- Additional pesticide and other pollutant listings in Ventura County waters draining agricultural lands including the Santa Clara Drain, Tapo Canyon, Wheeler Canyon and Boulder Cove, arising from the Ventura County Agricultural Irrigated Lands Group water quality monitoring.

- Additional toxicity listings in the Los Angeles River arising from water quality sampling conducted the City of Los Angeles' Bureau of Sanitation, required pursuant to the City's NPDES permits.

- Various other proposed listings arising from special studies or ongoing water quality monitoring programs.

Most of the proposed new listings are new waterbody segment-pollutant combinations where a TMDL will be needed. These waterbodies would then be in Category 5. However, several of

the proposed new listings identify additional impairments in watersheds already being addressed by a TMDL for that pollutant. For example, the proposed new listings for mercury in Calleguas Creek Reach 3 and the proposed DDT listings in Hondo Barranca are being addressed by the Calleguas Creek Metals TMDL and the Organochlorine Pesticides, PCBs and Siltation TMDL. In addition, the proposed Los Angeles River Reach 3 indicator bacteria listing is already being addressed by the Los Angeles River Bacteria TMDL. These waterbodies would then be in Category 4a unless another waterbody pollutant combination requires a TMDL such that the waterbody would remain in Category 5.

The proposed ~~48~~ 54 delistings include:

- Several proposed delistings for indicator bacteria at Santa Monica Beaches, including Abalone Cove Beach, Bluff Cove Beach, Outer Cabrillo Beach, Manhattan Beach and Hermosa Beach. It is important to note that the Santa Monica Bay Bacteria TMDL remains in effect for those beaches even if the delistings are fully approved.

- Various other proposed delistings arising from special studies or ongoing water quality monitoring programs.

In a number of cases, in both fresh and marine waters, listings for "coliform bacteria" were renamed "indicator bacteria" based on USEPA's recommendation and for statewide consistency.

In addition, because 21 TMDLs including 252 listings, have gone into effect since the development of the 2010 303(d) list, a number of Category changes are proposed to change waterbody-pollutant combinations from "requiring a TMDL" (Category 5A) to "being addressed by a USEPA approved TMDL" (Category 5B or, if all waterbody-pollutant combinations have been addressed for that waterbody, Category 4a).

For detailed information on proposed changes, refer to the waterbody-pollutant "fact sheets" in Appendix I~~G~~.

As discussed in Section 2.6, it is anticipated that the State Water Board will approve the 2014 list updates of Regions 3, 5 and 9 and the 2016 list updates of Regions 2, 4, and 8, during the same State Water Board hearing in 2017. Table 3, below, shows the 303(d) list changes approved by Regional Water Boards 3, 5 and 9 and the 303(d) list changes proposed, at this time, for approval by the staff of Regional Water Boards 2, 4, and 8.

Table 3. Summary of 2014 and 2016 Changes to the California 2012 303(d) List

2014-2016 INTEGRATED REPORT						
REGION	2012 303(d) LIST	2014 and 2016 303(d) List proposed changes				
	Total 303(d) Listings (Categories 4a, 4b and 5)	Regional Water Board 303(d) Listing Recommendations		Miscellaneous Changes*		Total proposed 303(d) Listings (Categories 4a, 4b and 5)
		New Listings	New Delisting	Resulting in Listings	Resulting in Delistings	
1	159	0	0	0	0	159
2	333	~~41~~30	7	0	~~9~~10	~~358~~346
3	712	269	~~48~~47	0	23	~~910~~911
4	823	~~211~~153	~~48~~54	0	0	~~986~~922
5	730	269	45	0	0	954
6	155	0	0	0	0	155
7	68	0	0	0	0	68
8	132	~~31~~28	~~16~~18	0	0	~~147~~142
9	445	~~244~~243	~~14~~17	0	0	~~675~~671
Totals	3557	~~1065~~992	~~178~~188	0	~~32~~33	~~4412~~4328

*Miscellaneous changes include adjustments to the 303 (d) list when waterbody reaches are combined or split resulting in a decrease or increase in the number of listings.

