



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

5/9/2017 Board Meeting

8-7

Subject

Adopt CEQA determination and adopt Legislative Priorities Related to Implementing the Governor's Executive Order B-37-16, "Making Water Conservation a California Way of Life"

Executive Summary

This board letter outlines the Legislative Priorities recommended by staff in response to legislation associated with the recent state report: Implementing the Governor's Executive Order B-37-16, "Making Water Conservation a California Way of Life."

Details

Governor Jerry Brown's actions regarding the recent drought in California extend through a series of proclamations and executive orders beginning with his January 17, 2014 Proclamation of a State of Emergency when California faced water shortfalls amidst the then-driest year in recorded state history. As the drought continued, on May 9, 2016, the Governor issued Executive Order B-37-16, "Making Water Conservation a California Way of Life" with the intent to bolster California's climate and drought resilience. On April 7, 2017, the state released the final report "*Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16.*"

The Legislature has introduced seven bills in an effort to implement Executive Order B-37-16 related to urban water use, and the Brown Administration has released two proposed budget trailer bills to implement the Governor's Executive order (**Attachment 1**). AB 1668 and AB 1669 by Assembly Member Friedman (D-Glendale) contain nearly identical language as the Brown Administration's proposed budget trailer bills. Although each of the bills seeks to implement the framework and goals of Executive Order B-37-16, there are aspects in each of the bills, which are incompatible with one another.

In order for Metropolitan to uniformly review and respond to these bills, along with related future bills, staff proposes that Legislative Priorities be adopted related to the implementation of the framework. By adopting these priorities, the Board will set the policy direction for staff to direct resources both legislatively and administratively.

The proposed Legislative Priorities are organized by the themes identified in the state report "*Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16.*" These Legislative Priorities recognize the state's role in providing appropriate oversight to the implementation of water conservation efforts and effective water shortage contingency plans, while preserving local decision-making and authorities of urban water suppliers to utilize their investments in storage, to exercise water transfers and exchanges, and to implement other locally-appropriate steps to manage supplies.

The Legislative Priorities are as follows:

Using Water More Wisely

- Support the objectives of the Governor’s Executive Orders for “Making Water Conservation a California Way of Life”
- Preserve the legislative process for setting water-use targets and oppose granting a state agency or an appointed body the authority to issue standards
- Ensure that there is no adverse impact on existing water rights
- Support multiple compliance methods
- Support the recognition of recycled water as an efficient use of water
- Support reporting on the progress towards 2025 water-use efficiency targets, in lieu of setting interim targets prior to 2025
- Support the establishment of performance measures for the Commercial, Industrial, and Institutional sector in place of water-use reduction targets

Eliminating Water Waste

- Support efforts to reduce distribution system water loss
- Support making the water waste prohibitions established during the drought emergency permanent

Strengthening Local Drought Resilience

- Support enhancing water shortage contingency analysis as part of Urban Water Management Plans
- Preserve local and regional decision-making and control in determining actions to avoid shortage or mitigate shortage impacts
- Support appropriate state agencies’ oversight of water demand and supply assessments by urban water suppliers
- Support the inclusion of all available sources of water supplies and water management actions by urban water suppliers to mitigate water shortage impacts to customers
- Oppose extending the current 90-day challenge period of Urban Water Management Plans and Water Shortage Contingency Plans

More details on the background and rationale for these Legislative Priorities are shown in ([Attachment 2](#)).

On April 25, the Assembly Water, Parks and Wildlife Committee passed all the urban water use and drought contingency planning legislation introduced in the Assembly as “works in progress.” Committee Chair Eduardo Garcia (D-Coachella) urged all bill authors and stakeholders to work together on a compromise approach in the coming weeks. The bills have been referred to the Assembly Appropriations Committee for hearings in May.

The proposed legislative priorities were developed by staff based upon the Board’s previously-adopted State Legislative Priorities and Principles for 2017/18, Metropolitan’s participation in the SWRCB/DWR long-term framework process during the fall of 2016, as well as comments received from the member agencies and broader water community. Staff recommends support of the attached Legislative Priorities to timely address concerns and to promote Metropolitan’s goals and objectives as water-use efficiency and drought contingency planning legislation moves forward this year.

Policy

By Minute Item 45208, dated February 11, 2003, the Board adopted policy principles regarding water conservation activities.

By Minute Item 48449, dated October 12, 2010, the Board adopted the 2010 Integrated Water Resources Plan Update.

By Minute Item 48661, dated May 10, 2011, the Board authorized changes to Metropolitan’s Water Conservation Program for FY 2011/12.

