



● **Board of Directors**
Communications and Legislation Committee

8/17/2010 Board Meeting

8-10

Subject

Express support for AB 1834 (Solorio, D–Santa Ana) – Rainwater Capture Act of 2010

Description

Assembly Bill 1834, as proposed to be amended ([Attachment 1](#)), by Assembly Member Jose Solorio, Chair of the Assembly Select Committee on Regional Approaches to Addressing the State’s Water Crisis, would establish the Rainwater Capture Act of 2010 and include the following provisions:

1. A landowner may install, maintain, and operate a rainwater capture system on the landowner’s property to supply water for outdoor, non-potable uses on the property where the rainwater was captured or for groundwater recharge;
2. A public agency, including but not limited to the Metropolitan Water District of Southern California (Metropolitan) or the California State University Water Resources Institute (WRI), may lead a statewide stakeholder process to consider and address the issues arising out of expansion of rainwater and stormwater capture;
3. If a public agency initiates a stakeholder process, the Department of Water Resources, the State Water Resources Control Board (SWRCB), and the California Department of Public Health shall participate in the stakeholder meetings;
4. If the stakeholder process results in recommendations for the California Building Standards Commission (Commission) and the Department of Housing and Community Development (HCD) to develop building standards for the installation and use of rainwater capture systems, the public agency shall submit those recommendations on or before December 31, 2011 to the Commission and HCD for approval and adoption;
5. As part of the next regular update and revision process for the California Green Building Standards Code or the California Plumbing Code, the Commission and HCD shall consider any such building standards recommendations; and
6. The SWRCB may adopt policies or guidelines related to voluntary rainwater and stormwater capture, if it finds that those policies or guidelines would encourage and facilitate greater capture of rainwater and stormwater while protecting public and environmental health.

The bill defines a “rainwater capture system” as a facility on developed or developing lands, but not on agricultural lands, designed to capture and retain rainwater flowing off of a building, parking lot, road, or any other manmade, impervious surface for either subsequent outdoor, non-potable uses or infiltration into a groundwater aquifer. Rainwater is defined as rain or snowmelt that has not entered an offsite storm drain system or channel, flood control channel, or any other stream channel, and has not previously been put to beneficial use. Further, the bill states that nothing in the enactment shall be construed to affect existing water rights or change existing water rights law. The bill states legislative intent that rainwater for non-potable uses should not be subject to drinking water standards but shall comply with water quality requirements for non-potable uses under

the Porter-Cologne Water Quality Control Act. Additionally, landowners who install, maintain, and operate rainwater capture systems to supply water for outdoor, non-potable uses (on the property where the rainwater was captured or for groundwater recharge) shall comply with applicable requirements of local agencies that have programs to promote rainwater or stormwater capture and use, including, but not limited to, a stormwater resource plan under the existing Stormwater Resource Planning Act (Water Code, § 10560, et seq.).

Any stakeholder process may consider the following topics:

1. Vector control;
2. Water supply augmentation;
3. Water quality, including, but not limited to first-rain contamination hazards and potential changes in concentration, quality, or abundance of runoff pollution from increased rainwater collection;
4. Safe installation, maintenance, and operation of rainwater capture systems;
5. Water rights;
6. Vegetation and habitat management in flood control facilities and rainwater or stormwater capture systems;
7. Effects on downstream, in-stream flow volumes and native fish and wildlife;
8. Consistency with building standards requirements, including building drainage requirements of the California Plumbing Code;
9. Potential for indoor, non-potable use of captured rainwater for toilets and laundry;
10. Financial and tax incentives to encourage greater capture of rainwater and stormwater;
11. Necessary monitoring and reporting of rainwater and stormwater capture programs;
12. Outcomes of existing programs that promote rainwater or stormwater capture; and
13. The financial feasibility of each of the recommendations.

AB 1834, as proposed to be amended, would make financing available for rainwater capture systems through voluntary contractual assessment programs authorized in the Streets and Highways Code. These programs enable public agencies and free and willing property owners to establish voluntary assessments for installation of water efficiency improvements permanently affixed to residential, commercial, industrial, agricultural, or other real property, such as recycled water connections, synthetic turf, cisterns for stormwater recovery, and permeable pavement. (These provisions were enacted by Assembly Bill 474 by Assembly Member Bob Blumenfield.)

