



Santa Clara Valley Water District

File No.: 19-0332

Agenda Date: 3/26/2019

Item No.: *7.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommended Positions on State Legislation: Assembly Bill 533 (Holden) Income Taxes: Water Conservation or Efficiency Programs: Water Runoff Management Improvement Program; Assembly Bill 557 (Wood) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program; *Assembly Bill 292 (Quirk) Recycled Water: Raw Water and Groundwater Augmentation; *Assembly Bill 510 (Cooley) Local Government Records: Destruction of Records; *Assembly Bill 1180 (Friedman) Water: Recycled Water; *Assembly Bill 1194 (Frazier) Sacramento-San Joaquin Delta: Delta Stewardship Council; *Assembly Bill 1204 (Dodd) Public water systems: Primary Drinking Water Standards: Implementation Date; *Assembly Bill 1588 (Gloria) Drinking Water and Wastewater Operator Certification Programs; *SB 332 (Hertzberg) Wastewater Treatment: Recycled Water; and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

RECOMMENDATION:

- A. Adopt a position of "Support" on: AB 533 (Holden) Income Taxes: Water Conservation or Efficiency Programs: Water Runoff Management Improvement Program; and
- B. Adopt a position of "Support" on: AB 557 (Wood) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program.
- C. *Adopt a position of "Support" on: Assembly Bill 292 (Quirk) Recycled Water: Raw Water and Groundwater Augmentation;
- D. *Adopt a position of "Support" on: Assembly Bill 510 (Cooley) Local Government Records: Destruction of Records;
- E. *Adopt a position of "Support" on: Assembly Bill 1180 (Friedman) Water: Recycled Water;
- F. *Adopt a position of "Oppose" on: Assembly Bill 1194 (Frazier) Sacramento-San Joaquin Delta: Delta Stewardship Council;
- G. *Adopt a position of "Support" on: Assembly Bill 1204 (Dodd) Public water systems: Primary Drinking Water Standards: Implementation Date;
- H. *Adopt a position of "Support" on: Assembly Bill 1588 (Gloria) Drinking Water and Wastewater Operator Certification Programs.
- I. *Adopt a position of "Oppose Unless Amended" on: SB 332 (Hertzberg) Wastewater Treatment: Recycled Water.

SUMMARY:

AB 533 (Holden) Income Taxes: Water Conservation or Efficiency Programs: Water Runoff Management Improvement Program (I-02/13/19)

Position Recommendation: Support
Priority Recommendation: 2

California Personal Income Tax Law and the Corporation Tax Law, in conformity with federal income tax law, generally defines “gross income” as income from whatever source derived, except as specifically excluded, and provides various exclusions from gross income.

AB 533 would provide an exclusion from gross income for any amount received as a rebate, voucher, or other financial incentive issued by a local water agency or supplier for any water conservation, water efficiency, or water runoff management improvement program.

Importance to the District

AB 533 would further incentivize and therefore could increase water conservation within our service area, which is consistent with Valley Water’s goal of making conservation a way of life.

Current California law allows a gross income exemption for water conservation rebates only for customers that receive turf removal rebates. That law, approved by AB 2434 (Gomez) in 2014, is set to expire at the end of 2019. AB 533 would continue the turf removal rebate exemption and expand the exemption to apply to a wide array of cost-effective tools to increase water use efficiency, including turf replacement, irrigation controllers, leak detection devices, and other higher cost water conservation, and runoff improvement options. In short, AB 533 would provide an additional incentive for residents to apply for a wide array of Valley Water water conservation rebates, not just turf removal rebates, and therefore could increase overall water conservation in Santa Clara County.

Consequently, staff recommends that the Board adopt a position of “Support” on AB 533.

Pros

- Bolsters the Board’s Landscape Rebate Program, the Irrigation Hardware Rebate Program, and any financial incentives for water conservation the Board may pursue.
- By further incentivizing Valley Water’s rebate programs, countywide water conservation could increase.
- Consistent with the Board’s goal of making water conservation a way of life.

Cons

- Modestly decreases state General Fund tax collections.

