

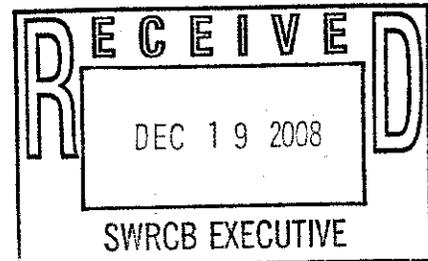
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*A Strategic
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December 19, 2008

VIA E-MAIL COMMENTLETTERS@WATERBOARDS.CA.GOV

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



RE: Comment Letter – Draft Water Recycling Policy
City of Oxnard, California

To Members of the State Water Resources Control Board:

This office submits these comments on behalf of the City of Oxnard ("City"). The City thanks the State Water Resources Control Board ("State Board") for its leadership in developing this third version of the Draft Water Recycling Policy ("Draft Policy"). This version is a great step forward in the State Board's attempt to develop an effective policy from which sound regulations can be created. The City also commends the State Board's philosophy which clearly intends to promote the use of recycled water and to bring to fruition a statewide approach that fosters a consistent application of requirements regarding recycled water. The City further supports setting a structure that provides for uniform interpretation of the various recycle requirements in such a way as to reduce uncertainty in the design and operational requirements for recycled water projects.

As described herein, the City is depending on the use of recycled water as a resource in its water supply plan. It believes that the State of California's current and future water supply concerns mandates uniformity amongst the various Regional Water Quality Control Boards (Regional Boards) in support of recycled water usage. Regulations and policies that impede this goal should be changed. The development of recycled water facilities must be encouraged so that recycled water may be made available, as the Legislation intended, to help meet the growing water requirements of the state.

The City is pleased to offer the following background facts and comments on the Draft Policy and looks forward to the upcoming hearing on this issue.

1. **City of Oxnard**

The City is home to over 190,000 people. To serve this growing population, the City's Water Resources Division relies on imported surface water from the Calleguas Municipal Water District (CMWD), groundwater from the United Water Conservation District (UWCD), and groundwater from the City's own wells. Local groundwater comprises the greatest portion of the City's water supply. The City blends water from these three sources to achieve an appropriate balance between water quality, quantity, and cost.

As described in details below, to meet its water supply needs through the year 2020, the City's Groundwater Recovery Enhancement and Treatment (GREAT) Program includes wastewater recycling, groundwater injection, storage and recovery, and groundwater desalination. Starting with treated wastewater that would otherwise be discharged to the Pacific Ocean, the GREAT Program will produce a high-quality purified recycled water product. This purified recycled water can be used safely for

agricultural irrigation, industrial processes, landscape irrigation, and groundwater injection for aquifer recharge and as a seawater intrusion barrier.

2. The Water Code Support and Require the Use of Recycled Water

(a) Water Code Section 13576.

Within Water Code Section 13576, the Legislature made the following findings and declarations:

(a) The State of California is subject to periodic drought conditions.

(b) The development of traditional water resources in California has not kept pace with the state's population, which is growing at the rate of over 700,000 per year and is anticipated to reach 36 million by the year 2010.

(c) There is a need for a reliable source of water for uses not related to the supply of potable water to protect investments in agriculture, greenbelts, and recreation and to replenish groundwater basins, and protect and enhance fisheries, wildlife habitat, and riparian areas.

(d) The environmental benefits of recycled water include a reduced demand for water in the Sacramento-San Joaquin Delta which is otherwise needed to maintain water quality, reduced discharge of waste into the ocean, and the enhancement of groundwater basins, recreation, fisheries, and wetlands.

(e) The use of recycled water has proven to be safe from a public health standpoint, and the State Department of Health Services is updating regulations for the use of recycled water.

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

(g) The development of the infrastructure to distribute recycled water will provide jobs and enhance the economy of the state.

(h) 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.

(i) Recycled water producers, retail water suppliers, and entities responsible for groundwater replenishment should cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service.

(j) Retail water suppliers and recycled water producers and wholesalers should be encouraged to enter into contracts to facilitate the service of recycled and potable water by the retail water suppliers in their service areas in the most efficient and cost-effective manner.

(k) Recycled water producers and wholesalers, and entities responsible for groundwater replenishment should be encouraged to enter into contracts to facilitate the use of recycled water for groundwater replenishment if recycled water is available and the authorities having jurisdiction approve its use.

(l) 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.

