



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

6/14/2016 Board Meeting

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**8-9**

**Subject**

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Express opposition, unless amended, to SB 163 (Hertzberg, D-Van Nuys) - Wastewater treatment: recycled water

**Executive Summary**

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With the ongoing drought in California and continued constraints on deliveries from the Bay-Delta, the need for alternative water supplies continues to grow. SB 163 focuses on one such supply – recycled water. SB 163, as amended June 8, 2016, would find and declare that it is a waste and unreasonable use of water to discharge treated wastewater from an ocean or bay outfall or for a water supplier or water replenishment district to refuse to accept treated wastewater for groundwater recharge, surface water augmentation or landscape irrigation purposes. SB 163 also would require holders of National Pollutant Discharge Elimination System permits to develop plans by January 1, 2023, to beneficially reuse “to the maximum extent possible” treated wastewater that would otherwise be discharged through ocean or bay outfalls. Finally, SB 163 would require that by January 1, 2033, at least 50 percent of all treated wastewater be beneficially reused.

Though Metropolitan supports the goal of encouraging the use of recycled water, staff is concerned that SB 163’s approach is too restrictive and does not allow for consideration of local conditions and circumstances in determining whether and to what extent treated wastewater can be beneficially reused. Moreover, SB 163 raises a host of legal and policy questions. Ultimately, decisions regarding the development and reuse of treated wastewater are best made on a case-by-case basis that takes into account all relevant environmental, economic and technological factors. Accordingly, staff recommends expressing opposition to SB 163 unless amended.

**Details**

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Although recent winter rains and snow have helped to lessen the severity of the drought in some parts of California, dry conditions persist in many areas of the state, with limited drinking water supplies in some communities, diminished water for agricultural production and environmental habitat, and severely depleted groundwater basins. Indeed, extreme or exceptional drought conditions continue throughout the Central Valley and in most of Metropolitan’s service area. Moreover, while allocations from the State Water Project (SWP) have increased, environmental restrictions on pumping in the Delta continue to adversely impact water deliveries from the project. Since October 2015, it is estimated that these restrictions have reduced available SWP supplies by approximately 700,000 acre-feet (AF).

Given these conditions, the need and desire for alternative water supplies continues to grow, with much of the focus being on the development of local supplies. For Metropolitan, the development of such supplies is an essential component of its water reliability strategy. As set forth in the 2015 Integrated Water Resources Plan (IRP) Update, Metropolitan’s target for local supplies is 2.31 million AF (MAF) by 2020 and 2.43 MAF by 2040.

SB 163 (**Attachment 1**) is ostensibly aimed at fostering the development of one particular local supply, namely, recycled water. As amended on June 8, 2016, SB 163 would find and declare that it is a waste and unreasonable use of water, within the meaning of Section 2, Article X of the California Constitution, to discharge treated wastewater from an ocean or bay outfall or for a water supplier or water replenishment district to refuse to accept treated wastewater for groundwater recharge, surface water augmentation or landscape irrigation purposes.

Consistent with this declaration, SB 163 would direct the State Water Resources Control Board (State Board) to promulgate regulations requiring each holder of a National Pollutant Discharge Elimination System permit to: (1) on or before January 1, 2023, develop plans to beneficially reuse “to the maximum extent possible” treated wastewater that would otherwise be discharged through ocean or bay outfalls; and (2) on or before January 1, 2033, beneficially reuse at least 50 percent of all treated wastewater relative to the inflow to the permit holder’s treatment plant. These regulations must “provide operational and compliance flexibility in the event of an emergency, scheduled maintenance or repairs, extreme weather events, or any other factors that the board determines warrants consideration.” But apart from this directive, SB 163 would appear to provide the State Board with a fair amount of discretion in promulgating regulations governing the reuse of treated wastewater. Finally, SB 163 would allow the State Board to impose “reasonable fees” on permit holders to recover its administrative costs.

In contrast, SB 163 is silent on how the requirement for water suppliers and water replenishment districts to accept any treated wastewater made available to them by permit holders would be implemented. It does not provide any guidance or parameters concerning the terms and conditions under which treated wastewater would have to be accepted nor does it expressly charge the State Board with the task of promulgating regulations to implement this portion of SB 163’s mandate.

