

August 1, 2008

Mary Nichols, Chair
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Subject: Comments on AB 32 Draft Scoping Plan

Dear Ms. Nichols:

Thank you for the opportunity to comment on the Air Resources Board's (ARB) Draft Scoping Plan (Plan) for AB 32, the Global Warming Solutions Act. The East Bay Municipal Utility District (EBMUD) provides potable water to 1.3 million people in the east San Francisco Bay Area, as well as wastewater treatment for 646,000 customers. EBMUD is the second largest water retailer in the state, and is an industry leader both in its response to climate change and in water use efficiency. We actively supported AB 32, and were the first water/wastewater utility to enroll with the California Climate Action Registry.

We congratulate the ARB for tackling one of the most complex and ambitious policy tasks in preparing the way for implementing AB 32. It is clear that ARB has proceeded carefully in identifying the actions that will have the greatest impact on reducing greenhouse gas (GHG) emissions, first in California and then extending the benefits nationally and worldwide.

In particular, we applaud ARB for:

- Focusing initially on the "discrete early actions" that can be implemented relatively easily, and generate benefits quickly at low cost;
- Adopting a cap and trade system that will harness the power of the market to achieve additional GHG reductions in an economically efficient manner;
- Directing its analysis to the sectors of the economy responsible for most of the state's GHG emissions, regardless of the political consequences;
- Conducting careful analysis of the economic impacts of proposed regulatory actions;
- Creatively using other available tools such as carbon fees, offsets, and voluntary actions to supplement the cap and trade system. These will, respectively, help to provide price signals for carbon-intensive activities, cost-effective alternatives for regulatory compliance, and opportunities for broader participation in addressing climate change;
- Recognizing that the costs of reducing GHG emissions will provide substantial benefits, both immediately and in the long term, to the state's economy and to its residents.

The AB 32 Draft Scoping Plan recognizes that the water sector itself is not a major emitter of GHG emissions, even though the energy associated with the production and end uses of water constitutes a substantial portion of the state's energy consumption. Water use efficiency has an important role to play in helping the state to achieve the GHG reduction goals defined by AB 32. Our more detailed comments below are mainly confined to the brief section on the water sector.

Public Goods Charge

Our primary concern is about the ARB's proposal for a "public goods charge," generating \$100 million to \$500 million annually, to achieve the expected GHG reductions in the water sector. EBMUD opposes the public goods charge as described on three primary counts: 1) state water-related agencies are already fully engaged in parallel efforts to achieve quantum new levels of efficiency, using regulatory authority; 2) the charge appears to be a de facto tax that would effectively penalize agencies (and their ratepayers) that have already made major investments in water use efficiency; and 3) imposing a charge on the basis of GHG emissions is a blunt tool that fails to recognize the disparate levels of embedded energy in different water sources and conveyance systems.

As the Plan notes, the state is embarking on a major effort to achieve the 20 percent per capita water use reductions by 2020 called for by the Governor. AB 2175 (Laird) would codify this statewide goal, and is widely expected to be enacted into law. Whether or not the bill is passed, the Department of Water Resources (DWR) has begun work on a plan to achieve the goal pursuant to the Governor's direction under its administrative authority. The State Water Resources Control Board is cooperating in this effort, and may exercise its regulatory authority to help achieve the water use reductions.

The Delta Vision Blue Ribbon Task Force has also declared that conservation should drive California water policies, and that "we must start by requiring and investing in water use efficiency by all users throughout the state." As part of the Strategic Plan to implement the Delta Vision, water surcharges may be proposed to finance a number of program areas including increased water conservation and recycling.

These agencies (as well as the Public Utilities Commission, Energy Commission and Department of Public Health) have specific water-related mandates and staff expertise, and are already committed to achieving aggressive water efficiency targets. While the draft Scoping Plan acknowledges these activities in Appendix C, it fails to recognize that these agencies are in the best position to evaluate the need for any surcharges to finance additional water use efficiency programs. In the worst case, water agencies could be burdened with duplicative surcharges from ARB and the state water resource agencies without deriving any additional benefit.

In addition, the AB 32 plan is an inappropriate vehicle for a “public goods charge” on water because the carbon footprint for a unit of water varies widely across the state. EBMUD’s Pardee Dam and Mokelumne Aqueducts are net producers of energy in contrast to, for example, the State Water Project. Given the huge disparity in the embedded energy (and hence GHG emissions) among disparate water sources, ARB should concentrate on those that require the most energy to serve water customers. In lieu of a focus on the GHG emissions of water production, we believe that water use efficiency should be driven by the direct benefits it offers – drought protection, cost savings, environmental quality – rather than the incidental (and uneven) benefits of GHG reductions.