(b) Water Code Section 13350(a)

Water Code Section 13350, et seq. unequivocally demands the use of recycled water in lieu of potable water where appropriate:

The Legislature hereby finds and declares that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste or an unreasonable use of the water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available which meets all of the following conditions, as determined by the state board, after notice to any person or entity who may be ordered to use recycled water or to cease using potable water and a hearing held pursuant to Article 2 (commencing with Section 648) of Chapter 1.5 of Division 3 of Title 23 of the California Code of Regulations...

(c) Current and Future Water Supply Concerns

In light of the current water supply constraints within the State, and the projections for future growth in the State, promoting the use of recycled water must be a fundamental strategy to ensure the availability of adequate water supplies.

There are many current concerns in terms of water supplies as the State Board well knows. Recycled water can be used as a resource to offset major issues such as:

- The need to reduce dependence on the State Water Project.
- The need to reduce dependency on depleted groundwater sources.
- Preparation for drought conditions.
- Anticipation of the impacts of climate change, including reduced snowpack, increased seawater levels and changes in storm intensity and duration.
- Population increase throughout the State.

3. The City's Planned Use of Recycled Water is a Cornerstone of its Water Planning

Reflecting the above concerns, like many California municipalities, the City faces a number of challenges related to water resources, including a growing population, greater demand on water

supplies, competition over local groundwater resources, more costly and potentially less reliable imported state water, and the need to restore local wetlands.

As a result, Oxnard developed the GREAT Program. An innovative project with significant regional benefits, the GREAT Program combines wastewater recycling and reuse; groundwater injection, storage and recovery; and groundwater desalination to provide regional water supply solutions. Designed to meet the City's current and future water supply needs, the Program also initiates the delivery of over 20,000 acre feet of recycled water for agricultural irrigation and groundwater recharge, and may provide a brackish water byproduct that can be used to help restore vital local coastal wetlands.

The GREAT Program includes the construction of the Advanced Water Purification Facility (AWPF), adjacent to the Oxnard Wastewater Treatment Plant. Design is nearing completion and the City expects construction to start in late 2009. Treatment at the AWPF will include microfiltration, reverse osmosis, and advanced oxidation, producing a high-quality recycled water product suitable for use in industrial processes requiring highly-treated water, for irrigation of even high-value food crops, such as strawberries, and for future groundwater injection, for aquifer recharge and to repel seawater intrusion, as well as for traditional non-potable municipal uses, such as landscape irrigation. The Los Angeles Regional Water Quality Control Board has recently approved Waste Discharge Requirements (WDR) for the City's use of recycled water for all uses besides the groundwater injection and recharge use. The City is actively working with partners United Water Conservation District, Calleguas Municipal Water District, Metropolitan Water District of Southern California, and the Fox Canyon Groundwater Management Agency to conduct detailed groundwater studies that would lead to future WDRs for this use of recycled water.

The advanced treated, recycled water from the AWPF will be made available to agricultural users in the Oxnard Plain that are currently using local groundwater and surface water supplies. This recycled water will be of higher quality than the existing supplies and will help relieve over-drafting of the local groundwater basin, which has led to seawater intrusion. In the winter, when irrigation demands drop off, the recycled water will be injected into the groundwater basin to reduce the potential for seawater intrusion into nearby agricultural areas.

By using recycled water in lieu of groundwater, the unused groundwater allocation will be transferred from agricultural users to the City. The City can then extract the groundwater from wells located in areas not in overdraft and easier to recharge (El Rio Forebay Basin, northern portion of Oxnard Basin). Oxnard's GREAT Program provides significant regional benefits. The Program is an excellent example of how challenges can be transformed into opportunities to better serve residents and bring regional improvements through technical innovation, regional partnerships, public information, stakeholder involvement, and legislative support.

The development of the GREAT Program was made possible through a nearly decade-long cooperative effort with partner agencies throughout the region, including the United Water Conservation District, Calleguas Municipal Water District, Fox Canyon Groundwater Management Agency, and the Port Hueneme Water Agency. The ongoing communication has been vital to the program's overall success. Congresswoman Lois Capps of California's 23rd District introduced legislation to authorize a federal partnership for the GREAT Program. The City of Oxnard Water Recycling and Desalination Act of 2007, approved by the House in May 2008, would authorize the Secretary of the Interior to participate in the design, planning, and construction of the GREAT Program. The Senate is currently considering the legislation.

