

In the matter of General Order WDRs For)
Recycled Water Use On behalf of Friends)
of the North Fork (American River))

WRITTEN
COMMENT



INTRODUCTION

At the December 15, 2010, State Water Resources Control Board (SWRCB) hearing on the CEC monitoring panel report, a series of water reuse agency representatives requested the State Board to escalate its pattern of deregulating the use of recycled water. They did this by urging the elimination of Regional Water Quality Control Board water recycling permit conditioning.

This proposed General Order, if adopted, would in large part accomplish this deregulation by creating an unknown number of district, private and unknown other types of Recycled Water Administrators. The proposal does not address public education and participation in Administrator processes, disclosure of information to the public, or notification of preparation and submission of NOIs. Nor does it address the participation by existing or the creation of new firms of investment firm Administrators, or the recycled water markets that the proposal appears to contemplate including for truck loads of recycled water.

POINTS

1. The proposal is isolated using to its benefit the existing applicable Clean Water (CWA) and Porter Cologne Act programs that are essential to safe and successful water reuse. Similarly, the proposal fails to address the ways in which the proposal would be in conflict with and undermine those programs.

Dilution solution exacerbated by the drought. Central Valley regional Water Quality Control Board" (Regional Board)¹ and SWRCB engineers consistently use dilution as a "solution" to the discharge of contaminants into our waters. This is also escalating: the Regional Board is modeling a mixing zone concept below discharges which is of doubtful validity under USREPA regulations. The drought is rapidly eroding the water that is relied upon for dilution and for mixing zones. The proposal would remove sewer plant discharges from water courses, making even less water available for the "dilution solution." The proposal does not address how orders in effect address the reducing of dilution water contemplated in the proposal, and what is being done under existing orders that do and do not adequately anticipate drought impacts on dilution.

Industrial Pretreatment Program. (IPP) The self appointed "stakeholder group" that excluded our group from participating was given the SWRCB's imprimatur to

¹ This Comment uses the term "Boards" to refer to both the SWRCB and the Central Valley Regional Water Quality Control Board Board.

lead discussion outside the Board for the creation of the 2009 Recycled Water Policy. After adoption of the policy, when two attorneys for districts were asked at their county bar program presentation about how the stakeholder group they were praising considered the CWA Industrial Pretreatment Program, they said this had not been considered. The state's IPPs document what chemicals are being treated before they enter the sewer system and what chemicals enter the sewer from private facilities such as electroplaters. As far as we know the SWRCA and Regional Board have not in recent memory, if ever since the program was delegated to the state by USEPA, had reports on their agendas about IPP implementation and effectiveness.

Identification of POTWs that are not fit to be considered as a source of water recycling. Sewer operations in chronic, long term, violation of their NPDES permits, with ongoing cease and desist orders, with maximum penalty orders, with a history of illegal dumping into sewer system system manholes and so on, should be on a water reuse exclusion listing. POTWs with discharges from hospitals and pharmaceutical manufacturing should be excluded.

The use for recycling data and impact on each water quality program needs to be assessed including combined sewer systems,

2. Who wrote, reviewed and participated in creating and writing the proposal?
3. The proposal has many conclusions, findings and statement that are without basis, explanation, documentation,
4. The proposal defines the SWRCB and Regional Board failure to use science in the exercise of its regulatory authority and deregulatory initiatives.

Engineering practices and engineers dominate technical discussion and membership on boards.

Environmental toxicology entered the process on the CEC monitoring report, though uselessly because nothing is to be monitored that doesn't; have existing monitoring protocols, which is most chemicals.

Environmental science has not been part of recycled water discussion. It is safe to say that ecological science – aquatic and otherwise -- has no evident role in water recycling.

There is a massive accumulation of scientific publications relevant to recycling municipal wastewater water. Our observation is that its use, its reading, and comment and response to science brought to its attention is assiduously avoided by all involve in the State and Regional Board.

Economic science is absent regarding the intended or unintended creation of recycled water markets and regulating them. Whether there is legal authority for such a market require evaluation.

