



DISCUSSION ITEM

September 17, 2017

TO: Board of Directors

FROM: **Public Affairs and Legislation Committee**
(Directors Tamaribuchi, Dick, and Yoo Schneider)

Robert J. Hunter
General Manager

Staff Contact: Heather Baez

SUBJECT: UPDATE ON AB 1668 AND SB 606 (FRIEDMAN/HERTZBERG & SKINNER) – MAKING CONSERVATION A CALIFORNIA WAY OF LIFE

STAFF RECOMMENDATION

Staff recommends the Public Affairs and Legislation Committee receive and file this report.

COMMITTEE RECOMMENDATION

Committee recommends (To be determined at Committee Meeting)

SUMMARY

At the request of the Public Affairs and Legislation Committee Chair, this is to provide background on AB 1668 and SB 606, implementing the Governor’s Executive Order – Making Conservation a California Way of Life. There will also be an oral update at the committee meeting.

DETAILED REPORT

On April 19, 2017, the MWDOC Board of Directors adopted a support position on AB 1654 (Rubio) and an oppose position on AB 1668 (Friedman). Both bills were different ways of implementing Governor Brown’s Executive Order B-37-17 *Making Water Conservation a California Way of Life*. Since April there have been many changes to the proposed bills.

AB 1654 (Rubio) and AB 1668 (Friedman) were heard in the Senate Natural Resources and Water Committee on July 11, 2017. It was clear at that time that the two versions were still

Budgeted (Y/N): n/a	Budgeted amount: \$0	Core <u>_x_</u>	Choice <u>__</u>
Action item amount: n/a	Line item:		
Fiscal Impact (explain if unbudgeted): None			

very different and little progress on a compromise had been made since the April 25 hearing in the Assembly Water, Parks and Wildlife Committee. The Chair of the Senate Natural Resources and Water Committee, Senator Bob Hertzberg, recommended that both bills be scrapped and amended to intent language. From there, he asked all stakeholders to submit letters to the committee outlining their “must haves” or what they considered their top priorities to be considered in a new draft of the legislation. In addition, Chair Hertzberg indicated that stakeholder working groups would convene during the summer recess to craft new language based on feedback received. As instructed, MWDOC submitted a letter to the committee outlining its top four priorities on July 21.

During the summer recess, two small stakeholder working groups met with committee staff, who then drafted a working document or “white paper” based on input received from written responses and working group feedback. The working document was not well received, as MWDOC and many others throughout the water community viewed it as a step backwards. Senate Natural Resources and Water Committee staff then convened an open meeting for all stakeholders (not just an invited few as the previous two meetings) to provide specific feedback on the working document. Committee staff did not continue with some of the more objectionable provisions in the document, and on August 21, the first day back from summer recess, AB 1668 and a Senate vehicle, SB 606 (Skinner/Hertzberg) were amended with new language. Assembly Member Rubio declined to have her bill, AB 1654 amended with the new language.

On August 29, AB 1668 and SB 606 were both amended again after negotiating additional amendments with various organizations such as MWDOC, Metropolitan, East Bay Municipal Utilities District, and others. These amendments plus additional amendments were put in print on September 6; MWDOC moved to a support position as all our requests were met and included in the updated bill language.

On the final day of legislative session, SB 606 was on the Assembly Floor awaiting vote. AB 1668 was heard in the Senate Appropriations Committee however it was referred back to the Senate Rules Committee where it was held and not moved to the Senate Floor for a vote. For this reason, SB 606 was not brought up for a vote on the Assembly Floor, and both measures are now two-year bills.

MWDOC’s Sacramento advocate Syrus Devers will provide an oral update at the PAL Committee on the status of both AB 1668 and SB 606 including details from the final day of legislative session.

The full, amended text of AB 1668 can be found [here](#), AND SB 606 [here](#).

