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

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Via E-Mail commentletters@waterboards.ca.gov

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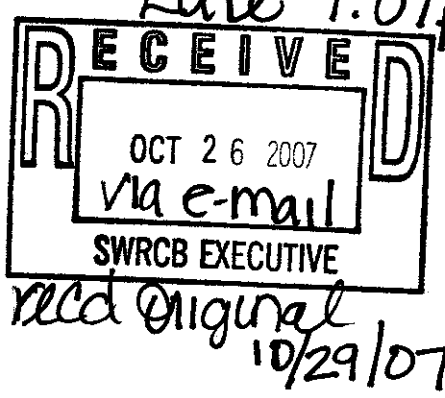

rec'd original 10/29/07

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 – proposed Water Recycling Policy
City of Oxnard, California

To Members of the State Water Resources Control Board:

The City of Oxnard ("City") thanks the State Water Resources Control Board ("State Board") for its leadership in developing the Draft Water Recycling Policy ("Draft Policy") to promote the use of recycled water. The City supports the development of a Recycled Water Policy that recognizes and treats recycled water as a resource rather than a waste product.

As described herein, the City is depending on the use of recycled water as a resource in its water supply plan. It further believes that the State of California's current and future water supply concerns mandates clear, unambiguous, and 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 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 of Oxnard (City) is home to over 190,000 people. To serve this growing population, the City's Water 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 more detail 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. State Board Resolutions and the Water Code Support and Require the Use of Recycled Water

State Board Resolution No. 77-1

State Water Resources Control Board Resolution No. 77-1 states:

"1. The California Constitution provides that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that waste or unreasonable use or unreasonable method of use of water be prevented, and that conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare;

2. The California Legislature has declared that the State Water Resources Control Board and each Regional Water Quality Control Board shall be the principal state agencies with primary responsibility for the coordination and control of water quality;

3. The California Legislature has declared that the people of the State have a primary interest in the development of facilities to reclaim water containing waste to supplement existing surface and underground water supplies;

4. The California Legislature has declared that the State shall undertake all possible steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meeting the growing water requirements of the State."

(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 which 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 a resource to offset major issues such as:

- The need to reduce dependence on the Delta.
- Preparation for drought conditions.
- Anticipation of the impacts of climate change.
- Population increase throughout the State.

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

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 provides a brackish water byproduct that can be used to help restore vital local coastal wetlands.

The GREAT Program began at the Oxnard Wastewater Treatment Plant with the construction of the Advanced Water Purification Facility (AWPF). This portion of the Project includes tertiary treatment facilities to meet the state Department of Public Health (DPH) criteria for unrestricted reuse and advanced treatment to achieve the highest recycled water quality.

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 in the optimal locations.

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, seek innovative technological means to generate solutions, facilitate partnerships, build public awareness, enhance public confidence and advocate for legislative support.

The development of the GREAT Program was made possible through a cooperative effort with partner agencies throughout the region. Years before the program was publicly unveiled, representatives from the City, Port Hueneme Water Agency, United Water Conservation District, Calleguas Municipal Water Agency and Fox Canyon Groundwater Management Agency met regularly to discuss regional water supply issues. 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 2004 authorized the Secretary of the Interior to participate in the design, planning and construction of the GREAT Program.

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 Wells, Blending Station No. 1 Desalter, and the Blending Station No. 5.

4. Comments on specific parts of the policy

(a) Groundwater recharge reuse projects

These projects are defined in Resolution Paragraph 2 of the Draft Policy as:

> A project that uses recycled water and that has been planned and is operated for the purpose of recharging a groundwater basin for use as a source of domestic supply or for the purpose of controlling salt water intrusion.

(i) Situations where there is no Maximum Contaminant Level (MCL) for a particular substance

The Draft Policy states the following about such projects:

> 14. The California Department of Public Health (CDPH) (formerly known as the Department of Health Services or DHS) is responsible for establishing maximum contaminant levels (MCLs) for constituents in drinking water to protect the health of the public who drink water supplied by water utilities. These MCLs are adopted through an extensive scientific and public review process.
>
> 15. For groundwater recharge reuse projects, MCLs and other requirements or recommendations provided by CDPH provide reasonable protection of groundwater quality for the beneficial use of municipal supply.
>
> 16. Recycled water has the potential to contain constituents not typically found in surface water or groundwater, because it is usually produced from sewage. Hence, for groundwater recharge reuse projects, to protect public health, a Regional Water Board may need to establish a limitation for a constituent for which CDPH has not established an MCL.