5. Regular monitoring throughout the year is required for proposed monitoring. Monitoring of all chemicals including all pathogens is necessary for:

- All water discharged from POTWs
- All water distributed to water users by water suppliers
- Each new recycled water source and periodically after the first sampling.

California has no planned effort to monitor, identify and regulate CECs. The Recycled Water Policy is an obstacle to addressing this vast problem of unregulated contaminants. and this proposal goes in the opposite direction of addressing CECs: it proposed significant deregulation.

6. The Legislature has give a pass to the Boards regarding the impact of POTW and other NPDES discharger pollutants into our waters.

The Legislature has been appropriately protective of water quality impacts of logging by requiring stream and downstream monitoring of these impacts. But sewer operations seem to be largely untouchable.

It's possible that the Boards have over the years developed an inability to develop necessary and effective regulations when the there is no organized group involved what is being regulated.

Friends of the North Fork has a board member and an activist who take drinking water from the North Fork American river a short distance below where discharges from the Colfax POTW enter the North Fork. I first walked by and smelled the bad odor where Bunch Creek enters the North fork in 1999. A couple of years later I had an opportunity at a community organization meeting to express the need for monitoring below the sewer plant discharge where the water enters Smuthers Ravine from an unnamed tributary to it, above and below where Smuthers Ravine enters Bunch Creek, and above and below where Bunch Creek enters the North Fork. A main Regional Board' staffer present had many excuses for this to not happen.

We've been parties in two NPDES renewal and a couple of enforcement hearings and have concluded that USEPA should investigate the state's NPDES program for purposes of withdrawing USEPA delegation of the NPDES program to the state. Instead of leading efforts to advance water quality regulation the Regional Board has several efforts to undermine water quality (e.g., mixing zones) each that requires major investment of time and expertise to challenge which detract from obtaining basic water quality regulation.

The Boards are not the cat's meow of water quality protection. They are the problem.

6. The Regional Board is supposed to regulate POTW discharges. Department of Public Health regulated public water supplies. In between I our group experiences a regulatory gap and a public disclosure and involvement gaps.

Our observation is that the Boards are not attentive to this gap. Our experience is that we get very little traction for our efforts. In 2007 a Regional Board member championed our effort to get infill and inflow conditions into an order. She is gone and such further conditions are subject to economic analysis.

7. The proposal's non-disclosure elements are a severe infringement on the public's right to know.

CEQA is a disclosure document. No EIR was prepared for the Recycled Water Policy. None is contemplated now. Even though, for example, the proposal could reduce water flows into the delta

There is not one word in the proposal about public access to any documents and processes in it. Regional Board access, yes. Mention of public involvement in the NOI process? Not mentioned.

The Governor's Office, Boards, and Board Members need to be required to disclose when their appointment and reappointment has been supported by entities that have an economic interest in the matter on which they are the lead SWRCB member, and on which they are considering or voting. Board members need to make this announcement at meetings they attend in which their appointment supporters have an economic interest and to name the interest. This should not disqualify them.

8. The proposal documents the state's systematic failure to plan for and regulate CECs/unregulated chemicals. Paragraph 11 page 3 and other text describes what is needed for salts and nutrients. But there is no concomitant explanation of other CECs and what needs to be done about them. Paragraph 15 page 4 on the P4 List is not enough. All contaminants need to be identified. Item 26 page 9 falsely state that coliform bacteria represent pathogens which is an inexcusable failure to know applicable science. To write that "Each of the recycled water constituents of concern are discussed below" is a massive deregulatory positioning that endangers public health and the environment.

CONCLUSION

This proposal must not be adopted until the State of California has a plan in place to monitor and identify all CECs and regulate the as needed.

By regulatory process, this proposal would create for the Governor his positioning as the Steve Peace of water recycling in the manner that Assemblyman Peace came to be seen to be responsible for electricity deregulation. Even though it was the brainstorm of those who agreed that they were the architects of it but who said that it's up to others to implement it.

Respectfully submitted,

Michael Garabedian, President
Friends of the North Fork (American River)
7143 Gardenvine Ave.
Citrus Heights CA 95621
916-719-7296