D R A F T

Response to Comments

Proposed Recycled Water Policy

State Water Resources Control Board

January 30, 2009

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C. PREAMBLE

Comment Summary a: The proposed Policy needs clarification as to whether it applies to recycled water produced from sources other than municipal wastewater. (17.1, 17.2, 25.2, 68.1, 105.1, 107.1)

Response:
The proposed Policy has been edited to provide clarification.

Comment Summary b: Several comments were received concerning the goals listed in the preamble. (16.5, 18.1, 20.8, 20.7, 34.1, 46.2, 46.3, 46.4)

Response:
The goals are not regulatory requirements.

Comment Summary c: The recitation of symptoms does not address the fundamental cause of the effects enumerated – the failure to plan and develop an adequate water storage and delivery infrastructure. (46.1)

Response:
As expressed in the State Water Plan Update, a portfolio of methods must be used to provide supply necessary to meet California's water demands, including the development of additional water storage and delivery infrastructure. The regulatory provisions in the proposed Policy are intended to address one aspect of water supply – recycled water – and address regulatory issues concerning this supply.

Comment Summary d: Storm water should be removed from the proposed Policy and addressed in its own policy. (45.9)

Response:
The storm water provisions in the proposed Policy are not regulatory requirements.

PURPOSE

Comment Summary a: Add truly before unique on line 64. (16.6)

Response:
Truly is an unnecessary modifier for unique.

Comment Summary b: On line 58, add a sentence stating that nothing in this Policy is intended to interfere with the use of existing water projects or to prevent water agencies of the State of California from developing new sources of water. (49.5)

Response:
Although it is true that it is not the intent of the proposed Policy to discourage the development or use of storm water capture or groundwater recharge facilities that do

not recharge with recycled water, we do not consider the proposed edit to be necessary. The proposed Policy places no restriction on these facilities.

Comment Summary c: Add language to section 2 (Purpose of the Policy) to clarify that existing master reclamation permit holders would be allowed to continue coverage under their current permits. (70.1)

Response:
Under the proposed Policy, existing master reclamation permit holders would be allowed to continue coverage under existing master reclamation permits unless a permit is renewed. Upon renewal, the existing permit holders would be subject to the requirements of the proposed Policy. The additional clarifying language is unnecessary.

BENEFITS

Comment Summary a: Two comments were received concerning language in the Section 3 - Benefits of Recycled Water (8.7, 16.8)

Response:
This provision is not a regulatory requirement.

MANDATES

Comment Summary a: With respect to draft Policy paragraph 4.a.2, it is not appropriate to insert specific terms and conditions on agreements to use recycled water, rather language should remain open between interested parties. Accordingly, the second sentence in paragraph 4.a.2 should be deleted. As a commodity, the price of recycled water should be negotiated among interested parties. (13.1, 116.1)

Response:
Paragraph 4.a.2 does not require any particular terms or conditions. The sentence proposed by the commenter to be deleted reads as follows: “Such terms and conditions may include payment by the water purveyor of a fair and reasonable share of the cost of the recycled water supply and facilities.” Use of the optional term “may” as opposed to the mandatory “shall” indicates that interested parties may negotiate any reasonable terms and conditions.

Comment Summary b: Given the legislative mandate to increase the use of recycled water, paragraph 4.a.1 of the draft Policy should be amended to provide that the mandated increases in recycled volumes of 200,000 afy by 2020 and 300,000 afy by 2030 are minimum quantities to be achieved. This could be achieved by inserting the term “at least” in front of the numeric mandates of 200,000 and 300,000 afy. (16.9)

Response:
The mandated increases were selected based on an estimate of what is economically and technically feasible without imposing any unreasonable burden on the regulated

community. While the State Water Board supports greater increases, as reflected in the goals stated in paragraph 1 of the draft Policy, making the suggested revision would do little to achieve them. For instance, by changing the mandated increase from 200,000 afy to “at least” 200,000 afy, the regulated community could comply with the suggested revision by increasing use of recycled water by 200,001 afy.

Comment Summary c: Any mandated increases in recycled water supplies should identify the available funds or condition the mandate on the availability of funds. Although paragraph 4.b provides that “these mandates assume that there will be sufficient capital funding for the construction of recycled water projects . . .”, the apparently conditional nature of the mandates would be more clear if this sentence were revised to read: “These mandates are contingent upon the availability of sufficient capital funding . . .” (15.1, 18.2, 38.1, 49.2).

Response:
The draft Policy has been revised to incorporate this edit.

Comment Summary d: The State Water Board is to evaluate progress towards the mandates biennially, etc. There currently are no reporting requirements, mechanisms, databases, or procedures in place to enable the State Water Board to receive, compile and collate recycled water use information throughout the state. (18.3)

Response:
If the draft Policy is adopted by the State Water Board, State Water Board staff intend to make use of existing State Water Board databases to collect the required information.

Comment Summary e: It is our understanding that the term "water purveyor" in the context of paragraph 4.a.2 refers to an entity which is either a water retailer or a water wholesaler and not simply a water user/customer. If we are incorrect in our understanding please clarify. (24.1)

Response:
This understanding is correct. It is well understood in the regulated community that the term “water purveyor” applies to water providers, whether retail or wholesale, and does not apply to users/customers. The plain meaning of the term “purveyor” supports this understanding.

Comment Summary f: All references to “mandates” in the draft Policy should be changed to “goals.” (40.1).

Response:
It is the intent of the State Water Board to include both mandates and goals in the draft Policy. The mandates represent increases in water recycling that can be reasonably achieved by 2020 and 2030 based on information currently available. The goals are not required, but are encouraged to carry out the intent of the Legislature to maximize water

recycling. Meeting the goals should become increasingly feasible as technology advances.

Comment Summary g: It is unclear whether the Policy represents a binding regulation applicable to all purveyors of recycled water or a "guidance" document. (44.2)

Response:
The draft Policy contains both regulatory provisions and non-regulatory guidance. Use of mandatory terms, such as “shall” indicate regulatory provisions. Use of permissive terms, such as “may” indicate non-regulatory guidance.

Comment Summary h: Paragraph 4.a.3 should be modified to further clarify that it is not "waste" for purposes of the Water Code if water is not recycled because of concerns that such recycling would cause injury to downstream riparians or others that may possess rights in treated wastewater return flows. See Water Code Sections 1211(a), 1702; and Order WR 2008-0024 (City of Riverside Change Petition WW-045). (44.5)

Response:
As the comment notes, the State Water Board addresses this issue through the water rights process it administers. The cited paragraph in the draft Policy provides that the State Water Board shall exercise its authority under Water Code section 275 to the fullest extent possible to enforce the mandates in the draft Policy. The “fullest extent possible” limitation recognizes that there may be situations, such as those cited by the commenter, where the mandates cannot be enforced. A change to the proposed Policy is not necessary.

Comment Summary i: The Policy should use consistent units in describing its goals and mandates, and clearly state the benchmark values to be used for comparison of future accomplishments. Both the goals and mandates include specific numeric quantities. The quantities are presented in different units in the goals than in the mandates paragraph. (54.1, 64.1)

Response:
State Water Board staff has revised the draft Policy to include consistent units in its description of both the goals and mandates. With respect to the benchmark values to be used as a baseline for comparison, State Water Board staff intend to obtain this information from the Regional Water Boards and other sources.

Comment Summary j: Under paragraph 4.a the State Water Board appears to go well beyond its statutory obligations when it requires water agencies to sell their recycled water to others who might use it. (60.1)

Response:
The State Water Board has the constitutional and statutory power to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water. See Water Code section 275 and Section 2 of Article X of the California

Constitution. This power is sufficiently broad to authorize the mandates required by draft Policy paragraph 4.a.

Comment Summary k: The Draft Policy should note that regardless of the fund availability, the recycled water policy will be issued and carried out to the best of all participants' abilities. Add the following to the end of paragraph 4.c: "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." (16.10).

Response:
As specified in paragraph 4.a the State Water Board intends for the mandates to be contingent upon the availability of funding. However, no other regulatory provisions of the draft Policy are contingent upon adequate funding.

Comment Summary l: State Board staff should make it clear that the intent of the policy is to expand recycled water use not be an impediment to more widespread recycled water use. (117.4).

Response:
The description of goals for increased use of recycled water in proposed Policy paragraph 1 and mandates to increase the use of recycled water in proposed Policy paragraph 4 make it clear that the intent of the proposed Policy is to expand recycled water use.

Comment Summary m: Section 4 of the proposed Policy should reference the Water Recycling Act of 1991, which includes findings, declarations, and policies regarding the use of recycled water. (52.1)

Response:
Although we agree that the Water Recycling Act of 1991 is significant and contains important findings, declarations, and policies, it is not necessary for the Policy to specifically reference all relevant statutes.

AGENCY ROLES

Comment Summary a: What agency is responsible for the protecting the public from pathogens transmitted into the air when recycled water is used for irrigation? (5.26)

Response:
It is CDPH which establishes appropriate levels of treatment for pathogen reduction to be protective of human health for all uses of recycled water, including landscape irrigation. Both CDPH and the Water Boards are responsible for enforcing violations of these standards in water reclamation requirements. The water reclamation requirements include the water recycling criteria in CCR Title 22. The water recycling criteria include treatment requirements, disinfection requirements, and necessary setbacks to protect the public from pathogens.

Comment Summary b: The CDPH drinking water standards (Maximum Contaminant Levels (MCLs)), are out of date. Relying on them will not protect public health. (8.9)

Response:
Rather than containing specific standards, the proposed Policy appropriately requires implementation of CDPH's recommendations for groundwater recharge reuse projects. The recommendations, in the past, have implemented the MCLs. CDPH is the agency responsible for determining which drinking water standards are protective of public health.

Comment Summary c: Edit lines 139-141 to require the Regional Water Boards to defer to the expertise of CDPH for the establishment of permit conditions necessary to protect public health. (16.11)

Response:
Water Code section 13523 states that State Water Board shall issue water reclamation requirements after consulting with CDPH. The proposed edit is not consistent with the language in the Water Code.