**AB 557 (Wood) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program.
(I-02/13/19)**

Position Recommendation: Support**Priority Recommendation: 3**

SB 758 (Block, 2015) established the Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program in the Department of Water Resources (DWR). The law requires DWR, upon an appropriation of funding, to research climate forecasting and the causes and impacts that climate change has on atmospheric rivers, to operate reservoirs in a manner that improves flood protection, and to re-operate flood control and water storage facilities to capture water generated by atmospheric rivers.

The current Atmospheric Rivers Research and Mitigation Program housed within DWR researches the causes and effects of atmospheric rivers, and takes actions to capture water generated by atmospheric rivers to increase water supply and the reliability of water resources in the state and to operate reservoirs in a manner that improves flood protection in the state.

AB 557 would appropriate \$9,250,000 from the General Fund to DWR in the 2019-20 fiscal year to operate the enhanced program proposed by SB 758 to research climate forecasting and the impacts of climate change on atmospheric rivers.

Importance to the District

California has the most variable precipitation annually of any location in the U.S., ranging from severe drought to major floods. Research has shown that this variability is largely due to a weather condition known as “atmospheric rivers” which are responsible for 30-50 percent of California’s precipitation and water supply in just a handful of days each year. A storm, commonly called a “pineapple express” because it brings tropical moisture to the western U.S., is an example of an atmospheric river.

Better forecasting of atmospheric rivers across hours, days, weeks, and seasons has the potential to enable new levels of both water supply and flood protection using “Forecast-Informed Reservoir Operations” (FIRO). Through the expansion of FIRO, and the accuracy in forecasting that it provides, dam operators can release water ahead of storms that could otherwise cause flooding with less concern for losing water supply needed in the summer months.

Staff recommends that the Board adopt a position of “Support” for AB 557 and for other efforts to appropriate funds for the Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program through the Budget Act for Fiscal Year 2019-20.

Pros

- The prediction of atmospheric river patterns allows for intelligent water management decisions both to collect additional water supply and to enhance flood protection.

Cons

- A state General Fund impact of \$9,250,000.

***Assembly Bill 292 (Quirk) Recycled Water: Raw Water and Groundwater Augmentation
(Amended-03/06/2019)
Position Recommendation: Support
Priority: 3**

AB 292 would update the definition of “Potable Reuse” by adding raw water augmentation, treated drinking water augmentation, groundwater augmentation, or reservoir water augmentation within the definition, and deleting direct, and indirect potable reuse.

The passage of AB 574 (Quirk) in 2017 ushered in clear distinction of the types of potable reuse projects: “Indirect Potable Reuse for Groundwater Recharge”, “Reservoir Water Augmentation”, and two subcategories for Direct Potable Reuse: “Raw Water Augmentation” and “Treated Drinking Water Augmentation.” However, the terms “direct” and “indirect” can be too easily misunderstood in the context of the recycled water categories. Furthermore, the term “direct” can imply that the purified recycled water will be directly mixed with the drinking water supplies. This of course is not the case in Raw Water Augmentation projects. Also, the term “direct” does not accurately reflect the multiple barrier approach nor the safeguards present in potable reuse systems.

Importance to Valley Water

Valley Water has been educating the public through tours and outreach events at the Silicon Valley Advanced Purification Center (SVAWPC)-a demonstration and research facility for potable reuse. Success of our future potable reuse projects requires a great deal of community outreach and education on the safety and efficacy of a multi-step purification process. In general, people visiting SVAWPC are much more comfortable with potable reuse water after taking a tour and learning the details of the process.

AB 292 would eliminate some confusion over the use of recycled water in potable drinking water sources, and will assist Valley Water in the effort to increase community understanding and acceptance of these projects.

Staff recommends that the Board adopt a position of “Support” on AB 292.

Pros

- Improves the description for potable reuse, thereby reducing any potential confusion the public may have over the use of recycled water in drinking water sources.

Cons

- None at this time.

***Assembly Bill 510 (Cooley) Local Government Records: Destruction of Records (Introduced-02/12/2019)**

Position Recommendation: Support

Priority: 3

Current law authorizes a special district, county, or city, to destroy recordings of telephone and radio communications maintained by that governmental entity after 100 days, if approved by the legislative body and if the written consent of the agency's attorney is secured. Video monitoring recordings may be destroyed after one year by following the same protocol.