We are very concerned about the proposal that “funds raised by this measure would be distributed among local, regional, and statewide planning efforts to reduce water-related GHG emissions,” and that the charge would be a “flat rate per connection i.e. not based on water use.” Raising revenues and then distributing them outside the local (water supplier) area raises numerous issues of equity and efficiency. Ratepayers served by agencies that have already made major investments in water use efficiency would effectively be penalized as their funds were directed to areas that are lagging in this regard. Efficiency would be compromised as a state administrative apparatus was put in place to redistribute the funds. It is also perplexing why the ARB is proposing a flat charge and forgoing an obvious tool to incentivize reduced water consumption – clearly the goal of this section in the Plan.

There is no explanation offered as to how the anticipated annual revenues of \$100 million to \$500 million were calculated or justified. Revenue targets should be based on a careful assessment of local needs, with funds invested accordingly by local agencies. The wide range of dollar figures given strongly suggests that little thought has been given to what exactly needs to be achieved and how much money is needed for those purposes.

It would be very unfortunate and politically divisive if the ARB adopted a public goods charge that is actually a redistributive tax in disguise. If agencies require an additional charge to achieve higher levels of water use efficiency, these agencies should be permitted, and enabled, to assess such a charge and direct the revenues to the maximum benefit of their own ratepayers.

Water Recycling

Many urban water suppliers have made substantial investments in recycling, which is also an increasingly important part of the statewide strategy to meet future water demand. EBMUD has committed to achieving 14 million gallons per day (MGD) of recycled water production by 2020, and will exceed that goal in subsequent years. It is important to recognize that, while 23 percent of wastewater in the state could be recycled, this goal should not be imposed across the board on all water suppliers. Just as the GHG emissions associated with water production vary according to the source water and conveyance used, the GHG

reductions benefits of recycling vary as well. As noted above, EBMUD's gravity-fed system has low levels of embedded energy, such that recycled water in EBMUD's service area actually has greater associated GHG emissions than potable water.

Appendix C indicates that any future recycling requirements under AB 32 would consider whether a community relies on imported water and whether recycling would require less energy than the current water supply. We concur with this approach, and strongly recommend that water recycling not be mandated for mitigating climate change as a single regulatory standard would lead to an inefficient allocation of resources. The state should continue to encourage recycled water projects, including the provision of grant funds, to foster increased voluntary collaboration between water suppliers and wastewater agencies.

Renewable Energy Production from Water

We are pleased that the ARB has recognized the potential for increased production of renewable energy from water systems, including undeveloped in-conduit sources. In fact, EBMUD has a one megawatt in-conduit project that could be quickly implemented if legal impediments were resolved to allow this type of hydroelectric power generation to qualify for net energy metering. At this time, in-conduit hydropower is not recognized as a renewable energy source and does not qualify for the self-generation incentive program, creating a needless barrier to cost savings and GHG reductions.

Agricultural Water Use

The Plan is nearly silent on the need for increased agricultural water use efficiency. Appendix C acknowledges that "The agricultural sector accounts for approximately 80 percent of California's total water use" but then fails to observe that GHG emissions from this source are significant as well. Both ARB and the state water agencies appear to be focusing solely on urban water user efficiency, without drawing the obvious conclusion that ag water users should also be part of the solution.

Improved Consultation and Coordination

In February, the Economic and Technology Advancement Advisory Committee adopted the concept of a public goods charge, recommendation later approved by the ARB. Unfortunately, water industry representatives were never consulted in these deliberations, which highlights the need for improved collaboration, going forward. Specifically, we urge that ARB and DWR meet jointly with urban water agency representatives, so that we can be assured of high-level coordination between the state agencies in the implementation of AB 32 and other state initiatives. Such meetings should occur at regular intervals as the Scoping Plan is finalized and approaching implementation.

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EBMUD is fully committed to doing its part to mitigate the climate impacts from its operations, and continues to support the goals of AB 32. If you have any questions about these comments, please call me at (510) 287-1615.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Wallis". The signature is written in a cursive style with a large initial "M".

Michael J. Wallis
Director of Operations and Maintenance

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