5. References

For a complete list of references used in all the assessment fact sheets, see Appendix ~~H~~J.

SWRCB. (2004a). *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List* (amended February 3, 2015). Sacramento, CA.

SWRCB. (2004b). *Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List, Final Functional Equivalent Document*. Sacramento, CA.

SWRCB. (2013). *California Integrated Report [Clean Water Act Sections 303(d) and 305(b)] Update* (Memorandum dated November 12, 2013). Sacramento, CA.

U.S. EPA. (2001). *2002 Integrated Water Quality Monitoring and Assessment Report Guidance* (Memorandum dated November 19, 2001). Washington, D.C.

U.S. EPA. (2015). *Information Concerning 2016 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Report and Listing Decisions* (Memorandum dated August 13, 2015). Washington, D.C.

NOTICE OF OPPORTUNITY TO COMMENT AND NOTICE OF PUBLIC MEETING TO APPROVE THE THE PROPOSED STATEWIDE CLEAN WATER ACT SECTION 303(d) LIST FOR THE 2014 AND 2016 CALIFORNIA INTEGRATED REPORT AND NOTICE OF OPPORTUNITY TO COMMENT AND NOTICE OF PUBLIC HEARING ON THE PROPOSED CLEAN WATER ACT SECTION 303(d) LIST FOR THE LOS ANGELES REGION

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (State Water Board) will accept written comments on the proposed statewide Clean Water Act section 303(d) list of water quality limited segments (303(d) List) comprised of recommendations by the Regional Water Quality Control Boards (Regional Water Boards) for the San Francisco Bay, Central Coast, Central Valley, Santa Ana, and San Diego regions and the proposed 303(d) List for waterbodies within the region of the Los Angeles Regional Water Board. Public comment shall be limited to:

1. The specific listing and delisting recommendations made by the Regional Water Boards for the San Francisco Bay, Central Coast, Central Valley, Santa Ana, and San Diego regions that were timely requested for review pursuant to section 6.2 of the Water Quality Control Policy for Developing the California's Clean Water Act Section 303(d) list (Listing Policy)[1];
2. The State Water Board's proposed additions, changes, and deletions to listing and delisting recommendations submitted by the Regional Water Boards for the San Francisco Bay, Central Coast, Central Valley, Santa Ana, and San Diego regions; and
3. The State Water Board's proposed 303(d) listing and delisting recommendations pertaining to all waterbodies within the Los Angeles region.

DOCUMENT AVAILABILITY

The proposed 2014 and 2016 California Integrated Report, supporting draft Staff Report, and all waterbody fact sheets are available on the State Water Board's website at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml

[1] In accordance with section 6.2 of the Listing Policy, a request for the State Water Board to review a Regional Water Board's specific listing recommendation must be submitted to the State Water Board within 30 days after the date the Regional Water Board approved its 303(d) list.

BACKGROUND

Section 303(d) of the Clean Water Act requires each state to list waters not meeting water quality standards and prioritize those waters for total maximum daily load development or other management (referred to as the 303(d) List). Section 305(b) of the Clean Water Act requires each state to monitor, assess, and report on the quality of its waters relative to its water quality standards (referred to as the 305(b) Report). The Clean Water Act requires each state to satisfy its 303(d) and 305(b) reporting obligations every two years. The State Water Board consolidates the statewide 303(d) List and the 305(b) Report into a single report called the California Integrated Report. Only the proposed 303(d) List requires an opportunity for public comment and approval by the State Water Board and approval by U.S. EPA. Neither agency takes formal approval action on the 305(b) Report, an informational document that characterizes the state's general water quality conditions. Generally, the State Water Board does not solicit comments or respond to comments pertaining to the 305(b) portion of the 2014 and 2016 California Integrated Report.

