



**December 18, 2013**

*Via Electronic Mail: [eric.oppenheimer@waterboards.ca.gov](mailto:eric.oppenheimer@waterboards.ca.gov)*

Eric Oppenheimer  
Director, Office of Research, Planning & Performance  
State Water Resources Control Board  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

**Re: Comments on Draft Groundwater Workplan Concept Paper**

Dear Mr. Oppenheimer,

The California Association of Sanitation Agencies (CASA) and the Central Valley Clean Water Association (CVCWA) appreciate the opportunity to submit comments on the discussion draft of the State Water Resource Control Board (SWRCB or State Water Board) Groundwater Workplan Concept Paper (Concept Paper). We would also like to thank State Water Board staff for meeting with stakeholders, including members of the wastewater community, to discuss the Concept Paper and the specific issues the State Water Board is hoping to address. CASA is a statewide association of municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, and water recycling services to millions of Californians and CVCWA is a regional association representing similar entities in the Central Valley. Many of our member agencies engage in groundwater recharge utilizing recycled water and are subject to permit and other regulatory requirements that involve protection of groundwater quality. Thus, the Concept Paper and any implementation actions flowing from it have the potential to impact our members, and many are keenly interested in this process.

## **1. General Comments**

CASA and CVCWA appreciate that the Concept Paper is designed to spark discussion on important issues related to groundwater management in California, and that addressing groundwater is a priority for State Water Board members and staff. While we understand the need to address both groundwater quality and quantity issues, overall the concept paper appears to treat these issues separately, with greater focus on water quality related groundwater issues, and potential solutions, and less emphasis on the water quantity side of the equation. There is very little discussion of how the two are interrelated. For example, there seems to be significant amount of focus placed on the establishment of “thresholds” and regulation of groundwater contaminants, but relatively minimal focus placed on causes and solutions to address overdraft and other groundwater quantity problems or how conjunctive use or recharge may be used to address both quantity and quality issues.

Additional comments regarding the Concept Paper, both general and relating to specific language in various sections, are set forth below.

**A. Local and Regional Efforts Must Be the Primary Implementation Mechanism for California’s Groundwater Management Efforts**

Local and regional efforts are currently the cornerstone of groundwater management efforts and must continue to be the primary means through which groundwater quality and quantity is managed in California. The unique circumstances facing each basin and region in the state require flexibility and a variety of tools to address groundwater quality and quantity issues. While the State Water Board (and other state agencies) may play a supporting and/or supervisory role in these processes, local efforts must be allowed to tailor solutions to their needs. While we understand that the State Water Board (and potentially other agencies) intends to fill gaps in existing regulation and serve as a backstop, as opposed to affirmatively implementing many of the groundwater management actions identified in the Concept Paper, unfortunately this does not always come through in the tone or structure of the Concept Paper. An explicit statement to this effect should be included in the Concept Paper and reiterated throughout the document where appropriate.

**B. The Need for Additional Data on Existing Practices**

Assessing existing groundwater management data and programs is a crucial first step in the process of establishing a new framework for groundwater management in the state. This need to identify and evaluate existing groundwater programs is a concept with which we believe State Water Board staff agree, but which does not necessarily come through in the current draft Concept Paper. Namely, there is great focus on identifying new reporting and data gathering mechanisms without first having a complete understanding of what currently exists. Before proceeding with the establishment of thresholds or other actions that might directly impact publicly owned treatment works (POTWs), the State Water Board should perform an assessment of data which is already being reported or is readily available from all state agencies related to both water quantity and quality. As the Concept Paper itself notes, “local and regional management of groundwater basins does exist in much of the state”<sup>1</sup> and there is already a significant amount of groundwater quality and quantity data being collected. Prior to embarking on this effort, we recommend the State Water Board confer with the Central Valley’s Salinity Alternatives for Long Term Sustainability (CV-SALTS) effort. CV-SALTS recently completed an initial assessment of the groundwater quality for most of the Central Valley floor as part of its process. In this effort, ground and surface water data were gathered from a number of sources and databases. Not only did this assessment look at water quality, but also assessed ground and surface water interactions. Only when there is a clearer picture of what is currently available should the State Water Board and other agencies begin to identify the data gaps and develop an approach for gathering the necessary data on which to base effective management actions.

---

<sup>1</sup> Concept paper at p. 2.