Attachments:

MWDOC letter to the Senate Natural Resources and Wildlife Committee

MWDOC Support Letter, AB 1668



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- City of Westminster
- Yorba Linda Water District

September 11, 2017

The Honorable Lorena Gonzalez Fletcher
California State Senate
State Capitol, Room 5050
Sacramento, CA 95814

RE: SB 606 (Skinner/Hertzberg) - SUPPORT

Dear Assembly Member Gonzalez Fletcher:

The Municipal Water District of Orange County (MWDOC) supports SB 606, and requests the support of you and your colleagues on the Senate Appropriations Committee. The decision to support SB 606 was not an easy one, nor without controversy. Governor Brown and his administration are committed to moving the state to a water-budget based target setting approach, and away from conservation goals based on historic water usage or haphazard percent reductions. In the long run, MWDOC believes that this proactive approach will result in far more sustainable progress toward conservation, as opposed to arbitrary conservation measures pursued in reaction to a crisis.

At the July 11th hearing of the Senate Natural Resources and Water Committee, Senator Hertzberg asked water providers and other stakeholders to outline their main concerns and priorities in implementing the recommendations in Governor Brown’s April 2017 report, “Making Conservation a California Way of Life.”

MWDOC laid out four areas of main concern for the committee to consider when drafting amendments to the bills. Those issues were as follows:

1) Standards and Target Setting Authority

MWDOC’s letter, dated July 21, took issue with the State Water Resources Control Board (Board) being given unfettered authority to set initial efficient standards. A comprehensive stakeholder process undertaken last year supported an initial indoor efficiency standard of 55 gallons per capita per day (or “GPCD”) for indoor water use, and a stakeholder process to set future efficiency standards. We are pleased that the initial standard is now incorporated into SB 606, as well as a central role for the Department of Water Resources (Department) in developing the standards, which MWDOC also concurs.

2) Efficiency Standards for Outdoor Commercial, Industrial, and Institution (CII) Water Use

MWDOC’s chief concern was that the efficiency standards could not be met by the 2021 deadline. While that date has not yet been amended, we are encouraged that SB 606 now includes language that provides for the use of alternative sources of data that are shown to be as or more accurate

than data provided by the Department. In addition, we support the broad public and stakeholder participation that requires the Department in coordination with the Board to conduct studies prior to recommending outdoor CII standards. Finally, we are encouraged by new language that directs the Department to not recommend standards until it has conducted pilot studies to ensure the data provided are reasonably accurate for the data's intended use. Setting water efficiency standards for CII use requires extensive data on both irrigated and irrigable landscapes. Directing the Department to develop different deadlines for different uses based on the availability of accurate data, or when accurate data can realistically be developed should also be strongly considered by this committee.

3) Credit for Recycled Water

SB 606 was amended to provide for a 10% credit of the amount of potable reuse toward an urban water supplier's water use objective. While we believe that this level of credit should be higher in order to meaningfully incentivize investment to expand and continue water recycling as well as not strand current infrastructure investments, MWDOC agreed to support SB 606 in the spirit of negotiation in exchange for the removal of provisions that would have eliminated the credit over time, and for tying the credit to the total water budget. MWDOC will continue to advocate for a higher level of incentive for recycled water credit to encourage expansion of projects both now and in the future.

4) Cease and Desist Authority

Throughout the stakeholder process, concerns were raised over the enforcement provisions reflected in the "glide path" approach that had been incorporated into bill language. MWDOC and many others felt that cease and desist was an inappropriate response in the context of a water supplier failing to meet a conservation target. A water supplier has a limited set of tools to encourage conservation by their customers. While we recognize that cease and desist is rarely implemented and only used in extreme circumstances, it should not be in statute. Current law provides ample means for the state to compel compliance with its regulations. We appreciate the authors recognition of this and the expansion of cease and desist authority **has been removed** from the current version of SB 606.