<u>The 2014 and 2016 California Integrated Report</u>:
The State Water Board is combining the listing cycles for 2014 and 2016 into a report titled, "2014 and 2016 California Integrated Report." The 303(d) List portion of the 2014 and 2016 California Integrated Report will be comprised of the 303(d) Lists of waters within six regions—the Regional Water Boards for the San Francisco Bay, Central Coast, Central Valley, Santa Ana, San Diego, and Los Angeles regions.

Five of the Regional Water Boards considered and approved each of its proposed 303(d) Lists at a public hearing after providing advance notice, opportunity for comment, and responding to comments. The five boards are the Regional Water Boards for the San Francisco Bay, Central Coast, Central Valley, Santa Ana, San Diego regions.

The State Water Board will consider approving the 2014 and 2016 California Integrated Report at the board meeting identified in this notice.

<u>State Water Board hearing and approval of the 303(d) List for waters in the Los Angeles region</u>:
The Los Angeles Regional Water Board did not approve 303(d) List recommendations for waterbodies within its region, but provided a written public comment period, held a board workshop, and responded to comments. After the public workshop, and in response to public input, the Los Angeles Regional Water Board made revisions to its 303(d) List.

Because the Los Angeles Regional Board did not formally approve the revised regional 303(d) List, the State Water Board will administer the approval process on behalf of the Los Angeles Regional Board, consistent with section 6.2 of the Listing Policy.

At a hearing, and in accordance with this notice, the State Water Board will consider and approve the proposed 303(d) List pertaining to waterbodies within the Los Angeles region, after providing an opportunity to comment and responding to comments. The State Water Board's approved 303(d) List on behalf of the Los Angeles Regional Water Board shall be consolidated into the 2014 and 2016 California Integrated Report submitted to U.S. EPA without further consideration.

The 2014 and 2016 California Integrated Report includes the CWA section 305(b) report of surface water quality (305(b) report). Only the 303(d) list portion of the California Integrated Report requires approval by the State Water Board and U.S. EPA. Neither agency approves the 305(b) report portion of the California Integrated Report.

After the State Water Board approves the 303(d) list, the 2014 and 2016 California Integrated Report will be submitted to U.S. EPA. U.S. EPA may make changes to the 303(d) List, which is only effective upon U.S. EPA's approval.

SUBMISSION OF WRITTEN COMMENTS

The State Water Board will accept written comments on the proposed 2014 and 2016 California Integrated Report. **Comments must be limited to the categories described in items 1 through 3 on the first page of this notice**. **Comments that fall under item 1 should include a statement explaining the manner in which the listing or delisting recommendation(s) was timely requested for review. The State Water Board may refuse to accept any comments that are not limited to the categories described in items 1 through 3.**

Electronically submitted comments are encouraged. Comment letters **must be received by 12:00 noon on July 10, 2017**. Comment letters received after that deadline will not be accepted unless the State Water Board determines otherwise. Send comments to Jeanine Townsend, Clerk to the State Water Board, by email at commentletters@waterboards.ca.gov **(must be no more than 15 megabytes)**; fax at (916) 341-5620; or mail or hand delivery at:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000 (mail)
1001 I Street, 24th Floor, Sacramento, CA 95814 (hand delivery)

Please also indicate in the subject line: **"Comment Letter—303(d) List portion of the 2014 and 2016 California Integrated Report" and/or "Comment Letter—303(d) List for waterbodies in the Los Angeles region."**

NOTICE IS ADDITIONALLY HEREBY GIVEN THAT A HEARING WILL BE HELD by the State Water Board to receive public input limited to the proposed Clean Water Act 303(d) listing and delisting recommendations for waterbodies in the Los Angeles region. The public hearing will be held on:

Tuesday, October 3, 2017 – 9:30 a.m.
Joe Serna Jr. – CalEPA Headquarters Building
Coastal Hearing Room
1001 I Street, Second Floor
Sacramento, CA 95814

At the public hearing the State Water Board will consider approving the Clean Water Act 303(d) List specific to the waters in the Los Angeles region. The State Water Board's approved listing recommendations on behalf of the Los Angeles Regional Water Board shall be consolidated into the statewide 2014 and 2016 California Integrated Report submitted to U.S. EPA without further consideration by the State Water Board.