In late 2004, the City Council certified the environmental impact report for the GREAT Program, and the Water Resources Division subsequently initiated design and construction of a wide variety of projects. These include the Advanced Water Purification Facility, the recycled water distribution system, recycled

water Aquifer Storage & Recovery Pilot Well, Blending Station No. 1 Desalter, Blending Station No. 5, and the Blending Station No. 3 Desalter.

4. Department of Public Health Draft Regulations

As the State Board undoubtedly recognizes, the California Department of Public Health (CDPH) issued solicited comments to its Groundwater Recharge Reuse, Draft Regulations. (August 5, 2008) The City submitted comments. While the CDPH Draft Regulations were not as broad in scope as those of the State Board, we would urge the State Board to review those Draft Regulations and the comments made by various stakeholders. The State Board's Draft Policy and the CDPH Draft Regulations cannot exist in a vacuum. They must compliment each other. Therefore, the City would recommend that before any action is taken by the State Board to formerly adopt a final policy that the State Board review the CDPH Draft Regulations and confer with them as appropriate.

Outside of the common sense need for coordination, there are two statutory mandates that must also be taken into consideration. They are:

(a) **Water Code Section 13521**

Water Code Section 13521 places the responsibility on Department of Public Health (CDPH) to establish the water quality criteria for all recycled water used in the State.

The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health.

(b) **Water Code Section 13523**

Water Code Section 13523 sets forth clearly that CDPH is to be consulted with by each Regional Board DHS recommendation requirements for the quality of recycled water for reclamation facilities:

(a) Each regional board, after consulting with and receiving the recommendations of the State Department of Health Services and any party who has requested in writing to be consulted, and after any necessary hearing, shall, if in the judgment of the board, it is necessary to protect the public health, safety, or welfare, prescribe water reclamation requirements for water which is used or proposed to be used as reclaimed water.

5. Agriculture

The City's recycled water usage is heavily geared to one of its major industries, agriculture. During the process of developing the Suggested Policy, the City commented to ACWA that the stakeholder group was staffed and structured to deal with urban and suburban views on the issue as opposed to agriculture. This is a critical issue.

The City requests that the State Board reach out to the agriculture industry for a specific review and comment on how the Draft Policy may affect them. While the City realizes that anyone may comment on the Draft Policy through the process now ongoing, it is often the case that various specific groups may not be aware or involved in activities that may impact their viability. The City believes that because of the vital need for agriculture to be part of this process, that a specific solicitation to that industry be directed to obtain comment, if the State Board determines that the industry has not provided sufficient communication/comment to the State Board so that there is some level of assurance that agriculture's

point of view is taken into consideration. This is especially true for those sectors of the agriculture industry implementing the *Conditional Waiver for Irrigated Agriculture*, or those assigned a load allocation under a salt or nutrient TMDL.

In fact, the City believes it would be of great benefit to the process and to the development of a final policy for the State Board to hold a workshop which specifically targets agriculture.

6. Specific Comments on the Draft Policy

(a) Goals (Lines 26-38)

The statement of specific volume goals for the use of recycled water is laudable. However, the City believes that the State Board should not set forth a goal that is limited. That is, we would urge that the State Board recognize the legislative mandate of increasing the use of this resource by changing the wording of the preamble to the following:

To this end, we adopt the following minimum goals for California:

- Increase the use of recycled water over 2002 levels by at least one million acre-feet by 2020 and by at least two million acre-feet by 2030.
- Increase the use of stormwater by at least 500,000 acre-feet over use in 2007 by 2020 and by at least one million acre-feet by 2030.
- Increase the amount of water conserved in urban and industrial uses by comparison to 2007 by at least 20% by 2020.
- Included in these goals is the substitution of as much recycled water for potable water as possible by 2030.

(b) Purpose of Policy (Lines 59-64, 70-72)

(i) Uniqueness Issues (Lines 59-64)

One of the concerns often raised by the regulated water and recycled water community is that each of the Regional Boards interpret State Board policies differently. Ameliorating this was one of the reasons that the State Board stated originally was a purpose of drafting a statewide policy for recycled water usage. In keeping with this need, the City believes that the State Board should indicate that while unique circumstances often need to be taken into account, there should be some expression of limitation. The City suggests the following word be added on line 64:

The intent of this streamlined permit process is to expedite the implementation of recycled water projects in a manner that implements state and federal water quality laws while allowing the Regional Water Boards to focus their limited resources on projects that require substantial regulatory review due to truly unique site-specific conditions.