Comment Summary d: The proposed Policy should include more information on the function of the CPUC. (15.3)

Response:
The Public Utilities Commission has a limited role in this matter, since it regulates privately-owned utilities, and most recycled water is produced and delivered by publicly-owned agencies. In addition, as stated in the paragraph 5.e of the proposed Policy, its role is to approve rates and terms of service. This role is specified in Water Code section 13580.8. We do not consider addition language to be necessary.

Comment Summary e: . Where is it that your board is to comply with the provisions of Water Code sections 13521 and 13522 and Health and Safety Code sections 5410 and 5411? It appears that the public has not standing on this. (27.2)

Response:
Agency compliance with state law is always assumed, and it is not necessary for the proposed policy to specify each legal requirement that must be met.

Comment Summary f: Local agencies must have input into the permitting process for projects within their jurisdiction with the potential to impact existing water supplies. (45.5)

Response:
Under the proposed Policy, water reclamation requirements or waste discharge requirements would continue to be adopted at a public Board Meeting after proper notice and after hearing comments from interested parties.

SALT/NUTRIENT MANAGEMENT PLANS

Comment Summary a: Salt/nutrient management plans cannot be developed within five years. The State Water Board should adopt a policy that facilitates cooperation among stakeholders to attain the basin or sub-basin salinity or nutrient objectives in a cost effective manner. Language should be added to clarify how projects should proceed in the interim while salt/nutrient management plans are being developed. A one year implementation process is insufficient time for adequate industry and public input. (8.12, 9.1, 29.3, 34.4, 37.1, 46.6, 64.4)

Response:
The five year time frame provided is ambitious, but it is intended to provide an impetus for the local stakeholders to work collaboratively to produce these plans, which are needed statewide. The salt nutrient management plans for those basins or sub-basins that are not experiencing salt/nutrient degradation may be relatively short and straightforward. For areas with salt/nutritent degradation, by comparison, even complex TMDLs may be completed and adopted as basin plan amendments within five years. If it takes longer, it is often not because more time is needed to complete technical analyses but rather because the stakeholders cannot come to agreement. For the salt/nutrient management plans, agreement is more likely because the State Water Board understand that local water and wastewater entities, together with local salt/nutrient contributing stakeholders, will fund locally driven and controlled processes to prepare salt/nutrient management plans. However, if stakeholders have not completed the plans but are making progress in developing the salt/nutrient management plans, the proposed Policy allows an additional two years to complete their proposal. Wastewater and water agencies as well as the public are considered to be stakeholders and the proposed Policy clearly specifies that the collaborative process is open to all stakeholders.

The proposed Policy promotes a collaborative stakeholder approach, as stated in Line 181 of the proposed Policy.

Section 9 provides interim procedures for applying the Anti-degradation Policy while the salt/nutrient management plans are being developed. Additional interim requirements for the proposed Policy are not necessary.

Regarding the one-year time frame in paragraph 6(b)(2), this time frame should be adequate to Regional Boards to review proposed salt and nutrient management plans and conduct the public review process. The State and Regional Water Boards are mandated by law to issue a public notice and hold a hearing before adopting any Basin

Plan amendment such as a salt/nutrient management plan. This affords the public ample opportunity to participate in the process.

Comment Summary b: The agencies have not committed funds, and may not be able to commit funds, to the development of the salt/nutrient management plans as stated in the proposed Policy and staff report. Where is the letter committing the water agencies to funding? The phrase "have agreed to fund" is not accurate and the Policy should use the original language that the stakeholders presented to the State Board. (13.2, 14.5, 16.12, 25.3, 33.7, 34.2, 38.2, 45.6, 56.2, 64.2, 65.5, 70.8, 116.4)

Response:
The State Water Board understands that local water and wastewater entities, together with local salt/nutrient contributing stakeholders, will fund the collaborative process to prepare these plans. The letter dated December 19, 2008, to the State Water Board from the Association of California Water Agencies, the California Association of Sanitation Agencies, and the WateReuse Association is posted at http://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/index.shtml. Although resources are currently scarce, it is in the agencies' interest to have the salt/nutrient management plans completed to ensure long-term protection of groundwater resources and to reduce regulatory uncertainty.

Comment Summary c: The Regional Water Boards should not abdicate their planning responsibilities to local stake holder groups. (8.11)

Response:
The proposed Policy promotes a collaborative effort among stakeholders to develop the salt/nutrient management plans. Ultimately, however, the Regional Water Board will retain the authority to approve or disapprove any proposed salt/nutrient management plan. Furthermore, paragraph 6(b)(1) of the proposed Policy specifies that Regional Boards participate in the development of the plans.

Comment Summary d: Salt/nutrient management planning should be prioritized and requirements should be consistent. Not all basins need them. In many areas of the state there are no groundwater basins or groundwater tables. Groundwater monitoring for salts and nutrients is not necessary or even feasible in every basin and sub-basin. (14.2, 16.13, 16.14, 19.1, 19.2, 20.10, 20.11, 20.12, 21.3, 23.1, 24.3, 30.1, 35.1, 36.1, 42.1, 44.6, 51.1, 56.1, 58.1, 58.2, 60.4, 60.6, 63.1, 63.2, 65.3, 65.4, 69.2, 100.1, 105.2)

Response:
We agree that salt /nutrient management planning should be prioritized. However, this does not necessarily mean that only some basins need to have the plans. Having the requirement in effect on all basins and sub-basins ensures that all will be duly assessed and fully considered. The plans can then be tailored to address the water quality concerns in each basin. Salt/nutrient management plans for basins that are not impaired by salts or nutrients will require less effort. One purpose of the salt/nutrient management plans is to provide direction to permitting staff on how to establish

limitations for salts and nutrients. In some cases, if salts and nutrients are not increasing in concentration within a basin, perhaps due to high rainfall, the salt/nutrient management plan may find that limitations for salts and nutrients in recycled water used within the basin are not necessary.

Comment Summary e: Salt will not break down and will accumulate, making the goal for a sustainable discharge unrealistic. Assessing basin/sub-basin assimilative capacity, loading estimates, and fate and transport of salts and nutrients are very complex matters, and the data required are likely largely missing. The same information for all other contaminants also is needed. The difficulties of managing the load of all the myriad contaminants present in recycled water, source water, and storm water runoff on a sustainable basis must be addressed. (8.14, 13.2, 28.6, 28.8, 28.9, 29.4, 29.5, 116.2)

Response:
When a salt/nutrient management plan is completed, it may be found that the accumulation of salts within a basin cannot be prevented without either prohibiting the importation of saline waters into the basin or removing the salt from the basin and disposing of it elsewhere. Although the goal of the proposed Policy is to protect groundwater so that it can be used on a long-term basis, an outcome could be a decision to only reduce the rate of degradation.

Groundwater data is available from the State Water Board's Groundwater Ambient Monitoring Program (GAMA) program, the California Department of Health Services, and other sources. To complete a salt/nutrient management plan, however, additional data may have to be collected. As the commenter stated, the analysis of this data could be complex and resources will be needed to complete these analyses. Therefore it is significant that local and water and wastewater entities, together with local salt/nutrient contributing stakeholders, will fund the collaborative processes to prepare these plans.

Comment Summary f: Public agencies can only manage controllable sources to the extent practicable. Storm water recharge and use goals should be coordinated with local agencies that have responsibility for flood control and storm water design. This is not necessarily waste water management agencies and may include city and county governments. (13.2, 24.5, 116.3)

Response:
A requirement of the proposed Policy for the salt/nutrient management plans is the identification all sources of salts and nutrients and appropriate controls. During the development of the salt/nutrient management plans, it may be found that some of the sources are not controllable by public agencies and the salt/nutrient management plans would have to account for this in the salt/nutrient management plan. It is expected that flood control agencies will participate as stakeholders in developing and implementing the salt/nutrient management plans. Paragraph 6(b)(1) of the proposed Policy clearly states that the collaborative process to develop the plans is open to all stakeholders.

Comment Summary g: Salt/nutrient management plans should address and implement provisions, as appropriate, for all sources of salt and/or nutrients to groundwater basins, including storm water captured from many land uses. Consideration should be given to geological limitations for groundwater recharge. Allowance should be made for storm water that is already being captured in surface water reservoirs for domestic use, and also, to address potential adverse impacts, so that proactive measures can be taken in advance of definitive adverse impacts to groundwater quality. (2.1, 13.2, 16.20, 18.4, 28.3, 34.3, 37.2, 37.3, 37.4 54.3, 101.1)

Response:
Paragraph 6(b)(3)(d) of the proposed Policy requires the identification of sources of salt and nutrients. Storm water is one of these sources and the salt/nutrient management plans will have to consider its recharge and salt/nutrient loads.

Comment Summary h: Consider changing objectives to meet natural conditions, not necessarily establish regional or basin wide standards, but rather be aquifer specific. Change groundwater basin/sub-basin to basin, sub-basin, or watershed. (20.9, 39.1, 116.5, 117.2)

Response:
A change is not necessary. A salt/nutrient management plan can include a proposal to modify water quality objectives so that they are consistent with existing natural conditions. Any such proposal would have to be consistent with the Anti-degradation Policy (Resolution No. 68-16) and Water Code section 13242. The proposed Policy also allows the development of salt/nutrient management plans that address a basin, sub-basins, multiple basins, or individual aquifers. The proposed Policy does not prevent a Regional Water Board from combining multiple sub-basins and proceeding with the planning process on a watershed basis, as appropriate.

Comment Summary i: Baselines of groundwater quality in each basin/sub-basin should be established to develop basin specific standards. Are baselines for the basins being set as the monitoring is being performed? How does the State Water Board know when the basins are being threatened if no previous baseline data has been recorded? Is applying salt/nutrient management plans requirements retroactive after implementation of a water recycling project? Will Regional Water Boards revise salt/nutrient management plans prior to incorporating them into the implementation sections of pertinent basin plans? Will there be an opportunity for public notice and comment prior to adoption? (20.1, 40.3, 44.8)

Response:
Many basins have existing date to evaluate whether they meet water quality objectives, In other areas, after compiling existing data, some additional monitoring may have to be performed.

An adopted salt/nutrient management plan would apply to all discharges to a basin, even ongoing, pre-existing discharges.