AB 510 would exempt the head of a department of a county, city, or special district from the current recording retention requirements if the county, city, or special district adopts a records retention policy governing recordings of routine video monitoring and recordings of telephone and radio communications.

Importance to Valley Water

AB 510 is sponsored by the California Special Districts Association (CSDA) to allow the destruction of video, radio, or telephone monitoring that is continuous and most of the time has no activity whatsoever. There are many special districts that monitor buildings, or offsite locations that do not have any activity, but the agency is required to hold on to the recording for at least one year for video, and 100 days for telephone and radio communications. The amount of data that special districts are required to store under existing law is expanding and so is the cost of storage of that data.

AB 510 modernizes the Government Code to allow local public agencies, including special districts, to adopt records retention policies designed for modern digital recording technologies, while ensuring the proper retention of any records in which an incident may have occurred. The new law will allow agencies to decide on when benign recordings should be deleted while considering which recordings may be of use and should be kept. The reduction in storage needs should lead to savings of taxpayer dollars on unnecessary data storage costs.

Pros

- Reduces records retention costs.
- Allows for the modernization of governmental policies that reflect technological advancements in the recording of video, radio, or telephone.

Cons

- Seemingly worthless surveillance video, radio, or telephone recordings may have

unanticipated value in the future, but if there is no activity recorded, the chances of future value are greatly reduced.

***Assembly Bill 1180 (Friedman) Water: Recycled Water (Introduced-02/21/2019)**

Position Recommendation: Support

Priority: 2

AB 1180 would require the State Water Resources Control Board (State Water Board) to address the use of a swivel or changeover device to supply potable water to a dual-plumbed system during an interruption in recycled water service, in the adopted policy handbook, on or before January 1, 2020. The bill would also require the State Water Board to update Title 22 California Code of Regulations which establish the uniform statewide criteria for non-potable recycled water uses, on or before January 1, 2023.

Title 22 regulations include numerous uses for non-potable recycled water and are severely out of date as they have not been updated for 19 years. Some of the updates that are necessary include:

- The restrictions on “outdoor eating area” to clarify that recycled water can be used in parks with picnic tables, etc.
- Revising dual plumbing requirements so food processing or beverage facilities (such as breweries) or buildings with cafeterias can have their restrooms dual plumbed.
- Adding additional allowable recycled water uses such as for ponds, vehicle washing, pressure testing, and approved fill stations.
- Clarifying that the use of recycled water for homeowner's association common areas where potable water is used for irrigation of individual residences does not constitute a dual plumbed site.

Importance to Valley Water

Valley Water has set a goal of increasing recycled water production to 10 percent of total water use in Santa Clara County by the year 2025, equal to almost 40,000 acre feet per year. However, prompted by the recent drought, the Valley Water Board directed staff to explore development of up to 45,000 acre feet per year of purified water on an expedited schedule. The target of 40,000 acre feet per year includes both recycled and purified water.

Valley Water's 2017 Water Supply Master Plan incorporates 24,000 acre-feet per year of potable reuse water and 32,000 acre-feet per year of non-potable reuse water as part of the baseline water supply system. Valley Water is partnering with Palo Alto, Mountain View, and San Francisco Public Utilities Commission and Bay Area Water Supply and Conservation Agency to explore non-potable and potable reuse opportunities. Our agency is also currently developing a countywide recycled and purified water master plan to identify additional opportunities and set priorities on a countywide basis.

Valley Water's 2019 Legislative Guiding Principles, adopted by the Board on October 23,

2018, under the title Water Supply and Drought in item number 3 state: Support efforts that encourage the use of recycled water for indirect and direct potable use.

AB 1180 provides an opportunity to clarify regulations that are required for maximizing the use of recycled water in parks, industry and within buildings, supports Valley Water's recycled water production goals, and aligns with this Legislative Guiding Principle.

Staff recommends that the Board adopt a position of "Support" on AB 1180.

Pros

- Requires the revision of outdated regulations pertaining to the use of recycled water.

Cons

- The Title 22 updates are not required until 2023.

