



# San Gabriel Basin Water Quality Authority

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**WQA LEGISLATIVE/PUBLIC INFORMATION COMMITTEE  
AND SPECIAL MEETING OF THE BOARD OF DIRECTORS  
TO BE HELD ON WEDNESDAY, JULY 15, 2015 AT 10:00 A.M.  
AT  
1720 W. CAMERON AVE., SUITE 100 IN WEST COVINA, CA**

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*\*The Legislative/Public Information Committee meeting is noticed as a joint committee meeting with the Board of Directors for the purpose of compliance with the Brown Act. Members of the Board that are not assigned to the Legislative/Public Information Committee may attend and participate as members of the Board, whether or not a quorum of the Board is present. In order to preserve the function of the Committee as advisory to the Board, members of the Board who are not assigned to the Legislative/Public Information Committee will not vote on matters before the Committee*

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## **AGENDA**

**Committee Members:** Luis Ayala, Louie Aguiñaga and Bryan Urias

**Liaison Member:** Dan Arrighi

- I. Call to Order
- II. Public Comment
- III. Discussion Regarding Next Advertorial
- IV. Discussion Regarding Letter to Senator Feinstein Regarding Water Recycling Provisions in Federal Drought Legislation [enc]
- V. Legislative Activities/Reports [enc]
  - a. State
  - b. Federal
- VI. Executive Director's Report
- VII. Adjournment

[Date]

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

**RE: Water Recycling Provisions in Federal Drought Legislation**

Dear Senator Feinstein,

We are writing to you on behalf of [Water Agency] regarding the Federal drought legislation that we understand you may be introducing shortly. Specifically, we are writing to urge you to consider including provisions in the bill that would revamp and revitalize the Bureau of Reclamation's Title XVI water recycling program as an "earmark" free, competitive grant program.

The Title XVI program has a demonstrated record of success in developing new, safe and reliable water supplies in California and throughout the West. Since it was first authorized in 1992, the 36 Title XVI funded water recycling projects in California have added hundreds of thousands of acre-feet to the state every year. In 2014 alone, Title XVI projects added nearly 400,000 acre-feet of safe and reliable new water to the dwindling water supplies in the West. Unfortunately, due to the Congressional "earmark" ban, new water recycling projects currently cannot be authorized or funded under Title XVI. If the Title XVI program is revitalized and revamped as a competitive grant program, the Federal government could once again help water agencies reclaim hundreds of thousands of acre-feet of water to counteract the effects of the devastating drought in the Western United States.

Attached for your consideration is draft legislative language to revitalize Title XVI by converting it to a competitive grant program with Congressional oversight. We hope you will consider including this in Federal drought legislation that you may introduce. Title XVI has demonstrated great success in helping to alleviate drought conditions, and accordingly, an earmark free Title XVI program should be the path forward to encourage additional water recycling and reuse.

We are aware that a loan and loan guarantee program, the 21<sup>st</sup> Century Reclamation Infrastructure Finance and Innovation Act of 2013 ("RIFIA"), has been suggested as an alternative to the Title XVI program. Many water agencies, including the signatories of this letter, believe that revamping and revitalizing Title XVI makes far more sense than replacing it with a new program that will provide few - if any - benefits to agencies with access to the tax exempt capital bond markets.

There are a number of reasons why:

In California, there are ample opportunities to secure State Revolving Fund (SRF) loans

for recycled water infrastructure at extremely favorable interest rates. Recently, the State Board has made considerable concessions on the SRF program that include extending the amortization from 20 to 30 years and allowing SRF loans to be subordinate debt. Additionally, the State Board has shown substantial flexibility on interest rates.

Second, most medium-to-large sized water agencies have access to the municipal bond capital markets at very favorable interest rates. For example, the average AA rated agency currently enjoys low rates on both fixed and variable issuances. The all-in cost for debt (credit support, issuance costs, and administration) is under 3%. Even lower rated agencies are experiencing historically low interest rates, as well.