NOTICE IS ADDITIONALLY HEREBY GIVEN THAT A MEETING WILL BE HELD by the State Water Board to consider adopting a resolution approving the proposed statewide Clean Water Act section 303(d) List portion of the 2014 and 2016 California Integrated Report. The public meeting will be held on:

Tuesday, October 3, 2017 – 9:30 a.m.
Joe Serna Jr. – CalEPA Headquarters Building
Coastal Hearing Room
1001 I Street, Second Floor
Sacramento, CA 95814

Once approved, the 303(d) List portion of the 2014 and 2016 California Integrated Report will be submitted to U.S. EPA for final approval as required by the Clean Water Act.

PROCEDURAL MATTERS
At the State Water Board public hearing, there will be no sworn testimony or cross-examination of participants. However, the State Water Board and its staff may ask clarifying questions. Oral comments at the hearing will generally be limited to a summary of the written comments submitted during the written comment period (identified above). At the hearing, participants will be given opportunity to summarize and supplement their written materials with oral presentations and written material. To ensure a productive and efficient hearing in which all participants have an opportunity to participate, oral presentations may be time-limited. For other presentation recommendations, go to:
http://www.waterboards.ca.gov/board_info/meetings/board_presentations.shtml

CALIFORNIA ENVIRONMENTAL QUALITY ACT
The State Water Board's approval of the Clean Water Act section 303(d) List specific to the waters in the Los Angeles region and the consolidated 303(d) List portion of the 2014 and 2016 California Integrated Report is not a "project" subject to the California Environmental Quality Act because such action has no potential to result in a "direct physical change in the environment, or a reasonably foreseeable indirect physical change on the environment." (Pub. Res. Code, § 21065.) The approved 303(d) List satisfies reporting requirements of the Clean Water Act and provides information for setting priorities for future actions.

PARKING AND ACCESSIBILITY
For directions to the Joe Serna, Jr. (CalEPA) Building and public parking information, please refer to the map on the State Water Board Web site: http://www.calepa.ca.gov/headquarters-sacramento/location/. The CalEPA Building is accessible to persons with disabilities. Individuals requiring special accommodations are requested to call (916) 341-5880 at least 5 working days prior to the hearing. TDD users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922. An audio broadcast of the hearing will be available via the internet and can be accessed at:
https://video.calepa.ca.gov/.

All visitors to the CalEPA Building are required to sign in and obtain a badge at the Visitor Services Center located just inside the main entrance (10th Street entrance). Valid picture identification may be required. Please allow up to 15 minutes for receiving security clearance.

FUTURE NOTICES
The State Water Board will hold the public hearing at the time and place noted above. Any change in the date, time, and place of the public hearing will be noticed on the Lyris e-mail list.

Any persons desiring to receive future notices concerning the hearing and adoption meeting, including any changes to this notice **must subscribe** to the Integrated Report – 303(d)/305(b) lyrist list at:
http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml.

The State Water Board encourages use of its electronic mailing list. Persons who require notice by regular mail must submit such request to the State Water Board contact identified below.

ADDITIONAL INFORMATION

Please direct any questions about this notice to Nick Martorano, Senior Environmental Scientist, at (916) 341-5290 or nicholas.martorano@waterboards.ca.gov; or Stacy Gillespie, Senior Staff Counsel, at (916) 341-5190 or stacy.gillespie@waterboards.ca.gov.

June 9, 2017
Date

Jeanine Townsend
Jeanine Townsend
Clerk to the Board

REPORT

DATE: June 15, 2017

TO: Governing Board, San Gabriel Valley Council of Governments

FROM: Phil Hawkey, Executive Director

RE: ENVIRONMENTAL PROTECTION AGENCY (EPA) WATERS OF THE UNITED STATES (WOTUS) RULEMAKING INFORMAL COMMENT SOLICITATION

RECOMMENDED ACTION

Authorize the Executive Director to submit comments to the EPA's informal WOTUS solicitation.

