

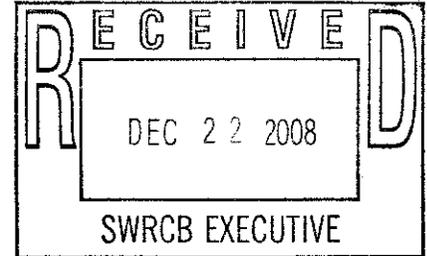


December 22, 2008

Tam Doduc, Chair and Members
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

VIA ELECTRONIC MAIL: commentletters@waterboards.ca.gov

Re: **Comment Letter – Proposed Recycled Water Policy**



Dear Chair Doduc and State Board Members:

On behalf of the California Coastkeeper Alliance (CCKA), Heal the Bay, the Natural Resources Defense Council (NRDC), Planning and Conservation League (PCL), and Lawyers for Clean Water, we are writing with regard to the State Water Resources Control Board's ("Board") above-described "Proposed Recycled Water Policy" (Policy). As we have noted throughout the multi-year process for developing a Board policy on recycled water, our organizations support the goal of expanding recycled water use in the state of California and meeting the near-term goal of one million acre-feet of recycled water used per year – *consistent with* state and federal water quality law and policy. We have sent multiple sets of detailed comments and provided oral testimony with regard to our shared commitment to the state's adoption of an overarching recycled water policy that comprehensively addresses these goals and mandates, and includes needed implementation recommendations. CCKA, Heal the Bay and PCL also have participated actively in an intensive stakeholder process to develop consensus recommendations with the regulated community on the provisions of the proposed Policy.

We greatly appreciate the Board's efforts in taking on the important task of developing a recycled water policy, and in crafting the recycled water stakeholder group's recommendations into the Policy now before the Board. The current Policy is a significant improvement over prior drafts, and will far better ensure that recycled water is used as an important resource consistent with the requirements of state and federal water quality laws. As we have articulated consistently, water recycling helps California meet its water needs only when water quality is also fully protected. The proposed Policy, by focusing far more significantly on this fundamental, common-sense tenet than prior versions, will better respond to California's growing water crisis.

To ensure that the Policy best implements the goals and mandates of water quality laws and water supply needs, and in consideration of additional input from other interested stakeholders, we recommend five specific modifications to the Policy. First, on page 13, lines 486-487, the Policy states that the Board "shall endorse" staff recommendations on constituents of emerging concern (CECs), based on the blue ribbon advisory panel and after making "any necessary modifications." We feel that even with the allowance for modifications, the "shall" language is fairly restricting on the Board's authority to adopt recommendations. CECs are of particular concern to many stakeholders, and the Board will likely receive significant input on those recommendations that might

move them away or towards the staff and panel recommendations. Therefore, we suggest instead that the Board "adopt the recommendations as appropriate" after making necessary modifications.

The other four requested modifications address provisions on pages 8-9, in the Landscape Irrigation Section of the Policy. First, the section on Control of Incidental Runoff is not clear that the State and Regional Boards must follow the mandates of existing state and federal water quality laws (*see, e.g.*, lines 286-287, "[i]ncidental runoff *may* be regulated..." (emphasis added)). A simple reference to existing law would address this potential gap and clarify the regional boards' and the regulated communities' responsibilities. Second, in that same section, we have articulated on numerous prior occasions that an MS4 permit cannot regulate recycled water discharges, such as from golf courses or soccer fields, at least without significant additional and site-specific analysis. Recycled water discharges are *not* storm water and so do not fit within the allowance for non-storm water discharges. For example, even relatively low discharges of pollutants such as nutrients are not "insignificant" in a nutrient-impaired waterway. Region 1 recently rejected a City of Santa Rosa attempt to include recycled water runoff in their submitted storm water management plan. This had become an issue because Region 1's Laguna de Santa Rosa is impaired for nitrogen, phosphate and low DO and used by endangered Steelhead as a migration and rearing area; the local recycled water that would have reached the waterway contains nitrogen and phosphorus at levels that would worsen this problem. In another example, Region 4's Malibu Creek was severely impacted by nutrient loads downstream of recycled water sprayfield irrigation activities. If the Policy is to even consider recycled water discharges in MS4 permits, additional language must be added to make it clear that the permittee must first demonstrate that the discharge will be a *de minimus* source of pollutants for the specific water bodies at issue and will not impact those water bodies' health; this of course will require regular sampling and careful analysis that may go beyond the general requirements of an MS4 permit. Without such language, the reference to MS4 permits must be struck.

Accordingly, we recommend that lines 286-290 be revised to address these two concerns to read:

...Incidental runoff will be regulated consistent with federal and state law requirements that include but are not limited to: 33 U.S.C. § 1311(a); 40 C.F.R. § 122.1(b); and Calif. Water Code §§ 13260, 13263, and 13264. To implement these requirements, waste discharge requirements, or waste discharge requirements that serve as a National Pollutant Discharge Elimination System (NPDES) Permit, shall be used as required by law. But regardless of the regulatory instrument....

Next, in the section on Streamlined Permitting, line 311 of page 8 sets a relatively significant evidentiary requirement to the specific finding of "unusual circumstances" that is needed to take advantage of the streamlined permitting process. The concern has been raised that the requirement of "substantial" evidence in the record for the finding of "unusual circumstances," which is already fairly narrowly defined, sets an artificially high bar that otherwise unique water quality situations might not be able to meet. This evidentiary hurdle runs counter to the principle of being precautionary when taking action that could affect the quality of the waters of the state. We suggest instead that the word "substantial" be stricken, so that although a water board would be required to point to the evidence in the record that supported the finding of "unusual circumstances," it would not need to overcome the "substantial evidence" burden. We believe that given the specificity of the Policy in defining "unusual circumstances," this recommended modification sets an appropriate test for using streamlined permitting in the face of potential water quality concerns.

Finally, in the section on Criteria for Streamlined Permitting on page 9, we have a concern that even with the mandate of compliance with Title 22 requirements and other CDPH recommendations as described in lines 339-342, there are insufficient controls on recycled water purveyors who are violating key provisions of their NPDES permits, particularly where such violations will impact uses not addressed by Title 22 (such as aquatic habitat use, as described in detail in our prior comment letters on the Policy). An additional criterion for streamlined permit approval is needed to address this situation and ensure that all uses receive appropriate consideration, and that facilities that do meet their permit requirements receive heightened approval priority. Accordingly, we recommend that an additional criterion (4) be added after line 351 to read:

- (4) Compliance by the recycled water purveyor with all NPDES permit effluent limitations and receiving water limitations.

Purveyors who cannot meet this criterion would still have the option of making use of their recycled water product, just not in a streamlined permit context, as the streamlined permit would not allow for appropriate consideration of the impacts of the relevant violations of effluent and receiving water limitations.

* * *

Reuse and recycling of our limited water resources will be essential to meet the ever-growing demand for water in the state, including water needs for a healthy environment. As we have articulated repeatedly, the laudable goal of encouraging wastewater reuse and recycling can and should be pursued without diminishing the commitment to protect and enhance water quality fully in the process. We ask that you incorporate the above recommended changes to the Policy to best effectuate this vision, and we look forward to working with you to ensure clean, abundant water for California.

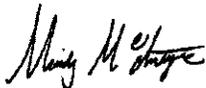
Best regards,



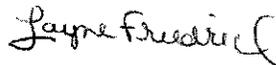
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