In light of the progress made on these issues, MWDOC has moved to a support position on SB 606. In addition, it should be noted that progress has been made on several other important issues. Assembly Member Friedman, Senator Hertzberg, Senator Skinner, and the Brown Administration, negotiated in good faith with the water industry and took amendments relating to variances that will allow for water budgets to be tailored to local conditions, an approach to enforcement that begins with cooperation and support before seeking to impose penalties, and a leading role for the Department of Water Resources. SB 606 is far from perfect, but MWDOC feels that water is too important to allow the perfect to be the enemy of the good—especially when the government is involved.

For these reasons, we urge your support of SB 606.

Sincerely,

A handwritten signature in black ink that reads "Wayne S. Osborne". The signature is written in a cursive, flowing style.

Wayne S. Osborne

President

Municipal Water District of Orange County

cc: Governor Edmund G. Brown
Senator Nancy Skinner
Senator Robert Hertzberg
Assembly Member Laura Friedman
Members of the Senate Appropriations Committee
Members of the Orange County Delegation



July 21, 2017

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Santa Margarita Water District
City of Seal Beach
Serrano Water District
South Coast Water District
Trabuco Canyon Water District
City of Tustin
City of Westminster
Yorba Linda Water District

The Honorable Robert Hertzberg
Chair, Senate Natural Resources and Water Committee
State Capitol, Room 5046
Sacramento, CA 95814

Re: Comments on Legislation Implementing “Making Water Conservation a California Way of Life.”

Dear Senator Hertzberg:

The Municipal Water District of Orange County (MWDOC) appreciates your leadership and looks forward to working with you and the staff of the Senate Natural Resources and Water Committee over the coming weeks to craft a long-term water conservation bill package. In response to your request for comments, MWDOC would like to call attention to the following issues:

Standards and Target Setting Authority

MWDOC appreciates the progress made since the administration first put forward a proposed budget trailer bill regarding the process for setting efficiency standards, as well as the encouraging comments made by the administration’s staff regarding the central role that the Department of Water Resources (DWR) should play in setting future standards. MWDOC, however, does not see that these areas of progress were clearly incorporated into the most recent version of AB 1667.

Regarding the initial adoption of long-term standards for urban water conservation, there is a reference in the findings and declarations that standards must be based on the April 2017 report, “Making Water Conservation a Way of Life,” (or the “Framework”) but the operative bill language simply states that the State Water Resources Control Board (Board) shall, in consultation with DWR, adopt standards for indoor residential water use. The nexus between the Framework and the operative bill language is not clear, and it could support the interpretation that the Board has unfettered authority to set the standards, which is contrary to MWDOC’s understanding of the administration’s intent.

The lack of agreement between the discussions held by the administration and the bill language continues into the setting of future water use efficiency standards. DWR was given a (much appreciated) role in convening a stake holder process to set future standards, but then the bill language simply has DWR making “recommendations” to the Board. It is not at all clear that the Board is bound to accept those recommendations, or if it may even go farther and substitute its own standards. Future bill language needs to clarify that the DWR’s work product is more than a mere recommendation.

The final question is who should adopt future efficiency standards: The Legislature or the Board? MWDOC is not inflexible as to which path is most appropriate. If debates

July 21, 2017

The Honorable Robert Hertzberg

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over conservation were based purely on the best science available, allowing state agencies to consider and adopt new efficiency standards would be uncontroversial. In the real world, however, pursuing new conservation standards, regardless of the area, is inevitably a mix of policy and politics. This is not a criticism of any institution, and is perhaps necessary given the limits of technology and science. For this reason, **MWDOC believes that the final decision on new efficiency standards should remain with the Legislature**, provided the Legislature is considering the recommendations of DWR, which are based on stakeholder input and the best available science.

Efficiency Standards for Outdoor Commercial, Industrial, and Institutional (CII) Water Use

Setting water efficiency standards for CII use requires extensive data on both irrigated and irrigable landscapes. Discussions over the previous months have revealed significant gaps in the available data, and reasons to question to accuracy of some of the data that is available from GIS mapping and satellite imagery. **MWDOC believes that these hurdles cannot be overcome by the proposed May, 2021 deadline.** Perhaps a process led by DWR could develop different deadlines for different uses based on the availability of accurate data, or when accurate data can realistically be developed.