When considering a salt/nutrient management plan, a Regional Water Board would have the authority to make revisions. The salt/nutrient management plans would be adopted through the standard process for adoption of basin plan amendments. This is a public process that includes public notice and opportunity for comment.

Comment Summary j: The proposed Policy does not address the disposal of salts removed from a basin. The Policy should support regional salt and nutrient disposal options and projects that facilitate the achievement of Basin Plan objectives. In impaired watersheds. new recycled water projects may be difficult to initiate even though they do not interfere with beneficial uses. Plans should include an expedited process to consider what are the appropriate beneficial uses and also whether existing basin plan standards are necessary to ensure those uses are met. (29.6, 100.2)

Response:
We agree that some salt/nutrient management plans will have to explore salt and nutrient disposal options. We do not, however, consider it necessary to add language concerning this to the proposed Policy. Paragraph 6(b)(3)(e) of the proposed Policy provides general language requiring implementation measures to manage salt and nutrient loadings on a sustainable basis, which is adequate for policy purposes. We agree that plans should include the review of beneficial uses and basin plan standards.

Comment Summary k: Salt and nutrient management plans are two completely separate issues. Nutrient management planning in the same context as salt management planning is not needed. (13.2, 33.6, 40.6, 44.4, 65.2, 70.7)

Response:
Many groundwater basins of the state have concentrations of nitrates that are higher than the drinking water standard. The sources of nitrates are numerous and include septic tank/leach field systems, dairies, fertilizers used for both farms and urban/suburban landscapes, and recycled water. Not all of these sources are rigorously regulated with respect to discharges of nitrate. The salt /nutrient management plans would identify the sources and appropriate control methods for nutrients so as to provide additional controls for sources of nitrates. Nothing in the proposed Policy would prevent the creation of separate plans – one for salts and the other for nutrients – if this is found to be the more effective way to address these constituents.

Comment Summary l: Any permit issued before a salt/nutrient management plan is in effect should demonstrate compliance with the anti-degradation policy over the lifetime of the project, not an arbitrary period (e.g. 10 years). (45.4)

Response:
The proposed Policy does not establish any time periods after which the 10 percent and 20 percent limitations on degradation would cease to apply. These limitations, which apply before a salt/nutrient management plan is in effect could only be superseded by

the adoption of a salt/nutrient management plan that complies with the requirements of the proposed Policy.

Comment Summary m: It would be nearly impossible for some lower San-Joaquin Basins to develop a salt/nutrient management plan given that neighboring interests are the sources of salts and uninterested in placing further burdens on themselves. We recommend that regulators set water quality standards and enforce them, rather than place a burden on Delta and San Joaquin County interests. The State Water Board and the Regional Water Boards should act now to clean up the river. (60.5)

Response:
The primary purpose of the salt/nutrient management plans is to protect groundwater quality. If groundwater that underlies the South-San Joaquin Delta is naturally saline and is not designated for municipal or agricultural use, then the salt/nutrient management plan can acknowledge this condition and not establish controls to protect these uses. Salinity in surface water in the lower San-Joaquin Basin is being addressed through other processes.

Comment Summary n: In impaired watersheds, where Total Maximum Daily Loads (TMDLs) will be prepared, the process for developing salt/nutrient management plans may be duplicative with the TMDL development process. Board staff should clarify how the timing and requirements associated with the development of the salt/nutrient management plans are to be reconciled with the TMDL development process in order to achieve maximum efficiency. (44.7)

Response:
The primary purpose of the salt/nutrient management plans is to protect groundwater quality. TMDLs are required only for surface water, not groundwater.

Comment Summary o: In Paragraph 6.b (4), the last sentence states that "No Regional Board, however, shall seek to modify Basin Plan objectives without full compliance with the process for such modification as established by law." This sentence is not necessary as all it says to the Regional Water Boards is not to do something they are not allowed to do anyway. It is a slap at the Regional Boards that is not called for and not needed in the policy. (7.1)

Response:
The proposed Policy is emphasizing the State Water Board's desire that basin planning statutes be fully followed. It is not uncommon for policies to emphasize the need for compliance with existing legal requirements. A change to the proposed Policy is not necessary.

LANDSCAPE IRRIGATION PROJECTS

Comment Summary a: A definition for *project* should be provided so that individual users are not subject to the requirements of the proposed Policy. (12.2, 14.1)

Response:
The context of the proposed Policy makes it clear that a landscape irrigation project is one that uses recycled water for irrigation. The proposed Policy does not make a distinction between producer-owned and user-owned projects. Hence, the requirements apply to both producers and users. The allocation of responsibilities will be specified in waste discharge and water reclamation requirements that implement the proposed Policy.

Comment Summary b: The opening sentence of section 7(c) does not appear to limit the use of the permit streamlining provisions to landscape irrigation projects as it states that "Irrigation projects using recycled water that meet the following criteria are eligible for streamlined permitting..." The section should be revised to resolve and clarify the apparent ambiguity. (16.16)

Response:
Since the language is in the section on landscape irrigation projects, it is clear from the context that the sentence is referring to landscape irrigation projects.

Comment Summary c: The proposed Policy assumes that all recycled water is acceptable for landscape irrigation purposes, regardless of salinity. Although this is generally correct, there are plants and grasses that have sensitivity to certain constituents in recycled water (e.g. sodium and/or chloride). Under such circumstances, the use of recycled water would be detrimental to the health of plants and grasses. (29.8)

Response:
Producers should provide recycled water that will not damage plants in landscapes. However, the contractual relationship between the producer and the user is the appropriate forum to address this issue. Waste discharge requirements and water reclamation requirements are established to protect public health, surface water quality, and groundwater quality, not landscape plants.

Comment Summary d: Incidental runoff from recycled water is essentially the equivalent to runoff from potable water and therefore should not be considered a threat to water quality and should be managed in a manner comparable to runoff from potable water. (1.1, 12.1, 13.3, 14.4, 19.4, 22.2, 23.4, 25.4, 30.3, 34.5, 36.3, 42.2, 43.1, 51.5, 56.5, 63.5, 69.4, 70.2, 101.2, 113.1)

Response:
Discharges from wastewater treatment plants to waters of the United States require NPDES permits. This requirement applies regardless of whether the discharge is directly into a stream or onto a field from which the water flows into a stream. The proposed Policy states that any discharge must comply with the NPDES regulations. It also establishes management practices to ensure that any discharge to a municipal

storm sewer system is incidental, as defined in the proposed Policy, so the storm sewer system does not violate its NPDES requirements.

Comment Summary e: The draft policy defines incidental runoff as unintended, small amounts of runoff from recycled water use areas, such as unintended, minimal overspray from sprinklers that escapes the recycled water use areas. The terminology used is this definition is too vague and subject to interpretation (e.g. small amounts; unintended; minimal over spray; water leaving water use area*)*. The proposed Policy should be modified to expressly state that the Water Boards must follow the mandates of existing state and federal laws. (14.4, 16.15, 19.4, 23.4, 30.3, 35.4, 36.3, 42.2, 64.5; 40.9; 47.2)

Response:
The proposed Policy provides a definition for incidental runoff. The terms used in the definition are common terms, and it is not necessary for policies to introduce new definitions of terms for which adequate dictionary definitions already exist. To provide numerical definitions of such terms as "small" and "minimal" would not be possible, given the wide variation of conditions around the State, and would unnecessarily complicate the proposed Policy. It is understood that Water Board must follow legal mandates without stating this in the Policy.

Comment Summary f: The language regarding incidental runoff is overly detailed and prescriptive for a policy and includes permit-like language related to leak detection, aim and design of sprinkler heads, rain events, and pond discharges. Conditions regarding practices that are appropriate for a particular site should be left to the permitting process. The language should be revised to delete the specific requirements set forth in Section 7(a)(1) through (4) and replaced with a simple statement that water recyclers shall develop and implement an operations and management plan that provides for compliance with the site control requirements of Title 22. (12.1; 14.4; 19.4; 22.2; 23.4; 25.1, 25.4; 30.3; 34.5; 35.4; 36.3; 42.2; 43.1; 51.5; 56.5; 58.4; 63.5; 65.1, 110.1, 111.1, 114.1)

Response:
A purpose of the proposed Policy is to establish uniform requirements throughout the state. To achieve this objective, the proposed Policy includes certain permit-like language for inclusion in permits. The language is uniformly applicable and not dependent on site-specific conditions. The inclusion of detailed requirements for this particularly contentious issue is appropriate so that there is a clear statewide directive in place that need not be disputed in every one of the numerous permits issued throughout the state.

Comment Summary g: The Policy requires prior approval from the Executive Officer for discharges from ponds due to 25-year, 24-hour or greater storm events. It is not clear what ponds are covered under this section. Are they wastewater storage ponds? Are they ponds receiving runoff from irrigation areas? A 100-year, 24 hour storm event is a more common design storm for "acts of god" in wastewater civil engineering

projects. Under waste discharge requirements, wastewater ponds are generally required to have a capacity to hold a 100-year, 24-hour storm event.

Users will encounter logistical problems in complying with this requirement. For example, drawdown of storage ponds in the fall for a precipitation event that may or may not happen during the winter or spring is gambling at best and poor management at worst. During a 25-year, 24-hour storm event the amount of diluted recycled water leaving the use area seems trivial given the total amount of water and other pollutants now present in the watershed based on these outlier events.

The proposed language requires "prior approval for the discharge by the appropriate Executive Officer." Such approval may not be legal or appropriate for a Policy rather than a permit. This condition is vague and incomplete, the means or legality of its implementation is unclear, and should be removed or revised. (7.2, 8.17, 33.5, 38.3, 40.11, 48.1, 54.5, 61.1, 61.2, 70.3, 70.4)

Response:
Since the requirement is in a policy on recycled water in a section on landscape irrigation projects, it is clear from the context that the proposed Policy is referring to ponds that store recycled water for at irrigation use sites.

The 25-year, 24-hour storm event is a reasonable frequency to use. Since the ponds contain treated recycled water, not untreated wastewater, a spill from the pond, although unfortunate, would not be expected to cause serious environmental damage. A requirement to design and manage for the 100-year storm event is unnecessarily restrictive.

