

## Water Recycling Reform Principles

June 15, 2012

### Board Adopted Principles for Support:

- **Advanced Treated Purified Recycled Water Should be Regulated as a Source Rather than a Waste** – Regulation should not be based on unsubstantiated fear, but rather scientific evidence. When it is used as a raw water source for drinking water, it should be regulated as such, and by the government agency designated with performing this duty: the California Department of Public Health.
- **Lower Net Expected Costs of Projects** – Any increase in expected permitting and monitoring fees should be less than the expected savings achieved through avoiding other permitting or regulations, or by avoiding the construction of additional infrastructure.
- **Goals Should Not be Treated as Mandates** – It must be clear that no penalties are to be assessed for failure to meet regulations designed to achieve water recycling goals. If regulations are allowed to be used to achieve recycling goals, they should be incentive-based.

### Rationale:

State of California law is antiquated when it comes to how recycled water is treated. Policy makers and the general public are ready to side with science and have gotten over the “yuck factor.” Advanced Treated Purified Water is not waste, and should not be defined as such. Because this legislation allows for fees to recoup expenses without specifying their levels, we should proceed with caution as fees could be set so high as to discourage future projects. Revising law that was influenced by since diminished fear of recycled water should be a priority.

### Background:

#### *City of San Diego Indirect Potable Reuse Demonstration Project*

In November of 2008, the San Diego City Council approved a temporary water rate increase necessary for the City of San Diego (City) to conduct a Water Reuse Demonstration Project study (Project). The Demonstration Project facility is now in operation and being used to evaluate advanced water purification technology as a means of supplementing existing drinking water sources.<sup>1</sup> The Project includes a study of San Vicente Reservoir, research to determine a pipeline alignment, a public outreach education program and the construction and operation of a pilot scale advanced water purification facility.

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<sup>1</sup> Letter to Assemblyman Hueso from the City of San Diego. “AB 2398 (Hueso) – Water recycling: SUPPORT”. May 21, 2012.

*City and Department of Public Health*

As the City moves forward with the Project, the California Department of Public Health (DPH) is concurrently embarking on discussions as to the regulatory development requirements for indirect potable reuse/reservoir augmentation projects. DPH also needs to establish operational or permit requirements for a reservoir augmentation system. In a December 2009 letter to the City, DPH states, “There are also several outstanding technical issues related to the subject of surface water augmentation that the demonstration project will need to address, such as the level of advanced treatment necessary along with appropriate monitoring and contingency plans.”

**Proposal:**

The recent proposal entitled the Water Recycling Act of 2012, introduced by Assemblymember Ben Hueso as Assembly Bill (AB) 2938, is expected to be revised and reintroduced in 2013. It would have created regulations specific to recycled water. By removing the existing regulations and codes from California law, removing recycled water from the State’s definition of “waste,” and creating unique regulations for recycled water, the legislation aimed to make it easier for local government agencies to mix reclaimed water with existing raw water supply such as groundwater and reservoirs.<sup>2</sup>

*Permitting Responsibility Change*

The legislation would have shifted the responsibility for permitting of water recycling projects from the California Water Resources Control Board, to the California Department of Public Health.<sup>3</sup> The California Water Resources Control Board currently maintains this responsibility and executes it at the regional level through its associated regional boards. This legislation would have required the California Department of Public Health to adopt updated standards and assume this responsibility.

*Regulations for Recycled Water Separate from Wastewater*

Over the past several decades, recognition of recycled water has been added to California law with comparatively little unique regulations. This legislation repeals the Water Reuse Law of 1974, and other existing regulatory and permitting framework which according to proponents is an obstacle to developing cost-effective recycling projects.<sup>4</sup> For the most part, recycled water is currently classified and regulated as wastewater despite scientific consensus that advanced treated wastewater is significantly more pure than typical raw water.

This legislation would have removed recycled water from the definition of waste in both the Water Code and the Health and Safety Code and created a new regulatory framework designed to regulate recycled water in a unique way. It would have created a permitting process and enforcement mechanisms distinct to less treated recycled water within the Water Code, and the same within the Health Code for Advanced Treated Purified recycled water – the most treated type of recycled water. The bill comprehensively distinguished and allowed

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<sup>2</sup> “BENEFITS OF AB 2398”. WateReuse California.

<<http://waterrecyclingact.files.wordpress.com/2012/05/about-ab-2398-w-faqs-053012.pdf>>.

<sup>3</sup> California Assembly floor analysis dated May, 26, 2012. <<http://leginfo.legislature.ca.gov>>

<sup>4</sup> California Assembly floor analysis dated May, 26, 2012. <<http://leginfo.legislature.ca.gov>>

for the regulation of recycled water by type and level of treatment including extensive revisions to State Code<sup>5</sup> eliminating outdated umbrella regulations such as the requirement that all recycled water only be transported in purple pipes.