Credit for Recycled Water

There are some who argue that the term “conservation” can only refer to measures that result in individual water users consuming less water, or “demand reduction.” These arguments gloss over the fact that the impacts of recycling on the total water supplies of the state are indistinguishable from other conservation measures, and they ignore the fact that recycling is a resilient means of conserving water when compared to measures that only focus on demand reduction.

Reducing individual demand for water is, of course, a laudable goal, but proponents routinely ignore the consequences to water suppliers and users. Some of those consequences to suppliers include paying fixed overhead costs on reduced water sale revenues, and operational problems for treatment facilities that were designed to run on larger volumes of water. The consequences to water users include reductions in functional landscaped areas that could negatively affect their quality of life. Recycling water can avoid these unintended consequences while producing the same overall benefits as demand reduction.

In plain words, water recycling can result in conservation regardless of requiring individuals to use less water, and some people simply find that politically unacceptable. Rather than argue the merits of that perspective, as stated above, MWDOC accepts the fact that legislation is the result of a political process that needs to encompass the range of political views. Water recycling is a reliable means of conservation, and it must concur within a broader framework that also includes conventional demand reductions and achieves consensus from a range of stakeholders.

The most recent version of AB 1667 allowed a limited credit for potable water reuse toward a supplier’s water use target, capped at 10% of the supplier's target. Although a step in the right direction, **this level of credit fails to provide adequate incentive for investment in potable reuse and could even discourage further investment.** Potable reuse projects require a much larger initial investment than other forms of conservation. The total gains in conservation are substantially greater, and they are realized over comparatively longer time periods.

MWDOC is open to good-faith negotiations over what represents the correct balance of credit for recycled water. Orange County has already far exceeded the proposed 10% target as a result of local investments, further these efforts are sustainable over time.

Cease and Desist Authority

We appreciate the recognition of stakeholder concerns over the enforcement provisions reflected in the “glide path” approach incorporated into the most recent version of AB 1667. In discussions convened by the administration over the Governor’s proposed trailer bill language, however, it was pointed out that cease and desist was an inappropriate response in the context of a water supplier failing to meet a conservation target. A water supplier has a limited set of tools to encourage conservation by their customers. It begs the question of what a supplier can “cease and desist” from doing to make their customers use less water.

In response, the Governor’s staff argued that cease and desist was rarely implemented and only in extreme circumstances, therefore not the correct standard to measure a statute against. A statute, which will likely remain on the books long after its drafters are happily retired, must be measured against how it could be misused in the future by those who were not a part of the current discussions. Current law provides ample means for the state to compel compliance with its regulations. **We ask that the expansion of cease and desist authority to water use efficiency standards in Section 1831 of the Water Code not be carried forward in future legislation.**

MWDOC appreciates both the Legislature’s and the administration’s decision to pursue a transparent and open legislative process to make water conservation a way of life, and looks forward to participating in that process.

Sincerely,



Robert J. Hunter
General Manager
Municipal Water District of Orange County

Cc: Governor Edmund G. Brown
Assembly Member Eduardo Garcia
Assembly Member Blanca Rubio
Assembly Member Laura Friedman
Assembly Member Shirley Weber
Senator Nancy Skinner
Members of the Senate Natural Resources and Water Committee
Members of the Assembly Water, Parks, and Wildlife Committee
Members of the Assembly Working Group

July 21, 2017

The Honorable Robert Hertzberg

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Kim Craig, Deputy Cabinet Secretary, Office of Governor Brown

Dennis O'Connor, Principal Consultant, Senate Natural Resources and Water Committee

Ryan Ojakian, Senior Consultant, Assembly Water, Parks, and Wildlife Committee

Todd Moffitt, Consultant, Senate Republican Caucus

Robert Spiegel, Consultant, Assembly Republican Caucus