Paragraph 11 of the Resolution section of the Draft Policy states:

> 11. For constituents for which CDPH has not established an MCL, a Regional Water Board may interpret a narrative objective for toxicity for protection of human health to establish an effluent limitation for the constituent for a groundwater recharge reuse project, only if it finds that: (a) the constituent is present in the recycled water; (b) the constituent is likely to be persistent in groundwater in the recharge area; (c) adequate information is available to characterize the toxicity of the constituent and establish an effluent limitation; and (d) approved analytical methods are available to measure the concentration of the constituent.

City's comment: As the City understands this construct, if there is a constituent involved that has an MCL that level will have to be met in the recycled water prior to recharge. If there is no MCL, a Regional Water Quality Control Board (Regional Board) is free to establish its own limitation. What is not clear is whether or not this limitation is to be a health based level as an MCL would be, or a receiving water limitation based on some unstated set of rules.

If there is an intent to create a health based rule similar to an MCL, the City has concerns over the whether or not the methodology to be employed will be similar to that normally used to set MCLs. As stated in the Draft Policy, and noted above, "These MCLs are adopted through an extensive scientific and public review process." We would assume that the RWQCB would take a similar approach as the Office of Environmental Health Hazard Assessment does in setting the PHG (the first step to setting an MCL) and the DPH. Obviously, we would assume that the public would have an opportunity to provide input in this decision making. Notwithstanding that, however, we would like assurances that the Regional Boards are not being authorized to create a limitation which is in some manner posited as a functional equivalent to the MCL as this is solely in the purview of the DPH.

Also, by the absence of the MCL, the DPH is stating either that it does not believe a given constituent requires an MCL or that there is insufficient information available to make such a determination. Therefore, if there is some actual nexus between the effluent limitation to be determined by a Regional Board and the MCL, the City would submit that the DPH has a greater degree of expertise and responsibility as to the human health issues/risks than any one Regional Board.

In essence, the State Board is proposing to delegate this standard setting responsibility to individual Regional Boards for emerging contaminants. This is in clear conflict with DPH expertise and authority, which is also recognized in the Policy.

(ii) Situations where there is an MCL for a particular substance

The Draft Policy states:

> 10. For constituents for which CDPH has established an MCL, when interpreting a narrative objective for toxicity to develop a numeric effluent limitation for the constituent for protection of public health for a groundwater recharge reuse project, the Regional Water Board shall establish the effluent limitation at a concentration equivalent to the MCL. A Regional Water Board may establish a limitation that is more stringent than the MCL, if necessary to protect a designated beneficial use other than municipal or domestic use, such as agricultural use.

City Comment: The City is concerned that there is no definition provided as to what "equivalent" means. This should be spelled out in detail so that a recycled water provider can know what the relevant rules are which would be applied so as to avoid any ad hoc determination by a Regional Board. Further, a set of criteria issued by the State Board as to how and in what nature the Regional Boards will establish this "effluent limitation as a concentration equivalent to the MCL" should be spelled out in detail.

(iii) Issue of "Legal Control"

The Draft Policy states:

> 12. For groundwater recharge reuse projects, if a Regional Water Board finds that attenuation of a constituent will occur within soil, the vadose zone or groundwater, in lieu of establishing an effluent limitation, the Regional Water Board may establish a groundwater limitation for the constituent. If a groundwater limitation is established, the Regional Water Board shall require monitoring of the constituent in groundwater. The groundwater shall comply with the limitation at specified monitoring points. The discharger shall have legal control over the attenuation area between the discharge points and the monitoring points to prevent the use of domestic or municipal wells within the attenuation area.

City Comment: It would appear that this paragraph applies both to injection or more passive surface recharge using recycled water. This may not be a problem if, for example, a monitoring point can be cited in the middle of a street as the City could have "legal control." But in some instances it may not be so easy to accomplish this depending on the distance from the recharge the monitoring takes place.