The public agency that initiates the stakeholder process would be responsible for the costs of the meetings and preparation of any report of the conclusions or recommendations from the stakeholder group. Stakeholder participants would be responsible for their respective costs incurred as a result of their participation.

Additionally and separate from its rainwater capture provisions, the bill would amend the state's Business and Professions Code to authorize a landscape contractor, as licensed by the Contractors' State License Board and working within the classification of their license, to enter into a prime contract for construction of a rainwater capture system for landscape irrigation.

Background

As originally envisioned by Assembly Member Solorio, this bill would require the SWRCB to fulfill the role now proposed for a public agency to initiate a stakeholder process potentially developing recommended building standards for installation and use of rainwater capture systems and submitting the recommendations to the Commission and HCD for approval and adoption. However, the Senate fiscal committee identified significant state costs for the SWRCB's prior role under this bill. In light of the serious state budget situation and limited availability of monies to fund the Act, Assembly Member Solorio approached Metropolitan with a proposal that a public agency such as Metropolitan or the WRI assume the role previously designated for the SWRCB. If WRI were to assume this role, outside funding would be required to avoid associated state costs. Assembly Member Solorio proposed that under this arrangement, Metropolitan, WRI, or another public agency would be responsible only for the costs of the stakeholder meetings and the preparation of any report of the stakeholder group conclusions and recommendations. Additionally, all stakeholder participants would be responsible for their own costs.

Analysis

Increasing water use efficiency by capture and use of rainwater will assist Metropolitan and its member agencies meet the Governor's call for statewide reduction in per capita urban water use by 20 percent by the year 2020 as set forth in the Water Conservation Act of 2009 (referred to as "20x2020"). During the collaborative process for updating Metropolitan's 2010 Integrated Resources Plan (IRP), the Stormwater Technical Workgroup identified new opportunities for stormwater projects in Metropolitan's service area, including distributed, small-scale direct use from onsite runoff such as cisterns and for use in cooling towers, truck washes, drip irrigation, toilets, and other non-potable demands. As part of an adaptive management strategy proposed in Metropolitan's Draft 2010 IRP Update (released July 2010), stormwater is identified as an additional potential water resource to counteract future water supply uncertainties. AB 1834 would encourage greater rainwater capture, and the development of recommendations and building standards for rainwater capture systems would identify ways to implement this resource for long-term statewide benefits.

Policy

By Minute Item 45208, dated February 11, 2003, the Board adopted the Water Conservation Policy Principles.

By Minute Item 43964, dated April 11, 2000, the Board adopted the Watershed Management Policy Principles.

By Minute Item 42820, dated February 10, 1998, the Board adopted the Source Water Quality Protection Policy Principles.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan’s support for AB 1834, as proposed to be amended.

Fiscal Impact: Should Metropolitan assume the role of initiating the stakeholder process, the costs identified in the bill would largely consist of staff time and building services already included in Metropolitan’s budget.

Business Analysis: Metropolitan support for increasing rainwater capture and use under AB 1834, as amended, and Metropolitan’s possible participation in a stakeholder process would be consistent with Metropolitan’s promotion of water use efficiency and help Metropolitan and its member agencies achieve the state’s 20x2020 water conservation objectives.

Option #2


Take no position on AB 1834, as proposed to be amended.

Fiscal Impact: None


Business Analysis: Lack of support could reduce the opportunity for rainwater capture and its associated benefits in helping retail agencies achieve the state’s 20x2020 water conservation goals.

Staff Recommendation

Option #1


Linda D. Waade
Deputy General Manager, External Affairs

8/11/2010
Date


Jeffrey Lightlinger
General Manager

8/11/2020
Date

Attachment 1 – Assembly Bill 1834, (Solorio, D-Santa)

AB 1834 (Solorio) July 2010 Amendments

SECTION 1. Section 7027.5 of the Business and Professions Code is amended to read:

7027.5. (a) A landscape contractor working within the classification for which the license is issued may design systems or facilities for work to be performed and supervised by that contractor.