Metropolitan fully supports the goal of developing alternatives to imported water supplies. Metropolitan’s 2015 IRP Update envisions that over the next 25 years 40 to 50 percent of the Southern California region’s retail demands will be met using local supplies and another 20 to 25 percent will be met through conservation. And as Metropolitan’s Board is well aware, Metropolitan has devoted and continues to devote significant resources toward meeting these targets.

Likewise, Metropolitan is specifically committed to the development and use of recycled water. That commitment was most recently demonstrated with Metropolitan’s approval of the Regional Recycled Water Program Agreement between Metropolitan and the Sanitation Districts of Los Angeles County (Districts). This agreement authorizes construction and operation of a one million gallon per day (MGD) pilot treatment plant, as well as various financial and technical studies, to determine the feasibility of moving forward with a full-scale facility capable of producing up to 150 MGD of advanced treated water using secondary effluent from the Districts’ Joint Water Pollution Control Plant in Carson.

Despite Metropolitan’s commitment to development of local supplies, staff has significant concerns with SB 163. Among other things, imposing a statewide mandate is not a practical or efficient method to promote water recycling and could cost local public agencies billions of dollars, most of which would be borne by ratepayers. Likewise, establishing a blanket 50 percent beneficial reuse requirement seems premature. It does not allow for consideration of local conditions and circumstances that affect whether and to what extent treated wastewater can be beneficially reused in any given situation. Furthermore, SB 163 is ambiguous regarding how its mandates are to be carried out and places significant discretion in the hands of the State Board for implementation. Ultimately, decisions regarding the development and reuse of treated wastewater are best made by local agencies on a case-by-case basis that takes into account all relevant environmental, economic and technological factors.

SB 163 raises a host of legal and policy questions. For example, the extent to which the Legislature can statutorily define what is or is not a waste and unreasonable use of water under Section 2, Article X of the California Constitution remains unclear. It is unclear whether development of recycled water should be elevated to a constitutional priority over the development of other local supplies or the implementation of other water supply projects and strategies. For instance, ocean or brackish water desalination in some areas may be a better approach than recycling as a way of achieving supply reliability.

Accordingly, staff recommends opposing SB 163 unless the bill is amended to address these policy concerns and questions. This position is consistent with the Board’s Policy Principle on Water Recycling adopted in 1997. This policy generally calls for the support of legislation that expands the development and use of recycled water, but also states that such legislation should encourage “voluntary cooperation and partnership among involved agencies to foster workable strategies for recycled water project implementation.” This position also is consistent with the 2016 legislative priorities adopted by the Board last December, which calls on Metropolitan to support

“legislative action to promote recycled water, and stormwater, and desalination as water resources, without compromising the operational, financial, water quality, regulatory and customer interests of Metropolitan and other water and wastewater agencies.”

To that end, staff is committed to working with the author to advance legislation that achieves the overarching intent behind SB 163, while still recognizing the various constraints faced by local agencies, including Metropolitan, to ensure continued water supply reliability for their constituents.

## **Policy**

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Metropolitan Board-Adopted Policy Principles: Water Recycling, M.I. 42287 (February 11, 1997) and M.I. 42820 (February 10, 1998)

Metropolitan’s Legislative Priorities for 2016, M.I. 50328 (December 8, 2015)

## **California Environmental Quality Act (CEQA)**

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### **CEQA determination for Option #1:**

The proposed action is not defined as a project under CEQA because it involves legislative proposals that do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (CEQA Section 21605 and Sections 15378(b)(1) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project under CEQA pursuant to CEQA Section 21065, as well as Section 15378(b)(1) of the State CEQA Guidelines.

### **CEQA determination for Option #2:**

None required

## **Board Options**

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### **Option #1**

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA, and  
Authorize the General Manager to express opposition to SB 163, unless amended.

**Fiscal Impact:** Unknown

**Business Analysis:** Expressing opposition to SB 163, unless amended, would allow Metropolitan to pursue changes to the legislation with the aim of ensuring that the development and use of recycled water occurs in a manner that is cost-effective and sensitive to local conditions and constraints.