(ii) Stormwater issues (Lines 70-72)

The Draft Policy states that:

State Water Board will establish additional policies that are intended to assist the State of California in meeting the goals established in the preamble to this Policy for water conservation and the use of stormwater.”

The City agrees with comments made by the California Stormwater Quality Association in their review of the 2004 development of a Stormwater Policy: "The policy should encourage stormwater infiltration and groundwater recharge, however, the policy should be coordinated with existing regulatory programs". The City also agrees with the comments made at the time by the California Department of Transportation: "A key issue for storm water infiltration and related disposal programs is the Point of Compliance (i.e., the location in the groundwater at which the standards are applied). The Policy for Application of Water Quality Objectives contained in at least one Basin Plan states that "...Water quality objectives apply to all waters within a surface water or groundwater resource for which beneficial uses have been designated, rather than at an intake, wellhead, or other point of consumption." In effect, this appears to mean that those infiltrating water or otherwise discharging to the groundwater cannot take advantage of the natural attenuation that occurs before the water is extracted."

It has been four years since the concept of a Stormwater Policy was proposed. If the City, and indeed the rest of the State of California, are to increase the use of stormwater by at least 500,000 acre-feet, we should not wait any longer for this important piece of guidance.

(c) Benefits of Recycled Water (Lines 77-84)

The City believes that the Draft Policy should not rely on ambiguous language that may cause unnecessary and time consuming challenges to recycled water projects. As an example the wording of this portion of the policy uses the phrase "sufficiently treated so as not to adversely impact public health or the environment and which ideally substitutes for use of potable water, is presumed to have a beneficial impact...". The term of concern is the use of the phrase "sufficiently treated." It is axiomatic that any water that will be used for recycled purposes must meet established CDPH criteria and as a result there is no need to for the State Board or any Regional Board to make the determination as to the level of treatment required to maintain public health and the environment. CDPH will have already provided such an analysis. Therefore, we suggest the following changes so clarify this fact:

The State Board finds that the use of recycled water in accordance with this policy, that is, which supports the sustainable use of groundwater and/or surface water, which is sufficiently treated as required under law so as not to adversely impact public health or the environment and which ideally substitutes for use of potable water, has ~~is presumed to have~~ a beneficial impact. Other public agencies are encouraged to use this presumption in evaluating the impacts of recycled water projects on the environment as required by CEQA.

(d) Mandate for Use of Recycled Water (Lines 89-91, 118)

(i) Mandates (Lines 89-91)

In keeping with the City's comment on goals, in (a) above, the City suggests that the following text be changed in the Draft Policy:

The State Water Board hereby establishes a mandate to increase the use of recycled water in California by at least 200,000 afy in the use of recycled water by 2020 and by at least an additional 300,000 afy by 2030.

(ii) Funding (Line 118)

Funding is always problematic. We need go no further for an explanation than to view the current budget crisis in California. While undoubtedly the State Board will do its utmost to advocate for significant funds to be made available for recycling projects, there is no assurance that such funds will be available given the variety of other needs within the State. Therefore, the City believes that Draft

Policy should note that regardless of the fund availability, the recycled water policy which will be issued and carried out to the best of all participants' abilities. Thus, the City suggests the addition of the following:

However, it is recognized that such funds may not be available and this should not be construed as any limitation to the effectuation of this Policy.

(e) Roles of the SWRCB, Regional Boards, CDPH and CDWR (Lines 137-141)

In the discussion concerning CDPH as noted above, CDPH is the agency with the requisite statutory authority to establish the safety of water so that the public health is protected. The City believes that in so far as public health is concerned in regards to the use of a specific source of recycled water for a particular project, if the source meets CDPH criteria, the Regional Boards must not place themselves in a position of contradicting or restricting the legislatively required role of CDPH. Therefore, the City suggests the following be changed (Line 139-141):

Regional Water Boards should ~~defer appropriately rely on~~ to the expertise of CDPH for the establishment of permit conditions needed to protect human health.

(f) Adoption of a Salt-Nutrient Plan (Lines 175-279)

(i) General Comment

As stated above, the recycled water product offered by the City will be highly treated and effectively have no salt (TDS = 20) or nutrients (total nitrogen = 1.1). While the City agrees that salt and nutrient management should be part of the basin management plans, the City is very concerned that recycled water uses will be held up awaiting completion of the plans. The City does believe that the relief allowed under 9.c.(1) is useful.