### **C. The Role of POTWs in Groundwater Management is Not Entirely Clear**

The Concept Paper is not entirely clear regarding the role that the State Water Board envisions POTWs playing in the groundwater management process. We appreciate staff's indication that significant changes to programs governing POTWs are not envisioned or anticipated. We also appreciate that the Concept Paper acknowledges the important role of local and regional groundwater management entities as those primarily responsible for managing and maintaining groundwater of sufficient quality and quantity, and that the State should serve a support and potentially oversight role only where needed.<sup>2</sup> However, it would be helpful for the Concept Paper to identify which proposed actions would apply to wastewater NPDES permittees and those operating under various waste discharge requirements (WDRs). This would allow our associations and our member agencies to focus attention on those areas most relevant to their operations and provide more detailed comments on those aspects of the Concept Paper.

### **D. Account for Planned Drinking Water Program Reorganization**

The Concept Paper assumes that several task items are within the purview of the California Department of Public Health (DPH), and specifically the Drinking Water Program in that agency. However, there is currently an effort to transition many if not all of those functions to the State Water Board through a comprehensive reorganization effort. Therefore, some or all those potential actions that are identified as DPH actions may become SWRCB actions. For example, the suggestion that "CDPH should complete the rulemaking for groundwater recharge with recycled water (indirect potable reuse)."<sup>3</sup> It is our understanding that if the reorganization goes forward as currently planned, the State Water Board will be the responsible entity undertaking the rulemaking for indirect potable reuse of recycled water. In some cases this may yield increased efficiencies in the approach to groundwater (for example, in distribution of safe drinking water State Revolving Fund (SRF) loans or in coordination efforts). Although we would not expect the transition to be complete by the time the next draft of the Concept Paper is released, it may be prudent to acknowledge the reorganization effort within the Concept Paper and the potential ramifications of having the drinking water programs currently at DPH transitioned to the State Water Board.

### **E. Recognize the Important Role of Recycled Water**

Recycled water is an important part of groundwater and surface water management efforts in California. Recycled water will continue to play a significant role in groundwater recharge efforts throughout the state, particularly in areas identified as high quality candidates for recharge projects. However, this is only referenced tangentially throughout the Concept Paper, and there is very little discussion of its significance in this context. In addition, recycled water for municipal and agricultural

---

<sup>2</sup> Concept Paper at p. 1.

<sup>3</sup> Concept Paper at p. 4.

uses will offset the need for groundwater pumping or surface water diversions. There needs to be a more robust discussion regarding the need for recycled water in the state.

CASA and CVCWA are also concerned that the recommendation for the establishment of thresholds in certain regions could make the use of recycled water difficult for recharge purposes, even if such a project would benefit the basin and region as a whole. Triggers could force the use of imported water instead of local, sustainable groundwater projects. This is one of the reasons to redefine "maximum benefit" within the groundwater antidegradation process to account for the benefits of recycled water and its role in groundwater recharge and offsetting groundwater and surface water uses. If recycled water is to play an important role in groundwater supply and management, which is an idea the State Water Board has embraced, then there should be more focus on that aspect of groundwater management and the associated trade-offs within the Concept Paper.

## 2. **Groundwater Management Strategy Graphic**

Based on conversations with State Water Board staff, we understand that developing a comprehensive and accurate graphic to represent the groundwater management process is of significant focus and concern. The current graphic does a very good job of representing the high-level elements of the process and how they relate to each other. However, we would suggest the following modifications in order to capture some of the comments above and below, and to paint a more accurate picture of the relationship between various elements of the framework:

- (1) Attempt to display the important relationship between groundwater quality and groundwater quantity. As currently crafted, the graphic makes the two areas appear "siloed" and unrelated, when in reality there is an important interplay between strategies to address groundwater quality and those to address groundwater quantity. As the Concept paper acknowledges, "[g]roundwater quality can also be impacted by pumping and declining water levels. In some areas, pumping may cause polluted groundwater or seawater to migrate or be drawn into areas that would otherwise not be impacted."<sup>4</sup> This is just one example of the significant relationship between groundwater quality and quantity that should be articulated in the graphic and throughout the Concept Paper.
- (2) Demonstrate that local and regional entities will continue to serve a primary role in groundwater management. Pursuant to our understanding of what role the state intends to play in implementation of actions identified in the Concept Plan, local and regional agencies will continue to be the primary implementation mechanism for groundwater management actions going forward. However, the graphic (and indeed, much of the text of the Concept Paper) seems to indicate that the state will play a primary or co-equal role. Modifying the graphic to somehow demonstrate

---

<sup>4</sup> Concept Paper at p. 2.

the “backstop and oversight” role the State Water Board intends to play would produce a more accurate depiction of the framework going forward.

