



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

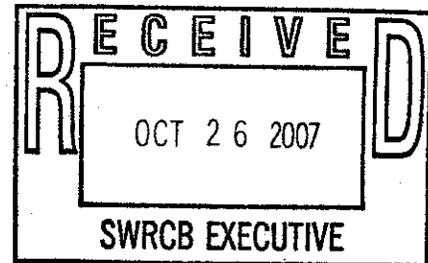
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12/4/07 Bd. Mtg.
Water Recycling Policy
Deadline: 10/26/07 Noon

October 26, 2007

Via Electronic and U.S. Mail

Tam Doduc, Chair, and Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



ATTN: Jeanine Townsend, Acting Clerk to the Board.
(commentletters@waterboards.ca.gov)

SUBJECT: Comment Letter: Water Recycling Policy

Dear Chair Doduc and Members of the Board:

The California Association of Sanitation Agencies (CASA) is pleased to submit comments on the draft Water Recycling Policy. CASA is a statewide association of local public agencies that provide wastewater collection, treatment, disposal and water recycling services to millions of Californians. At the outset, we wish to express our appreciation to the State Water Board for its leadership in undertaking this policy. As producers of recycled water, CASA members have a strong interest in eliminating unnecessary regulatory barriers to, and inconsistencies in, recycled water permitting and use, and we believe the draft Policy is intended to accomplish this while ensuring protection of public health and the environment.

Many of CASA's members are also members of the WateReuse Association, and we have participated in the development of detailed comments and language revisions that will be included as part of WateReuse's separate submittal. CASA supports these proposed changes, and urges the State Water Board to give careful consideration to the suggested revisions. We write separately to highlight, from the producer perspective, the key aspects of the current Policy that we believe must be redrafted in order to ensure that the Policy achieves its goals.

The Requirements for Irrigation Need to Be Revised in Order to Avoid Shutting Down Existing Projects and Foreclosing New Ones.

We strongly concur that regional, basin-wide planning is the appropriate approach to management and control of salts in groundwater. Many of our members have participated in, and are participating in, regional salt planning efforts in Santa Ana, Ventura and the Central

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Valley. We agree that imposing stringent salt limitations on individual recycled water projects will not accomplish the goal of groundwater protection and may unreasonably restrict the use of recycled water to replace potable supplies.

The language of the Policy needs to be revised to ensure that it does not unintentionally contribute to the problems it is aimed at solving. As the State Board will hear from many individual agencies, the 300 mg/l increment for TDS above source water currently contained in the Draft Policy is not workable and will preclude many beneficial projects. We understand that the purpose of the TDS increment is to serve as a performance based limit that will guard against worsening salt levels during the interim period prior to development of the comprehensive plan. We appreciate the opportunity to provide data and information to support an alternative TDS increment, and are working closely with WaterReuse to provide this in the short term. We also agree with WaterReuse that an alternative step-wise recognizes that if the recycled water meets the groundwater objective for TDS, no additional regulation for TDS is appropriate. The Board should use the incremental TDS, above source water approach only in instances where recycled water quality exceeds the groundwater objectives for TDS, and the appropriate increment should be significantly higher than the 300 currently proposed. There are numerous sources of salts in recycled water, including industrial discharges, residential uses, residential self-regenerating water softeners, and water conservation measures. There is no evidence that controls on industries or residential self-regenerating water softeners can limit the TDS increase in source water to 300 mg/l in every instance. (Local controls on residential self-regenerating water softeners are severely limited by statute.) CASA members are committed to practicing good source control measures, but some find incremental TDS increases of at least 500 mg/l in recycled water even where salt control practices have been implemented.

In addition, the staff report indicates that the State Water Board does not intend to address incidental runoff in this Policy. If the State Water Board maintains this posture, the reference to the federal NPDES regulations in Paragraph No. 7 should be deleted. Including this reference in the listing of requirements for irrigation projects is confusing and may be misconstrued to require NPDES permits for every water recycling project regardless of whether there could be a discharge of pollutants to waters of the United States.