BACKGROUND

The Clean Water Act (CWA) of 1972 gave the Environmental Protection Agency (EPA) and the US Army Corps of Engineers (USACE) (the agencies) jurisdiction over Waters of the United States (WOTUS). Congress enacted the CWA "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[1] Prior to this, the definition of WOTUS had been limited to waterways that were navigable "in fact" but with the passage of the CWA, that definition began to expand to include non-navigable and non-permanent waterways and tributaries. Since then, the reach and extent of federal jurisdiction has been challenged in court numerous times.

A Supreme Court decision in 2006, *Rapanos v. United States*, attempted to answer where the Federal government can apply the CWA, specifically by determining whether a wetland or tributary is a WOTUS. The justices issued five separate opinions (one plurality, two concurring, and two dissenting), with no single opinion commanding a majority of the Court. When there is no majority opinion, controlling legal principles may be derived from those espoused by five or more justices. Four justices, in a plurality opinion authored by Justice Scalia, rejected the argument that the term WOTUS is limited to only those waters that are navigable in the traditional sense. However, the plurality concluded that the agencies' regulatory authority should extend only to "relatively permanent, standing or continuously flowing bodies of water" connected to traditional navigable water. Justice Kennedy wrote a concurring opinion arguing that the CWA defines navigable waters as a water or wetland that possesses a "significant nexus" to waters that are navigable in fact. He argued that a nexus exists where the wetland or waterbody, either by itself or in combination with other similar sites, significantly affects the physical, biological, and chemical integrity of the downstream navigable waterway. Thus, the legal principles governing the agencies' jurisdiction were derived from the plurality opinion plus Justice Kennedy's concurring opinion.

In 2008, the EPA issued a *Rapanos* interpretation memorandum to provide guidance to the agencies in the application of the plurality opinion and "significant nexus" test. In 2015, the EPA opened a docket in the Federal Registry to formalize the principles of the *Rapanos* case. This resulted in the Clean Water Rule of 2105. Many stakeholders expressed concerns with the Rule and it was immediately challenged in court. A stay was issued causing the agencies to revert back to the use of

[1] 33 U.S.C. 1251(a).

the 2008 *Rapanos* interpretation memorandum for guidance on how to determine jurisdiction over waters. The agencies are now embarking on another effort to provide clarity and predictability regarding the extent of the agencies' jurisdiction over waterways.

PRESIDENTIAL EXECUTIVE ORDER

On February 28, 2017, President Trump signed the "Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the 2015 Clean Water Rule interpretation of "Waters of the United States" and "publish for notice and comment a proposed rule rescinding or revising the rule…." The E.O. directs that the agencies "shall consider interpreting the term 'navigable waters'" in a manner "consistent with Justice Scalia's opinion" in *Rapanos*.

The agencies are implementing the Executive Order in two steps.

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

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

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

PROPOSED SGVCOG RESPONSES

The agencies have posed a series of questions for consideration regarding redefining WOTUS. Below are the questions and the proposed responses developed by the SGVCOG Water Policy Committee.

1. How would you like to see the concepts of "relatively permanent" and "continuous surface connection" defined and implemented?
    - "Relatively permanent" and "continuous surface connection" should be defined according to Justice Scalia's statement in *Rapanos*, without further applying the "significant nexus" test. Scalia stated that relatively permanent waters do not include tributaries "whose flow is 'coming and going at intervals… broken, fitful.'"[2]
      Engineered waterways within the San Gabriel Valley consist of various under-street

[2] 547 U.S. 715 (2006)

storm drains, open boxed-shaped concrete channels, and trapezoidal concrete rivers. They were designed to capture, contain, divert, and/or rapidly convey urban runoff and stormwater either downstream or into spreading grounds. The entire system is under continuous control of the Los Angeles County Flood Control District and subject to release of upstream water and urban runoff at times set by them and to destinations of their choosing. These engineered channels do have a continuous surface connection to both upstream and downstream navigable waters but the highly engineered nature of the system subjects water flows to the discretion of the Flood Control District. For this reason, the flow is 'coming and going at intervals… broken, fitful."