### *Fees*

Under the new regulatory environment, costs would have been recouped by fees similar to that of stormwater monitoring fees. The legislation would have authorized the creation of a fee schedule, and would have required that the fee setting creation go through a public process, and that fees be set so that revenues equal the amount necessary to recoup regulatory costs incurred. There would have been both one-time, and annual fees created. These fees would have been designated for annual permitting costs as well as conducting studies and evaluations, and initial set up costs such as convening and administering an expert panel on public health issues and scientific and technical matter. The fees set may be changed on an annual basis.

### *Levels of Water Recycling, Goals and Mandates*

In 1991, a statewide goal was established to recycle 700,000 acre-feet of water per year by 2000 and 1,000,000 acre-feet of water per year by 2010.<sup>6</sup> The most recent survey quantifying the amount of water recycled each year in California was performed in 2009. At the time of the survey, California was only recycling 669,000 acre-feet per year of water, falling short of achieving even the goal that was meant for nine years earlier.

AB 2398 would have effectively restated existing goals of the State Water Resources Control Board originally stated in the 2009 State Water Resources Control Board Recycled Water Policy. Those goals are 1.5 million acre-feet of recycled water by 2020, and 2.5 million acre-feet of recycled water by 2030.<sup>7</sup> The same document, the 2009 State Water Resources Control Board Recycled Water Policy, establishes a separate mandate of 869,000 acre-feet of recycled water by 2020 and 1,169,000 acre-feet of recycled water by 3030.<sup>8</sup> It is unclear what enforcement activities may be taken if any. The policy expressly states that the State water board will evaluate progress every two years and review and revise “implementation provisions” in 2012 and 2016. The revision to the policy that is currently open for public review does not change anything with regards to goals or mandates. The policy also suggests that the mandates will be achieved through means other than establishing penalties by clarifying that “these mandates are contingent on the availability of sufficient capital funding for the construction of recycled water projects from private, local, state, and federal sources and assume that the Regional Water Boards will effectively implement regulatory streamlining in accordance with this Policy.”

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<sup>5</sup> “BENEFITS OF AB 2398”. WateReuse California.  
<<http://waterrecyclingact.files.wordpress.com/2012/05/about-ab-2398-w-faqs-053012.pdf>>.

<sup>6</sup> California Water Code 13577.

<sup>7</sup> California Water Code 13560.

<sup>8</sup> “Recycled Water Policy”. State Water Resources Control Board. 2009.  
<[http://www.waterboards.ca.gov/water\\_issues/programs/water\\_recycling\\_policy/docs/recycledwaterpolicy\\_approved.pdf](http://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/docs/recycledwaterpolicy_approved.pdf)>.

## **Fiscal Impact:**

### *State Fiscal Impact*

Fees, under the AB 2398, would have been established to recoup associated costs including monitoring and regulatory costs. The level of the fees were not available as the legislation allowed for those fee schedules to be created, but did not set them.

Two funds would have been created and funded by this legislation: the Augmentation Permit Fund, and the Water Recycling Permit Fund. It's estimated by the State Assembly Bill Analysis that the Water Recycling Permit fund would need "in the range of \$450,000 to \$900,000... to develop and implement a program for permitting tertiary treated recycled water projects..."

It was expected that the State Water Resources Control Board would save "in the range of \$165,000 to \$325,000" annually as the responsibility for permitting some recycled water projects would be transferred to the Department of Public Health.

The legislation did set penalties of up to \$5,000 for the first time regulations are not met, up to \$10,000 for the second, and up to \$25,000 for further violations. When inappropriate discharges are made and notification to the Department of Health is avoided civil liability would have been administratively imposed by a regional board up to \$1,000 per day in violation.

### *Local Fiscal Impact*

It is also important to note that local government agencies would be paying the above fees. According to the bill's author, the City of San Diego would save hundreds of millions of dollars with the new streamlined regulatory process for Advanced Treated Purified Water. The following Policy Discussion section provides more details regarding potential local fiscal impacts.

Several other California local government agencies would also be affected by similar legislation including Escondido, Helix Water District and Padre Dam Municipal Water District. The City of Escondido would be aided by the legislation in their effort to construct a 4,000 acre-feet per year potable reuse facility.<sup>9</sup> Helix Water District and Padre Dam Municipal Water District are working together to put 5,000 acre-feet per year of recycled water into Lake Jennings.<sup>10</sup>

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<sup>9</sup> "BENEFITS OF AB 2398". WateReuse California.