- (3) The graphic should incorporate the idea that regulation of both groundwater quality and quantity is connected with the State Water Board’s ongoing surface water programs in a meaningful way. While we understand the need to depict an overarching groundwater management strategy as its own effort, it is nonetheless important to identify the ways in which the State Water Board’s surface water and groundwater efforts interconnect, and that this important relationship be visually demonstrated through the groundwater management strategy graphic.

### **3. Sustainable Thresholds (Section 3.1)**

Overall, the Concept paper needs to display a greater focus on flexibility and adaptive management techniques to manage groundwater, and should place less emphasis on the establishment of “thresholds.” As the Concept Paper notes, “the nature of groundwater and its uses vary widely by area, as does the extent of control.”<sup>5</sup> The variety of conditions and challenges facing groundwater quality and quantity across the state calls for a full toolkit of solutions. Any potential thresholds or requirements that do not account for the wide diversity in approaches needed to address water quality and quantity problems in different areas of the state will be counterproductive and ineffective in addressing California’s groundwater issues. In addition, the development of thresholds must account for the different groundwater levels (i.e. first-encountered groundwater versus various depths) and how those relate to the actual uses of that water. Establishing generic thresholds for groundwater in a particular area without regard to both the depth of the particular water being monitored and the correlated use associated with groundwater at that depth is ineffective and would not efficiently address the real water quality problems that exist.

In terms of the specific State Water Board actions proposed under the thresholds discussion (Section 3.1.1), CASA and CVCWA suggest modification of bullet 2, which currently identifies as a potential State Water Board action an effort to “[i]ncorporate into Basin Plans thresholds for salt and nutrients contained in Salt and Nutrient Management Plans.”<sup>6</sup> First, the Recycled Water Policy does not require thresholds for salt and nutrient management plans (SNMPs) to be incorporated into Basin Plans, and requiring this action may be counter-productive. Simply having the SNMPs developed when appropriate would save the time and resources associated with converting them into regulations via the basin plans, with the same end-result. Mandating incorporation would not provide for the type of flexibility needed in adaptive management strategies. Second, we are concerned that simply using the word “thresholds” does not adequately convey the type of flexibility needed in certain regions to comply with groundwater quality standards. A clear statement is needed, either as part of this bullet or elsewhere in the threshold discussion, that acknowledges the need for flexibility in implementation of any

---

<sup>5</sup> Concept paper at p. 2.

<sup>6</sup> Concept Paper at p. 4.

“thresholds” established and alternative approaches such as trading, offsets, site specific objectives, variances and adaptive management to account for local challenges and conditions. Many of these are already being considered or are at work in the CV-SALTS process, and perhaps staff should look to those innovative solutions when determining the scope of a statewide effort.

In addition, as part of the discussion on potential actions for other state entities related to the setting of thresholds (Section 3.1.2), bullet number 2 states that “[t]he Legislature should require local groundwater management entities to establish thresholds for sustainable groundwater management in their local groundwater management plans and to report their progress.”<sup>7</sup> It is not clear how local groundwater management agencies would establish “thresholds” on groundwater quantities (i.e. how and whether it ties into the concept of a safe yield or restrictions on groundwater pumping), nor is it clear to whom the local groundwater management plans would be reported. While appropriate and sustainable groundwater quantity management is a laudable goal, more detail on this aspect of the Concept Paper would be appreciated.

#### **4. Monitoring and Assessment (Section 3.2)**

The need to assess existing groundwater data is evident and should be a priority for the State Water Board and other state and local agencies as appropriate. We support the articulated goal of promoting “better integration and accessibility of existing groundwater quality and quantity data to support assessment of groundwater conditions, evaluation of groundwater quality and quantity trends, and informed management decisions.”<sup>8</sup> CASA and CVCWA’s primary concern is that no additional reporting requirements be imposed upon POTWs and that existing reporting be streamlined and not duplicated. We support the Recycled Water Policy’s recommendation that “The preferred approach to monitoring plan development is to collect samples from existing wells if feasible as long as the existing wells are located appropriately to determine water quality throughout the most critical areas of the basin.” We would also appreciate a reference to or acknowledgement of current Department of Water Resources (DWR) efforts related to identifying good candidate areas for groundwater recharge as part of Section 3.2.2, bullet 3 (or where appropriate). The only other issue in this section relates to the suggestion that the DWR “create a searchable electronic database to submit well completion reports and associated data.”<sup>9</sup> Some well completion data (specifically in the drinking water supply context) is prohibited under existing law making widespread distribution of such data questionable, unless existing law is changed.