Likewise, the term "legal control" is unclear in the context in which it is being used. One may have legal control, but have bargained away the access which presumably is what is required here.

(b) If injection wells are being used

> 14. For groundwater recharge reuse projects that use injection wells, the Regional Water Board shall require that the discharger comply with conditions established by CDPH when making its findings of non-degradation in accordance with Water Code section 13540, or, if the Regional Water Board disagrees with the conditions, the Regional Water Board shall follow the conflict resolution process prescribed in the 1996 "Memorandum of Agreement between the Department of Health Services and the State Water Resources Control Board on the Use of Reclaimed Water."

City Comment: Water Code section 13540 permits the DPH to enforce such requirements and this Draft Policy requires a Regional Board to include those requirement in its permits. It would appear that this is somewhat redundant.

(c) If spreading grounds are being used

> 15. For groundwater recharge reuse projects that use spreading basins, the Regional Water Board shall require the discharger to implement the recommendation provided by CDPH, or, if the Regional Water Board disagrees with the recommendation, the Regional Water Board shall follow the conflict resolution process prescribed in the 1996 "Memorandum of Agreement between the Department of Health Services and the State Water Resources Control Board on the Use of Reclaimed Water."

City Comment: Again, as set forth above, this would appear to be redundant.

(d) Requirements for Recycled Water Irrigation Projects

The Draft Policy defines such projects as:

> 5. For the purpose of this Policy, "recycled water irrigation projects" are defined as those projects that use recycled water primarily to meet a water supply need, instead of a disposal need.

Such projects are subject under the Draft Policy as follows:

> 7. Regional Water Boards shall require the following in waste discharge and water reclamation requirements for recycled water irrigation projects: (a) the development and implementation of a nutrient management plan; (b) compliance with the California Code of Regulations, Title 22, Division 4, Chapter 3, Recycling Criteria; (c) the recycled water to be applied in an amount that does not exceed the amount needed for the landscape or crops, taking into account evapotranspirative demand, the distribution uniformity of the irrigation system, and leaching needed to prevent the buildup of salts in soil; (d) the monthly average TDS concentration in the recycled water to not exceed the monthly average TDS concentration of the source water supply, plus 300 mg/L. The monthly average TDS concentration of the source water supply shall be the flow-weighted monthly average TDS concentration of the public water supply of the service area that generates sewage from which the recycled water is produced; (e) compliance with the federal Code of Regulations, Chapter 40, Part 122, National Pollutant Discharge Elimination System; and (f) the use of recycled water to not cause or contribute to violations of water quality objectives.

City Comments: In the prefatory comments to the Draft Policy the State Board states:

> For recycled water irrigation projects, discharges of salts to groundwater can be reasonably controlled by implementing a nutrient management plan, applying recycled water in an amount that does not exceed the amount needed for the landscape or crops, and controlling salt discharges to collection systems from industrial facilities and self regenerating water softeners. These actions represent best practicable treatment or control for controlling salts for recycled water irrigation projects.

(i) Applicable to a user?

As written, this responsibility ultimately may become that of an end user. If so, the presumption made here seems to be misplaced. One of the problems with this perspective is all the nutrients contained in recycled water can vary significantly seasonally or even from hour to hour or day to day. How can a user be responsible for maintaining the necessary balance based on that variance and based on what is likely to be a varied water demand over time. This may be a significant disincentive to the use of recycled water.

(ii) Two-step process

As was presented at the October 2, 2007 hearing on this topic, the State Board is proposing a two-step process to control and manage TDS and nitrates. The policy is intended to apply short-term prescriptive requirements for irrigation with recycled water, while a Regional Board prepares and adopts long-term plans for salt management under Water Code Section 13242. When developing long-term salt management plans, all Regional Boards should be required to work with local water agencies and other stakeholders to find reasonable and cost effective approaches to managing salts.

However, this two-step approach is not clearly stated in the Draft Policy. The Draft Policy currently states that all recycled water irrigation projects shall comply with the proposed prescriptive requirements in Section 7. No exceptions have been provided. The Draft Policy should be changed to clearly state that once a Regional Board has adopted a salt management plan for a groundwater basin, the plan shall supersede the prescriptive requirements identified in the (now) Draft Policy.

