



March 25, 2021

The Honorable Robert Rivas
California State Assembly
State Capitol Room 5158
Sacramento, CA 95814

Re: AB 377 (Rivas) Water Quality: impaired waters. Notice of Opposition.
(As amended 3/22/21)

Dear Assembly Member Rivas:

The Los Angeles County Division of the League of California Cities (Division), representing 86 cities in the county, respectfully opposes your AB 377 (Rivas), as amended on March 22, 2021, which would fundamentally 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 cities are subject to the National Pollutant Discharge Elimination System (NPDES) 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 Porter-Cologne Water Quality Control 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, including the fact that water quality standards are constantly evolving. The regional boards, in cooperation with permitted entities, consider a multitude of

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dynamic local factors for meeting water quality objectives through very detailed and rigorous regulatory processes. Given the complexities involved with multiple point source and non-point source inputs that must be considered, coupled with constantly evolving limits for existing, new and emerging constituents of concern, long-term management tools 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.

Permits issued under the NPDES, WDR, and MS4 programs are incredibly varied and complex. There are significant variations within these permits depending on the type of discharger, the point of discharge and the conditions of the receiving surface water. For this reason alone, local permitting authority is incredibly important and regional approaches to the management of pollutants are a proven compliance mechanism in many circumstances. Furthermore, an important distinction for stormwater dischargers is the significant challenges for securing funding for the infrastructure necessary to manage these discharges. 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 a real and difficult task, and one that would become even more problematic and costly if AB 377 were enacted.

The proposed requirements in the bill 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 could significantly interfere with existing regional board program schedules and could have other legitimate, if unintended consequences because of the broad scope of the legislation and variety of permits and permittees impacted. 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.

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 to the maximum extent, 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. This type of “polluter pays” approach to generating revenue for water quality programs administered by the water board runs contrary to existing statute dictating how these programs are funded, and is a concept that has been rejected by the legislature in the past.

For the reasons described above, the Los Angeles County Division opposes AB 377.



Blanca Pacheco
President
Los Angeles County Division
League of California Cities