Third, RIFIA is duplicative of the Water Infrastructure Finance and Innovation Act (WIFIA) provisions contained in the Water Resources Reform and Development Act of 2014 (WRRDA). These provisions established Federal loan and loan guarantee programs within the EPA and the Corps of Engineers for the purpose of financing water infrastructure projects, *including* water recycling and reuse projects. WIFIA has yet to be implemented and only \$5 million was appropriated for it in the past fiscal year. If the WIFIA model is successful, there is no need to replicate it within the Bureau of Reclamation. If it is not, there is no reason why it should be replicated at all.

Fourth, Federal loan guarantees, such as RIFIA, cannot be utilized in conjunction with tax-exempt borrowing. This is a major flaw with WIFIA that proponents of RIFIA acknowledge and indicate that they wish to change as a part of the RIFIA legislation. However, the Treasury Department has historically resisted any use of loan guarantees on top of tax-exempt borrowing and is unlikely to relent now. At a time when tax-exempt financing is under vigorous attack, supporting a new Federal program that presupposes utilizing taxable borrowing sends the wrong message as we fight to maintain tax-exempt financing.

In summary, RIFIA will provide little to no benefit to water agencies with access to capital markets, is duplicative of another Federal program, and would establish a dangerous precedent regarding the use of tax exempt financing. RIFIA is not the answer for financing water reuse projects - revitalizing Title XVI is.

Thank you for consideration of these views. Should you have any questions or need additional information, please feel free to contact any of us.

Sincerely,

**Sec. \_\_\_\_** Water Recycling and Reuse Projects

(a) Section 1602 of the Reclamation Wastewater and Groundwater Study and Facilities Act (Title XVI of Public Law 102-575; 43 U.S.C. 390h et. seq.) is amended by adding at the end the following new subsection:

“(e) Authorization of New Water Recycling and Reuse Projects.—

“(1) Submission to the Secretary. –

“(A) In General -- Non-Federal interests may submit proposals for projects eligible to authorized pursuant to this Section in the form of completed feasibility studies to the Secretary.

“(B) Eligible Projects – A project shall be considered eligible for consideration under this Section if the project reclaims and reuses –

“(i) municipal, industrial, domestic, or agricultural wastewater; or

“(ii) impaired ground or surface waters.

“(C) Guidelines – Within 60 of the enactment of this Act the Secretary shall issue guidelines for feasibility studies for water recycling and reuse projects to provide sufficient information for the formulation of the studies.

“(2) Review by the Secretary. – The Secretary shall review each feasibility study received under subsection (1)(A) for the purpose of determining whether the study and, and the process under which the study was developed , each comply with Federal laws and regulations applicable to feasibility studies of water recycling and reuse projects.

“(3) Submission to Congress. – Not later than 180 days after the date of receipt of a feasibility study received under subsection (1)(A), the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report that describes –

“(A) the results of the Secretary’s review of the study under subsection (2), including a determination of whether the project is feasible;

“(B) any recommendations the Secretary may have concerning the plan or design of the project; and

“(C) any conditions the Secretary may require for construction of the project.

“(4) Eligibility for Funding. – The non-Federal project sponsor of any project determined by the Secretary to be feasible under subsection (3)(A) shall be eligible to apply to the Secretary for funding for the Federal share of the costs of planning, designing and constructing the project pursuant to subsection (f).

“(f) Competitive Grant Program for the Funding of Water Recycling and Reuse Projects.

“(1) Establishment. – The Secretary shall establish a competitive grant program under which the non-Federal project sponsor of any project determined by the Secretary to be feasible under subsection (e)(3)(A) shall be eligible to apply for funding for the planning, design, and construction of the project.

“(2) Priority. – When funding projects under subsection (f)(1), the Secretary shall give funding priority to projects that meet one or more of the criteria listed in paragraph (3) and are located in an area that –

“(A) has been identified by the United States Drought Monitor as experiencing severe, extreme, or exceptional drought and any time in the 4-year period before such funds are made available; or

“(B) was designated as a disaster area by a State during the period 2014 to 2018.