***Assembly Bill 1194 (Frazier) Sacramento-San Joaquin Delta: Delta Stewardship Council (Introduced-02/21/2019)**

Position Recommendation: Oppose

Priority: 2

AB 1194 would increase the number of members of the Delta Stewardship Council (Council) from seven to thirteen by adding four new members and two non-voting members from the legislature, that represent the Delta region. The Delta Stewardship Council was created by the Delta Reform Act of 2009 (SBX7 1), which also established the concept of "coequal goals" in California Water Code §85054, intended to balance the goals of water supply reliability and protecting, restoring, and enhancing the Delta ecosystem.

The Council's primary responsibilities include developing and maintaining the Delta Plan, a long-term management plan for the Delta adopted in 2013 to provide coordinated action at the federal, state, and local levels. The Council leads the Delta Plan Interagency Implementation Committee, provides ongoing agency coordination, develops science to support Delta Plan implementation, and has regulatory authority over "covered actions," which include plans, programs, or projects that are required to be certified as consistent with the Delta Plan.

The Council currently is made up of seven members who are intended by the Legislature to provide a broad, statewide perspective. Four members of the Council are appointed by the Governor and confirmed by the Senate, one member is appointed by the Senate Committee on Rules, one member is appointed by the Speaker of the Assembly, and one member is the Chairperson of the Delta Protection Commission. The Delta Protection Commission is a fifteen-member board comprised primarily of city and county officials from the five-county Delta region, and the Chairperson's role at the Delta Steward Council is to speak for the Delta. The other members of the Delta Stewardship

Council are intended to speak for the 23 million people in Central and Southern California and the agricultural interests of 1,130,000 acres of farmland that source at least part of their water supply from the Delta.

Importance to Valley Water

The Valley Water Board opposed a similar bill in 2018, AB 792 (Frazier), which died in its first policy committee. Valley Water is concerned that AB 1194 would tilt the Delta Stewardship Council further toward Delta regional interests that have largely opposed the formation of the Council and opposed the California WaterFix (WaterFix). This could impact the process whereby the Council certifies that plans, programs, or projects are consistent with the Delta Plan. In 2018, the Council considered whether a Department of Water Resources (DWR) certification that the WaterFix is consistent with the Delta Plan, and the Council ultimately declined to reject the appeals of Delta interests. Ultimately, the DWR certification was withdrawn from consideration and further negotiation was planned.

If passed by the Legislature and signed by Governor Newsom, AB 1194 would take effect on January 1, 2020. A newly constituted Delta Stewardship Council could affect any water conveyance or storage project located in the Delta region which may be determined by the Council to be a “covered action” under the Delta Reform Act.

After extensive consideration and public participation in numerous hearings on the subject, on May 8, 2018, the Valley Water Board approved this agency’s participation in the WaterFix. AB 1194 would make findings of consistency with the Delta Plan more difficult by increasing the power of Delta interests at the expense of statewide interests and the interests of Valley Water. Further delay of the WaterFix, or a successor Delta conveyance, would likely increase the final cost of the project, endangering reliability and affordability of the water supply for Santa Clara County and for tens of millions of other Californians.

Valley Water’s 2019 Legislative Guiding Principles, adopted by the Board on October 23, 2018, under the title Water Supply and Drought in item number 1 state: Support legislative, administrative or other efforts that protect and/or advance the District’s interests in the California WaterFix, including efforts to ensure financially prudent project delivery. In item number 4, under that same title, the Legislative Guiding Principles state: Oppose measures that reduce the reliability or quality of the District’s imported water supplies.

Adding a total of six seats to the Delta Stewardship Council, as proposed in AB 1194, would not increase the momentum or success of Delta protection and environmental restoration efforts. The Delta Reform Act provides sufficient direction and ample authority to the Delta Stewardship Council and other agencies to accomplish these outcomes.

AB 1194 seeks to change the membership of the Delta Stewardship Council such that it would be less likely to support Valley Water’s interests in protecting the water supply of Santa Clara County, and in opposition to the Board’s Legislative Guiding Principles on the matter.

Staff recommends that the Board adopt a position of “Oppose” on AB 1194.

Pros

- From a Valley Water perspective, there may be no upside to AB 1194. Elevating the influence of Delta regional interests at the Delta Stewardship Council could help ensure those interests are, at a minimum, appropriately compensated and/or mitigated for WaterFix impacts. However, appropriate compensation or mitigation of impacts can be addressed through existing mechanisms.