(e) Nutrient Management Plans

City Comments: There are several places in the Draft Policy that reference Nutrient Management Plans. (Paragraphs: 9, 24, Resolution 3, and 7). As to the Nutrient Management Plans themselves, the Draft Policy includes requirements for the development and implementation of a nutrient management plan for irrigation projects, where "nutrient management" is the act of managing the amount, source, placement, form and timing of plant nutrients and soil amendments.

At the October 2, 2007 public meeting, it was stated the nutrient plan would be required from each user of recycled water. The Draft Certified Regulatory Program Environmental Analysis for the Draft Policy states that this approach would be economically and technologically feasible and would provide as much protection of water quality as any other method. However, the analysis fails to provide any documentation on costs of implementation and anticipated water quality results that would support this conclusion. Development of nutrient management plans will place a significant workload on the Regional Boards, recycled water suppliers and users, all of which will pose an impediment to use of recycled water. In some groundwater basins, nutrient management by recycled water users may not be necessary where nitrate concentrations in the groundwater are very low and the potential impact of nitrate in the recycled water is insignificant.

The City does agree that efforts should be made to educate recycled water users on the impacts to groundwater basins and surface water runoff that are caused by the over-application of nutrients. As an alternative to nutrient management plans, the City recommends that existing training programs for recycled water site supervisors emphasize or develop a component on nutrient management.

(f) TDS limitations

City Comments: The proposed policy states that the TDS concentration in recycled water may not exceed the monthly average TDS concentration in source water plus 300 mg/L. The Draft Certified Regulatory Program Environmental Analysis states that the 300 mg/L increment was selected as being a difference that the majority of recycled water producers can meet, but provides no documentation substantiating this claim. Many recycled water users will have difficulty meeting this standard. While we agree that TDS control is important, the State Board, in association with various stakeholders, should do further analysis to establish a reasonable standard.

(g) NPDES Compliance

In reference to the NPDES compliance, the Draft Policy states:

> 7. Regional Water Boards shall require the following in waste discharge and water reclamation requirements for recycled water irrigation projects: ... (e) compliance with the federal Code of Regulations, Chapter 40, Part 122, National Pollutant Discharge Elimination System..

City Comments: The Draft Policy fails to state how a recycled water user would comply with these requirements. The California Constitution provides that the water resources of the State be put to beneficial use to the fullest extent possible. Compliance with NPDES requirements should be implemented in a manner that protects surface water supplies, while at the same time allowing the beneficial use of recycled water for irrigation. Recycled water beneficially used for irrigation should be characterized in the same manner as irrigation water from other sources of supply.

In order to optimize the use of staff resources at a Regional Board, and allow for use of BMPs to prevent runoff, the City recommends that the Draft Policy state that compliance with NPDES requirements may be achieved through MS4 regulation of non storm-water discharges under existing permits.

(h) Liability

The Draft Policy states:

> (Resolution) 17. Compliance with requirements based, in whole or in part, on this Policy does not exempt a discharger from liability for contamination of groundwater. If drinking water standards become more stringent after a Regional Water Board establishes requirements for a project, the discharger shall be liable, under Water Code section 13304 or other applicable provisions of law, for any past or continuing discharge that has caused, is causing, or threatens to cause groundwater to violate the new or more stringent drinking water standard(s). This liability may include the provision of an alternative water supply or wellhead treatment to any affected parties.

City Comment: There are a myriad of questions that are raised by this paragraph. The City highlights below the major concerns in hopes that this stimulates the appropriate dialogue on this point.

(i) "Liability"

(1) How is the term "liability" used here? Is it meant in a civil damage context? Is it meant to connote responsibility for remediation?

(2) The issue of no exemption of liability requires asking questions. From whom or what? To the State Board/Regional Boards? The public at large? A water right holder? A water user?

(3) Was it the intent to have this applicable to all uses of recycled water? Was there intent to relate this only to recharge and not irrigation uses? And if so, why?

(ii) Is this statement needed?

City Comment: To the extent that there is any interpretation that the Draft Policy is in any way changing or attempting to change the law, it should be clarified or dropped altogether.