### **Option #2**

Take no position SB 163.

**Fiscal Impact:** Unknown, but potentially significant.

**Business Analysis:** Metropolitan’s costs could increase if SB 163 is enacted, depending on how the requirement for water suppliers to purchase recycled water is implemented.

**Staff Recommendation**

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Option #1

  
\_\_\_\_\_  
Dee Zinke, Assistant General  
Manager/Chief External Affairs Officer

6/9/2016

Date

  
\_\_\_\_\_  
Jeffrey Kightlinger  
General Manager

6/9/2016

Date

**Attachment 1 – Senate Bill 163, as amended June 8, 2016**

Ref# ea12644194

AMENDED IN ASSEMBLY JUNE 8, 2016

AMENDED IN ASSEMBLY SEPTEMBER 3, 2015

AMENDED IN SENATE JUNE 2, 2015

**SENATE BILL**

**No. 163**

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**Introduced by Senator Hertzberg**

February 4, 2015

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An act to add Section 13557.5 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Hertzberg. Wastewater treatment: recycled water.

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 nonpotable uses is a waste or an unreasonable use of water if recycled water is available, as determined by the State Water Resources Control Board, and other requirements are met.

Under existing law, the state board and the 9 California regional water quality control boards prescribe 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.

This bill would declare ~~that the discharge of treated wastewater from ocean outfalls, that, except in compliance with the bill's provisions, it is a waste and unreasonable use of water in light of the cost-effective opportunities to recycle this water for further beneficial use. This bill,~~

~~on or before January 1, 2026, would require a wastewater treatment facility discharging through an ocean outfall to achieve at least 50% reuse of the facility's actual annual flow, as defined, for beneficial purposes. This bill, on and after January 1, 2036, would prohibit the discharge of treated wastewater through ocean outfalls, except as backup discharge, as defined, and would require a wastewater treatment facility to achieve 100% reuse of the facility's actual annual flow for beneficial purposes. This bill, on and after January 1, 2022, would authorize a NPDES permitholder subject to these requirements to petition the state board for a partial exemption to the above-described requirements. This bill would require the state board to determine, after notice and opportunity for comment, whether the petition demonstrates that the NPDES permitholder cannot comply with these reuse requirements and would provide that an exemption from these reuse requirements is valid for a period of no more than 5 years, at which point the NPDES permitholder is required to reapply for an exemption or comply with these reuse requirements. This bill would prohibit a NPDES permitholder subject to these provisions from being eligible for state grants or loans if they receive a partial exemption to these reuse requirements, unless the state grant or loan is solely for the purpose of achieving compliance with these reuse requirements.~~

*water to discharge treated wastewater from an ocean or bay outfall, or for a water supplier or water replenishment district to not take treated wastewater made available for certain purposes. The bill would require the state board to promulgate regulations, on or before January 1, 2020, that would require each NPDES permitholder, on or before January 1, 2023, to submit to the state board the permitholder's plans to achieve beneficial reuse, to the maximum extent possible, of treated wastewater that would otherwise be discharged through ocean or bay outfalls. The bill would require these regulations to require, on or before January 1, 2033, the beneficial reuse of at least 50% of treated wastewater that the NPDES permitholder would otherwise discharge though ocean or bay outfalls relative to the inflow to the treatment plant. The bill would require the regulations to provide operational and compliance flexibility, as specified. The bill would authorize the state board to convene an advisory group and to consider any other recommendations or testimony provided during the regulation adoption process. The bill would authorize the state board to adopt reasonable fees payable by a holder of an NPDES permit to recover costs incurred in administering these provisions.*