(ii) Funding (Line 182)

As noted in (d)(ii) above, the issue of funding is always problematic. Therefore, the City suggests that the following be added after Line 182 and before Line 183:

Notwithstanding the availability of such funds referenced above, and in order to fulfill the purpose and goals of this Policy the State Water Board states that:

(iii) Consistency in Salt-Nutrient Plans (Lines 183-184)

The Draft Policy states the following: "It is the intent of this Policy for every groundwater basin/sub-basin in California to have a consistent salt/nutrient management plan." The City agrees that the plans should be consistent, but believes that the Draft Policy should detail what is meant by "consistent." The City presumes, but is not certain, that what the State Board is referring to is the requirements set forth in subsection (b)(3). If that is so, it might be useful to so state. If the State Board is seeking more "consistency" with reference to something else, that should be explained as well.

(iv) How Does the Draft Policy Align with the State Board's Appropriate Inclination to Streamline?

By letter dated October 7, 2008, the City of Oxnard received its Water Recycling Requirement (WRRs) and Waste Discharge Requirement (WDRs) Permits for Groundwater Enhancement and Treatment Program – Nonpotable Reuse Phase I. This permit allowed us to move forward with the construction of an Advanced Water Purification Facility (AWPF) designed to treat a portion of the 23 million gallons per

day Wastewater Treatment Plant effluent now going to an ocean outfall. The AWPf is comprised of Microfiltration/Ultrafiltration (MF/UF), Reverse Osmosis (RO), Ultra Violet/Advanced Oxidation and Reduction (UV/AOX), and Post-Treatment Systems. The City appreciates the intended streamlining of the permitting process referenced earlier in the Draft Policy; however, for a recycled water product that is entirely stripped of salts and nutrients (such as the City's) the requirement to create a Salt-Nutrient Management Plan does not appear to be streamlining.

(g) Landscape Irrigation Projects (Lines 280-354)

The usage and parameters of recycled water for landscape irrigation projects is defined in AB 1481 authored by Assemblyman De La Torre. The City attended the State Board workshop required by AB 1481, offered comments at the workshop, and submitted written comments. (Letter dated: June 25, 2008). The State Board has done an admirable job in segregating the landscape irrigation from other parts of the Draft Policy and has captured many of the critical requirements mandated by AB 1481. The City does believe, however, that there are some issues that need clarification. These are:

(i) Definition of Incidental Runoff (Lines 280-300)

The City believes that the definition of incidental runoff and the criteria set forth therein are reasonable for the sake of development of this Draft Policy and for the General Permit for Recycled Water to be developed in the near future. The City would like to see this definition expanded to all pertinent parts of the Draft Policy, such as agricultural crop spaying. As it stands at the moment, it cannot be ascertained whether the State Board intends to use this term generally with reference to incidental runoff from, for example, agricultural usage or recharge facilities. The City would welcome clarification.

Further, the City believes that the preferred permitting strategy (e.g., inclusion in recycled water incidental runoff under the MS4 permit) can be and should be included in the Salt/Nutrient Management Plan.

(ii) Criteria for Streamlining Permits - Clarification Regarding "Irrigation" (Line 335)

As above, the City believes that the idea of streamlining of permits for projects that meet certain criteria makes sense based on the need to expand the use of recycled water. This particular reference, however, in the Draft Permit is in the section that only relates to Landscape Irrigation projects. However, the term used in the opening sentence does not appear to so limit the use of the concept to only Landscape Irrigation projects as it states: "Criteria for streamlined permitting. Irrigation projects using recycled water that meet the following criteria are eligible for streamlined permitting...". So that there is no ambiguity and so that irrigation projects other than Landscape Irrigation, such as irrigation for crops, can avail themselves of this streamlined process, the City believes that subsection (c) should be made Section 8 and all other following sections renumbered.

(iii) No Reference to AB 1481

It would seem logical that given the substance and language of AB 1481, reference to the bill should be included. The reason for this inclusion is that the City believes that AB 1481 specifically requires that:

- It is only the State Board who has the responsibility and authority to "establish criteria to determine eligibility for coverage under the General Permit." That is, only the State Board can decide who is in and who is not, what activity is covered, and what is not.

- The State Board has the sole responsibility to create the eligibility requirements. On any specific issue of eligibility the State Board need only "consult" with the Regional Board.
- It places the sole responsibility in assessing the quality of the recycled water, not in the State Board, but in CDPH.

