



California Environmental Legislation Alert

Kimberly Chew

September 2010

California Senate Bill 1173, sponsored by Senator Wolk, may potentially impact water rights by prohibiting the use of “raw” water if recycled water is available. This bill, introduced last legislative year, modifies the Porter-Cologne Water Quality Control Act. It is one of many water related bills currently under consideration by the State Legislature.

As reported in the media, California is facing an unprecedented water crisis. Statewide population growth, collapse of the Bay-Delta ecosystem, climate change and drought conditions place a tremendous strain on water resources. Consequently, the Legislature is forced to focus on conserving the existing water supply and promoting water conservation. In 2009, the State Water Resources Control Board (Water Board) adopted a recycled water policy with a goal of increasing use of recycled water over 2002 levels by at least one million acre-feet per year (afy) by 2020 and by at least two million afy by 2030. The objective is to substitute the use of recycled water for as much potable water as possible by 2030.

SB1173 would build on the Water Board's recycled water policy by prohibiting the use of raw water if recycled water is available. This bill, as it is currently written, would declare the use of raw water for irrigation of landscaping (or industrial use) as a waste and an unreasonable use of water if a reliable source of remediated water is available. Raw water is currently defined as untreated surface water, groundwater or rainwater. The bill also provides for notice and a hearing before the Water Board to determine whether the source of recycled water meets the requirements of quality and reliability. This bill is not anticipated to have a significant fiscal impact upon the state government, other than the administrative costs for waste and unreasonable use hearings and assessment of additional water recycling projects.

This bill could potentially affect municipalities, cities, counties, developers, and any persons who use raw water for landscaping, industrial applications or irrigation. In fact, the City of San Diego opposed this bill primarily because this legislation diminishes local decision making on water resources and could impact the city's existing recycled water program. Following a hearing, SB1173 passed out of the Senate on August 25, 2010. Thus, absent any greater opposition, the bill is expected to pass and be signed by the Governor.

Kimberly Chew is a member of Burnham Brown's Environmental Litigation Department with an emphasis on toxic tort and environmental matters. Ms. Chew can be reached at (510) 835-6729 or kchew@burnhambrown.com.