Regarding the matter of Executive Officer approval of pond discharge, staff plans to propose an edit to the proposed Policy that would delete the reference to Executive Officer approval and require instead notification of the Executive Officer.

Comment Summary h: The standard for water loss in the proposed Policy is so low that it would make use of recycled water in some areas infeasible. It is an unreasonable expectation that our agency with over 600 recycled water customers spread over 125 square miles can detect leaks such as a broken sprinkler head and correct that condition within 72 hours. (12.1; 13.3; 14.4; 22.2; 24.6; 40.9; 54.4; 55.1; 62.1)

Response:
Producers and users will be responsible for complying with the leak detection and correction requirements of the proposed Policy. Hence, users will have to monitor their irrigation sites to detect leaks. This responsibility is not being placed solely on the producer.

Comment Summary i: The language, "proper design and aim of sprinkler heads" is incomplete at best, is ineffectual in a policy, and should be removed. The language, "Refraining from application during precipitation events", is ineffectual and

inappropriate. A more appropriate approach would be to state this concept as a prohibition. The sprinkler leak response provisions of this Policy and the provisions, if adopted, are unlikely to result in any measurable water quality improvement. We strongly urge the Board to remove these provisions from the Policy and rely instead on a best management practices to control use site runoff. The policy should again encourage the implementation of industry-based BMP's for design, installation, and maintenance of an irrigation system. Allowing the State Water Board to review BMP's is recommended. (12.1; 13.3; 14.4; 22.2; 24.7; 40.10; 48.1; 54.4; 62.1, 116.6)

Response:
The requirements to minimize incidental runoff are reasonable measures. It is reasonable to require implementation of an operations and maintenance plan that contains procedures for detecting and correcting leaks; to require sprinklers to be aimed so they water the landscape, and not the street; and to prohibit irrigation during precipitation.

The operation and maintenance plan may include other best management practices.

We considered a prohibition of incidental runoff. The Recycled Water Task Force found existing prohibitions of incidental runoff in water reclamation requirements to be an obstacle to increasing the use of recycled water. The proposed Policy establishes appropriate controls and limitations for incidental runoff. This is a reasonable balance between encouraging water recycling and protecting water quality.

Comment Summary j: The draft policy states that this discharge may be regulated by waste discharge requirements or a National Pollutant Discharge Elimination System (NPDES) permit. There were generally four reactions to this proposed approach: 1) If a discharge off the site is truly incidental, then it should not be regulated at all; 2) an NPDES municipal separate storm sewer system (MS4) permit cannot regulate recycled water discharges, such as from golf courses or soccer fields, at least without significant additional and site-specific analysis; 3) 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; and 4) an NPDES general order should be adopted to control potential and actual discharges of incidental runoff. (8.17, 12.1; 15.6, 16.15, 47.3; 53.1; 70.2)

Response:
Federal law states that any discharge of pollutants (including recycled waters or combined recycled and storm water flows) from a point source to waters of the United States is prohibited unless otherwise authorized by an NPDES permit. Therefore, some form of authorization (e.g., an individual NPDES permit an NPDES MS4 storm water permit, or other General NPDES permit) is necessary to discharge recycled water to federal waters in compliance with the Clean Water Act.

MS4 permits conditionally authorize the discharge of various categories of non-storm water, and provide for follow-up actions, including discharge prohibitions, if such discharges are found to be a source of pollutants. While the specific details of storm

water discharge permits are beyond the scope of the proposed Policy, existing MS4 permits, when revised to incorporate provision of this Policy, will include adequate controls in the event that a discharge, including the discharge of incidental runoff, is found to be a source of pollutants. Furthermore, MS4 permits are an appropriate regulatory tool for most incidental runoff situations.

Comment Summary k: The idea of streamlining of permits for recycled water projects that meet defined criteria generally makes sense. Some comments received included suggestions for clarifying the timeframes in which intermediate steps must occur (e.g., determination of a complete application package, etc.). (16.15; 16.16; 40.12; 43.2; 64.6)

Response:
Existing statutes[1] and regulations[2] govern the timeframes in which the intermediate steps of reviewing and approving a project, including a recycled water project, must occur. Further specification of the timeframe, to include intermediate steps for reviewing and approving a recycled water project, is unnecessary and redundant.

Comment Summary l: We understand that the AB 1481General Order is intended to be an "opt in" permit, where the applicant chooses to seek coverage for its projects under the general order. The policy provision should be revised to reflect this. In addition, the substitution of the term "deemed complete" for submitted is problematic, as the Policy does not indicate the criteria to be applied in making this determination. The 60-day timeframe is meaningless without some clarity about the Regional Water Board's obligations to notify the applicant of any deficiencies in the submittal. (25.5)

Response:
The commenter is correct that the general permit, which the State Water Board is currently developing as required by AB 1481, is an “opt in” permit. An applicant would “opt in” to the general permit by submitting an application to the State Water Board. It would “opt out” of the general permit by submitting an application to the Regional Water Board. However, additional language is not necessary to clarify this since it is already clear from the language of AB 1481. See response to summarized comment “k” for a discussion of the timeframe for deeming an application complete.

Comment Summary m: The proposed 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. (16.17, 16.18)

Response:
The proposed Policy clearly states that “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.” The development of a general permit for landscape irrigation uses of recycled

[1] CWC section 13264; expiration of 140 days
[2] State Water Resources Control Board Administrative Procedures Manual – Water Quality; 30 days

water, pursuant to Water Code section 13552.5 (i.e., AB 1481) is a separate process from the development of a recycled water use policy. Therefore, it is unnecessary for the Policy to address the requirements specified in Water Code section 13552.5. Staff is in the process of developing and proposing for Board adoption a general permit for landscape irrigation uses of recycled water. As part of that process, staff intends to address the requirements of Water Code section 13552.5, including eligibility requirements. Documents associated with the development of the General Order for landscape irrigation uses of recycled water will be available for public review and comment in the future.

Comment Summary n: Language should be added to clarify that existing Master Reclamation Permit holders would be allowed to continue coverage under their current existing Master Reclamation Permit. Master Reclamation Permit holders should be able to either "Opt In" or "Opt Out" of the streamlined permitting process. The streamlined permit should not create a situation of double coverage or contradiction between permits. (33.2, 117.1)

Response:
Nothing in this proposed Policy indicates that existing permits are invalidated. The streamlined permitting requirements apply to the Water Boards, not permit applicants. Therefore, as permits come due for renewal or update, the Regional Water Boards will need to ensure that the permits incorporate applicable provisions of the Policy.

Comment Summary o: The terms *high transmissivity soils, shallow, high quality groundwater, unusual circumstances*, *substantial evidence in the record* [7.b. (1) and (2)] and *rates* [7.c.(2)] generated comments including questions (e.g., *Is the policy stating that recycled water irrigation above high transmissivity soils 5 feet and 6 inches over a high quality groundwater aquifer is eligible for streamline permitting?*) and a comment that basing a decision on soil transmissivity alone is flawed and improper. (28.10)

Response:
The terms are examples being used to clarify the term "unusual circumstances." Therefore, it is not necessary to modify the proposed Policy. Given that these were provided as examples only, the Regional Water Boards may use other criteria to make a finding that a site has unusual characteristics that would rule out the use of the streamlined permitting process.

Comment Summary p: In the absence of actual site-specific data, there should be no streamlined permitting allowed. (28.11)

Response:
For Regional Water Board permitting actions, permit applicants submit Reports of Waste Discharge to the Regional Water Boards. These reports include site-specific data that would identify any unusual site circumstances. Hence, Regional Water

Boards would have information necessary to make a determination that an unusual circumstance exists.

Comment Summary q: A relatively significant evidentiary requirement to the specific finding of "unusual circumstances" is necessary to take advantage of the streamlined permitting process. The concern has been raised that the requirement of "substantial" evidence in the record for the finding of "unusual circumstances," which is already fairly narrowly defined, sets an artificially high bar that otherwise unique water quality situations might not be able to meet. This evidentiary hurdle runs counter to the principle of being precautionary when taking action that could affect the quality of the waters of the state. We suggest instead that the word "substantial" be stricken, so that although a water board would be required to point to the evidence in the record that supported the finding of "unusual circumstances," it would not need to overcome the "substantial evidence" burden. We believe that given the specificity of the Policy in defining "unusual circumstances," this recommended modification sets an appropriate test for using streamlined permitting in the face of potential water quality concerns. (47.4)

Response:
The substantial evidence test does not set an artificially high bar. The substantial evidence test is met if there is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CalBeach Advocates v. City of Solano Beach (2002) 103 Cal.App.4th 529.)

Comment Summary r: We have a concern that there are insufficient controls on recycled water purveyors who are violating key provisions of their NPDES permits, particularly where such violations will impact beneficial uses such as aquatic habitat. An additional criterion for streamlined permit approval is needed to that would require compliance with NPDES effluent limitations. (47.5)

Response:
The proposed Policy does not disqualify an agency from the permit streamlining process because of a violation of an NPDES permit for the following reasons. The NPDES discharge may have different treatment processes and therefore different limitations. Therefore, a violation of a limitation that is not related to the production of recycled water should not preclude recycled water use from the facility. In addition, some permit violations are relatively minor, for example, a late submittal of a monitoring report, and it is difficult for a statewide policy to distinguish between such minor violations and key violations. The Water Boards intend to both enforce key permit requirements and also encourage the recycling of water. Staff considers that permit enforcement is an important goal but feels it is a separate topic being addressed separately from water recycling.

Comment Summary s: Paragraph 7.c.2 addresses two separate topics: the first sentence addresses irrigation application rates, and the second and later sentences

address operations and management plans. Clarity would be improved by presenting these two topics in separate paragraphs. The last sentence of Paragraph 7.c.2 includes the term "tiered rate structures". It is unclear what rates are being referred to here: water price rates, irrigation application rates, or some other rates? If this refers to 'agronomic rate' then the paragraph needs to clearly state that agronomic rates include the amount of recycled water application needed for the landscape to leach salts below the root zone. This term (*rate*) needs to be more clearly described. (8.17, 13.4; 25.5; 54.6; 64.8)

Response:
As stated in the first sentence of paragraph 7(c)(2), the paragraph's topic is the appropriate application of recycled water. The second sentence of paragraph 7(c)(2) states that this requirement is to be implemented through the preparation and implementation of an operation and maintenance plan. This plan is to discuss various methods of conserving recycled water, including water budgeting, training, inspections, pricing structures, and use of smart controllers. Tiered rate structure refers to a pricing schedule under which users that use excessive amounts of water are charged more per unit volume. A change to the proposed Policy is not necessary.