“(3) Criteria. – The project criteria referred to in Paragraph (2) are the following:

“(A) Projects that are likely to –

“(i) provide a more reliable water supply for States and local governments; and

“(ii) protect, restore, or enhance the ecosystems including groundwater basins and tributaries.

“(B) Projects that are likely to increase the water management flexibility and reduce impacts on environmental resources from projects operated by Federal and State agencies.

“(C) Projects that are regional in nature.

“(D) Projects with multiple stakeholders.

“(E) Projects that provide multiple benefits, including water supply reliability, eco-system benefits, groundwater management and enhancements, and water quality improvements.

## Stephanie Moreno

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**From:** Bob Gore <Bob\_Gore@gualcogroup.com>  
**Sent:** Monday, June 29, 2015 12:06 PM  
**To:** Ken Manning; Randy Schoellerman; Gabriel Monares; Stephanie Moreno  
**Cc:** Jackson R. Gualco; Kendra Daijogo  
**Subject:** SWRCB Releases Storm Water Workplan & Drinking Water Report to Legislature - Water Whirled  
**Attachments:** 9E71AF66-C8DD-4D1B-884B-CCD6FAE5AFFB[6].png; notice\_storm water program[3].pdf; workplan\_storm water program[3].pdf; appendix a\_storm water program[3].pdf

Ken, Randy, Gabriel, Stephanie, good afternoon,

The State Water Resources Control Board released two major documents, the Storm Water Initiative Workplan and Safe Drinking Water Report, which are digested below. Also, the latest curtailments. All in this edition of Water Whirled, constructed by The Gualco Group, Inc. for your use.

SWRCB Releases Storm Water Initiative Workplan The SWRCB released for your comment the final draft Storm Water Initiative workplan and priorities — even as Division of Financial Assistance staff creates Prop. 1 and revolving fund criteria for storm water projects in 2016. A web workshop is scheduled July 7, on which TGG, Inc. will brief you, and comments are due by noon July 24. (Materials attached.) Please recall the Brown administration is emphasizing aggressive drought mitigation and water resource management through innovative, integrated techniques like storm water harvest, recycling, recharge, regional groundwater storage and quality improvements.

Items of note in the workplan:

- \* Instead of focusing on permits, such as the MS4, focus on storm water quality improvements for direct and measurable benefits. (Page 7)
- \* Guiding principles (9) are:
  - \* Storm water is a valuable resource with multiple benefits that can be integrated with recycling, recharge and quality improvement.
  - \* Restore “watershed processes,” such as infiltration and recharge, and connect to quality.
  - \* “Efficient and effective regulatory programs.” Update permits, improve data and management. There is no mention of accountability or cost of compliance reduction.
  - \* Solutions that are regulatory and non-regulatory. This is a potentially far-reaching principle that staff posits as “source control” for standards of product replacement, product substitutions, green chemistry and lifecycle management.
  - \* Priority issues are identified for immediate action (16-19), but you may not agree with the priorities. Determining the value of a “unit” of storm water is high, but it is linked to developing a credit program for infiltration linked to permits. Greater collaboration among regional boards is ranked high, but incorporating stakeholder input for efficiencies and cost of compliance reduction is ranked low. Permit outcomes should achieve higher quality and not minimum technical requirements. Existing development should be retrofitted.
  - \* Four funding options are buried (32) in the recommendations, including the inevitable “raise fees,” along with existing resources, redirect resources and extend deadlines.

Items of note in the priority staff next steps (appendix):

- \* Create a method for calculating the unit cost of storm water, compared to the cost of imported water. (7) Explore linking to the Sustainable Groundwater Management Act for “a new mechanism for monetizing storm water through the implementation of groundwater sustainability plans” because “restrictions on extractions...may cause local groundwater markets to mature without impacting rights.”
- \* Requiring the Storm Water Resource Plans (SB 985) is a very high priority — which will cost water districts money and produce no results.
- \* Open data linking at least 3 CalEPA and SWRCB databases is a high priority. (18-19)
- \* Use the still-in-draft Biological Integrity Plan to design “compliance endpoints” for storm water permits that “further support statewide planning.” (27)

Safe Drinking Water Report Proposes Significant Water District Governance Changes to Legislature The SWRCB reported to the Legislature, as required, on the new policy and program priorities for the Safe Drinking Water Program, which was transferred by statute on July 1, 2014 from the Department of Public Health to the board. In addition to the responsibilities, this move brought an instant 1/3 increase in staff and expenses.

