June 18, 2019

The Honorable Laura Friedman, Chair
Assembly Natural Resources
State Capitol, Room 2137
Sacramento, CA 95814

Assembly Natural Resources Committee – June 24, 2019

Dear Chairman Friedman:

I am writing to express our opposition to SB 1 by President pro Tem Atkins, unless amended. Metropolitan supports the goal of SB 1 to protect California’s environment and worker safety laws from any future rollbacks in federal law. However, if enacted as amended on May 21, SB 1 could have unintended consequences in several policy areas relevant to Metropolitan and our 26 member agencies.

Some of the language in SB 1 is extremely problematic. For example, the endangered species provisions go beyond statutes and regulations and include incidental take permits or biological
opinions, including the biological opinions governing the coordinated operations of the State Water Project (SWP) and Central Valley Project (CVP) as they existed prior to the Trump Administration. The federal government is in the process of updating the federal biological opinions. California has initiated consultation separately under the California Endangered Species Act (CESA) that covers all species. If the state is required to adopt the standards from the previous biological opinions from 2008-09, that could constrain SWP operations and shift water supply costs from the federal CVP to SWP; create confusion for water managers; and prevent the state from using best available science to improve conditions for at-risk fish in the Delta in any new permit.

The amended bill also assumes that CESA applies to the federal CVP. That is an unsettled area of law, and it is likely that this language will lead to litigation. In the interim, SWP would bear the full costs of meeting the 2008-09 biological opinion requirements. These water supply costs would limit SWP’s flexibility to implement the Voluntary Agreements that is the Newsom Administration’s effort to update the Bay Delta Water Quality Control Plan to provide additional flows and fund new habitat and restoration efforts.

Another troubling aspect of SB 1 is that it could cause increased exposure to litigation. Senate Bill 1 would allow California citizen suits to be brought in state court to enforce baseline federal standards in all areas except the Endangered Species Act section. While it is unknown how many federal standards may be adopted under SB 1, and therefore subject to the citizen suit provision, creating this private right of action under state law could expose Metropolitan to simultaneous litigation in state and federal court for an alleged violation of a standard adopted pursuant to SB 1. This would increase litigation costs and could create confusion in case law where federal laws are being enforced in state courts. Finally, SB 1 would allow state agencies to adopt the standards with as little as 30-days’ notice, precluding meaningful public comment. We have had several meetings with the pro Tem’s staff and the proponents of the bill to share our concerns and suggest amendments. Senate Bill 1 was amended on May 21, but unfortunately those amendments do not address our concerns and have created new ones, including expanding the citizen suit provision.

For these reasons, we oppose SB 1 unless it is amended to address our concerns. First, we propose striking the provision relating to biological opinions and the incidental take permits. Second, strike the provision that applies CESA to the Central Valley Project. Third, amend the citizen suit provision to protect against unnecessary litigation. Last, amend the “less protective” definition in SB 1 to apply to the relevant statutes.

We are committed to working with the author and the proponents of the bill to see if we can reach an agreement on amendments that address our concerns while maintaining the bill’s stated goal which Metropolitan supports. If you have any questions regarding our position on the measure or our suggested amendments, please do not hesitate to contact Kathy Viatella at the
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Sincerely,

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cc: President pro Tem Toni Atkins
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