(b) Notwithstanding any other provision of this chapter, a landscape contractor working within the classification for which the license is issued may enter into a prime contract for the construction of any of the following:

(1) A swimming pool, spa, or hot tub, provided that the improvements are included within the landscape project that the landscape contractor is supervising and the construction of any swimming pool, spa, or hot tub is subcontracted to a single licensed contractor holding a Swimming Pool (C-53) classification, as set forth in Section 832.53 of Title 16 of the California Code of Regulations, or performed by the landscape contractor if the landscape contractor also holds a Swimming Pool (C-53) classification. The contractor constructing the swimming pool, spa, or hot tub may subcontract with other appropriately licensed contractors for the completion of individual components of the construction.

(2) An outdoor cooking center, provided that the improvements are included within a residential landscape project that the contractor is supervising. For purposes of this subdivision, "outdoor cooking center" means an unenclosed area within a landscape that is used for the cooking or preparation of food or beverages.

(3) An outdoor fireplace, provided that it is included within a residential landscape project that the contractor is supervising and is not attached to a dwelling.

(4) A rainwater capture system, as defined in Section 10572 of the Water Code, **used for** ~~provided that the system is included within a~~ landscape irrigation ~~system that the contractor is supervising.~~

(c) (1) Work performed in connection with a landscape project specified in paragraph (2), (3), or (4) of subdivision (b) that is outside of the field and scope of activities authorized to be performed under the Landscape Contractor ~~classification~~ (C-27) **classification**, as set forth in Section 832.27 of Title 16 of the California Code of Regulations, may only be performed by a landscape contractor if the landscape contractor also either holds an appropriate specialty license classification to perform the work or is licensed as a general building contractor. If the landscape contractor neither holds an appropriate specialty license classification to perform the work nor is licensed as a ~~general building~~ **General Building** contractor, the work shall be performed by a ~~specialty~~ **Specialty** contractor holding the appropriate license classification or by a ~~general building~~ **General Building** contractor performing work in accordance with the requirements of subdivision (b) of Section 7057.

(2) Notwithstanding paragraph (1), a landscape contractor performing work under the Landscape Contractor ~~classification~~ (C-27) **classification**, as set forth in Section 832.27 of Title 16 of the California Code of Regulations, may design and install all exterior components of a rainwater capture system, as defined in Section 10572 of the Water Code, that are not a part of, or attached to, a structure.

(d) A violation of this section shall be cause for disciplinary action.

SEC. 2. Part 2.4 (commencing with Section 10570) is added to Division 6 of the Water Code, to read:

PART 2.4. Rainwater Capture Act of 2010

10570. This part shall be known, and may be cited, as the Rainwater Capture Act of 2010.

10571. The Legislature finds and declares all of the following:

(a) As California has grown and developed, the amount of stormwater flowing off of buildings, parking lots, roads, and other impervious surfaces into surface water streams and flood channels has increased, thereby reducing water allowed to infiltrate into groundwater aquifers and increasing water and pollution flowing to the ocean. At the same time, recurring droughts and water shortages in California have made water conservation efforts a priority.

(b) Historical patterns of precipitation are predicted to change, with two major implications for water supply. First, an increasing amount of California's water is predicted to fall not as snow in the mountains, but as rain in other areas of the state. This will likely have a profound and transforming effect on California's hydrologic cycle and much of that water will no longer be captured by California's reservoirs, many of which are located to capture snowmelt. Second, snowmelt, and runoff resulting from snowmelt, are predicted to occur progressively earlier in the year, and reservoirs operated for flood control purposes must release water early in the season to protect against later storms, thereby reducing the amount of early season snowmelt that can be stored.

(c) Rainwater, captured and properly managed, can contribute significantly to local water supplies by percolation into the ground to recharge groundwater aquifers, thereby increasing available supplies of drinking water. In addition, the use of rainwater through onsite storage and use for landscape irrigation significantly reduces the demand for potable water, contributing to the statutory objective of a 20-percent reduction in urban per capita water use in California by December 31, 2020.