The report, summarized here, is largely a historical summary and status report; however, there are a number of sensitive new recommendations that merit close scrutiny, including recommendations to the Legislature for district consolidation, rate assistance for disadvantaged areas, mandated assistance from large districts to small adjacent districts, supply reliability studies (of all sources) and others. The Sustainable Groundwater Management Act (SGMA) is incorporated by reference, which means the SWRCB will cite this report as it rolls out SGMA regulations and rulings.

TGG, Inc. will closely monitor these developments and keep you informed. Excerpts below of significant areas with page notations:

#### State Funding Structure

The reliance on federal funds has become problematic given the efforts at the federal level to reduce expenditures. The Public Water System Supervision Grant Program provided to states to implement federal SDWA requirements has not increased in more than a decade and was recently reduced by \$0.3 million (from \$6 million to \$5.7 million). (Page 35)

The State Water Board recommends enactment of legislation to implement a funding strategy that will ensure that the program is adequately and consistently funded. That strategy should address the need for funding of activities that provide greater oversight of and technical assistance to small PWS particularly those that serve disadvantaged communities. (38)

The era of inexpensive water, however, is coming to an end. This change may be the result of a number of factors (129):

- \* Court action regarding water allocations of Colorado River waters resulting in a decrease in California’s allotment has required utilities throughout Southern California to switch to more costly sources of water and to promote water conservation measures.
- \* Increases in cost associated with producing water such as electricity, chemicals, etc.
- \* Costs associated with replacing infrastructure as components originally brought in to service 25 to 75 years ago (distribution pipes, storage tanks, treatment plants, wells, etc.), reach the end of their useful life.
- \* New, enhanced, or more restrictive drinking water standards have caused most water systems to add treatment facilities, increase treatment chemical use, or improve their existing treatment facilities.
- \* Drought continues to place additional stress on California’s water supplies.

#### Supply & Reliability

There are a number of conditions that have altered and will continue to affect the adequacy of the state’s drinking water sources. These include increasing requirements for water due to population growth; uncertainty in water supplies as a result of drought conditions and climate change; demands for water by agriculture, industry, and environmental purposes; contaminating activities that threatens surface water and groundwater quality (therefore affecting available quantity); and reductions in access and use of the Colorado River as a source. (39)

The State Water Board will require, as appropriate, vulnerable water systems to 1) submit studies regarding the reliability of their existing sources of drinking water, and 2) take necessary actions to improve system reliability in accordance with the studies, as well as avoid or mitigate the impact of the loss of supply on the public health and safety, including the loss of supply due to prolonged or severe drought conditions. The cost of a reliability analysis is eligible for funding through DWSRF planning studies. (61)

Threats to a safe drinking water supply include (41):

- microbiological organisms, such as viruses, bacteria, Giardia, and Cryptosporidium
- inorganic chemical contaminants, many of which may be naturally occurring
- radiological contaminants, from natural radioactivity or from human activities that may release radionuclides into the environment, and
- organic chemical contaminants, many of which are of industrial, agricultural, or household origin.

Recycled water is also being considered as a direct source of drinking water, which would be introduced directly into a public water system's distribution system for customer use (direct potable reuse). Under SB 918 and SB 322 (Chapter 637, Statutes of 2013), The State Water Board is required to investigate and report on the feasibility of developing uniform water recycling criteria for direct potable reuse by December 31, 2016. Use of alternative water supplies for drinking water requires considerable treatment to provide adequate public health protection. Care must be taken to ensure the required high level of water treatment does not fail, so customers do not receive unsafe drinking water. The purpose of current and potential future State Water Board's water recycling regulations is to ensure that project design, construction, and operation are protective of public health. (41)