Cons

- A newly constituted Delta Stewardship Council could negatively affect the Council’s determination regarding whether the WaterFix is consistent with the Delta Plan.
- Adding additional hurdles for the Waterfix project would delay the implementation of potential solutions to the problems affecting the Delta.

***AB 1204 (Rubio) Public Water Systems: Primary Drinking Water Standards: Implementation Update (Introduced-02/21/2019)**
Position Recommendation: Support
Priority: 3

AB 1204 would require the adoption or amendment of a primary drinking water standard for a contaminant in drinking water not regulated by a federal primary drinking water standard, or that is more stringent than a federal primary drinking water standard, to take effect 3 years after the date on which the State Water Resources Control Board (State Water Board) adopts or amends the primary drinking water standard. The bill would authorize the State Water Board to delay the effective date of the primary drinking water standard adoption or amendment by no more than 2 additional years as necessary for capital improvements to comply with a maximum contaminant level or treatment technique.

The United States Environmental Protection Agency (U.S. EPA) establishes health based standards to protect against all types of contaminants that may be found in drinking water under the authority provided by the federal Safe Drinking Water Act (SDWA). The EPA establishes primary standards which have a legally-enforceable limit or maximum contaminant level (MCL), and secondary standards that do not have enforceable limits and are for issues such as taste, odor, or color. Once an MCL is established, the federal SDWA allows for a three-year period for state systems to comply, and allows states two additional years, where a determination is made that the time is necessary for required capital improvements.

The State Water Resources Control Board (State Water Board) establishes state drinking water standards under the authority of the California Safe Drinking Water Act (SDWA). The primary drinking water standards must be set at a level that is not less stringent than the federal MCL. The state

SDWA does not include a buffer to allow agencies to meet compliance.

Importance to Valley Water

As a public water system that provides treated drinking water at a wholesale level, Valley Water is responsible in meeting all drinking water standards. When the state adopts new standards, drinking water systems are not provided any time before they are required to report on compliance. For some drinking water standards, the period for compliance provided is inadequate. There are some pollutants for which testing methods are not widely available, or the capital improvement costs are prohibitive. AB 1204 would allow the State Water Board to provide a buffer, equal to the federal compliance period, for Valley Water to reach compliance for new drinking water standards in the future.

Staff recommends that the Board adopt a position of "Support" on AB 1204.

Pros

- Provides a buffer for agencies to meet compliance with drinking water standards.
- Requires that the drinking water provider show progress towards meeting the drinking water standards.

Cons

- May delay compliance with drinking water standards.

***Assembly Bill 1588 (Gloria) Drinking Water and Wastewater Operator Certification Programs (Introduced-02/22/2019)**

Position Recommendation: Support

Priority: 2

Currently the State Water Resources Control Board (State Water Board) administers an exam and certifies persons to operate drinking water and waste water treatment plants. Existing law requires the certification to indicate the classification of water treatment plant or water distribution system that the person is qualified to operate, and classifies the treatment plants for determining the levels of competence necessary to operate them.

AB 1588 would require that when a person is applying for certification by the State Water Board, to receive full equivalent experience credit and education credit for work and tasks performed that are directly related to the operation of water or wastewater facilities, including members of the military and military veterans. For purposes of water treatment operator certification experience, the bill would require that persons operating an advanced water treatment plant be provided equivalent experience. The bill would also require operators to be provided experience credit for registration as

a professional engineer in California.

Existing law requires the State Water Board to appoint an advisory committee of 10 members, as prescribed, to assist it in carrying out its responsibilities to examine and certify people to operate water treatment plants and water distribution systems. The law also requires the advisory committee to review all proposed regulations and make recommendations to the State Water Board.

AB 1588 would add an additional member to the advisory committee that assists the State Water Board in carrying out its responsibilities in certifying operators who are active or former members of the United States military with water or wastewater treatment operations experience within their military service.

Importance to Valley Water

Valley Water employs both wastewater and water treatment operators at its recycled water and drinking water treatment plants, and at the Silicon Valley Advanced Water Purification Center (SVAWPC). Under current regulations, employees working at the SVAWPC do not accumulate experience towards the higher levels of certification because the plant is classified as a wastewater facility.

