Date of Hearing: March 25, 2025

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS
Damon Connolly, Chair
AB 638 (Celeste Rodriguez) – As Amended March 19, 2025

SUBJECT: Stormwater: uses: irrigation

SUMMARY: Requires, on or before June 1, 2026, the State Water Resources Control Board (State Water Board) to establish guidance for storm water capture and use for the irrigation of urban public lands. Specifically, **this bill**:

1) Requires the State Water Board to establish guidance that includes, but is not limited to, both of the following:

    a) Use of captured storm water for irrigation to offset potable water demand in a manner that poses minimal to no public health risks; and,

    b) Criteria for pathogens and pathogen indicators, total suspended solids, toxics, and structural and nonstructural best management practices to reduce potential health risks to exposed populations.

2) Defines "urban public lands" to mean land in an urban area that is owned by the state, a city, or a county, or land that has been dedicated for public access, including, but not limited to, parks, street medians and parkways, and golf courses.

EXISTING LAW:

1) Establishes the federal Clean Water Act (CWA) to regulate discharges of pollutants into the waters of the United States (U.S.) and to regulate quality standards for surface waters. (33 United States Code (USC) § 1251, et seq.)

2) Establishes the National Pollutant Discharge Elimination System (NPDES) permit program, requiring the State Water Board and the nine California Regional Water Quality Control Boards (Regional Water Boards) to prescribe waste discharge requirements that, among other things, regulate the discharge of pollutants into storm water, including municipal storm water systems. (33 USC § 1342)

3) Establishes the Porter-Cologne Water Quality Control Act, which prohibits the discharge of pollutants to surface waters unless the discharger obtains a permit from the State Water Board. (Water Code (WC) § 13000, et seq.)

4) Establishes the Stormwater Resource Planning Act, which authorizes one or more public agencies to develop a storm water resource plan that, among other things, is consistent with applicable NPDES and waste discharge permits, and identifies and prioritizes storm water and dry weather runoff capture projects for implementation in a quantitative manner, to maximize water supply, water quality, flood management, environmental, and other community benefits within the watershed. (WC § 10560, et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author:

"Due to climate change, drought patterns will cause a decrease in water supply, increasing the need for water capture and reuse. The construction and use of storm water capture projects are one approach to conserve potable water. These projects have seen local, state, and federal level investments; however, frameworks and guidance are needed to help drive these projects in our communities.

With Assembly Bill 638, the State Water Board Resources Control Board will establish guidance for storm water capture and reuse for the irrigation of urban public lands, such as community parks. In doing so, this bill will ensure beneficial storm water reuse projects can be implemented throughout our state."

The NPDES Permit Program: As authorized by the federal CWA, the NPDES Permit Program controls water pollution by regulating point sources—or discrete conveyances such as pipes, or human-made ditches—that discharge pollutants into waters of the U.S. Examples of pollutants include, but are not limited to, rock, sand, dirt, and agricultural, industrial, and municipal waste. Industrial, municipal, and other facilities must obtain an NPDES permit to discharge into surface water. In California, implementation of the NPDES Permit Program has been delegated to the State Water Board and nine Regional Water Boards, which maintain regional jurisdiction within boundaries that are based on major watersheds.

Storm water regulation: Storm water is defined by the US EPA as runoff generated when precipitation from rain and snowmelt events flows over land or impervious surfaces, without percolating into the ground. Storm water is often considered a nuisance because it mobilizes pollutants such as motor oil, trash, and microplastics. According to the State Water Board, in most cases, storm water flows directly to water bodies through sewer systems, contributing a major source of pollution to rivers, lakes, and oceans. Because of their propensity to contain and mobilize pollutants, storm water discharges are regulated through NPDES permits. In California, NPDES permits are also sometimes referred to as waste discharge requirements (WDRs).