#### Governance & Rates

The State Water Board will encourage large water systems, subject to compliance with such PUC requirements as may apply, to assist neighboring water systems in sampling and analysis, particularly when the small systems are out of compliance and when sampling of the small systems' source(s), including surface and groundwater, might provide information that would be of value to the larger system (e.g., presence of contaminants, movement of contaminants). Similar arrangements for water systems that utilize the same surface water source already exist. (61)

As drinking water standards become more stringent, there must be a realization that with the greater assurance of the safety of the water and reduced risks, there will be associated increases in the cost to provide that assurance, through the use of high-cost analytical methodology and treatment techniques, as well as increased regulatory controls and oversight. (129)

There are both direct and indirect costs associated with water conservation and drought. While water conservation conserves a scarce resource -- whether in response to state mandates, drought, or climate change concerns -- it also reduces water sales and revenues in systems with metered rates, usually at a level that is not directly proportional to a corresponding reduction to the costs of providing service. And the tiered/inclined rate structure increasingly used by water systems (lower rates for less consumption) tends to reduce revenues. So conservation can result in a utility's need to actually raise metered rates to cover fixed costs that are not directly related to the volume of water used by customers. Consumer acceptance of rate increases is also a challenge, and depends on an understanding of the factors described above as well as the value of safe public water for property, fire protection, sanitation needs, industries that create jobs for communities, and a host of other community benefits (parks, recreation facilities, public facilities, etc.). Proposition 218 has memorialized these concerns and continues to pose challenges in providing adequate rate-based revenues. (130)

Options should be developed and evaluated for making drinking water affordable for all low income households, including evaluating the potential for establishing an appropriate water service subsidization program to low-income families and individuals served by a PWS that charges unaffordable rates. As a guiding human right principle, the cost of water should not pose a barrier to access. 160 The State Water Board recommends enactment of legislation in support of consolidation where feasible and appropriate. (160)

Full report:

[http://www.waterboards.ca.gov/publications\\_forms/publications/legislative/docs/2015/sdwp.pdf](http://www.waterboards.ca.gov/publications_forms/publications/legislative/docs/2015/sdwp.pdf)

Merced River Senior Right Curtailments Issued With drought conditions continuing into the summer months, the SWRCB extended curtailments on the Merced River for senior water rights dating back to 1858; and all pre-1914 and post-1914 appropriative rights on the Upper San Joaquin River, which runs from upstream of Friant Dam to the confluence with the Merced River. This newest curtailment from Friday affects 16 water rights held by eleven owners.

A curtailment notice is also being sent to the City of San Francisco for four appropriative water rights on the Tuolumne River dating back to 1903, based on the notice sent on June 12. Those notices had omitted the San Francisco water rights because the city's water right dates had been entered into the database incorrectly.

The senior water rights affected by today's notice add to the growing number of water rights limited by the State's ongoing drought as demand far outstrips supply in key Northern California watersheds. As of this notice, a total of 8,721 junior water rights and 297 senior water rights in the Sacramento-San Joaquin River watersheds and Delta have been notified that there is insufficient water in the system to serve their rights.

To determine the need for curtailment by water right holders, the SWRCB uses monthly diversion data and sorts that data by watershed, water right type and priority date. Water flow used for power generation that is diverted and returned back to the water course is removed from the analysis. The demands for water use by type of right are summed and plotted graphically to display junior and senior water right needs. To assess supply, monthly and daily natural flow data from the Department of Water Resources (DWR) are plotted with DWR estimates of return flows and additional minor tributary flows. The resulting supply vs. demand curve indicates curtailment is needed when demand outstrips supply.

As supplies continue to decline through the summer, it is expected that more senior rights will be impacted by limited water availability. As supply increases in the fall or winter, the State Water Board will lift the curtailments, i.e. notify diverters that water is again available under their priority of right, as soon as appropriate using the same procedure.

Curtailment notices issued so far this year:

June 26 – Senior appropriative water rights on the Merced River with a priority date of 1858 or later, and all appropriative water rights on the Upper San Joaquin River, affecting 16 water rights held by eleven right holders. An additional four water rights on the Tuolumne River are being curtailed as well.