(d) Expanding reliance on rainwater capture for water supply needs will require efforts at all levels, from individual landowners to state and local agencies and watershed managers.

10571.5. Nothing in this part shall be construed to do either of the following:

(a) Alter or impair any existing rights.

(b) Change existing water rights law.

10572. Solely for the purposes of this part, and unless the context otherwise requires, the following definitions govern the construction of this part:

(a) "Agricultural lands" has the same meaning as defined pursuant to Section 56016 of the Government Code.

(b) "Developed or developing lands" means lands that have one or more of the characteristics described in subparagraphs (A) to (C), inclusive, of paragraph (4) of subdivision (b) of Section 56375.3 of the Government Code.

(c) "District" means the Metropolitan Water District of Southern California.

(c) "Rainwater" means rain or snowmelt that has not entered an *offsite* storm drain system or channel, a flood control channel, or any other stream channel, and has not previously been put to beneficial use.

(d) "Rainwater capture system" means a facility on developed or developing lands, but not on agricultural lands, designed to capture and retain rainwater flowing off of a building, parking

lot, road, or any other manmade, impervious surface, for either subsequent outdoor, nonpotable uses or infiltration into a groundwater aquifer.

(e) "Stormwater" means temporary surface water and snowmelt runoff generated by immediately preceding storms. This definition shall be interpreted consistent with the definition of "stormwater" in Section 122.26 of Title 40 of the Code of Federal Regulations, as that section may be amended.

10573. (a) A landowner may install, maintain, and operate, on the landowner's property, a rainwater capture system to supply water for outdoor, nonpotable uses on the property where the rainwater was captured or for groundwater recharge. If a local agency has a program to promote rainwater or stormwater capture and use, the landowner shall comply with applicable requirements of the program, including, but not limited to, a stormwater resource plan adopted pursuant to Part 2.3 (commencing with Section 10560).

(b) Financing pursuant to Chapter 29 (commencing with Section 5898.10) of Part 3 of Division 7 of the Streets and Highways Code shall be available to landowners who install a rainwater capture system, if a local agency authorizes and arranges that financing consistent with the requirements of that chapter.

(c) This section shall not be construed to impose a duty on, or impair the authority of, a local agency to establish or implement a program for rainwater capture in its jurisdiction.

10574. (a) It is the intent of the Legislature that the use of rainwater for nonpotable uses should not be constrained by drinking water standards in Title 22 of the California Code of Regulations, but shall fully comply with water quality requirements for nonpotable water pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)).

(b) Notwithstanding subdivision (a), this part does not affect any additional state, regional, or local requirements for the protection of groundwater quality from contamination resulting from stormwater drainage.

10575. (a) It is the intent of the Legislature to encourage collaboration among state, regional, and local agencies with responsibilities that include, but are not limited to, building standards, flood protection, water supply, or land use to promote greater capture of rainwater and stormwater for water supply purposes.

(b) It is the intent of the Legislature that the California Building Standards Code, including the California Green Building Standards Code (Part 11 (commencing with Section 101) of Title 24 of the California Code of Regulations), encourage and provide building standards guidelines for the installation and use of rainwater capture systems for outdoor, nonpotable uses and groundwater recharge.

10576. (a) ~~The board shall~~ The Legislature finds and declares that, in order to expand rainwater and stormwater capture broadly, many legal, policy and technical issues will need to be addressed and resolved. The best way to address these issues is ~~to~~ initiate a stakeholder process to develop recommendations for policies of state and local agencies that would encourage and facilitate the voluntary installation and use of rainwater capture systems for outdoor, nonpotable uses and groundwater recharge, and capture of stormwater by public agencies.