Under the Municipal Storm Water Program, the State Water Board regulates storm water discharges from municipal separate storm sewer systems (MS4s) throughout California. US EPA defines an MS4 as a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels, or storm drains. Under Phase I of the Municipal Storm Water Program, Regional Water Boards have adopted NPDES permits to regulate discharges from MS4s serving municipalities with over 100,000 people; under Phase II, the State Water Board has issued a WDR to regulate discharges from small MS4s serving municipalities with less than 100,000 people.

State efforts to manage storm water as a resource: The Pacific Institute, in its 2024 report, *Untapped Potential: An Assessment of Urban Stormwater Runoff Potential in the United States* (Pacific Institute Report), states that the risk of water scarcity is increasing across the country, due to rising pressures on traditional water sources such as freshwater from rivers and streams and underground aquifers. Pressures include population and economic growth and the intensifying effects of climate change. These challenges are leading water providers to develop

new, alternative water supply strategies, such as reusing treated wastewater and capturing urban storm water runoff.

In recent years, California has started to shift towards managing storm water as a critical resource. Governor Gavin Newsom's 2022 "Water Supply Strategy: Adapting to a Hotter, Drier Future" contains a goal for California to support local storm water capture projects, to diversify the state's water supply and take advantage of high flows during storm events. In its 2015 "Storm Water Resource Plan Guidelines," (2015 Guidelines) the State Water Board describes the benefits of this shift, stating that:

> Increasing storm water and dry weather runoff capture and infiltration restores lost watershed processes and provides multiple tangible and intangible benefits, including but not limited to: improved water supply sustainability, increased groundwater supplies, increased base-flow in creeks, increased riparian tree canopy providing a cooling effect on the earth's surface, reduced greenhouse gas emissions inherent in water transport and treatment, reduced local flooding, reduced pollutant loads discharged to surface waters, restored native habitat, and increased recreational and green space.

Passed in 2014, AB 1471 (Rendon, Chapter 188, Statutes of 2014) enacted the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and authorized—once approved by voters via Proposition 1 (Prop 1) in November 2014—$7.5 billion in general obligation bonds for water projects, including surface and groundwater storage, ecosystem and watershed protection and restoration, and drinking water protection. According to the State Water Board, as of August 2024, all Prop 1 funding had been allocated to projects, with $10 million allocated to 25 projects for storm water project planning, and $180 million allocated to 44 "multi-benefit storm water management projects," such as green infrastructure, storm water capture projects, and storm water treatment facilities.

Passed in 2024, SB 867 (Allen, Chapter 867, Statutes of 2024) enacted the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024 and authorized—once approved by voters via Proposition 4 (Prop 4) in November 2024—$10 billion in general obligation bonds for safe drinking water, wildfire prevention, and protecting communities and natural lands from climate risks. Of this amount, $110 million will be available for grants for multi-benefit urban storm water management projects. Eligible projects must address flooding in urbanized areas and can include storm water capture and reuse, planning and implementation of low-impact development, restoration of urban streams and watersheds, debris flow mitigation, and increasing permeable surfaces to help reduce flooding.

Using captured storm water to irrigate public spaces: Passed in 2014, SB 985 (Pavley, Chapter 555) requires storm water resource plans developed by public agencies to identify and prioritize storm water capture projects in a manner that maximizes water supply, water quality, flood management, environmental, and other community benefits within a watershed. With respect to this requirement, the State Water Board states in its 2015 Guidelines that plans should prioritize individual projects or programs according to several elements, including projects that augment local water supplies, such as projects that store and use captured storm water for irrigation purposes.

Although the 2015 Guidelines reference the use of storm water for irrigation, California does not currently have state guidance on how to do this safely in situations where storm water might be used to irrigate spaces used by people, such as public parks. According to the State Water Board, urban storm water can contain a range of pollutants that pose risks to public health,

including bacteria, oils, pesticides, and heavy metals, picked up as the water comes into contact with urban surfaces such as streets, rooftops, parking garages, parks, and sidewalks.