The City believes that there should be no ambiguity that the State Board is making a policy that will lead to a general permit based on the requirements of AB 1481. This would permit applicants and other relevant agencies to understand that the policy must be conformed to the language of AB 1481 whenever necessary. Therefore, the City would suggest at a minimum that the Draft Policy changes (Lines 333-334) to:

It is the intent of the State Water Board that the general permit for landscape irrigation projects be consistent with the terms of this Policy and with the requirements of AB 1481.

(iv) Applicable Uses Not Referenced

The City is concerned that the Draft Policy does not respond to a key requirement of AB 1481 because it does not set forth any guidance as to what types of projects could be considered as landscape irrigation. In keeping with the mandate of AB 1481, and because the term "landscape irrigation" is not defined in the legislation, the City believes that the issue of eligibility must be read as broadly as possible. Indeed, a search of the laws of this state failed to show that there is a comprehensive definition.

However, AB 1481's preamble references and its declared purpose is to not use potable water for nonpotable uses, "including but not limited to, irrigation uses for cemeteries, golf courses, parks and highway landscaped areas...". (Emphasis added). Thus, the listed uses should not be viewed as a limitation of use, but obviously should be included in whatever definition that the State Board decides on. Perhaps such designations will be left to the general permit, but so there is no ambiguity, the City believes that the Draft Policy should state that the use of recycled water for landscape irrigation is meant to include the following:

- Golf courses and the property immediately adjacent thereto used in support of operations and maintenance of the golf course itself;
- Cemeteries and the property immediately adjacent thereto used in support of operations and maintenance of the cemetery itself;
- Parks, greenbelts, and open recreational spaces where groundcover exists that require irrigation;
- Freeway and roadway medians or other such adjacent area within the right of way of the freeway or roadway where groundcover exists that requires irrigation;
- Any portion of a commercial or industrial parcel where groundcover exists that requires irrigation, less any building footprint, driveways, non-irrigated portions of parking lots, hardscapes - such as decks and patios, and other non-porous areas if same exist;
- Any portion of a government owned parcel where groundcover exists that requires irrigation, less any building footprint, driveways, non-

irrigated portions of parking lots, hardscapes - such as decks and patios, and other non-porous areas if same exist;

- Any area, not including hardscape, on which is planted or on which grows trees, shrubs, or grasses which are not used as or for the production of edible food, whether or not the land is in its natural or graded and contoured form; and,

- Any other portion of real property that due to its nature the State Board believes should be considered as an area where landscape irrigation with recycled water can be employed.

This is, we believe, required by AB 1481 and will go a long way to providing guidance in this area. Such guidance will also have a positive effect on the use of recycled water as the areas where this resource can be used will be defined and therefore it is more likely that those designing or maintaining those areas will be aware of the possibility to use recycled water.

(h) **Recycled Water Groundwater Recharge Projects (Lines 356 – 385)**

(i) Criteria for Groundwater Recharge Projects (Lines 360-371)

There are two aspects of this criteria that bear discussion. The first (Lines 361-364) relating to CDPH requirements is entirely supported by the City. The second, relating to monitoring for CEC's (Lines 365-371) is highly problematic.

In part, the City submits there is concern regarding the "expert panel" and its impact on all the water providers, let alone water recyclers, or those seeking to extend the benefits of recycled water by recharge. However, the City believes that there is a legitimate issue concerning the issue of public health for Groundwater Recharge Projects that the Draft Policy does not appear to take into consideration by the inclusion of 8(b)(2) regarding monitoring. That is, the agency that is in the best position to call for monitoring of CECs is CDPH, not the State Board, whether or not it is relying on the "expert panel" or otherwise.

The City asserts that as to the issue of monitoring the State Board of emerging contaminants the State Board would be wise to defer to the CDPH. At the Landscape Irrigation workshop held by the State Board pursuant to AB 1481, Mr. Brian Bernados (CDPH) explained the extensive role that CDPH has in terms of assuring the quality of recycled water. His PowerPoint presentation (which was made available at the State Board's website) demonstratively showed the depth of CDPH's role in this process. In his comments at the workshop, Mr. Bernados said something specifically worthy of quote: "The Department sets the standards for recycled water to protect public health." (Emphasis added). The City concurs with Mr. Bernados as to the CDPH's responsibility and mandate. We would urge that the State Board defer to CDPH on the issue of what CEC should be monitored.

