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August 4, 2025

The Honorable Benjamin Allen
California State Senate
1021 O Street, Suite 6610
Sacramento, CA 95814

RE: SB 601 (Allen): Water: waste discharge – OPPOSE

Dear Senator Allen:

On behalf of the City of Sunnyvale, we are sending you this letter to express and explain our opposition to SB 601. SB 601 seeks to amend the Porter Cologne Act to apply the more stringent Federal Clean Water Act (CWA) regulations to the former Waters of the United States (WOTUS). This is seemingly intended to protect the state's wetlands and water quality after the potential changes that could result in their jurisdictional status as waters of the United States ("WOTUS") by the Supreme Court's verdict in *Sackett v EPA*.

As a city working to restore our own wetlands, the most significant among them is Baylands Park, a joint project between Santa Clara County and the City of Sunnyvale to restore a 105-acre park of wetlands that plays home to dozens of endangered and at-risk species. As such, Sunnyvale shares the Senator's goal of protecting both wetlands and water quality. In fact, the City's General Plan Chapter 7 Environmental Management GOAL EM-10 (Reduced Runoff and Pollutant Discharge) was written and passed to minimize the quantity of runoff and discharge of pollutants to the maximum extent practicable by integrating surface runoff controls into new development and redevelopment land use decisions.

In its application of CWA to now state-controlled former WOTUS, SB 601 will require cities to obtain a permit for point source discharge to not only navigable waters, but non-navigable nexus waters from the State Water Resources Control Board (State Water Board). Nexus waters include seemingly ephemeral streams, streams that are wet during Winter (i.e. creeks) and dry (i.e. dry creek beds and arroyos) during Summer. Those ephemeral streams, in turn, feed into rivers and tributaries. SB 601 only defines what are not nexus waters. It provides no functional definition of what nexus waters are, which

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makes requesting permits, knowing which permits to apply for, and whether discharge is or is not permitted, and on what scale, nearly impossible. City planning requires, at the basest level, definitional understanding of an issue. Further, permits are already required for all waters of the State, making this new category of waters duplicative and unnecessary in addition to being confusing.

Most concerning though, are the next several provisions:

- In accordance with the National Pollutant Discharge Elimination System (NPDES), the City of Sunnyvale, as a medium-sized City, has a federal NPDES stormwater discharge permit. The CWA text and structure draw a clear distinction between water quality standards—a waterbody’s desired condition—and effluent limitations, restrictions on pollutants that individual point sources may discharge if they have a reasonable potential to exceed the standards. That is to say, the government may directly regulate discharges from specific point sources rather than make individual point sources responsible for the ultimate aggregate level of pollution in a body of water. SCOTUS upheld this understanding of the CWA in March of this year in *San Francisco v EPA*. Yet, SB 601 fails to strike adverse language (Section 6 13263 (a)(1)) in the portion of the CWA it includes in this bill. That section reads: the board... “shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed.” That section, if enacted post SB 601 passing into law, would once again make Sunnyvale responsible for the aggregate water’s condition, not just the discharge the City itself manages.
- Representatives for the City of Sunnyvale reached out to your office to inquire about this portion of the CWA not having been struck. Your staff felt that post *San Francisco v EPA* that that ruling would negate this provision. That is, unfortunately, not accurate. It would take litigation to determine that that ruling applied to this bill. And that could take years and at great expense to the City in not only staff time, and litigation costs, but in potential fines and penalties the City could face.

- Those fines and penalties too are at issue here. SB 601 provides a 150% cost of living allowance (COLA) increase in those fines year after year, which means in seven years, those penalties could rise 1,050%. That increase is simply unsustainable and unnecessarily punitive to municipal governments. The City of Sunnyvale is a good actor in protecting our wetlands and waterways and in managing our discharge. Yet, the vague definitional language and the unconstitutional language not struck in this bill make it almost certain that for all its efforts the City could, through no fault of its own, be faced with a violation and accompanying fine. At a time in our country of tight budgets and great need, imposing an astronomical year-over-year increase in penalties is just simply irresponsible. If maintained, then the applicability of defenses and use of compliance projects needs to be amended and expanded as follows:

Water Code section 13350: “(c) A person shall not be liable under this section if the discharge is caused solely by any one or combination of the following...”

Water Code section 13385: “(j) Alleged violations, including under subdivisions (h) and (i), do not apply to any of the following:”

and “(k)(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:”

- Lastly, the City applauds the Senator’s office for removing the citizen lawsuit provision of this bill that would have seen the City become the target of more frivolous third-party lawsuits in addition to the two it has dealt with over the last decade. However, the language that has been substituted instead, says that when enforcing clean water standards for nexus waters, enforcement “may” be brought by Attorney General, City Prosecutor, County Counsel, or City Attorney. This is vastly different from and largely expands enforcement of navigable waters that authorizes enforcement upon request of a regional board or the state board. The difference in the two pieces of language indicates that third parties might still bring the complaint that then results in enforcement. Additional citizen enforcement is not needed as the Water Boards have been very effective in policing and enforcing water quality regulation in California.

- This bill is wholly unneeded. The State Board already has the power to adopt statewide plans, and this language tries to expand its authority after an unsuccessful legal challenge. Federal standards can already be adopted as standards applicable to waters of the State – thus a new confusing category of waters and new authority is unnecessary. Finally, no new enforcement authority or additional fine escalators are needed. Many municipalities already face massive fines and adding more could end up causing bankruptcies. Instead, defenses should be added to ensure fairness in enforcement and additional penalties should be authorized for compliance projects to bring cities back into compliance and keep funds local.

For these reasons, the City of Sunnyvale respectfully opposes SB 601. Thank you for your consideration of our position. Please do not hesitate to contact me or Ramana Chinnakotla, Director of Environmental Services, at rchinnakotla@sunnyvale.ca.gov, if you have any questions.

Sincerely,



Larry Klein
Mayor

cc: Senator Dr. Aisha Wahab
Assembly Member Patrick Ahrens
Sunnyvale City Council
Tim Kirby, City Manager
Sarah Johnson-Rios, Assistant City Manager
Ramana Chinnakotla, Director of Environmental Services