Comment Summary t: The requirement that "Each irrigation project be subject to an operation and management plan ..." could result in the unnecessary promulgation of a multitude of operations and management plans. The Board should allow for the combination of a number of smaller irrigation projects into larger subregional or regional plans. This would reduce the amount of duplicative planning needed to accommodate a series of small projects. (24.8; 25.8; 40.9; 43.3; 46.7)

Response:
The language in the proposed Policy has been revised to clarify that an operation and management plan may apply to multiple recycled water uses areas.

Comment Summary u: We strongly encourage a modification of the policy to acknowledge that operation and management plans are the responsibility of the permit holders and not the end users. It is our opinion that incidental runoff will happen. We do not promote golf courses using excess water to irrigate their golf course. However, we are realistic enough to know that irrigation breaks occur, acts of god take place, and human errors are possibilities. (40.9)

Response:
The language regarding responsibility for operation and maintenance plan provides flexibility. Given the large range of relationships throughout the state among producers, distributors, and users of recycled water, it would not be appropriate for the State Water Board to dictate a one-size-fits-all solution on a statewide basis. Producers, distributors, and users for a given situation are the best suited to determine for themselves who shall be responsible for the development of the required operation and maintenance plan.

Comment Summary v: Who is qualified to review the operation and management plans for compliance with the proposed policy? Do the regional boards have staff competent in evaluating this type of information? Will Regional Boards be recommending rate structures to local agencies? Does the customer have any recourse should a dispute arise? May they hire their own consultants to settle disputes on any of these issues? (40.13)

Response:
The Water Boards have staff who are qualified to review the operation and maintenance plans. The language states that an operation and maintenance plan "may" include a tiered rate structures. A decision to establish a tiered rate structure is the water agency's, not the Regional Water Board's.

Comment Summary w: Accounting for nutrient content in recycled water is difficult as it can vary considerable from day to day. Who will provide the measured concentration level of nutrients to the end user, the recycled water supplier, regional board, others? (40.14)

Response:
The propose Policy is clear that it is the producer of recycled water who is expected to provide data regarding the nutrient levels of their recycled water to the users of recycled water.

Comment Summary x: A statewide program for electronic submittal and management of recycled water data would improve the efficiency of Water Board effort needed to implement the proposed policy. Policy implementation, and increased water recycling in general, will involve additional work load for the Regional Water Boards. Given that implementation of additional work will be difficult within the current level of staff resources, improved efficiency of existing resources could be achieved, to a certain degree, through use of modern tools for data management, such as a statewide program for electronic submittal, storage, review, and evaluation of recycled water project data. Our concern is practical: neither the State nor local governments have the resources to administer each connection to a recycled water system as a permittee, even under a General Permit strategy. (14.1, 54.2)

Response:
The State and Regional Water Boards are developing strategies to improve internal processes necessary to review and approve recycled water use projects, including data management tools in order to help facilitate streamlined case management of recycled water use projects.

Comment Summary y: Streamlined permitting as described in paragraph 7.c.3 (compliance with salt and nutrient management plans) will be problematic for numerous utilities because of recycled water salt levels in comparison to Basin Plan goals. As such, the ability to the goals of the Basin Plan is contingent upon those projects that that address salt and nutrient concerns in a positive manner and priority consideration

should be given to recycled water projects that reduce salt and nutrient levels within the relevant area of the Basin Plan. (29.7)

Response:
The comment is speculative since the deadline for adoption of salt and nutrient management plans would not be for another five years. However, if a utility expects to have difficulty complying with a salt/nutrient management plan, then it is incumbent on that utility to participate as a stakeholder in the development of the salt/nutrient management plan. The propose Policy is very clear that the collaborative process to develop these plans is open to all stakeholders. Even if such a utility does not choose to participate in the development of the plan, nevertheless the Water Codes specifies that the process for amending basin plans (which would include adoption of salt/nutrient management plans) is a public process subject to public notice and comment.

Comment Summary z: The proposed streamlined permitting component of the proposed Policy shifts the regulatory burden from the wastewater Discharger to the Regional Board. Rather than a Discharger having to show their project complies with the as yet undeveloped reclamation landscape irrigation general permit, the regional board must make such Findings after public notice and a hearing. Water Board Staff should have the ability to determine that a Discharger has not submitted sufficient information to complete a Report of waste Discharge or assess "unusual circumstances". Underlying fractured bedrock should be added to the list of "unusual circumstances" and the waste stream should be in compliance with all water quality standards and objectives prior to allowance of enrolment under a general order. (8.18)

Response:
Nothing in this proposed Policy alters the respective responsibility of dischargers and the Water Boards. These responsibilities are established by the Legislature in the Water Code rather than by the State Water Board in policy for water quality control. For additional information, see also responses to comment summaries o and p above.

Comment Summary z: The term "extraordinary circumstances" should be replaced by the term "unusual circumstances" for internal consistency. (25.7)

Response:
The proposed Policy has been revised in response to this comment.

GROUNDWATER RECHARGE PROJECTS

Comment Summary a: The proposed Policy should support the use of recycled water to augment surface water reservoirs for potable water supply. (4.1, 4.2)

Response:
The proposed Policy does not prohibit the use of recycled water to augment a surface water reservoir for potable water supply. We would expect Regional Water Boards to take into account the provisions in this policy as they consider any such proposals,

however it is not necessary to modify the proposed Policy to address this topic. This topic is site-specific and is beyond the scope of the proposed Policy.

Comment Summary b: Lines 399 – 400 state that groundwater recharge reuse projects have the potential to lower water quality. The proposed Policy should also state that they have the potential to improve water quality. (4.2, 29.7)

Response:
We agree that certain groundwater recharge reuse projects have the potential to improve groundwater quality. However, the context of the sentence is that groundwater recharge reuse projects may degrade water quality if not properly regulated. A change to the proposed Policy is not necessary.

Comment Summary c: In addition to consulting with CDPH, as required in Section 8.c, the Regional Water Board should consult with the Office of Environmental Health Hazard Assessment (OEHHA). (7.3)

Response:
OEHHA does not promulgate environmental regulations directly, but it is responsible for developing and providing risk managers in state and local government agencies with toxicological and medical information relevant to decisions involving public health. The California Department of Public Health (CDPH) relies on OEHHA when establishing limitations for the protection of public health. The proposed Policy requires Regional Water Boards to consult CDPH before establishing a limitation to protect public health, because such consultation is required by Water Code section 13523. It is not necessary for the proposed Policy to lay out all the processes that go into CDPH's determinations regarding protection of public health as it relates to recycled water.

Comment Summary d: For Section 8.c, the State Water Board should recognize that land disposal of domestic wastewater by percolation is a "groundwater recharge" that should meet the same criteria in the proposed Policy. (8.19)

Response:
Disposal of non-recycled wastewater is outside the scope of this proposed Policy, which concerns recycled water. Groundwater recharge projects are subject to specific requirements because they are constructed with the intent that the recycled water, once it passes through the ground, will be used for municipal supply. Therefore, for groundwater recharge with recycled water, the Water Code specifies that CDPH provide site-specific recommendations for the Regional Water Board to incorporate into the appropriate permit. This Water Code provision does not extend to land disposal discharges of wastewater, therefore it would not be appropriate for the proposed Policy to apply the same criteria to land disposal discharges as it does to groundwater recharge with recycled water.

Comment Summary e: For groundwater recharge projects, the wastewater utility should have an approved pretreatment program. (15.9)

Response:
Federal regulations (40 CFR Part 403) and state regulations (CCR Title 23, section 2233) require industrial pretreatment programs for any publicly owned treatment works with five million gallons per day or more of flow. Staff is not aware of smaller POTWs that operate a groundwater recharge project. However, in this event, the Regional Water Board would consider the industrial facilities within the community and decide whether an industrial pretreatment program is necessary to protect public health. A change to the proposed Policy is not necessary.

Comment Summary f: Since CDPH has primary responsibility for protection of public health, lines 372—376 should be edited to say that any proposed limitation for protection of public health should only be imposed following consultation with **and approval** by CDPH. In a similar vein, lines 377- 381 should be edited to say that the Regional Water Board shall consult with CDPH before imposing requirements to prevent adverse effects of contaminant plumes or geochemistry. (16.19)

Response:
The language in the policy in lines 372- 376 is consistent with Water Code section 13523, which requires consultation, not approval. Evaluation of effects on contaminant plumes and geochemistry requires expertise in hydrogeology, a field in which the Regional Water Boards generally have expertise. Nevertheless, Water Code section 13523 requires consultation with CDPH before issuing water reclamation requirements. No change to the proposed Policy is necessary.

Comment Summary g: Confined and unconfined aquifers within basins should be addressed separately because water for municipal purposes produced from unconfined aquifers is generally considered to be groundwater under the influence of surface waters. (20.3)

Response:
The benefit of addressing confined and unconfined aquifers separately is unclear. No change has been made to the proposed Policy.

Comment Summary h: Requiring treatment of recycled water by reverse osmosis for groundwater recharge will eliminate numerous opportunities to use recycled water to help local communities to meet water demands. (20.4)

Response:
The proposed Policy does not require reverse osmosis for groundwater recharge. It only specifies a faster permitting process for those projects that use reverse osmosis plants and spreading basins. No change to the proposed Policy is necessary.

Comment Summary i: In regard to lines 377-381, geochemistry is important and needs to be considered on an aquifer by aquifer basis. Therefore, policies need to be flexible. (20.13)

Response:
The proposed Policy requires consideration of geochemistry and does not provide prescriptive requirements on how to do so. The proposed Policy is consistent with the comment.