(b) A public agency, including but not limited to the district or the California State University Water Resources Institute, may lead a statewide stakeholder process to consider and address the issues arising out of expansion of rainwater and stormwater capture. ~~The board shall develop the~~

~~recommendations through a stakeholder process. The board shall invite all. If a stakeholder process is initiated, all~~ stakeholders, and federal, state, and local agencies concerned about rainwater and stormwater capture shall be invited to participate ~~in the process described in subdivision (a). The board shall appoint a chairperson to oversee the stakeholder process. The Director of Water Resources shall appoint a cochair to cofacilitate the stakeholder process. The board and the department shall retain responsibility for the final recommendations developed through the process.~~

(c) Any stakeholder process may consider the following issues:

~~In developing the recommendations, the board and the stakeholders shall address issues arising out of rainwater capture for nonpotable uses, including, but not limited to, all of the following:~~

- (1) Vector control.
- (2) Water supply augmentation.
- (3) Water quality, including but not limited to both of the following:
 - (A) First rain contamination hazards.
 - (B) Potential changes in the concentration, quantity, or abundance of runoff pollution from increased rainwater collection.
- (4) Safe installation, maintenance, and operation of rainwater capture systems.
- (5) Water rights.
- (6) Vegetation and habitat management in flood control facilities and rainwater or stormwater capture systems.
- (7) Effects on downstream, in-stream flow volumes and native fish and wildlife.
- (8) Consistency with building standards requirements, including the building drainage requirements of Chapter 11 of the California Plumbing Code (Part 5 (commencing with Section 101.0) of Title 24 of the California Code of Regulations).
- (9) Potential for indoor, nonpotable use of captured rainwater for toilets and laundry.
- (10) Financial and tax incentives to encourage greater capture of rainwater and stormwater.
- (11) Necessary monitoring and reporting of rainwater and stormwater capture programs.
- (12) Outcomes of existing programs that promote rainwater or stormwater capture.

(13) The financial feasibility of each of the recommendations.

~~(d) If a public agency initiates a stakeholder process pursuant to this section, the department, the board and the California Department of Public Health shall participate in stakeholder meetings. The board district shall publish recommendations developed pursuant to this section on its Internet Web site by December 31, 2011, and shall notify the fiscal committees and the appropriate policy committees of the Legislature when these recommendations become available on the Internet Web site. These recommendations may include recommendations for additional legislation, including amendments to this part, recommendations for building standards for the installation and use of rainwater capture systems, or other state agency actions to implement the recommendations.~~

(e) Participants in the stakeholder process shall be responsible for costs incurred as a result of their participation. The district public agency that initiates the stakeholder process shall be responsible for the costs of meetings and preparation of any report of the conclusions or recommendations of the stakeholder group.~~the requirements of subdivision (d).~~

~~—(e) The stakeholder process, including the development of recommendations, pursuant to this section, is not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).~~

10577. (a) (1) If the stakeholder process pursuant to Section 10576 results in recommendations for the California Building standards Commission and the Department of Housing and Community Development to develop building standards for the installation and use of rainwater capture systems, the ~~board~~ public agency, on or before December 31, 2011, shall submit those recommendations to the ~~California Building Standards Commission and the Department of Housing and Community Development~~ commission and department for approval and adoption in the California Green Building Standards Code (Part 11 (commencing with Section 101) of Title 24 of the California Code of Regulations) or the California Plumbing Code (Part 5 (commencing with Section 101.0) of Title 24 of the California Code of Regulations).

(2) In developing recommendations for building standards for the installation and use of rainwater capture systems pursuant to the stakeholder process, the process shall include consideration, and incorporation, if appropriate, of the rainwater capture system provisions contained in the 2010 Green Plumbing and Mechanical Code Supplement published by the International Association of Plumbing and Mechanical Officials and any other proposals that the stakeholders deem appropriate.

(b) As part of the next regular update and code revision process ~~On or before July 1, 2013,~~ the ~~California Building Standards Commission and the Department of Housing and Community Development~~ commission and the department shall consider any building standards recommendations submitted in accordance with subdivision (a) for adoption in an annual code update to the California Green Building Standards Code (Part 11 (commencing with Section 101) of Title 24 of the California Code of Regulations) or the California Plumbing Code (Part 5 (commencing with Section 101.0) of Title 24 of the California Code of Regulations).

10578. ~~In addition to policies developed pursuant to Section 10576, the~~ The board may adopt ~~its own~~ policies or guidelines related to voluntary rainwater and stormwater capture, if the board finds that those policies or guidelines would encourage and facilitate greater capture of rainwater and stormwater while protecting public and environmental health.

SEC 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.