Regional Water Boards Should Establish Requirements for Human Health Protection Only In Accordance with CDPH Recommendations.

The Policy language moves in the right direction, to rely on the California Department of Public Health (CDPH) with regard to requirements for human health protection. However, even greater clarity is needed with regard to deference to CPDH in setting constituent levels for currently unregulated constituents. Paragraph 11 and the associated Recital No. 16 do not clearly reflect the findings in Order WQ 2006-0001 (The Alamitos Barrier Order) with respect to

the role of CDPH in establishing requirements for protection of public health for groundwater recharge projects. The conditions for Regional Water Board findings should directly address the primary need for establishing a limit: Namely, that there is a link between a chemical that is reliably determined to be present in recycled water and that as a result of the recharge project reaches groundwater in amounts that could impair the municipal drinking water supply beneficial use. It is critical that any findings made by a Regional Water Board in establishing limits do so only under this context and not simply on the basis of detection and having information to set a limit. WateReuse has recommended language to address this concern, and CASA urges the State Water Board to revise the Policy accordingly.

The Policy Should Not Alter Liability Associated with Groundwater Contamination.

We do not believe that the Policy needs to include a provision associated with groundwater contamination, and we recommend deleting paragraph 17. Existing law provides mechanisms for addressing contamination, and no purpose is served by including a reference to existing statutory claims and other legal theories in a State Water Board Policy. To the extent that the purpose is merely to make clear that the Policy does not shield anyone from liability that they would otherwise have, this can be accomplished by including a simple statement that "nothing in this Policy is intended to expand or limit liability under existing law."

If, on the other hand, the State Water Board does intend to create new liability beyond that currently applicable, CASA urges the Board to reconsider the wisdom of this approach. The purpose of the Policy is to increase use of a valuable and sustainable source of water supply, and subjecting producers and suppliers of recycled water to heightened liability *not shared by any of the alternative water sources* would have a significant chilling effect on recycling projects.

The Financial Assurances Provision of the Draft Policy is Unnecessary.

As proposed, the Policy would allow Regional Water Boards to require owners of groundwater recharge reuse projects to provide financial assurances of their ability to bear liability for groundwater contamination. This provision is inappropriate for a variety of reasons and would unnecessarily curtail groundwater recharge reuse projects contrary to the Legislature's and, we believe, the State Water Board's intent.

For example, requiring financial assurances in this instance would interfere with the legislative budgeting processes of local governments. We are also concerned that requiring financial assurances would be inconsistent with the Water Code's prohibition against Regional Water Boards determining the method of permit compliance. (Wat. Code, § 13360.) Such a requirement places the Regional Water Boards in the role of judging whether the amount of local

revenue to be devoted to permit compliance and liability comports with the agency's notion of adequate financial assurances. Finally, if the State Water Board desires to require demonstration of financial assurances in the absence of express legislative authority, the Board must at a minimum undertake a public rulemaking process to develop clear criteria and standards against which a project will be judged. We do not think that development of such regulations—which would rarely, if ever, be needed—is a good use of the State Water Board's limited resources. For these reasons, we request that the State Water Board delete this provision from the Policy.

In closing, we wish to emphasize our support for the State Water Board's commitment to the State's water recycling goals. We believe that with the language changes recommended by the WateReuse Association, the adoption of this Policy will be a much needed step toward eliminating unnecessary regulatory barriers and re-positioning the State's view of recycled water as a valuable and reliable water supply, not a waste to be feared and constrained.

Sincerely,



Roberta Larson
Director, Legal and Regulatory Affairs

RLl/jlp

cc: CASA Executive Board
Catherine Smith, Executive Director
Jim Colston, Chair, Tri-TAC
Ben Horenstein, Chair, CASA Water Forum
Bill Jacoby, President, WateReuse Association
David Bolland, ACWA