By Minute Item 48772, dated August 16, 2011, the Board adopted the Long-Term Conservation Plan and revised policy principles on water conservation.

By Minute Item 50703 and 50704, dated January 10, 2017, the Board adopted State Legislative Priorities and Principles for 2017/18.

By Board Letter 8-8, dated April 11, 2017, the Board expressed support for AB 1654 (Rubio, D-Baldwin Park), and directed staff to seek amendments to consider provisions from the Governor's package and request that any bill to implement a framework for long-term efficient water use advance through legislative policy and fiscal committees rather than by budget trailer bill.

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 defined as a project and 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 that the proposed action is not defined as a project and is not subject to CEQA, and

Adopt the Legislative Priorities Related to Implementing the Governor's Executive Order B-37-16, "Making Water Conservation a California Way of Life."

Fiscal Impact: None.

Business Analysis: Adoption of these Legislative Priorities will support staff's ability to timely address concerns related to legislation associated with implementing the Governor's Executive Order B-37-16.

Option #2

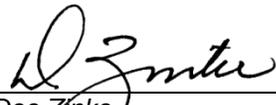
Take no action.

Fiscal Impact: None.

Business Analysis: Absence of these Legislative Priorities could hinder staff's ability to timely address concerns related to legislation associated with implementing the Governor's Executive Order B-37-16.

Staff Recommendation

Option #1



Dee Zinke
Assistant General Manager/Chief External
Affairs Officer

5/2/2017
Date



Jeffrey Kightlinger
General Manager

5/2/2017
Date

Attachment 1 – Summary of Pending Urban Water Use Legislation

Attachment 2 – Legislative Priorities Related to Implementing the Governor’s Executive Order B-37-16, “Making Water Conservation a California Way of Life”

Ref# ea12659646

Attachment 1
“Making Conservation a California Way of Life”
Summary of Pending Urban Water Use Legislation

Bill Number	Author	Version Date	Description
AB 869	Rubio (D-Baldwin Park)	3/28/2017	Exempts recycled water from conservation requirements under all conditions.
AB 968	Rubio (D-Baldwin Park)	4/17/2017	Requires new 2025 water use efficiency targets for urban water suppliers. Provides options for the targets, protects water rights, and exempts recycled water.
AB 1000	Friedman (D-Glendale)	2/16/2017	Requires CEC to certify innovative water conservation and water loss detection and control technologies.
AB 1323	Weber (D-San Diego)	2/17/2017	Requires DWR to convene a stakeholder workgroup to develop proposals for new long-term water use targets.
AB 1654	Rubio (D-Baldwin Park)	3/28/2017	Requires new drought shortage response procedures in urban water management plans. Defines emergency supply, and protects water suppliers that comply with the plans from any state action in times of drought.
AB 1668	Friedman (D-Glendale)	4/18/2017	Requires new drought shortage response with detailed levels of response. Incorporates climate change, enhances water supply analysis, and strengthens the enforceability of urban water management plans and drought response plans.
AB 1669	Friedman (D-Glendale)	4/18/2017	Authorizes and requires SWRCB to adopt long-term water use efficiency standards.
RN 17 12268	Budget Trailer Bill	4/3/2017	Establishes authorities and deadlines for setting new long-term standards for efficient urban water use.
RN 17 09926	Budget Trailer Bill	4/4/2017	Strengthens local drought resilience for urban water supplier through improved planning and annual assessments. Also expands existing planning requirements for agricultural water suppliers.

**Legislative Priorities Related to
Implementing the Governor’s Executive Order B-37-16,
“Making Water Conservation a California Way of Life”**

USING WATER MORE WISELY

Support the objectives of the Governor’s Executive Orders for “Making Water Conservation a California Way of Life”

- Support the development of water-use efficiency targets beyond 20x2020
- Support the state’s efforts to promote efficient use of water in California, to develop and maintain reliable water supplies, and to direct urban water supplies to prepare effective and comprehensive water shortage contingency plans

Preserve the legislative process for setting water-use targets and oppose granting a state agency or an appointed body the authority to issue standards

- The Legislature should retain its control and oversight over water-use target setting and accountability over state agencies
- Any revisions of the standards and performance measures beyond the 2025 compliance period should only be implemented through future legislation and not through ongoing regulatory authority and rule-making processes by one or more state agencies
- Oppose granting authority to a state agency or an appointed body to issue interim standards through emergency regulations outside of a Governor-declared emergency