The Pacific Institute Report describes several issues that can arise in the absence of guidelines that directly address storm water capture. For example, the Pacific Institute states that in many parts of the country, a "poorly defined patchwork" of regulations has emerged, creating "uncertainty and confusion among practitioners and end users" and inhibiting the "development and implementation of storm water capture projects." AB 638 seeks to help address this issue in California by requiring the State Water Board to establish guidance for the safe use of captured storm water for the irrigation of urban public lands.

Currently, AB 638 requires the State Water Board to develop guidance by June 1, 2026, which would allot five months (from January 1, 2026, the date the bill would go into effect) for the State Water Board to begin, develop, and complete the entire process. This timeline may constrain the State Water Board's ability to consider statewide variations in storm water quality issues and engage stakeholders in the development process, which could impact uptake of the State Water Board's recommendations once the guidance is complete. As AB 638 moves forward, the author may wish to consider whether allotting the State Water Board additional time to develop the guidance could support the bill's aim of ensuring that beneficial storm water use projects can be implemented throughout California.

This bill: AB 638 requires, on or before June 1, 2026, the State Water Board to establish guidance for the capture and safe use of storm water for the irrigation of urban public lands. This goal aligns with California's efforts to diversify the state's water supply and expand the use of storm water, without jeopardizing public health.

Arguments in support: According to a coalition of environmental organizations:

"California is facing increased water scarcity due to climate change, which has resulted in more extremes; an increasing frequency of bigger droughts followed by heavy rainfall across the state. This pressing issue requires solutions that can make our state’s water supplies more resilient and dependable…Establishing state-issued, standardized guidance for treatment levels and safe pollutant concentrations in storm water used for irrigating public golf courses, parks, nonfunctional institutional turf, and median strips would provide needed clarity and technical information to counties and municipalities interested in utilizing urban runoff to offset potable water demand."

Arguments in opposition: None on file.

Related legislation:

AB 1567 (E. Garcia, 2024). Would have placed a $16 billion climate resilience general obligation bond before the voters on the March 5, 2024 Primary Election ballot. This bill was held in the Senate Natural Resources and Water Committee.

AB 2106 (R. Rivas, 2022). Would have required the State Water Board to modernize its stormwater tracking system, on or before December 31, 2025, and to establish a statewide commercial, industrial, and institutional NPDES order. This bill was vetoed by the Governor.

AB 1471 (Rendon, Chapter 188, Statutes of 2014). Enacted the Water Quality, Supply, and Infrastructure Improvement Act of 2014, which, once approved by voters (via Prop 1), authorized the issuance of bonds to finance a water quality, supply, and infrastructure improvement program.

SB 867 (Allen, Chapter 83, Statutes of 2024). Enacted the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024, which, once approved by voters (via Prop 4), authorized the issuance of bonds in the amount of $10 billion, including $110 million for grants for multi-benefit urban storm water management projects.

SB 985 (Pavley, Chapter 555, Statutes of 2014). Made changes to the state's Stormwater Resource Planning Act, including the addition of statute that authorizes the development of storm water resource plans by one or more public agencies; requires that the plans identify and prioritize storm water and dry weather runoff capture projects for implementation; specifies that the development of a plan and compliance with the Stormwater Resource Planning Act is required to receive grants for storm water and dry weather runoff capture projects from a bond act approved by voters after January 1, 2014; and required the State Water Board to establish, by July 1, 2016, guidance for implementation of the Stormwater Resource Planning Act.

REGISTERED SUPPORT / OPPOSITION:

Support

A Voice for Choice Advocacy
Active San Gabriel Valley
California Coastkeeper Alliance
Center for Environmental Health
Clean Water Action
Climate Reality Project, Bay Area Chapter
Climate Reality Project, San Diego
Climate Reality Project, San Fernando Valley Chapter
Climate Reality Project, Los Angeles Chapter
Climate Reality Project, Orange County
Defenders of Wildlife
Friends of The River
Green Science Policy Institute
Heal the Bay
Los Angeles Waterkeeper
Mono Lake Committee
Natural Resources Defense Council
San Francisco Baykeeper
Sierra Club California
Surfrider Foundation

Opposition

None on file

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