~~This bill would require a holder of a NPDES permit authorizing the discharge of wastewater through an ocean outfall as of January 1, 2016, to submit, on or before July 1, 2020, a prescribed plan to meet these provisions, directly or by contract, to the executive director of the state board and would require the plan to be updated on or before January 1, 2024. This bill, on or before January 1, 2017, and by January 1 every 5 years thereafter, would require the holder of a NPDES permit authorizing the discharge of wastewater through an ocean outfall to submit a report to the executive director of the state board summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of these provisions. This bill would require the state board to submit a report to the Governor and the Legislature on the implementation of these provisions on or before July 1, 2021, and by July 1 every 5 years thereafter.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 13557.5 is added to the Water Code, to*
- 2     *read:*
- 3     *13557.5. (a) The Legislature hereby finds and declares that,*
- 4     *except in compliance with the provisions of this section, it is a*
- 5     *waste and unreasonable use of water within the meaning of Section*
- 6     *2 of Article X of the California Constitution to discharge treated*
- 7     *wastewater from an ocean or bay outfall, or for a water supplier*
- 8     *or water replenishment district to not take treated wastewater*
- 9     *made available to the supplier or district for groundwater*
- 10    *recharge, surface water augmentation, or landscape irrigation.*
- 11    *(b) On or before January 1, 2020, the state board shall*
- 12    *promulgate regulations to require both of the following:*
- 13    *(1) On or before January 1, 2023, each holder of an NPDES*
- 14    *permit to submit to the state board the permitholder's plans to*
- 15    *achieve beneficial reuse, to the maximum extent possible, of treated*
- 16    *wastewater that would otherwise be discharged through ocean or*
- 17    *bay outfalls.*
- 18    *(2) On or before January 1, 2033, the beneficial reuse of at*
- 19    *least 50 percent of treated wastewater that the NPDES*
- 20    *permitholder would otherwise discharge through ocean or bay*
- 21    *outfalls relative to the inflow to the treatment plant.*

1 (c) The regulations promulgated pursuant to subdivision (b)  
2 shall provide operational and compliance flexibility in the event  
3 of an emergency, scheduled maintenance or repairs, extreme  
4 weather events, or any other factor that the board determines  
5 warrants consideration.

6 (d) In developing the regulations pursuant to subdivision (b),  
7 the state board may convene an advisory group for the purpose  
8 of preparing a report or recommendations to the state board about  
9 how to implement this section and the state board may consider  
10 any other recommendations or testimony provided during the  
11 regulation adoption process.

12 (e) Consistent with Section 3 of Article XIII A of the California  
13 Constitution, the state board may adopt reasonable fees payable  
14 by a holder of an NPDES permit to recover costs incurred in  
15 administering this section.

16 ~~SECTION 1. The Legislature finds and declares all of the~~  
17 ~~following:~~

18 ~~(a) Severe drought conditions have persisted for the last three~~  
19 ~~years in California, and 2013 was the state's driest calendar year~~  
20 ~~on record.~~

21 ~~(b) California's water supplies have dipped to alarmingly low~~  
22 ~~levels indicated by the very limited snowpack in the Sierra Nevada~~  
23 ~~Mountains, declining water levels in the state's largest water~~  
24 ~~reservoirs, reduced surface water flows in major river systems,~~  
25 ~~and historically low groundwater levels. These water supplies~~  
26 ~~continue to be severely depleted despite a limited amount of winter~~  
27 ~~precipitation in 2014.~~

28 ~~(c) The duration of the drought is unknown, but based on the~~  
29 ~~projected impact of climate change on California's snowpack,~~  
30 ~~extremely dry conditions will likely continue beyond this year and~~  
31 ~~occur more regularly in the future.~~

32 ~~(d) Continuous severe drought conditions present urgent~~  
33 ~~challenges across the state, including, but not limited to, water~~  
34 ~~shortages in communities and for agricultural production, increased~~  
35 ~~risk of wildfires, degraded habitat for fish and wildlife, and threat~~  
36 ~~of saltwater contamination in large fresh water supplies.~~

37 ~~(e) Water reuse is one of the most efficient and cost-effective~~  
38 ~~ways to improve the drought resilience of California communities.~~

39 ~~(f) The State Water Resources Control Board has established~~  
40 ~~goals of recycling 1,500,000 acre-feet of wastewater by 2020 and~~



1 2,500,000 acre-feet of wastewater by 2030. However, California  
2 is not on track to meet the board's goals:

3 ~~(g) The discharge of treated wastewater from ocean outfalls~~  
4 ~~constitutes waste and unreasonable use of water within the meaning~~  
5 ~~of Section 2 of Article X of the California Constitution, in light of~~  
6 ~~the opportunities to recycle this water for further beneficial use.~~

7 ~~(h) By prohibiting ocean discharges from wastewater treatment~~  
8 ~~plants, California could dramatically accelerate the adoption of~~  
9 ~~water recycling and thus increase water supply available for~~  
10 ~~beneficial use.~~

11 ~~(i) Water recycling can reduce California's dependence on~~  
12 ~~diversions from surface rivers and streams that are subject to~~  
13 ~~variable climate and regulatory conditions.~~

14 ~~(j) In addition to water supply benefits, requiring water recycling~~  
15 ~~for further beneficial use eliminates ocean wastewater discharges,~~  
16 ~~decreasing pollutant loadings to ocean waters and improving~~  
17 ~~coastal water quality, thereby benefitting the aquatic environment~~  
18 ~~and local economies that depend on those coastal resources.~~

19 ~~SEC. 2. Section 13557.5 is added to the Water Code, to read:~~

20 ~~13557.5. (a) The Legislature hereby finds and declares that~~  
21 ~~the discharge of treated wastewater from ocean outfalls, except in~~  
22 ~~compliance with the provisions of this section, is a waste and~~  
23 ~~unreasonable use of water within the meaning of Section 2 of~~  
24 ~~Article X of the California Constitution in light of the cost-effective~~  
25 ~~opportunities to recycle this water for further beneficial use,~~  
26 ~~including both potable and nonpotable uses.~~

27 ~~(b) On or before January 1, 2026, each wastewater treatment~~  
28 ~~facility that discharges through an ocean outfall shall achieve at~~  
29 ~~least 50 percent reuse of the facility's actual annual flow for~~  
30 ~~beneficial purposes.~~

31 ~~(c) On and after January 1, 2036:~~

32 ~~(1) A wastewater treatment facility shall not discharge treated~~  
33 ~~wastewater through ocean outfalls, except as a backup discharge.~~  
34 ~~A backup discharge may occur only during periods of reduced~~  
35 ~~demand for reclaimed water in the reuse system, such as a period~~  
36 ~~of wet weather.~~

37 ~~(2) Each wastewater treatment facility shall achieve 100 percent~~  
38 ~~reuse of the facility's actual annual flow for further beneficial use.~~

39 ~~(d) (1) A holder of a NPDES permit authorizing the discharge~~  
40 ~~of wastewater through an ocean outfall as of January 1, 2016, shall~~

## 6

1 submit, on or before July 1, 2020, a plan to meet the requirements  
2 of this section, directly or by contract, to the executive director of  
3 the state board that contains all of the following:

4 (A) An identification of all land acquisition and facilities  
5 necessary to provide for treatment, transport, and reuse of treated  
6 wastewater.

7 (B) An analysis of the costs to meet the requirements of this  
8 section.

9 (C) A financing plan for meeting the requirements of this  
10 section, including identifying any actions necessary to implement  
11 the financing plan, such as bond issuance or other borrowing,  
12 assessments, rate increases, fees, charges, or other financing  
13 mechanisms.

14 (D) A detailed schedule for the completion of all necessary  
15 actions.

16 (E) Supporting data and other documentation accompanying  
17 the plan.

18 (2) On or before January 1, 2024, the plan described in  
19 paragraph (1) shall be updated and submitted to the executive  
20 director of the state board by the permit holder to include any  
21 refinements or changes in the costs, actions, or financing necessary  
22 to achieve full recycling of all wastewater and thereby eliminate  
23 the ocean outfall discharge in accordance with this section or a  
24 written statement that the plan is current and accurate.

25 (e) On or before January 1, 2017, and by January 1 every five  
26 years thereafter, the holder of a NPDES permit authorizing the  
27 discharge of wastewater through an ocean outfall shall submit to  
28 the executive director of the state board a report summarizing the  
29 actions accomplished to date and the actions remaining and  
30 proposed to meet the requirements of this section. The report shall  
31 include progress toward meeting the deadlines set forth in  
32 subdivisions (b) to (d), inclusive, and specifically include the  
33 detailed schedule for, and status of, the following:

- 34 (1) Evaluation of reuse and disposal options.
- 35 (2) Preparation of preliminary design reports.
- 36 (3) Preparation and submission of permit applications.
- 37 (4) Construction initiation.
- 38 (5) Construction progress milestones.
- 39 (6) Construction completion.
- 40 (7) Initiation of operation.