2. How would you like to see the agencies interpret "consistent with" Scalia?
    - The agencies should interpret Scalia strictly, without applying the "significant nexus" test.
3. Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the Step 2 proposed rule?
    - As the agencies develop the proposed rule they should consider how application of WOTUS jurisdiction to flood control systems impacts the intended use of those systems.
4. What opportunities and challenges exist for your state or locality with taking a Scalia approach?
    - Strictly defining jurisdictional waters according to Scalia, as relatively permanent waters which do not include tributaries "whose flow is 'coming and going at intervals… broken, fitful,' provides the opportunity to repeal regulatory control over the flood control system. Declassifying this system as WOTUS removes the requirement to establish and meet CWA standards.
5. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction?
    - The application of WOTUS jurisdiction to flood control infrastructure has already brought about the requirement to control upstream non-point source pollution (stormwater and urban runoff) at the source. In order to do this, the existing flood control infrastructure must, to some extent, be replicated at the city level. It is hoped that by rescinding CWA jurisdiction over flood control infrastructure, those facilities may continue to be used for the efficient conveyance of stormwater and urban runoff.

RECOMMENDATION

Support the submission of comments to the EPA's WOTUS informal solicitation.

Prepared by: _____
Eric Wolf
Senior Management Analyst

Approved by: Marisa Creter
Marisa Creter
Assistant Executive Director

ATTACHMENTS

Attachment A – EPA Presentation: "The Definition of 'Waters of the U.S.'"
Attachment B – SGVCOG Informal WOTUS Comments

United States Environmental Protection Agency

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

E.O. 13132 Federalism Consultation Meeting

April 19, 2017

Purpose & Agenda

Purpose:

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

Agenda:

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

E.O. 13132, Federalism

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

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

“Waters of the U.S.” Over Time

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

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

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

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

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

The Executive Order

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

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

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

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

Two-Step Process

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

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

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

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

Step 1: Withdraw 2015 Clean Water Rule

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

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

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

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

Step 2: Develop New Rule Consistent with the Executive Order

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

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

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

Potential Approaches to "Relatively Permanent" Waters

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

Potential Approaches to Wetlands with a "Continuous Surface Connection"

Surface connection even through non-jurisdictional feature

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

Some degree of connectivity

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

Wetland must directly touch jurisdictional waters

Only wetlands that directly touch a jurisdictional water

Other

Thoughts?

Discussion:

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

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

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

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

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

Next Steps

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

- If so, please provide.

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

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

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

Contacts

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San Gabriel Valley Council of Governments

Response to the Environmental Protection Agency (EPA) Informal Call for Comments on Redefining Waters of the United States (WOTUS)

1. How would you like to see the concepts of "relatively permanent" and "continuous surface connection" defined and implemented?
    - "Relatively permanent" and "continuous surface connection" should be defined according to Justice Scalia's statement in *Rapanos*, without further applying the "significant nexus" test. Scalia stated that relatively permanent waters do not include tributaries "whose flow is 'coming and going at intervals… broken, fitful.'"[1]

      Engineered waterways within the San Gabriel Valley consist of various under-street storm drains, open boxed-shaped concrete channels, and trapezoidal concrete rivers. They were designed to capture, contain, divert, and/or rapidly convey urban runoff and stormwater either downstream or into spreading grounds. The entire system is under continuous control of the Los Angeles County Flood Control District and subject to release of upstream water and urban runoff at times set by them and to destinations of their choosing. These engineered channels do have a continuous surface connection to both upstream and downstream navigable waters but the highly engineered nature of the system subjects water flows to the discretion of the Flood Control District. For this reason, the flow is 'coming and going at intervals… broken, fitful."
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