Comment Summary j. Clarification is needed for lines 377-381 regarding contamination plumes and geochemistry. (28.14)

Response:
We consider the language to be adequately clear, and the commenter has neither explained why the language is unclear nor suggested any clarifying language. No change to the proposed Policy has been made.

Comment Summary k: Paragraph 8.e. discusses "projects that utilize reverse osmosis for surface spreading". The type of project being referred to is unclear. Reverse osmosis is a treatment method, not a disposal method. (54.8)

Response:
The language has been edited to clarity that reverse osmosis is a treatment method.

Comment Summary l: In paragraph 8.e, the proposed Policy states that CDPH and the Regional Water Board shall prioritize review and approval of groundwater recharge reuse projects that use reverse osmosis and surface spreading. If the intent is that these are high priority, the proposed Policy should state so. Also, what authority does the State Water Board have to direct CDPH priorities? (7.4, 7.5, 54.9,)

Response:
The proposed Policy has been edited to clarify that the specified projects are to be high priority for review and approval.

Comment Summary m: The CDPH groundwater recharge reuse regulations and the State Water Board proposed Policy must complement each other. Hence, before adopting the proposed regulations, the State Water Board should review the draft regulations and confer with CDPH as appropriate. (16.1)

Response:
State Water Board staff has participated in the CDPH advisory workgroup concerning the draft CDPH groundwater recharge reuse regulations and is well versed in the CDPH draft. In addition, it is our understanding that CDPH participated in the stakeholder group that developed the initial draft of the proposed Recycled Water Policy. The two agencies are coordinating our policies.

ANTIDEGRADATION

Comment Summary a: Calculation of assimilative capacity for groundwater recharge reuse projects in the proposed policy requires evaluation of the most recent five years of data. Data availability and quality is highly variable by basin, and not all basins have sufficient data available to perform the required analysis. The policy should encourage use of the most recent data, but should allow flexibility to use older data or require that new data be collected in order to perform an adequate analysis. (7.6, 25.9, 43.5, 45.13)

Response:
State Water Board staff amended paragraph 9.c of the proposed Policy to allow for the use of alternative data sets if approved by the Regional Water Board Executive Officer. In addition, regarding the time period for calculating the impacts of the project(s), staff plans to propose an additional edit that would clarify that the time period could be "at least" ten years rather than a "data set."

Comment Summary b: The proposal to mandate the management of salt and nutrients on a basin wide basis, or mandating the granting of dilution in groundwater, conflicts with the Antidegradation Policy. (8.10, 28.16, 44.9).

Response:
State Water Board staff does not believe a conflict exists. However, even if one did, the State Water Board may resolve any conflict by adopting the proposed Policy as a later adopted and more specific Policy interpreting its earlier adopted and more general Anti-degradation Policy (Resolution No. 68-16) as it applies to recycled water.

Comment Summary c: The proposed Policy should include minimum treatment technology requirements. The minimum treatment technology should be that which treats the wastewater to produce recycled water meeting drinking water standards -- tertiary treatment consisting of nutrient removal, and various types of filtration. (2.3)

Response:
The proposed Policy employs a performance standard rather than the suggested prescriptive standard. The performance standard will ensure that neither pollution nor nuisance will occur. This standard limits the use of any assimilative capacity to 10 percent for any single project or 20 percent for multiple projects in a ground water basin/sub-basin.

Comment Summary d: It may not be possible to assure that pollution or nuisance will not occur if recycled water projects are initiated in response to the proposed Policy. The policy should not allow projects to use up assimilative capacity, either on an individual basis or a multiple basis. (5.10, 8.11, 57.1, 57.2)

Response:
If a recycled water project proponent cannot demonstrate compliance with the terms of the proposed Policy, the project will not be permitted. Paragraph 9 of the proposed

Policy is intended to ensure that neither pollution nor nuisance will occur, by requiring project proponents to demonstrate that the use of any assimilative capacity will not exceed 10 percent for any single project or 20 percent for multiple projects in a ground water basin/sub-basin. These percentages are interim limits only and will be in effect until the salt/nutrient management plans are adopted, specified by the proposed Policy to be no more than five to seven years.

Comment Summary e: Dilution of the pollutants throughout the entire basin/sub-basin (what is allowed when the comparison of the average concentration within the basin/sub-basin is compared to the water quality objective to get the assimilative capacity for the basin/sub-basin) is not something that should be desired. This process could allow for the water quality objectives to be exceeded in portions of the basin/sub-basin. (7.7, 54.10)

Response:
In 2004, the State Water Board approved a Basin Plan Amendment for the Santa Ana Regional Water Board that authorized this approach for salt management in that region (see State Water Board Resolution No. 2004-0060 and Santa Ana Regional Water Board Resolution No. 2004-0001). The Santa Ana approach has facilitated increased water recycling without any known significant adverse impacts.

Comment Summary f: Nutrient removal should be considered best practicable treatment or control and required by the proposed Policy. (8.11)

Response:
Nutrient removal may not be necessary in groundwater basins with nutrient concentrations well below water quality objectives and soil conditions that facilitate nutrient removal through natural processes, so it is not required by the proposed Policy.

Comment Summary g: Once groundwater is degraded it is difficult and expensive to cleanup. (8.20)

Response:
Cleanup is generally not required until a condition of pollution or nuisance exists or is threatened. Since the proposed Policy limits degradation to 10 percent for any single project or 20 percent for multiple projects in a ground water basin/sub-basin, implementation of the proposed Policy is not expected to result in the need for groundwater cleanup.

Comment Summary h: The proposed Policy does not assess the costs to other users of groundwater that has been degraded under the proposed Policy. (8.10)

Response:
Because the degradation allowed by the proposed Policy is limited to 20 percent of the assimilative capacity of a groundwater basin, beneficial uses of groundwater would be

impaired and therefore groundwater users would not incur any costs as a result of this limited degradation.

Comment Summary i: The proposed Policy does not discuss or define that only "domestic" sewage discharges are regulated under California Code of Regulations Title 22 reclamation regulations; wastewater discharges such as those from food processors is not covered by the proposed Policy. (8.4, 9.2)

Response:
Comment accepted. State Water Board staff revised paragraph 1 of the proposed Policy to clarify that only recycled water from municipal sources is covered by the proposed Policy.

Comment Summary j: In general the assimilative capacity of basins and sub-basins is not known and can be demonstrated only by elaborate research. Therefore, the standards of <10% or <20% of assimilative capacity are meaningless. (28.16)

Response:
Various methods exist for calculating the assimilative capacity of groundwater basins. Relatively simple mass balance calculations that consider the major inputs to, and outflows from, a basin may be used in a well defined basin. For complex basins, more sophisticated computer modeling can be employed.

Comment Summary k: We do not support the inclusion of salt/nutrient management plans in the recycled water policy. The mass balance approach needs to be explained in greater detail. (40.16, 40.17)

Response:
Many commenters do support the inclusion of salt/nutrient management plans in the proposed Policy. Even if some commenters disagree, the State Water Board has the power to require salt/nutrient management plans. A detailed description of the mass balance approach (a method of calculating assimilative capacity) is not being included in the proposed Policy so that Regional Water Boards have the flexibility to allow the use of varying approaches depending on regional differences.

Comment Summary l: Board Staff should provide additional guidance in paragraph 6.b(3)(f) of the proposed Policy on how projects within a plan are to "collectively" demonstrate conformity with the Anti-Degradation Policy (e.g., how much addition of mass loading is okay before Resolution No. 68- 16 is deemed violated?). (44.9)

Response:
Such demonstrations are highly site-specific, and it would not be appropriate for statewide policy for water quality control to contain such detailed guidance. The proposed Policy provides the appropriate level of guidance for these demonstrations, given that they are an interim approach pending the development of salt/nutrient management plans no later than seven years hence.

Comment Summary m: To the extent that Department of Defense (DoD) installations fall outside the regulatory ambit of the Policy, we are concerned that DoD water recycling projects may be deemed to violate the Anti-Degradation Policy by mere virtue of their non-inclusion in the "collective" project list compiled by the funding stakeholders in accordance with the proposed Policy. (44.9)

Response:
DoD recycled water projects that affect waters of the state are not anticipated to fall outside the regulatory scope of the proposed Policy. The commenter has not provided the afore-mentioned “collective” project list, which would allow a staff response on this portion of the comment.

Comment Summary n: Any permit issued before a salt/nutrient management plan is in effect should demonstrate compliance with the anti-degradation policy over the lifetime of the project, not an arbitrary period (e.g. 10 years). (45.4)

Response:
The proposed Policy does not establish any time periods after which the 10 percent and 20 percent limitations on degradation would cease to apply. These limitations, which apply before a salt/nutrient management plan is in effect, could only be superseded by the adoption of a salt/nutrient management plan that complies with the requirements of the proposed Policy.

Comment Summary o: The draft policy should clarify that the antidegradation policy only applies to "high quality" waters, i.e., those meeting all applicable water quality objectives. To implement this clarification, we suggest that paragraph 9(b), page 11, lines 391-92 be revised as follows: "that could impact high quality waters, i.e., those meeting all applicable water quality objectives, are required to . . ." (49.3)

Response:
The proposed Policy clearly summarizes the Antidegradation Policy (State Water Board Resolution No. 68-16) in paragraphs 9(a) and 9(b). The Antidegradation Policy is clear that it only applies to high quality waters as provided in Resolved paragraph 1.

Comment Summary p: On Page 7, 3rd paragraph, under Anti-degradation - the proposed Policy states that if a basin has waters of high quality and the quality in established policies is lowered, the high quality water shall not be degraded. The opposite needs to be considered, too. If there is a basin of low quality and the water quality policies are higher than that of the basin, the policy should be flexible enough to allow recharging the basin with water that is better than the existing quality, but not necessarily meets the recommended standard of the policy. (20.15)

Response:
Recharging a basin that is of low quality, e.g., does not meet water quality objectives and is therefore polluted, with water that does not meet the water quality objectives for

the basin but is of better quality than exists in the polluted basin would have the effect of contributing to a condition of pollution.

