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From: Chris Palmer

To: June Hayes

Cc: Kristeen Farlow

Sent: Tue, Mar 9, 2021 2:13 pm

Subject: Thank You / AB 377

Good afternoon Director Hayes –

Just a quick note to say thank you for the opportunity to speak with you and the Board last week. I always welcome the opportunity to update our members on the happenings with CSDA.

Per our conversation, I wanted to let you know CSDA has taken an OPPOSE position on AB 377 (All California surface waters to be fishable, swimmable, and drinkable by January 1, 2050). CSDA has signed onto a coalition letter (attached) opposing the bill. If you have any further questions, please let me know.

Again, thank you!

Best,

Chris Palmer

Senior Public Affairs Field Coordinator

California Special Districts Association

1112 I Street – Suite 200

Sacramento, CA 95814

714-743-7404 cell

877-924-2732 CSDA

www.csda.net

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March 2, 2021

The Honorable Bill Quirk, Chair
Assembly Environmental Safety and Toxic Materials Committee
Legislative Office Building, Room 171
Sacramento, CA 95814

RE: AB 377 (Rivas): Oppose

Dear Assembly Member Quirk:

The undersigned coalition of associations is writing to respectfully oppose AB 377 (Rivas), which would fundamentally detrimentally alter the State of California's existing water quality programs without providing any solutions that will result in the attainment of water quality objectives. Our respective memberships represent the vast majority of water, wastewater, and municipal stormwater permittees subject to the National Pollutant Discharge Elimination System (NPDES), Waste Discharge Requirements (WDR) and Municipal Separate Storm Sewer System (MS4) permitting programs administered by the California State Water Resources Control Board in compliance with the Federal Clean Water Act of 1972 and Porter Cologne Water Quality Control Act. This bill would circumvent the local regulatory authority of the Regional Water Boards and instead legislate the rewriting of existing permitting policies, without regard to local conditions, existing agreements, or other priorities of the state.

The approach outlined in AB 377 is foundationally flawed in that it is based on the notion that existing state and regional NPDES, WDR and MS4 programs are so problematic and ineffective that they need to be completely overhauled and replaced. The bill proposes a new prescriptive enforcement program with statutorily defined time limits that eliminate State and Regional Water Board discretionary authority for permitting and enforcement of water quality objectives. Under the hallmark Porter-Cologne Act which predates the federal Clean Water Act, local discretionary authority for permitting is tantamount to the design and structure of state and regional board oversight and regulation of water quality in the State of California. To instead have the Legislature set prescriptive permitting terms and compliance requirements for every single discharge permit throughout the State, as this bill does, would be a significant policy departure with severe adverse consequences and contrary to the goals of the State and these programs.

AB 377 seemingly presumes the reason that water quality standards are not met in some instances, and various total maximum daily loads (TMDLs) have not been developed and implemented, is because there are no hard statutory deadlines in place. This presumption is false. There are many reasons for prolonged timeframes for remediating impaired bodies of water. The regional boards, in cooperation with permitted entities, consider a multitude of dynamic local factors for meeting water quality objectives through very

detailed and rigorous processes. Given the complexities involved with multiple point source and non-point source inputs that must be considered, coupled with constantly evolving limits for new and emerging constituents of concern, long-term management and compliance periods are appropriate in many cases. As our members are public agencies and stewards of the public trust, we must ensure that infrastructure and other programmatic investments are fiscally responsible and scientifically sound. Not only do extended water quality compliance schedules provide for scientific certainty and oversight – a hallmark of science-based policy – they also ensure that public funds are being expended for proven treatment and control projects that will meet compliance objectives as they are intended.

Additionally, AB 377 does not recognize that municipal storm water efforts are one of the most under-resourced public utilities in California due to court decisions requiring balloting process for approval of storm water fees. Legislatively mandating municipalities to fix all urban runoff pollution issues, including legacy and ongoing aerial deposition pollutant issues by 2050, and when voter approval of the massive resources is necessary to solve the problem, is extremely troubling.

Furthermore, AB 377 proposes goals that run contrary to other public health and environmental objectives for beneficial reuse of water resources. For example, the bill requires that “All California surface waters shall be fishable, swimmable, and drinkable by January 1, 2050.” While we understand and agree with the intent of this requirement, the practical implications for the beneficial use of water in California is unrealistic and problematic. The broad applicability of this provision would require ocean, bay and estuarian and brackish surface waters to be “drinkable.” It would require non-recreation drinking water reservoirs and environmentally sensitive habitats to be “fishable and swimmable.” Implementing this provision would be infeasible and run contrary to longstanding beneficial use policies and regional water planning efforts throughout the State.

The proposed requirements also would dictate how the regional water quality control boards can issue permits, which tools and considerations are relevant in those decisions and also how the permit limits must be enforced. Under current practice, these decisions are made at the local level because the local conditions, challenges, and needs vary drastically across the state. If enacted, these new requirements will significantly interfere with existing regional board program schedules for MS4, NPDES and WDR permits and could invalidate existing programs and consensus approaches that were negotiated with broad and diverse groups of stakeholders over many years, such as CV-SALTS and regional MS4 permits. Additionally, the proposed new permitting approach would limit the regional water boards to only providing for extended compliance schedules for physical construction. This is inappropriate and does not allow for necessary scientific review and evaluation as a factor for extended compliance. This would prohibit a permit compliance schedule for other relevant, and perhaps more effective, control factors like source control programs, new industrial permits or enforcement of industrial limits. The proposed approach would also reverse existing anti-backsliding provisions necessary for dynamic and discretionary local permitting decisions.

Finally, the bill requires rigid enforcement of permit violations with little to no discretion or flexibility granted to enforcement staff. The Water Boards already have broad and discretionary authority to enforce water quality requirements. This could be interpreted to mean that the Board must enforce all violations, even in cases where they may otherwise choose alternative approaches. In many cases, it is preferable to work toward a solution with the permit holder to remediate the issue, rather than exacting exorbitant penalties.

Overall, our coalition believes that AB 377 is unworkable and should not move forward. Realistically, to make additional progress toward the end goal of this bill we need more tools, flexibility, and creativity to solve real problems.

Thank you for your consideration of our concerns. We respectfully request that AB 377 not move forward when it is heard in the Environmental Safety and Toxic Materials Committee.

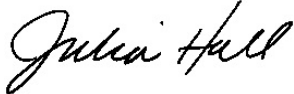
Sincerely,



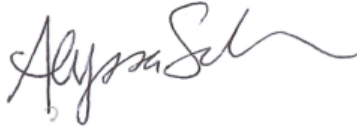
Jessica Gauger
Director of Legislative Advocacy & Public Affairs
California Association of Sanitation Agencies



Danielle Blacet-Hyden
Deputy Executive Director
California Municipal Utilities Association



Julia Bishop Hall
Senior Legislative Advocate
Association of California Water Agencies



Alyssa Silhi
Legislative Representative
California Special Districts Association



Derek Dolfie
Legislative Representative
League of California Cities



Karen Cowan
Executive Director
California Stormwater Quality Association

CC: Josh Tooker, Chief Consultant, Assembly Environmental Safety and Toxic Materials Committee
Members, Assembly Environmental Safety and Toxic Materials Committee
Assembly Member Robert Rivas