3/18/08 Bd, Mtg. Item 13
Recycle Water Policy
Deadline: 3/10/08 by 12 p.m.

CITY OF SUNNYVALE CALIFORNIA

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March 10, 2008

Jeanine Townsend
Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Comment Letter – Proposed Recycled Water Policy

Dear Chair Doduc and Members of the Board:

The City of Sunnyvale requests that the State Water Resources Control Board not adopt the draft Recycled Water Policy for California. While we had hoped that the revised Policy would help achieve the state's goal of removing barriers to use of recycled water, we regrettably find ourselves faced with a draft Policy that, as written, does not accomplish this goal. Furthermore, we had hoped that the State Water Board would have provided a timely and comprehensive response to comments, that would provide technical rationale for many of the as yet unsubstantiated elements of the proposed policy (e.g., why 550 mg/L salt increment, why 3 mg/L total nitrogen trigger?)

The City is highly disappointed that the Water Board staff were not able to provide a response to comments (submitted October 25th) until after 5:30 pm Friday March 7, 2008. It is not clear how the public can be expected to adequately review this 57 page response to comments, to determine whether previous concerns had been adequately addressed, and to still meet the commenting deadline on the Revised Recycled Water Policy of noon Monday March 10th. Our comments below are therefore more general than we would have desired, given the lack of time to fully review the response to comments.

For the above reasons, we urge the Board not to adopt the proposed Policy.

While we appreciate some of the revisions to the prior draft, such as removal of the requirement to provide financial assurances, a number of the policy provisions do not advance the goal of increasing the use of recycled water in California. Several of the problematic provisions are described below.

- The adjustment of the provisions relating to maximum total dissolved solids (TDS) increment (550 vs 300 mg/L), while less onerous than before, still remains a technical and administrative disincentive for recycled water purveyors such as Sunnyvale with

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a TDS increment greater than 550 mg/L (see the City's October 24, 2007 comment letter, incorporated by reference).

- The Policy allows Regional Water Boards to establish recycled water limits, based on narrative toxicity objectives, which are more stringent than drinking water standards, without a basis in science. The Policy undermines agencies' ability to plan for projects by introducing a level of uncertainty as to what limits might be established and at what level, and what the costs could be.

- The Policy relies upon the current MOA process to resolve conflicts between the California Department of Public Health (CDPH) and the Regional Board. This does not advance the cooperation between CDPH and the SWRCB which will be absolutely necessary to reach the State's established goals for recycled water use.

- While we appreciate the legitimate need for salinity management, we continue to believe that using a recycled water project application as a trigger for the preparation of salinity management plans is ineffective. The salt management plans are to be done in five years with the possibility of a five-year extension if significant progress is made, but there is no framework for determining progress, and our experience shows that it will take more than five years to do the plans.

- The Policy's approach to groundwater monitoring is unclear. One provision seems to imply monitoring is not needed, but other provisions give Regional Boards the authority to require monitoring under certain circumstances. This further contributes to the lack of clarity which will frustrate project planning. In addition, this lack of clarity could undermine the cohesive development of the monitoring plans needed to truly support regional salinity management.

- The Policy establishes a 3 mg/L nitrogen threshold in recycled water for implementation of nutrient management practices and again, the Policy lacks clarity as to what is meant by "nutrient management practices". This provision could result in an onerous administrative burden for small individual irrigation recycled water users. Many (probably most) water recyclers, including Sunnyvale, produce water that exceeds this threshold and again, without clarity, agencies' planning efforts are impeded by uncertainty as to treatment requirements and costs. The policy should reflect the fact that the nutrients contained in recycled water, including nitrogen, are a beneficial resource, reducing the need for chemical fertilizers. The policy as written could be interpreted as encouraging costly nutrient removal facilities.

- The SWRCB Policy presumes that local agencies can control water softeners to limit salts, which is not accurate – there are legal limitations and obstacles for prospective controls and no ability to retrospectively ban residential softeners. This real limitation on a local agencies' authority to conduct source control efforts must be recognized if the policy is to truly advance water recycling.

- The anti-degradation language does not adequately address the components of the Anti-degradation Policy, particularly with regard to defining prevention of nuisance and pollution, maximum benefit, and best practical treatment and control (BPTC). Without addressing this issue, the Draft Policy cannot insure it will not unreasonably affect beneficial uses.

The Policy includes numerous references to the Clean Water Act without explaining how the Act is relevant or applicable to recycled water irrigation and recharge. Once again this uncertainty about the Policy's intent and what is intended by Clean Water Act compliance, creates a regulatory environment that can frustrate the development of projects. Including these references to the CWA appears contrary to a stated purpose of the Policy, namely to provide greater consistency in the application of requirements for recycled water use. Including these references could in fact lead to increased variation in requirements (NPDES versus WDR) issued by different Regional Water Boards.

These issues must be satisfactorily addressed in order for our agency to support a Recycled Water Policy. The City strongly encourages the State Water Board to initiate a facilitated drafting session with stakeholders to help craft an effective policy that will truly encourage, rather than discourage water recycling. It is our understanding that both the regulated community and the environmental NGOs are supportive of this approach. This more collaborative approach will facilitate development of policies that will improve state-wide consistency, protect water quality, and be implemented successfully to result in greater recycled water use state-wide.

The City appreciates the opportunity to provide these comments. If you have any questions, please contact me (408-730-7268) or Dr. Tom Hall of EOA, Inc. (510-832-2852 x110).

Sincerely

Lorrie B. Gervin
Environmental Division Manager
Department of Public Works
City of Sunnyvale