Comment Summary q: On Page 10, the proposed Policy provides that "the intent of the proposed policy is that the degradation of groundwater quality be evaluated regionally". California needs to consider what Arizona is doing with their Active Management Areas. Instead of establishing regional requirements, perhaps Active Management Areas, similar to Arizona's, can be established within each basin to address those basins that are most subjected to impact or have most potential for beneficial use. (20.16)

Response:
The proposed Policy authorizes a similar approach in paragraphs 9.c and 9.d, which provide that assimilative capacity determinations may be made on a groundwater basin or sub-basin within a basin.

Comment Summary r: General clarification needed in the Policy - just an increase in mass loading alone is not sufficient to violate the Anti-Degradation Policy. The State Board should address anti-degradation through the periodic review of the Antidegradation Policy (Resolution No. 68-16) rather than through the Recycled Water Policy's provisions, including landscape irrigation streamlined permitting. (57.3, 57.4, 100.3)

Response:
Independent of this proposed Policy, the State Water Board has undertaken a periodic review of the antidegradation policy, Resolution No. 68-16. If there is any conflict between the outcome of this review and the proposed Policy, the State Water Board can reconcile any such conflict when it completes the review process. For recycled water, it is appropriate to allow a statewide, consistent, interim approach to compliance with the Antigradation Policy, as a means to encourage the use of recycled water.

EMERGING CONTAMINANTS/ CONSTITUENTS OF EMERGING CONCERN (CECS)

Comment Summary a: What mechanisms are in place to ensure the CDPH, State Board, and/or Water Boards develop criteria for CECs in a timely, transparent, and scientifically verifiable fashion to ensure recycled water as currently produced is not a hazard to human health? (3.1, 3.2)

Response:
As implied by the name, CECs are a new concern, and research is being conducted by the U.S. Geological Survey and other organizations to characterize the presence of these constituents, their risk to public health, and feasible control methods. The expert advisory panel specified in the proposed Policy is required to provide recommendations to the State Water Board on what actions, if any, it should take to regulate CECs. Upon receiving the panel's recommendations, the State Water Board would use its public and scientific review process for any actions it takes that have regulatory effect.

Comment Summary b: How will the public be able to have standing to raise questions about impacts to public health from the use of recycled water given that there is no re-opener clause in the Policy? (3.3, 3.4)

Response:
Re-opener clauses are used in permits to notify the permit holder that the permit conditions may be revised by the issuing agency. As with any policy for water quality control, the State Water Board may revise the Recycled Water Policy at any time, and would do so if it considers such a revision to be needed and has available resources to do so. In addition, any person may make such a request to the State Water Board.

Comment Summary c: The Policy should contain more detail on CEC issues. (66.1-8, 108.1, 108.2)

Response:
The details recommended by the commenter to be included in the Policy are relevant to the subject of CECs, but this level of information is not appropriate for inclusion in a policy-level document.

Comment Summary d: OEHHA should be included in the development of the CECs research program. (7.8)

Response:
Directly or indirectly, staff expects OEHHA to be participant in the CEC research program. OEHHA develops toxicological and medical information relevant to decisions of public health for State agencies. The CDPH and the State Water Board are users of OEHHA information.

Comment Summary e: How can one ensure that recycled water is not a public health threat if issues related to CECs that are currently documented have not been considered in the Policy? (3.5, 5.5, 5.7, 5.9, 5.12, 5.15, 5.16, 5.18, 5.20, 5.29, 31.2)

Response:
The expert advisory panel required by the proposed Policy is charged with analyzing the CEC issues, to ensure that the best available science would be incorporated into the Water Boards' approach to regulating CECs.

Comment Summary f: The conclusion by Board Staff that the impacts of recycled water irrigation are less than significant should be reevaluated in light of the studies that have shown that endocrine disruptors are present in recycled water and that they can accumulate in soils and ground water, bio-accumulate in crop and animal tissues, and can move via erosion and incidental runoff when recycled water is utilized for irrigation. (6.2, 11.1, 27.1)

Response:
Recycled water is and has been utilized in the state for many years for irrigation and other uses. State Water Board staff recognizes that the result of the proposed Policy may be increased use of recycled water in the state. To date, State Water Board staff is not aware of any significant problems resulting from CECs in recycled water utilized for landscape irrigation. However, State Water Board staff recognizes that the state of knowledge regarding CECs is incomplete and, as a result, is proposing a research program described in paragraph 10(b) of the proposed Policy.

Comment Summary g: There are too many unknowns to proceed with this Policy. The reuse of wastewater should be focused on cleaning it to much higher standards and preventing the entry of new pollutants into the waste stream. (28.2)

Response:
Widespread use of recycled water for landscape irrigation has not resulted in public health effects, to our knowledge. However, we recognize that the state of knowledge regarding CECs is incomplete. As a result, the proposed Policy includes an advisory panel to evaluate issues associated with CECs. It would be unreasonable and costly to require treatment works to upgrade their treatment processes without further understanding of the impacts of CECs and, if they are found to be problematic, what treatment processes can remove them from recycled water. The advisory panel is not constrained and may recommend such measures as source controls to keep CECs out of wastewater, if appropriate.

Comment Summary h: By definition, CECs are insufficiently characterized to assess risks of aquifer pollution. If they pose a risk to human health, allowing them in an aquifer is not consistent with the anti-degradation policy as well as other existing state laws and policies. (28.18, 28.19, 28.20, 28.21, 71.2)

Response: There is insufficient information at this time to establish requirements for CECs in recycled water. The proposed Policy includes an advisory panel to evaluate issues associated with CECs in order to assess any potential risks to human health and the environment. The proposed Policy also includes a provision for the State Water Board to take appropriate action on the recommendations of the advisory panel. In addition, the issue of CECs goes beyond recycled water, as they are also present in non-recycled water. The provisions of the proposed Policy are appropriate regarding CECs are they apply to recycled water.

Comment Summary i: CECs are a societal issue reaching far beyond recycled water policy. The Blue Ribbon Panel should look deeper at sources of CECs rather than lay all blame and concern for CECs on recycled water. (30.4)

Response:
State Water Board staff agrees that CECs are a societal issue and there are several pathways by which humans and the environment may already be exposed to these chemicals. We also recognize the importance of the CEC issue in relation to recycled

water. To address this, the proposed Policy includes an advisory panel to evaluate issues associated with CECs in order to assess any potential risks to human health and the environment. The proposed panel has a significant mandate and a large scope that does not preclude it from making recommendations regarding source controls to manage CECs identified as potential risks to human health and the environment.

Comment Summary j: The Board should reconsider the determination that the costs of reverse osmosis (RO) treatment are unreasonable. RO may represent BPTC for CECs, salts, and CTR compliance. (8.16, 8.21)

Response:
Nowhere in the proposed Policy has the State Water Board made a determination that the costs associated with reverse osmosis (RO) treatment are unreasonable for production of recycled water.

Comment Summary k: The CDPH should maintain primacy in evaluating human health risks associated with recycled water. If the recycled water is within the limits established by the CDPH, then the recycled water should be deemed acceptable for reuse. (16.21)

Response:
The CDPH and State Water Board both have a responsibility to ensure recycled water is safe for human health and the environment. The Legislature has established CDPH as the lead agency in evaluating the human health risks associated with exposure to recycled water, as explained 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." The State Water Board is responsible for the protection of beneficial uses of waters of the state from the use of recycled water.

Comment Summary l: The advisory panel's role, source of funding, oversight, control, membership, and public accountability should be better defined. Various recommendations are made for panel membership (5.8, 5.19, 16.22, 26.1)

Response:
If the proposed Policy is adopted, State Water Board staff would be responsible for selecting the panel members and expect to provide funding for the panel. Panel membership would be selected to ensure the panel has the necessary expertise and can be objective in its review of the science regarding CECs and recommendations made regarding their research findings. The panel's role is advisory only.

Comment Summary m: The Policy should specify that the report by the advisory panel should identify and include recommendations regarding the CECs to be monitored based on analytical methods and method detection limits; the risk assessments associated with the identified CECs of concern based on toxicological information, proposed uses, and potential public exposure with each use; treatment technologies known to reliably reduce concentrations of identified CECs and the cost

effectiveness of applying those technologies for various uses of recycled water; identification of potential indicators of specific CECs in the water; concentrations of CEC constituents or indicators that should trigger enhanced monitoring of recycled water, ground water, or surface waters; and the feasibility and financial impact of monitoring for the CECs. (34.6, 35.5, 42.3, 56.4, 69.5, 112.2)

Response:
Section 10.b.(4) of the proposed Policy specifies that the panel's report shall address most of the topics noted in these comments. It should be noted that these are the first steps the panel is taking and, based on this initial research, additional tasks may be defined for the panel. It is presumed that the panel experts on treatment technologies and monitoring would have knowledge of and consider the cost implications of their recommendations in these subject areas. Nevertheless, the State Water Board would take cost into account in whatever action it should take in response to the advisory panel's recommendations.

Comment Summary n: The Recycled Water Policy states that the Board "shall endorse" staff recommendations on CECs of concern based on the advisory panel's recommendations and after making "any necessary modifications." However, the State Water Board should have the power to reject the advisory panel's report if it believes the recommended action(s) are inappropriate and the panel should be empowered to decrease or eliminate CEC monitoring when the CEC(s) are not found or are found to not be a risk. (47.1)

Response:
Staff has revised the proposed Policy to clarify that the Board may act as appropriate rather than be required to accept the panel's recommendations.

Comment Summary o: Irrigation of certified organic crops that are consumed raw with recycled water known to contain pathogens, pharmaceuticals, and other CECs may have significant adverse economic impacts on organic agriculture if consumers object to paying a premium for potentially contaminated produce. (5.21)

Response:
The proposed Policy specifies conditions for landscape irrigation rather than agriculture. Nevertheless, a general description of organic farming is farming without the use of pesticides, mined or synthetic fertilizers, and hormones using methods that minimize impacts on the environment. We understand that the California Department of Food and Agriculture allows tertiary treated municipal wastewater that meets drinking water standards to be used to irrigate certified organic farming operations. In any event, it is not the State Water Board's responsibility to establish standards for organic farming.

INCENTIVES

Comment Summary a: Paragraph 11.b states that the State Water Board encourages the Regional Water Board to require less stringent monitoring for storm water treatment

and use projects. It should always be the goal to provide adequate monitoring to ensure compliance. (8.22)

Response:
This provision is not regulatory.

