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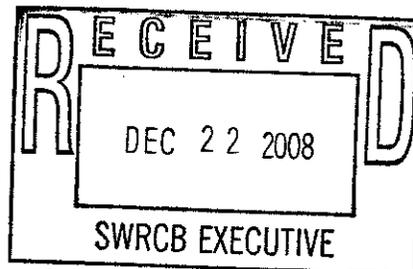
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VIA E-MAIL & U.S. MAIL

December 22, 2008

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



Re: Comment Letter – Proposed Recycled Water Policy

Dear Ms. Townsend:

This firm represents the California Water Association (“CWA”), a trade association of retail, investor-owned public utility water companies regulated by the California Public Utilities Commission (“CPUC”). CWA represents its water utility members before the CPUC, the legislature and other state agencies in connection with regulatory, legislative and public policy issues of concern to the investor-owned water utility industry.

By this letter, CWA offers its comments on the State Board’s Proposed Recycled Water Policy (“Proposed Policy”), released on November 21, 2008. The State Board is scheduled to consider the Proposed Policy at its January 6, 2009 Board meeting. CWA’s comments address two issues: (1) the need for the Proposed Policy to reference the Water Recycling Act of 1991 and the Act’s findings, declarations and policies regarding the use of recycled water, and (2) the need for the Proposed Policy to accurately describe the important role of the CPUC regarding the provision of recycled water by investor-owned water utilities.

CWA commends the State Board for its efforts to clarify and provide direction regarding the policies and regulatory requirements for the use of recycled water. CWA urges the State Board to revise the Proposed Policy as described below to expressly take into account existing statutory law that is directly germane to the Proposed Policy and to adopt the Proposed Policy as revised.

The Water Recycling Act of 1991.

CWA recommends that Section 4 of the Proposed Policy reference the Water Recycling Act of 1991 (California Water Code §§ 13575, *et seq.*; hereinafter, the “Water Recycling Act”)



and the Act's findings, declarations and policies regarding the use of recycled water. The Water Recycling Act establishes the use of recycled water as the law of the state and makes comprehensive legislative findings and declarations that are directly relevant to the mandate for the use of recycled water addressed in the Proposed Policy. For example, among other things, the Water Recycling Act finds and declares that:

- The use of recycled water is a cost-effective, reliable method of helping to meet California water supply needs (Water Code §13576(f));
- The use of recycled water has been proven to be safe from a public health standpoint (Water Code §13576(e));
- Retail water suppliers and recycled water producers and wholesalers should promote the substitution of recycled water for potable water and imported water in order to maximize the appropriate cost-effective use of recycled water in California (Water Code §13576(h)); and
- Wholesale prices set by recycled water producers and recycled water wholesalers, and rates that retail water suppliers are authorized to charge for recycled water, should reflect an equitable sharing of the costs and benefits associated with the development and use of recycled water (Water Code §13576(l)).

The Water Recycling Act also contains substantive provisions establishing procedures for recycled water producers, recycled water wholesalers, recycled water suppliers, and potential users of recycled water to follow in connection with providing recycled water service and establishing rates for the provision of recycled water service. Indeed, much of what the Proposed Policy calls for is rooted in the provisions of the Water Recycling Act. Thus, it is appropriate for the final Recycled Water Policy to reference the Water Recycling Act and its various provisions.

CWA's recommendations can be easily incorporated into Section 4 of the Proposed Policy by re-numbering current subsections a. through d. as subsections b. through e., respectively, and adding a new subsection a. that reads:

"a. The Water Recycling Act of 1991 (California Water Code §§ 13575, *et seq.*) establishes state law and makes comprehensive findings and declarations regarding the use of recycled water, including that:

"(1) The use of recycled water is a cost-effective, reliable method of helping to meet California water supply needs.

"(2) The use of recycled water has been proven to be safe from a public health standpoint.



- “(3) Retail water suppliers and recycled water producers and wholesalers should promote the substitution of recycled water for potable water and imported water in order to maximize the appropriate cost-effective use of recycled water in California.
- “(4) Wholesale prices set by recycled water producers and recycled water wholesalers, and rates that retail water suppliers are authorized to charge for recycled water, should reflect an equitable sharing of the costs and benefits associated with the development and use of recycled water.

“The Water Recycling Act of 1991 also adopts procedures for the identification of sources of recycled water, suppliers of recycled water and potential users of recycled water, as well as principles and procedures for the establishment of rates for recycled water.”

Role of the CPUC in the Provision of Recycled Water.

CWA also recommends that Section 5.e. of the Proposed Policy be expanded to more fully describe the role of the CPUC in the provision of recycled water by the investor-owned water utilities subject to its jurisdiction. The CPUC’s powers go well beyond simply “approving rates and terms of service for the use of recycled water by investor-owned utilities.” The CPUC is empowered to “supervise and regulate every public utility in the State [and to] do all things, whether specifically designated [in the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” California Public Utilities Code §701.

The CPUC may authorize water utilities under its jurisdiction to establish policies and programs, including the use of recycled water, to achieve water conservation and sets rates based on, among other things, a utility’s investment in water infrastructure, including recycled water infrastructure. *Id.*, §727.5(d) and (e). Indeed, the CPUC has done so. The CPUC also shares authority with the California Department of Public Health (“CDPH”) regarding the quality of the water provided by investor-owned water utilities. *Id.*, §770(b). And, with respect to recycled water, Water Code §13580.8 authorizes the CPUC to establish rates for the provision of recycled water by public utility water companies, including, for purposes of encouraging the use of recycled water, discounted rates that do not completely reflect the costs of acquiring a source of recycled water and providing it to customers. Water Code §13581.2 requires the CPUC to resolve disputes between public utility water companies and recycled water wholesalers or recycled water customers over the terms of, or rates for, a recycled water supply or recycled water service.

CWA’s recommendations can be accomplished by replacing Section 5.e. of the Proposed Policy with the following:



- "e. The CPUC has plenary authority to supervise and regulate all aspects of the operations of investor-owned public utility water companies. The CPUC approves the level of a water utility's investment in water infrastructure, including recycled water infrastructure, and sets rates for the provision of water service, including the provision of recycled water service. The CPUC shares authority with the CDPH regarding the quality of water, including recycled water, provided by a public utility water company to its customers. The CPUC is also charged with resolving disputes between public utility water companies and recycled water wholesalers or recycled water customers over the terms of, or rates for, a recycled water supply or recycled water service.

With the revisions described above, the California Water Association urges the State Board to adopt the Proposed Water Recycling Policy.

Sincerely,

Jose E. Guzman, Jr.
of Nossaman LLP

cc: Mr. John K. Hawks, California Water Association
Mr. Rami Kahlon, California Public Utilities Commission
Ms. Laura Krannawitter, California Public Utilities Commission
Ms. Pamela Loomis, California Public Utilities Commission
Ms. Cynthia Truelove, California Public Utilities Commission