As recycled water was developed, and regulated by the State Water Board, it was classified as wastewater, as it was not used in drinking water sources. With advancement in wastewater treatment technology, the State Water Board has been adopting regulations to allow for the use of recycled water for Indirect Potable Reuse (IPR) for both surface water augmentation and groundwater recharge, and is under a statutorily imposed deadline to adopt Direct Potable Reuse regulations by December 31, 2023.

AB 1588 would amend the certification requirements to allow staff to receive work experience towards their T4 water treatment certification. This change would provide Valley Water additional flexibility in staffing the various water treatment and recycled water facilities by removing the disincentive to work at the SVAWPC.

The bill also would increase the pool of eligible applicants by requiring the State Water Board to provide military service members and veterans with reciprocity for their experience in the military towards water and wastewater treatment certification. Projections of demand for water operators are fueled by a high level of expected retirements among the experienced workforce and the continued increase in demand for water by both residential and commercial customers. Most government employers are facing the reality of aging employees that are expected to retire in the next five to ten years. The flood of retirements is leading to a large gap for agencies to fill. Providing military service members and veterans equivalency for their experience towards certifications would assist in filling the positions that will be vacated by retiring employees.

Staff recommends that the Board adopt a position of "Support" on AB 1588.

Pros

- Allows Valley Water's water treatment operators to advance their certification using work experience working at the SVAWPC.
- Updates regulations to reflect the operational reality that advanced water purification centers are more aligned with water treatment facilities than wastewater facilities.
- Increases the number of individuals certified as wastewater and water treatment operators which increases the pool of eligible candidates to fill position vacated by retiring employees.
- Provides military members and veterans with increased opportunities for employment.

Cons

- None at this time.

***SB 332 (Hertzberg) (Introduced-02/19/2019)**

Position Recommendation: Oppose Unless Amended

Priority Recommendation: 2

The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented. Existing law declares that the use of potable domestic water for certain non-potable uses, such as irrigation for cemeteries, golf courses, parks, highway landscaped areas, and industrial uses, is a waste and an unreasonable use of water if recycled water is available.

SB 332 would declare that the discharge of treated wastewater from ocean outfalls, including oceans, bays, and estuaries, is a waste and an unreasonable use of water. The bill would require each wastewater treatment facility that discharges through an ocean outfall to reduce the facility's annual outflow, as compared to the average annual wastewater discharge baseline volume, by at least 50% on or before January 1, 2030, and by at least 95% on or before January 1, 2040. The baseline volume would be calculated using the discharges reported from 2010 to 2020. Wastewater treatment facilities, as well as the affiliated water suppliers, would be subject to a civil penalty of \$2,000 per acre-foot of water above the required reduction in volume discharged.

Under existing law, the State Water Resources Control Board (State Water Board) and the 9 California Region Water Quality Control Boards regulate waste discharge requirements in accordance with the federal National Pollutant Discharge Elimination System (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act.

SB 332 would require a holder of a NPDES permit that discharges treated wastewater through an ocean outfall, and affiliated water suppliers, to submit a plan to meet the required wastewater discharge reductions to the State Water Board by January 1, 2022. On or before January 1, 2026 and every January 1 for five years thereafter, the holder of an NPDES permit authorizing the discharge of treated wastewater through an ocean outfall, in conjunction with affiliated water suppliers, shall submit to the State Water Board a report summarizing the actions to date that have been accomplished, remaining, and proposed to meet the requirements of this bill. NPDES permitholders and affiliated water suppliers would be subject to a penalty of up to \$10,000 for failing to submit a required report by its deadline.

The bill would require the State Water Board to submit a report to the Governor and the Legislature on or before July 1, 2025, and by July 1 for every 5 years thereafter, on the implementation of these requirements.

Importance to Valley Water

Valley Water is facing several challenges in meeting future water demands including, uncertainty of imported water supplies, recurring droughts, and increases in regulatory restrictions, as well as climate change, which has impacted the way precipitation falls in the Sierra Nevada Mountains, from snowfall, to rain. Water recycling is one of the few solutions which creates a new, locally developed, drought-proof, reliable source of water.