(ii) Suggested changes (Lines 372-376 and 377-381)

In this same vein, the City would suggest that the following change be made in 8(c). (Lines 372-376):

Nothing in this paragraph shall be construed to limit the authority of a Regional Water Board to protect designated beneficial uses, *provided* that any proposed limitations for the protection of public health may only be imposed following consultation with and approval by the CDPH ~~regular consultation by the Regional Water Board with CDPH, consistent with State Water Board Orders WQ 2005-0007 and 2006-0004.~~

Likewise, the City would suggest the following change be made in 8(d). (Lines 377-381):

Nothing in this Policy shall be construed to prevent a Regional Water Board from imposing additional requirements for a proposed recharge project that has a demonstrable and substantial adverse effect on the fate and transport of a contaminant plume or changes the geochemistry of an aquifer thereby causing the dissolution of constituents, such as arsenic, from the geologic formation into groundwater. Before making such an additional requirement, the Regional Board shall consult with the CDPH.

(i) **Anti-degradation (Lines 386-450)**

Section 6.b.(1)(a) of the Draft Policy states that:

It is also the intent of the State Water Board that because stormwater is typically lower in nutrients and salts and can augment local water supplies, inclusion of a significant stormwater use and recharge component within the salt/nutrient management plans is critical to the long-term sustainable use of water in California. (Lines 189-194)

Clearly, the State Board understands that stormwater captured from many land uses is also of fairly high water quality. In that regard, the City encourages the use of Salt/Nutrient Management Plans as the controlling document for siting stormwater recharge projects instead of rigid requirements incorporated into municipal stormwater permits.

(j) **Emerging Constituents/Chemicals of Emerging Concern (Lines 451-502)**

(i) CDPH has primacy over recycled water quality

CDPH sets the standards for recycled water. (See generally the Water Recycling Criteria in Title 22 of the CCRs.) Also note the following:

Water Code § 13520. Recycling criteria:

As used in this article "recycling criteria" are the levels of constituents of recycled water, and means for assurance of reliability under the design concept which will *result in recycled water safe from the standpoint of public health, for the uses to be made.* (Emphasis added).

Water Code § 13521. DHS establishes recycling criteria:

The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water *where the use involves the protection of public health.* (Emphasis added).

The City believes that CDPH has and must be allowed to maintain primacy in this issue. As long as the recycled water is within the limits established by the CDPH, then the water is acceptable. There is no need for any further evaluation as to quality of the water by the State Board, and no need for the State Board to be involved with the issue of emerging contaminants as they may affect public health, an issue best left to the CDPH. The CDPH has the responsibility to set the standards for human health risks for recycled water and sets the standards for potable water as well. When CDPH believes an emerging chemical is of concern, they will act upon it. Further, Water Code Section 13576 states:

(e) The use of recycled water has proven to be *safe from a public health standpoint*, and the State Department of Health Services is updating regulations for the use of recycled water. (Emphasis added).

The City believes, given this, that 10(a)(1) (Lines 453-455) should be rewritten as follows:

Regulatory requirements for recycled water shall be based on the best available peer-reviewed science as interpreted by CDPH. In addition, all uses of recycled water must meet conditions set by CDPH.

Also, the City suggests that 10(a)(3) (Lines 459-484) be rewritten as follows:

The state of knowledge regarding CECs is incomplete. There State Board supports the needs to be for additional research and development of analytical methods and surrogates to determine potential environmental and public health impacts. The State Board will, upon advice from the CDPH Agencies should minimize the likelihood of CECs impacting human health and the environment by means of source control and/or pollution prevention programs.

(ii) "Advisory Panel" (Lines 468-502)

(1) General Concerns

In general, the City has a number of concerns with the appointment of this panel. Its key concerns are as follows:

First, this Advisory Panel would have to be paid for by the State Board to maintain any sort of objectivity as far as the public is concerned. While it appears that the State Board will be providing the funding ("...State Water Board...shall convene a 'blue-ribbon' advisory panel") this should be made clear. Also, as noted above, the issue of the lack of funding is a reality and therefore there needs to be some contingency for lack of funding.

Second, this panel appears to be given the task of performing some of the work that is being done by CDPH and to some extent the Office of Environmental Health Hazard Assessment (OEEHA). While the City disagrees with the panel's creation, at the very least the City believes that selected members should be approved by CDPH and OEEHA as opposed to having the State Board merely being required to "consult with" CDPH.