June 12 – Senior appropriative water rights with a priority date of 1903 or later in the Sacramento and San Joaquin river watersheds and the Delta, affecting 277 rights held by 114 right holders.

May 1 – Junior appropriative water rights back to 1914 in the Sacramento River watershed and the Delta. A total of 5,740 water rights held by 2,772 right holders are affected.

April 23 – Junior appropriative water rights to 1914 in the San Joaquin and Scott river watersheds. A total of 2,981 water rights held by 1,474 right holders in the San Joaquin River watershed and 162 water rights held by 137 in the Scott River watershed are affected.

Glad to answer questions and provide more detail, Bob

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## **MEMORANDUM**

July 7, 2015

TO: The San Gabriel Basin Water Quality Authority

FROM: Mallika Vastare

SUBJECT: Congressional Update

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### **Rep. Huffman Briefing**

On June 29, 2015, The Furman Group (TFG) assisted in a briefing for Congressman Jared Huffman (D-CA) on water issues facing communities in Southern California. The Los Angeles Department of Water and Power, West Basin Municipal Water District, Irvine Ranch Water District, Metropolitan Water District of Southern California, Inland Empire Water District and the San Gabriel Water Quality Authority (WQA) participated in the roundtable. Ken Manning, the Executive Director of the WQA, provided the Congressman with an update on the groundwater contamination and cleanup efforts in the San Gabriel Basin and discussed the need for a five-year extension to operate and maintain projects constructed under the Restoration Fund.

### **Appropriations Request**

TFG is working closely with Congresswoman Judy Chu (D-CA) and Congressman Ed Royce (R-CA) to make sure the Restoration Fund remains a high priority. Recently, TFG finalized legislation with Congresswoman Chu's office that would circumvent the earmark ban and allow the WQA to access its remaining authorized funds. We hope to introduce this language before the August recess.

### **Final Rule to Further Define "Waters of the U.S." (Clean Water Act):**

On May 27, 2015, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released the final version of their "Waters of the United States" rule, also referred to as the "Clean Water Rule" or WOTUS. This rule would allow the Federal government to expand its jurisdiction over Federal waters. Specifically, the rule would allow the Federal government to determine whether permits would be required to dredge and fill wetlands as well as to discharge pollutants to surface water. While the USACE and EPA made significant changes to the final rule after the negative feedback it received, many observers believe that the final rule is still too broad. Members of both the Senate and House Appropriations Committees have added policy riders to the Interior Appropriations bill that would block funding for the new water regulation. The riders would block the overregulation; however, the White House has threatened to veto the bill if it includes a WOTUS rider. The rule will be finalized on July 26, 2015, 60 days after its publication in the Federal Register.

*Some of the Significant Changes in the Final Rule*

- The final rule eliminated the proposed rule's language on shallow subsurface hydrological connections. However, the definition of "Neighboring" is still a concern because this could make storm water and wastewater recycling features built in wet areas (i.e. constructed wetlands and grassy swales) jurisdictional;
- The final rule includes a regulatory definition of a tributary - which defines ditches as jurisdictional tributaries unless specifically exempt;
- In the final rule, several exclusions and exemptions are made with the phrase "dry land." The federal agencies refer to dry lands as areas of the geographic landscape that are not water features.

*Some of the Final Rule Exclusions Include:*

- Waste treatment systems, including ponds or lagoons designed to meet the requirements of the Clean Water Act;
- Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary;
- Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands;
- Ditches that do not flow, either directly or through another water, into a navigable and interstate waters and territorial seas;
- Artificially irrigated areas that would revert to dry land if application of water ceases;
- Artificial, constructed lakes and ponds created in dry land (i.e., irrigation ponds, settling basins, or cooling ponds);
- Small ornamental waters created in dry land;
- Water filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;
- Erosional features including lawfully constructed grassed waterways;
- Groundwater, including groundwater drained through subsurface drainage systems;
- Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land; and
- Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; and water distributary structures built for wastewater recycling.