Ensure that there is no adverse impact on existing water rights

- Water Code Section 1011, which allows water right holders to use or transfer conserved water, should continue to apply, and any new water-use efficiency legislation should not adversely impact water rights, water supply contracts, or water agencies’ ability to use or transfer conserved water

Support multiple compliance methods

- Methods could include a water-budget based target-setting approach in addition to other methods that could be customized to unique local conditions and could be equally effective in reducing water use. This additional flexibility would benefit many agencies, especially those that lack resources or capacity to implement detailed breakdowns of water use by sectors
- Support the state’s role in providing data on landscape area and tools to assist urban water suppliers to determine their outdoor irrigation budgets
- Alternative compliance methods should be developed through an established workgroup or directly with suppliers. Outdoor irrigation budget methodologies have the potential to be disproportionately burdensome or unaccommodating to suppliers with unique conditions, such as those with low outdoor water use or those with challenging topography that cannot be accurately measured by satellite imagery
- Suggest establishing a process to address potential unintended consequences of imposing new water use efficiency targets

- A regional compliance approach should also be allowed as an option similar to current regulations established under SB x7-7 (2009)

Support the recognition of recycled water as an efficient use of water

- Metropolitan recognizes that recycled water is an efficient use and should be treated as such in the new water use efficiency targets. This will encourage continued development of recycling and potable reuse projects as called for through the State's Recycled Water Task Force recommendations to develop 1.5 million acre-foot of recycled water by 2030

Support reporting on the progress towards 2025 water-use efficiency targets, in lieu of setting interim targets prior to 2025

- Urban water suppliers should be given time to refine or design and implement water-use efficiency programs and measures in order to comply with the new 2025 targets
- Support requiring urban water suppliers to report on the steps they are taking to comply with the new 2025 targets

Support the establishment of performance measures for the Commercial, Industrial, and Institutional sector in place of water use reduction targets

- Support the establishment of performance measures, such as water-use audits or water management plans, for the Commercial, Industrial, and Institutional (CII) sector instead of volumetric targets or percentage reductions
- Recommend DWR to convene a CII workgroup with representative members from a broad spectrum of industries, along with water suppliers, to define appropriate and effective measures that would result in water-use efficiency without impairing economic activities

ELIMINATING WATER WASTE

Support efforts to reduce distribution system water loss

Support making the water waste prohibitions established during the drought emergency permanent

- These water waste prohibitions should be considered normal practices in California

STRENGTHENING LOCAL DROUGHT RESILIENCE

Support enhancing the water shortage contingency analysis as part of Urban Water Management Plans

- Support enhancing existing requirements of Urban Water Management Plans to include a water shortage contingency analysis that utilizes a five-year drought planning sequence, and to include a communications strategy, financial considerations, compliance and exemption procedures, monitoring and reporting protocols, and a regular review process

Preserve local and regional decision-making and control in determining actions to avoid shortage or mitigate shortage impacts

- Urban water suppliers understand their supply and demand conditions best and thus should be able to decide what actions are necessary before a shortage stage is declared. These actions could include utilizing storage, exercising transfers and exchanges, and implementing other steps to manage supplies before declaring a shortage level
- Urban water suppliers should also have the flexibility to determine what actions fall within the various steps within their Water Shortage Contingency Plan. Actions and the shortage stage they fall within should not be dictated by the state
- Urban water suppliers should retain authority to determine when to declare a shortage emergency declaration under Water Code Section 350
- Support the Governor's authority to declare a State of Emergency when emergency shortage conditions exist, but preserve local decision-making authority in conditions absent a Governor-declared emergency

Support appropriate state agencies' oversight of water demand and supply assessments by urban water suppliers

- Support the appropriate state agencies' oversight of the development and implementation of water-use efficiency standards, while also preserving local decision-making in this process
- Promote local control in defining risk tolerance through proposed planning and assessment methods ensuring local drought resilience
- Support annual assessments of water supply and demand conditions for the purpose of determining shortages specific to the urban water supplier, with reporting separate and apart from the Urban Water Management Plan

Support the inclusion of all available sources of water supplies and water management actions by urban water suppliers to mitigate water shortage impacts to customers

- When developing its water shortage contingency plan as part of its Urban Water Management Plan, an urban water supplier should be able to consider all sources of water supplies, including utilization of flexible supplies, before determining if a water shortage to its customers occurs

Oppose extending the current 90-day challenge period of Urban Water Management Plans and Water Shortage Contingency Plans

- Extending the challenge period could present undue legal uncertainty for urban water suppliers and entities making land-use decisions using Urban Water Management Plans to support the preparation of Water Supply Assessments and Verification of Sufficient Water Supply for development