Valley Water has set a goal of increasing recycled water production to 10 percent of total water use in Santa Clara County by the year 2025, equal to almost 40,000 acre feet per year. However, prompted by the recent droughts, the Valley Water Board directed staff to explore development of up to 45,000 acre feet per year of purified water on an expedited schedule.

Valley Water's 2017 Water Supply Master Plan incorporates 24,000 acre-feet per year of potable reuse water and 32,000 acre-feet per year of non-potable reuse water as part of the baseline water supply system. Valley Water is partnering with Palo Alto, Mountain View, the San Francisco Public Utilities Commission, and the Bay Area Water Supply and Conservation Agency to explore non-potable and potable reuse opportunities. Our agency also is currently developing a countywide recycled and purified water master plan to identify additional opportunities and set priorities on a countywide basis.

SB 332 seeks to expedite, and favor over other water sources, the transition to recycled water for agencies in a service area where wastewater facilities are discharging brine to a salt water body. The bill does not provide consideration for regional demand, regulatory permits, technical feasibility, the significant investment required to meet the targets established by the bill, or the impact to ratepayers. Although Valley Water is currently pursuing an aggressive recycled and purified water program, the targets established in the bill would be unattainable without significant increases in water rates throughout Santa Clara County and approval of direct potable reuse regulations by the State Water Board.

The bill includes civil penalties of \$2,000 per acre-foot of water discharged above the required

reduction in volume for both wastewater facilities and affiliated water suppliers, including Valley Water. Any failure of a wastewater treatment facility in Santa Clara County to meet the state targets for recycled water would result in civil penalties for Valley Water. Also, the Silicon Valley Advanced Water Purification Center operated by this agency is classified by the state as a wastewater facility. The bill is not clear as to whether civil penalties would apply to Valley Water's recycled water operations based on the state classification.

Staff recommends that the Board take an "Oppose Unless Amended" position on SB 332, and if the bill is amended to substantially conform to the following goals, staff would be authorized to remove that opposition.

Recommended Goals for Amendments

SB 332 could be amended to address Valley Water's concerns while advancing the use of recycled water through state targets that would apply under practicable conditions.

- The applicability of state targets for recycled water should be contingent upon the adoption of direct potable reuse (DPR) regulations by the State Water Board. Without DPR, there will not be adequate demand to expand the use of recycled water.
- More time is needed to achieve the targets outlined in the bill. The planning, design, construction, and delivery of recycled and advanced purified water treatment facilities take more time than the bill provides.
- State targets should consider the limitations of recycled water technology and the brine discharges required to produce recycled water. An appropriate level of treated wastewater discharges will be necessary to affordably reduce the environmental impacts of discharging brine.
- Public agency funding must be available for the capital investments needed to construct the treatment and delivery systems necessary to meet state targets. If state targets are not financially feasible, enforcement actions will not yield increases in recycled water use.
- The affordability of drinking water is critical for low-income communities and communities of color. A consideration of water rate impacts and applicable state constitutional limitations on how water rates may lawfully be structured, is a key factor in determining who pays and how much. This is a fundamental reality no matter how committed the state or a local jurisdiction may be increasing recycled water availability and use.
- By designating waste and an unreasonable use, the bill encourages water rights litigation. Existing water rights must be protected.
- Any enforcement mechanism should be commensurate with the effort undertaken by

wastewater and water agencies, and not punitive for circumstances beyond their control.

Pros

- Expedites the use of recycled and purified water.

Cons

- The applicability of state water recycling targets is not contingent upon the State Water Board's adoption of DPR regulations, and the timeline for compliance is not realistic.
- Does not consider the limitations of recycled water technology and the brine discharges required to produce recycled water.
- Does not consider the availability of public agency funds for necessary capital investments.
- Does not consider the affordability of water for low-income communities and communities of color.
- By designating waste and unreasonable use, may encourage water rights litigation.
- Enforcement mechanisms may not be commensurate with the effort undertaken by wastewater and water agencies. Recycled water facilities may be subject to civil penalties based on their current classification as wastewater treatment facilities by the state.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

- *Original Board Agenda Memo
- *Supplemental Agenda Memo

UNCLASSIFIED MANAGER:

Rachael Gibson, 408-630-2884