<<http://waterrecyclingact.files.wordpress.com/2012/05/about-ab-2398-w-faqs-053012.pdf>>.

<sup>10</sup> "Bill Seeks To Streamline Recycled Water". U-T San Diego. May 28, 2012.

<<http://www.utsandiego.com/news/2012/may/28/tp-bill-seeks-to-streamline-recycled-water/?print&page=all>>

## Policy Discussion:

### *Water Recycling Goals*

Language included in the most recent version of AB 2398 allowed for regulators to treat goals as mandates in which case unreasonable costs may be imposed on jurisdictions and public agencies under the threat of penalties. The language of concern is the following:

*“Section 18016. The state board and the State Department of Public Health may each adopt regulations to carry out their powers and duties under this division. Any regulations adopted shall be consistent with this division, including achievement of the water recycling goals set forth in Section 18010.”*

WateReuse California has stated that this was not the intent and is making an effort to clarify that the true intent is not for goals to be interpreted as mandates.<sup>11</sup>

### *City of San Diego’s Indirect Potable Reuse Plans*

The City of San Diego currently operates an Indirect Potable Reuse (IPR) Demonstration Project that is exploring the potential for IPR technology to increase the reliability of San Diego’s water supply by adding a local source of raw water, and decrease the flows of wastewater entering the Point Loma Wastewater Treatment Plant.

Assemblymember Hueso has estimated that the changes in the regulations could save the City of San Diego \$200 million as a result of this legislation. This savings figure is an estimate of the cost of constructing a pipeline that the City would theoretically be able to avoid if, with California Department of Public Health Approval, the City was able to “blend advanced treated purified water with its other raw water supplies in existing pipelines.”<sup>12</sup> There is no engineering cost estimate produced however, so this estimate is informal.<sup>13</sup>

Roger Bailey, the City of San Diego’s Public Utilities Director, has said the legislation would “eliminate the need for costly, time-intensive and redundant regulatory hurdles.”<sup>14</sup> This is reflective of the additional likely savings for the City of San Diego that would come from eliminating the requirement to apply to the Regional Water Quality Control Board for a wastewater discharge permit that would currently be required in order to put advanced treated purified recycled water into the San Vicente Reservoir. The cost of this permit has been estimated at an initial \$500,000 and three years of additional oversight expenses.<sup>15</sup>

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<sup>11</sup> Telephone Conversation with David W. Smith PhD, Managing Director, WateReuse California. May 30, 2012.

<sup>12</sup> “BENEFITS OF AB 2398”. WateReuse California.  
<<http://waterrecyclingact.files.wordpress.com/2012/05/about-ab-2398-w-faqs-053012.pdf>>.

<sup>13</sup> Telephone Conversation with City of San Diego staff. May 30, 2012.

<sup>14</sup> “Bill Seeks To Streamline Recycled Water”. U-T San Diego. May 28, 2012.  
<<http://www.utsandiego.com/news/2012/may/28/tp-bill-seeks-to-streamline-recycled-water/?print&page=all>>

<sup>15</sup> Email with City of San Diego staff. June 4, 2012.

### **List of Proponents:**

- WateReuse Association
- San Diego Regional Chamber of Commerce
- San Diego County Water Authority
- City of San Diego

### **Proponent Arguments:**

There is a complicated and fragmented permitting process that currently exists. The current law around recycled water hinders the development of such projects and is in need of revision if progress is to be made.

A dependable water supply is extremely important for everyone, and is essential to our economy. There are few local water sources, so clarity and streamlining of the recycled water project permitting process is one of the small number of ways we can increase the amount of water that is available to us, and decrease the capacity needs of existing wastewater treatment plants.

We need to encourage local governments to pursue recycled water projects as a sustainable and local water source.

### **List of Opponents:**

- Russian River Watershed Protection Committee
- Russian Riverkeeper

### **Opponent Arguments:**

Opponents argue that there is concern over the effects of such changes on the environment and public health.<sup>16</sup> There is concern over the incidental runoff reporting requirement is at 50,000 gallons when opponents claim 100 gallons is the appropriate number. It is important to note that this reporting requirement does not reflect a change from current regulations.<sup>17</sup> There is also concern about the impacts of low doses of hormones disrupting chemicals in water.<sup>18</sup>

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<sup>16</sup> California Assembly floor analysis dated May, 26, 2012. <<http://leginfo.legislature.ca.gov>>

<sup>17</sup> California Assembly floor analysis dated May, 26, 2012. <<http://leginfo.legislature.ca.gov>>

<sup>18</sup> California Assembly floor analysis dated May, 26, 2012. <<http://leginfo.legislature.ca.gov>>