1 ~~(8) Continuing operation and maintenance.~~

2 ~~(f) (1) On or before July 1, 2021, and by July 1 every five years~~  
3 ~~thereafter, the state board shall submit a report to the Governor~~  
4 ~~and the Legislature on the implementation of this section. The~~  
5 ~~report shall summarize the progress up to date, including the~~  
6 ~~increased amount of reclaimed water provided and potable water~~  
7 ~~offsets achieved, and shall identify any obstacles to continued~~  
8 ~~progress, including all instances of substantial noncompliance.~~

9 ~~(2) A report to be submitted pursuant to paragraph (1) shall be~~  
10 ~~submitted in compliance with Section 9795 of the Government~~  
11 ~~Code.~~

12 ~~(g) (1) On and after January 1, 2022, a NPDES permitholder~~  
13 ~~subject to the requirements of this section, may petition the state~~  
14 ~~board for a partial exemption to the requirements of this section.~~  
15 ~~The petition shall include the information required in subdivisions~~  
16 ~~(d) and (e), and shall demonstrate that the NPDES permitholder~~  
17 ~~cannot comply with the requirements of this section for one of the~~  
18 ~~following reasons:~~

19 ~~(A) The state board has failed to adopt regulations that approve~~  
20 ~~the indirect potable reuse of wastewater.~~

21 ~~(B) Upgrading the wastewater treatment plant to achieve~~  
22 ~~recycled water standards produces recycled water that costs more~~  
23 ~~than twice the cost per-acre foot as compared with other new~~  
24 ~~surface and groundwater supplies.~~

25 ~~(C) The wastewater treatment plant has achieved water quality~~  
26 ~~standards for recycled water, but there is not sufficient demand~~  
27 ~~for this water within the region.~~

28 ~~(2) The state board shall determine, after notice and opportunity~~  
29 ~~for comment, whether the petition demonstrates that the NPDES~~  
30 ~~permitholder cannot comply with the requirements of this section~~  
31 ~~pursuant to paragraph (1). If the state board approves the partial~~  
32 ~~exemption to the requirements of this section, that exemption shall~~  
33 ~~be valid for a period of no more than five years, at which point the~~  
34 ~~NPDES permitholder shall reapply for an exemption or comply~~  
35 ~~with the requirements of this section.~~

36 ~~(3) A NPDES permitholder subject to the requirements of this~~  
37 ~~section shall not be eligible for state grants or loans if they receive~~  
38 ~~a partial exemption to the requirements of this section pursuant to~~  
39 ~~this subdivision, unless the state grant or loan is solely for the~~

1 ~~purpose of achieving compliance with the requirements of this~~  
2 ~~section.~~

3 ~~(h) As used in this section:~~

4 ~~(1) "Actual annual flow" means the annual average flow of~~  
5 ~~treated wastewater discharging through a facility's ocean outfall~~  
6 ~~as determined by the state board using monitoring data available~~  
7 ~~for calendar years 2009 to 2014, inclusive.~~

8 ~~(2) "Backup discharge" means a surface water discharge that~~  
9 ~~occurs as part of a functioning reuse system that has been permitted~~  
10 ~~in accordance with the rules of the state board and that provides~~  
11 ~~reclaimed water for irrigation or public access areas, residential~~  
12 ~~properties, edible food crops, sea water barrier injection to protect~~  
13 ~~groundwater resources, groundwater replenishment, industrial~~  
14 ~~cooling, or other acceptable reuse purposes. "Backup discharge"~~  
15 ~~may also include releases to the ocean on an emergency basis, as~~  
16 ~~approved by a regional board, for a duration not to exceed 90 days~~  
17 ~~and only in the quantities as are necessary in the event of a storm~~  
18 ~~or other cause that impedes groundwater replenishment.~~