There is, of course, an initial question as to whether the State Board can impose what amounts to a finding of strict liability (you are liable if you perform an act). An agency of the State only has the power granted to it by the Legislature. The City finds no where in any legislation that the State Board has been granted the authority to make law.

Further, to the extent that the policy of this State is to increase the use of recycled water, the assertion by the State Board is inapposite to such a policy. That is, shouldn't the State Board be a champion of protecting suppliers and users from the unknowns that come to light in the future? The City believes that they should. If Legislation is needed to protect suppliers, the State Board should be in the forefront of all efforts to obtain that legislation.

Recent rulings by the California Supreme Court and the Court of Appeals set forth ample reasoning that demonstrate the rationale to support a position that there should be no "liability" to accrue in the future when the water supplier meets the standards at the time of use of the recycled water.

The Supreme Court ruling in *Hartwell v. Superior Court* (2002) 27 Cal.4th 256 created a safe harbor for water utilities regulated by the Public Utilities Commission ("PUC") against personal injury suits relating to "contaminated drinking water". After remand to the Superior Court, and a trial, the Court of Appeals in the *In Re Groundwater Cases* (Cal.App. 1 Dist, 2007) 154 Cal.App.4th 659, stated that Government Code Section 815.6 provides an avenue for immunity for a public agency relating to the service of water. While the context in these opinions was the service of water for public consumption, the logic applies equally here given the strict rules and regulations regarding the quality, treatment, distribution and usage of recycled water. Government Code Section 815.6 provides:

> Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

Citing to cases interpreting this statute, the Court of Appeals noted that they establish a three-pronged test for determining whether liability may be imposed on a public entity: (1) the enactment in question must impose a mandatory, not discretionary, duty; (2) the enactment must be intended to protect against the kind of risk of injury suffered by the party asserting the statute as the basis of liability; and (3) the breach of duty must be a proximate cause of the plaintiff's injury. The Court concluded that:

> Because we conclude that none of the statutes identified by plaintiffs in their brief to this court can be construed as creating a mandatory duty, we hold that plaintiffs have failed to state a claim against the Public Entity Defendants under Government Code section 815.6. Accordingly, the Public Entity Defendants'

> sovereign immunity barred the trial court from hearing plaintiffs' claims against the Public Entity Defendants, and their motions to dismiss were properly granted.

So stating the Court found that as long as the Public Entity Defendants followed the DPH rules and regulations relating to drinking water, they could not be held liable for contaminants not yet determined to be a health issue should some harm become apparent in the future. That is, there can be no future liability for delivery of drinking water with a substance for which an MCL does not exist.

The same must apply here, or the risk of using recycled water becomes untenable. The City recommends that this paragraph either be stricken or replaced as follows:

> (Resolution) 17. It is the position of the State Board that compliance with all appropriate State of California recycle water supply and usage standards, and this Policy, should exempt a discharger, whether under Water Code Section 13304 or other applicable law, for any past or continuing discharge that has caused, is causing, or threatens to cause groundwater to violate a new or more stringent drinking water standard(s).

(iii) Financial Means Test

The Draft Policy states:

> 18. The Regional Water Board shall include at least the liability description in paragraph No. 17 in requirements for groundwater recharge reuse projects. In addition, Regional Water Boards may, at their discretion, require project owners to pass a financial means test or otherwise provide financial assurances of their ability to bear such liability. Regional Water Board staff shall consult with appropriate State Water Board staff prior to recommending specific language implementing any such financial means/assurance requirements.

City Comment: The financial means test should be applied uniformly across the state. As such, the Draft Policy should contain the necessary aspects of the policy such that project owners may be treated equally wherever in the state they may be. There would appear to be nothing about such a test that would relate per se to any particular basin or condition of the basin. The purported idea apparently is the desire to have the owner be able to respond to the "liability" financially. But perhaps a more fundamental question should be why such a test is even necessary? The City does not see this as a meaningful suggestion, and if needed here, will it then be sought in other projects or programs? The City believes this entire paragraph should be eliminated.

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
On behalf of the City of Oxnard
For HATCH & PARENT
A Law Corporation

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