



November 20, 2008

Ms. Mary Nichols
Chair
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

Subject: Comments on Proposed AB 32 Scoping Plan and Appendices

Dear Ms. Nichols:

The California Urban Water Agencies (CUWA) appreciates this opportunity to comment on the recently released Proposed Scoping Plan and Appendices. CUWA is comprised of eleven public water agencies that provide drinking water to two-thirds of California's population. CUWA submitted comments on the Draft Scoping Plan and Appendices, which were communicated to the California Air Resources Board (ARB) in letters dated July 31, 2008 and August 8, 2008. We appreciate that some of these comments have been addressed in the Proposed Scoping Plan and Appendices. However, as detailed below, CUWA's member agencies still share several specific concerns. We respectfully request that the following issues be addressed in the Final Scoping Plan:

- **Public Goods Charge** – There is a fundamental flaw in attempting to “transplant” the public goods charge, as instituted in the investor-owned energy utility (IOU) sector, into the public water agency universe. In the energy utility sector, only the Public Utilities Commission (PUC) has the authority to set rates, and a public goods charge authorized by the PUC is the only mechanism that IOUs have to offset revenue losses due to conservation programs. The Scoping Plan proposal deviates from the energy utility public goods charge process in which the PUC merely authorizes the charge. The funds are then collected by the local electrical utility and expended by that same utility on programs within its own service territory thus providing direct, one for one benefit to their ratepayers (in a process similar to the one already employed by water agencies throughout California).

By contrast, public water agencies set their own rates through a public process conducted by their elected boards of directors. Water agencies can set their rates to offset investments in (and revenue losses from) conservation programs, and do not require authorization by a state regulatory body to do so. The Scoping Plan would instead collect and redirect these funds to state agencies, private entities, and other organizations for expenditure in other areas of the state, effectively imposing a tax on water use. Such a tax requires under state law a two-thirds majority vote by the Legislature (or the voters) and should not be misrepresented as a “fee” or “surcharge”, which requires only a simple majority legislative vote.

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In response to reduced water supplies, fisheries restoration requirements, and other factors, many water agencies are already significantly investing in conservation programs, which provide benefits for both water supply reliability and greenhouse gas emissions reductions. A new tax is unnecessary to augment these activities, and could have the unintended consequence of punishing those agencies that have already made significant investments in water conservation and other stewardship efforts. The state should find other means to provide incentives for improved performance by agencies with less developed programs.

The public goods charge for water use in the Scoping Plan is also problematic, as the broad range of expenses that this tax would be used to fund may not be all legally authorized uses of water agency ratepayer funds under the California Water Code and Proposition 218. CUWA recommends that a full and complete legal analysis be conducted before there is any further consideration of a public goods charge being applied to the water agencies of the state.

Water and wastewater agencies currently purchase a substantial portion of their energy from the investor owned utilities, and thereby contribute millions of dollars for energy efficiency programs through this surcharge. Greenhouse gas reductions from the water and wastewater sector will occur as a natural outcome of the forthcoming cap and trade program for energy-related emissions under AB 32.

In summary, there are numerous flaws with the public goods charge as proposed, and even more reasons not to institute it. We urge the ARB to recognize that the public goods charge may have the unintended consequence of diverting scarce resources, and adding unnecessary hurdles for greatly needed investments in conservation and renewable energy projects. CUWA requests that the public goods charge not be considered any further in the Scoping Plan until there is more vetting of the potential issues, which from our analysis appear to be significant.

- **Impediments to Implementing Water Sector Renewable Energy Projects** - Increasing the water sector's implementation of renewable energy projects will depend on having the full cooperation of electricity providers, and reversing current legislative impediments that prevent these kinds of projects from going forward. For example, in-conduit hydropower is not currently recognized as a renewable energy source and does not qualify for the self-generation incentive program. CUWA requests that the Scoping Plan identify these needs and propose solutions.
- **End User Energy Use** – The Scoping Plan should clarify that end user related emissions account for 74 percent of the electricity and 99.6 percent of the natural gas associated with drinking water, mostly in heating and cooling water (California's Water-Energy Relationship, California Energy Commission, November 2005). Given this finding by the California Energy Commission, the proposed Scoping Plan measures of increasing

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reuse of urban runoff and water recycling are likely to have limited effect on greenhouse gas emissions reduction. Programs that promote efficient use of heated and cooled water will have a much greater effect.

We appreciate your careful consideration of our comments. CUWA looks forward to collaborating with the ARB, the Department of Water Resources, and the State Water Resources Control Board as the Proposed Scoping Plan and Appendices are finalized and work begins to implement some of the proposed water sector measures. If you have any questions, please contact me at cuwaexec@sbcglobal.net or 916-552-2929.

Sincerely,

A handwritten signature in cursive script that reads "Elaine M. Archibald".

Elaine M. Archibald
Executive Director