Third, such panels can lapse into what can best be described as a "scientific ideological tug of war." Despite all attempts to reach consensus there may not be one. Given such a lack of consensus on any give issue, such a panel could wind up submitting reports by each individual member because a consensus cannot be reached. There is no indication in the Draft Policy of what would occur in that situation. This is not the case when CDPH and/or OEHHA makes a decision. When they make a decision, there is only one voice.

Fourth, the panel has no real oversight and no one will actually be monitoring its work. Our State Agencies, which deal with the same subject matter are subject to public scrutiny and legal challenges.

Fifth, the decision as to who might be selected to serve on this panel is an important decision. Obviously, certain vetting of the person will have to be done to avoid the possibility of collateral attacks on their work based on some perceived bias, such as they once received a grant from XYZ company to perform certain research; or they are too

controversial given certain publically expressed opinions. The process therefore must be very transparent and subject to public review. This is not addressed in the Draft Policy.

Sixth, no matter what the outcome, this panel will be viewed as being "quasi-governmental" as it has the imprimatur of the State Board. In essence, the policy is deferring to this group that has no accountability to the public and no specific legislative charge. If the panel issues opinions that may be at odds with CDPH, OEEHA, and possibly even the Regional and State Boards, who should the public and the regulated community listen to? What happens if the panel states that .1 ppb of Chemical X is harmful and should not be in recycled water. No state agency has even determined it should be studied. What should the City do? Should it merely do what is required (take no action as there is no authoritative reason to do so), which provides legal protection for them, or should they act in some other way given the findings? This is not addressed in the Draft Policy.

(2) Endorsement Required (Lines 483-487)

The Draft Policy requires the State Board to adopt the report by the panel. Even though the State Board can make "necessary modifications" it should have the power to reject the report if it believes that is the appropriate action to take. Therefore, the following should be changed to read:

Within six months of receipt of the panel's report the State Water Board, in coordination with and upon agreement with CDPH, shall hold a public hearing to consider recommendations from staff and shall endorse or reject or suggest the recommendations for after making any necessary modifications to the report. Within 6 months thereafter, the State Board shall reconvene said public hearing for the purposes of consideration of the recommendations. (Lines 483-487)

(3) Advisory Panels Purview (Lines 480-488, 492-499)

There is somewhat of a "disconnect" within the Draft Policy as to what exactly the panel is supposed to do. At one point, the Draft Policy states that:

The panel shall review the scientific literature and, within one year from its appointment, shall submit a report to the State Water Board and CDPH describing the current state of scientific knowledge regarding the risks of emerging constituents to public health and the environment. (Lines 480-483)

This would appear to be asking a very broad review of literature to provide information regarding risks of yet unregulated chemicals. It could include findings of risk levels, exposure levels, etc. Yet the Draft Policy then goes on to apparently narrow the scope by stating:

The panel report shall answer the following questions: What are the appropriate constituents to be monitored in recycled water, including analytical methods and method detection limits? What is the known toxicological information for the above constituents? Would the above lists change based on level of treatment and use? If so, how? What are possible indicators that represent a suite of CECs? What levels of CECs should trigger enhanced monitoring of CECs in recycled water, groundwater and/or surface waters? (Lines 492 – 499).

If such a panel is to exist, the City would ask that an unambiguous charter be delineated. Further, there are two specific sentences in each of the above referenced sections that may say the same thing, but it is not clear that the State Board is indicating they are. These are:

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...shall submit a report to the State Water Board and CDPH describing the current state of scientific knowledge regarding the risks of emerging constituents to public health and the environment. (Lines 482-483)

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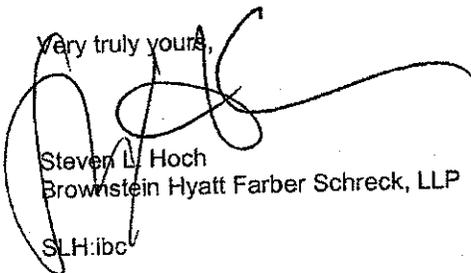
What is the known toxicological information for the above constituents? (Lines 494-495)

If these are meant to be the same, then the language should be the same to avoid confusion.

Lastly, if this Advisory Panel comes to fruition, the charge to the panel should include a consideration of a decrease or elimination of monitoring when CECs are not found or found to not be a risk. The Draft Policy may be construed as favoring increased monitoring and exclusion as opposed to a scientific risk based analysis.

The City again thanks the State Board for this opportunity to comment. We look forward to working with the State Board to increase the use of recycled water, a valuable resource for California's future.

Very truly yours,



Steven L. Hoch
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