



**REVISED  
ACTION ITEM**  
May 18, 2016

**TO:** Board of Directors

**FROM:** **Public Affairs & Legislation Committee**  
(Directors Barbre, Hinman, Tamaribuchi)

Robert Hunter  
General Manager

Staff Contact: Heather Baez

**SUBJECT: SB 163 (Hertzberg) – Wastewater Treatment, Recycled Water**

**STAFF RECOMMENDATION**

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Staff recommends the Board of Directors vote to adopt an oppose position on SB 163 and send a letter to the author and Orange County delegation expressing our position.

**COMMITTEE RECOMMENDATION**

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*Committee voted 3-0 and recommends the Board of Directors take an “Oppose Unless Amended” position and direct staff to work with the Orange County Water District as they work with the author’s office on Orange County’s concerns; also direct staff to communicate MWDOC’s position on SB 163 to MWD.*

**SUMMARY**

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SB 163 was brought to the Public Affairs & Legislation Committee on February 17, 2016 where the committee voted to take no action, but asked staff to monitor the legislation and bring the measure back if it was amended. In the following months, a number of water and wastewater agencies and organizations have engaged on this bill to no avail. No suggested amendments have been taken and the bill remains in current form.

As amended in the last week of session in 2015, SB 163 would declare that the discharge of treated water through ocean outfalls constitutes a waste and unreasonable use of water, and would require wastewater facilities to phase out this practice over the next two decades before achieving 100% reuse by 2036 and eliminating discharge through ocean outfalls.

<b>Budgeted (Y/N):</b> n/a	Budgeted amount:	Core x	Choice __
<b>Fiscal Impact (explain if unbudgeted):</b>			

In declaring the discharge of treated wastewater through ocean outfalls a waste and unreasonable use of water, this bill would require a NPDES permit holder (permit holder) authorized for the discharge of wastewater through an ocean outfall as of January 1, 2016, to submit a compliance plan to meet the following provisions to the executive director of the Water Board by 1/1/2020:

- 1) Achieve 50% reuse of the facility's actual annual flow for beneficial purposes by January 1, 2026. (For all purposes of this measure, "actual annual flow" is defined the annual average flow of treated wastewater discharging through a facility's ocean outfall as determined by the Water Board using monitoring data available for calendar years 2009 to 2014.)
- 2) Eliminate all discharge of treated wastewater through ocean outfalls, except as backup discharge (i.e. during storms or wet periods when there is little demand for reclaimed water), by 1/1/2036.
- 3) Achieve 100% reuse of the facility's actual annual flow for beneficial purposes by 1/1/2036.

## **ARGUMENTS IN SUPPORT**

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Given the cyclical droughts faced by California, and the increasing cost of developing new water supplies, preventing treated water from being lost to the ocean is an obvious benefit. In theory, reusing water that is already in the system is more efficient than generating new water.

While the underlying policy of this bill is laudable, issues such as cost, feasibility, or barriers to direct potable reuse need to be resolved before a state-imposed mandate may even be considered.

## **ARGUMENTS IN OPPOSITION**

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Since the original gut and amend in September 2015, Senator Hertzberg went out of his way to signal that he wants to work cooperatively with stakeholders. In February 2016, a coalition of water and wastewater treatment providers sent a letter to Senator Hertzberg asking him to reintroduce the measure as a new bill and not move SB 163 to allow for the full legislative process to develop including adequate committee analyses (to date there have been no analyses as this was a last minute gut & amend at the end of the prior legislative year) and full hearings on the bill in both houses.

When this did not occur, many agencies, including MWDOC, met with Senator Hertzberg regarding their concerns. When various stakeholders, over a period of months, suggested workable amendments, negotiations stalled quickly. The included coalition letter, dated April 18, 2016, outlines a number of concerns that water and wastewater providers have which were the basis of the requested amendments.

SB 1318 is based on a good theory, but the practical obstacles to complying with the bill's provisions are insurmountable. The bill simply imposes a top-down, one-size-fits-all,

mandate to reuse very large amounts of treated waste water with neither an identified source of funding to pay for infrastructure improvements, nor even a rough estimate of the cost, which very likely would be billions of dollars. Reusing treated water is a great strategy, except where other types of conservation and supply projects can produce more water for less money.

## **COMMENTS**

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Back in February staff recommended adopting a Support if Amended position in light of the author's willingness to meet and confer with interested parties. The proposed amendment, which was drafted by the California Association of Sanitation Agencies and the California Municipal Utilities Association, would have used the bill to do a feasibility study of meeting the goals of the legislation. MWDOC's lobbyist met on more than one occasion with the author's staff and was asked to delay adopting a position for the time being, which the Board ultimately did. Three months having elapsed with no discernable progress, staff believes it is time to reconsider that position.

ACWA had adopted a "Not Favor" position while other interested parties initially adopted an "Oppose Unless Amended" approach. Water Reuse California identified a number of practical issues with the bill. Recently, a variety of utility districts, water districts, and associations changed their position from "Oppose Unless Amended" to "Oppose." The reason of the change is the lack of progress despite ongoing discussions with the author. Although the bill can wait until the end of June before being heard, most parties feel that the time has come to respond to the language of the bill as opposed to the intentions of its author. As currently written, the bill would make all other water policies subservient to this one objective by taking all known, and all as yet unknown, funds from other types of water conservation and/or supply projects. In sum, the bill eliminates discretion in meeting water supply needs through the most appropriate method(s) based on local circumstances in favor of a single state-imposed solution.

## **DETAILED REPORT**

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The full text of SB 163 is attached along with a coalition letter opposing the measure.