#### **5. Governance and Management (Section 3.3)**

---

<sup>7</sup> Concept paper at p. 4.

<sup>8</sup> Concept Paper at p. 4.

<sup>9</sup> Concept Paper at p. 5.

Overall, CASA and CVCWA agree that there needs to be a governance and maintenance element to a groundwater management framework. However, we would appreciate some clarification as it relates to Section 3.3.1, bullet 1, which indicates the State Water Board may “[e]xpand the use of general orders to focus on high priority discharges to improve efficiency of regulation and better protect groundwater.”<sup>10</sup> As we understand staff’s interpretation, what is meant by this option is that the use of general orders would be expanded to cover low-threat dischargers, thereby allowing SWRCB staff to use other means to focus on high-priority discharges. This language should be re-phrased to reflect that understanding.

## **6. Funding (Section 3.4)**

The existence of a reliable and sufficient funding source for groundwater management programs is vital to the success of any framework being contemplated. We fully agree with the Concept Paper that “[s]uccessful groundwater management requires access to sufficient funding for development and implementation of [various groundwater management activities].”<sup>11</sup> However, to the extent that the Concept Paper identifies general and special district fee assessments as a potential source of funding for groundwater management activities and states that “[l]ocal and regional groundwater management agencies should assess fees, where needed, to cover costs of monitoring and managing groundwater”, we would like to reiterate the difficulty in assessing fees under the strictures of Proposition 218 and the relative unpredictability of relying on that as a source of groundwater management funding. Grant funding, SRF loans, and numerous other funding devices exist (many of which are identified in the Concept Paper), and these should be expanded and promoted in the context of groundwater funding prior to considering additional reliance on local fee authority. In addition, Section 3.4.2, Bullet 1, states that a state agency should “[e]stablish a funding source that also addresses liability for cleanup of contaminated sites where responsible parties are unavailable, unable, or unwilling to pay for cleanup.”<sup>12</sup> As we understand it, this provision is designed to target funding sources for “orphan sites” and is not meant to allow a responsible entity to avoid liability for their contributions to a contaminated site. However, we would suggest modifying the language to clarify that merely because a liable responsible entity is “unwilling” to contribute funding to cleanup contaminated sites does not mean that entity evades responsibility for doing so.

## **7. Oversight and Enforcement (Section 3.5)**

As a general comment, any oversight and enforcement efforts of the State Water Board and other state entities should be exercised within the constraints of existing authority, and should only be in the “backstop and oversight” role as described above. As it relates to the specific proposed options for State Water Board action, we have only one comment on Section 3.5.1, Bullet 3, which proposes that the State Water Board

---

<sup>10</sup> Concept Paper at p. 7.

<sup>11</sup> Concept Paper at p. 8.

<sup>12</sup> Concept Paper at p. 9.

“[e]stablish an interagency task force to improve the integration of agency authorities that could be used to address groundwater overdraft.”<sup>13</sup> As we understand this proposal, it is not intended to expand the scope of any such authority, will not include regulatory and permitting type actions, and will only be utilized if local and regional authorities are unable to address serious groundwater problems. To the extent that this is accurate, we do not take issue with further clarifying the scope of state agencies’ authority in this regard. However, we would like the State Water Board to consider, after its initial internal discussions with other agencies, incorporating local and regional authorities and other stakeholders into that process. We understand the need for the agencies to discuss their approaches internally at the outset, but any significant change in the manner in which the State Water Board and other state agencies utilize their authority, including but not limited to constitutional and statutory authorities to protect the public trust and/or prevent the waste and unreasonable use of the State’s water resources, should be reached through a transparent and participatory process.

Thank you for the opportunity to provide input on the Concept Paper. If you have any additional questions or would like additional information on the issues identified above, please do not hesitate to contact us. Adam Link can be reached at [alink@casaweb.org](mailto:alink@casaweb.org) or (916) 446-0388. Debbie Webster can be reached at [efficer@cvcwa.org](mailto:efficer@cvcwa.org) or (530) 268-1338.

Sincerely,



Adam Link  
Director of Government Affairs, CASA



Debbie Webster  
Executive Officer, CVCWA

Cc: Caren Trgovcich, State Water Resources Control Board

---

<sup>13</sup> Concept Paper at p. 10.