Comment Summary b: It is not appropriate to include storm water in a recycled water policy. The reference to storm water in line 525 should be deleted. (13.6)

Response:
This provision is not regulatory.

Comment Summary c: Lines 514- 516, which include the statement that the "State Water Board strongly encourages water purveyors to provide financial incentives for water recycling and storm water reuse project, are problematic, since water purveyors have limited financial resources to provide incentives. (20.14)

Response:
This provision is not regulatory.

Comment Summary d: Paragraph 11.c. introduces the concept of using waste load allocations as an incentive for more water recycling. Although we have not objections to the provisions, guidance on how to implement this concept would be useful. (54.12)

Response:
This provision is not regulatory.

Comment Summary e: In Paragraph 11.b, we recommend the proposed Policy further specify financial incentives the State and Regional Water Board could provide as opposed to undefined regulatory relief to encourage storm water recharge and reuse. (54.11)

Response:
This provision is not regulatory.

MONITORING

Comment Summary a: The required monitoring for CECs in 7.b (4) and 8.b (2) is premature. Any such monitoring should be based on the advice of the scientific advisory panel or, for groundwater recharge reuse, recommendations made by CDPH. Approved analytical methods are not available for most CECs. It is difficult to estimate the analytical costs for this monitoring. It is not clear what CEC's need to be monitored. It is not clear where the sample is to be taken. The required monitoring frequency is too prescriptive. It is not necessary to monitor all facilities to gain knowledge of CECs. Small facilities cannot afford the monitoring. The monitoring unfairly assigns responsibility for CECs to recycled water. Monitoring programs should be developed at

the time of permitting and be tailored to the specific facility. It will create additional fears about the safety of recycled water which is contrary to the purpose of the policy. The requirement precludes the implementation of the recommendations of the advisory panel. (8.13, 14.3, 15.10, 15.7, 19.3, 21.4, 22.1, 23.3, 28.13, 30.2, 33.8, 35.3, 36.2, 39.2, 43.4, 51.4, 55.2, 58.5, 58.3, 61.3, 62.2, 63.4, 64.7, 70.5, 70.6, 109.1, 110.2, 117.3)

Response:
Regarding costs for small facilities, the proposed Policy does not require individual users to conduct the monitoring. It is the producer of the recycled water that will be required to perform monitoring. Additional responses to this comment are contained in the response to comment summary h below. Regarding the costs of monitoring CECs, although it is true that there is a significant cost associated with monitoring of CECs, the monitoring is needed to characterize the presence of CECs in recycled water. Until such time as the expert panel makes its recommendations, the Regional Water Boards will decide which CECs will be monitored, what analytical methods will be used, and where the sampling points will be. However, as specified in paragraph 8(b)(2) of the proposed Policy, after the expert panel makes its recommendations, the CEC monitoring will be consistent with the panel's recommendations. See also responses to comments below.

Comment Summary b: Pathogens that carry antibiotic resistance and their genetic fragments should be monitored. Monitoring protocols should be established in the event of a pandemic or local epidemic. (5.3, 5.4)

Response:
Staff plans to charge the scientific advisory panel with evaluating the risk that recycled water may contain pathogens and genes that carry antibiotic resistance that could cause an untreatable infection. The scientific advisory panel would also provide a recommendation on whether the additional monitoring and monitoring protocols are necessary.

Comment Summary c: The proposed Policy should require sampling for non-priority pollutants, including, but not limited to, drinking water constituents in general, iron, manganese, ammonia, phosphorous, chloride, boron, and arsenic. (8.13)

Response:
The proposed Policy requires monitoring of nutrients in line 352. The proposed Policy also states that non-priority pollutants should be monitored "in addition to any other appropriate effluent monitoring requirements". Regional Water Boards routinely require monitoring of the other constituents listed, and it is not necessary for the proposed Policy to provide this direction to the Regional Water Boards.

Comment Summary d: The monitoring requirements for landscape irrigation projects are meaningless unless accompanied by standards of acceptable concentrations and actions required if standards are not met. (28.6, 28.12, 28.17)

Response:
Regarding priority pollutants, it is not necessary for this proposed Policy to specify standards. The recycled water producers are already required, through their existing NPDES permits or waste discharge requirements, to monitor for these constituents. If monitoring indicates that the recycled water contains priority pollutants, the Regional Water Board would evaluate the monitoring data to determine whether any limits have been exceeded, as it does with other monitoring data associated with a permit. Responses regarding CEC monitoring are contained in response to comment summary a.

Comment Summary e: Rather than prescribe specific conditions for groundwater recharge projects, the proposed Policy should focus on the overall objective and purpose of the monitoring. (45.12)

Response:
For groundwater recharge projects, monitoring will be on a site-specific basis, but at a minimum will include semi-annual monitoring for priority pollutants and annual monitoring for CECs. The usual objectives of self-monitoring programs are to determine whether a discharger is in compliance with limitations and to determine whether a discharge has additional constituents that need to have limits or objectives. The monitoring required by the proposed Policy is appropriate for these purposes.

Comment Summary f: The proposed Policy should require groundwater monitoring of nutrients in aquifers below recycled water irrigation areas whenever dissolved nutrients in recycled water exceeds threshold levels. Such monitoring would allow measurement of trends and permit remedies should concentrations approach health limits. (46.8)

Response:
The proposed Policy allows Regional Water Boards to require project specific groundwater monitoring if the adopted salt/nutrient management plan finds such monitoring to be necessary. Any adopted salt/nutrient management plan would have a regional groundwater monitoring plan that would evaluate trends within the groundwater basin. In the interim while salt/nutrient management plans are being developed, water recyclers, to be eligible for streamlined permitting, can either perform project specific groundwater monitoring or participate in the development of the salt/nutrient management plan. The procedures specified in the proposed Policy are appropriate for managing and monitoring salts and nutrients within groundwater basins.

Comment Summary g: In lines 352 -354, the monitoring for nutrients should be periodic (preferably monthly) rather than continuous. The proposed Policy does not specify. (61.4)

Response:
Nothing in the proposed Policy implies that continuous monitoring would be required. The Regional Water Boards will specify the appropriate monitoring frequency in the permits or waste discharge requirements that implement the Policy.

Comment Summary h: Performing priority pollutant testing twice per year on recycled water is unnecessary and duplicative, since most POTWs producing recycled water are mandated to perform priority pollutant testing on the POTW influent and effluent streams. (62.3)

Response:
The proposed Policy does not require duplicative monitoring for the same effluent. That is, if the producer's existing permit or waste discharge requirements already specify monitoring of the same effluent as is being recycled, the proposed Policy would not require extra, duplicative monitoring of this effluent. However, if the recycled water is produced from a different treatment train for which monitoring is not already required, the proposed Policy would add new monitoring requirements to evaluate whether the recycled water contains priority pollutants at concentrations of concern.

Comment Summary i: The proposed Policy does not provide adequate monitoring requirements to protect public drinking water supply wells from contamination by CECs and other potential contaminants. (59.2)

Response:
The proposed Policy does require adequate monitoring of recycled water for priority pollutants and CECs. The subject of protection of public drinking water supply wells is outside the scope of this proposed Policy and is within the purview of CDPH.

Comment Summary j: Recycled water irrigation projects should not have any monitoring requirements unless a specific public health issue is identified. (69.3)

Response:
Monitoring of recycled water is necessary to evaluate whether the recycled water is in compliance with established limitations and water quality standards.

Comment Summary k: The Regional Water Boards should be allowed to establish project-specific groundwater monitoring requirements for landscape irrigation projects. (5.1, 5.2)

Response:
The proposed Policy's limitations on groundwater monitoring for recycled water irrigation projects apply only to those projects that qualify for streamlined permitting. When a Regional Water Board finds that unusual site conditions, such as proximity to a drinking water well, exists, a project would not qualify for streamlined permitting. The proposed Policy also allows Regional Water Boards to require site-specific monitoring, if such monitoring is allowed by a salt/ nutrient management plan adopted by the

Regional Water Board. The groundwater monitoring limitations represent a reasonable compromise between the need to use more recycled water and the need to protect water quality.

Comment Summary l: Monitoring should not be structured in a way that will make recycled water producers vulnerable to third party legal actions. Sampling and analytical methods for CECs have not been standardized and approved; toxicological information on CECs is incomplete; and, for groundwater monitoring, the groundwater could be affected by sources other than recycled water. Edits should be made to the proposed Policy to better describe what is intended. (13.5)

Response:
The proposed Policy is not intended to structure the monitoring in a way to facilitate third party legal actions. In addition, see response to comment summary a above. See also responses to CEC comment summaries.

Comment Summary m: The Blue Ribbon Panel on emerging chemicals should consider what frequency of monitoring is required for emerging chemicals. (15.10)

Response:
The panel has the charge of specifying appropriate constituents to be monitored in recycled water, including analytical methods and method detection limits, and what levels of CECs should trigger enhanced monitoring. In essence, the panel is charged with specifying a monitoring program for CECs and discussing the appropriate frequency of monitoring. If the frequency is less or more than once a year, the State Water Board can amend the proposed Policy when it takes action in response to the advisory panel's recommendations.

Comment Summary n: Any monitoring performed should be done in accordance with U.S. EPA – approved analytical methods and monitoring should not be required for constituents that do not have approved methods. (13.4, 116.7)

Response:
Although staff expects that samples would be sent to commercial certified laboratories that use approved analytical methods, the advisory panel is also expected to provide recommendations on this topic.

Comment Summary o: Paragraph 8.b.2 discusses monitoring practices. The last sentence describes monitoring for both "effluent" and for "recycled water". It is unclear if these are the same or different monitoring points (54.7)

Response:
Staff plans to propose edits to address this concern.

Comment Summary p: The proposed Policy should be clarified to make clear that the monitoring can be conducted at the treatment plant rather than at individual reuse sites. (25.6)

Response:
The monitoring requirements in the proposed Policy are intended to apply to the producer rather than the individual user. In an effort to clarify this, the proposed Policy has been edited to include "Permits issued for…"

OTHER COMMENTS

Comment Summary a: Recycled water should be used for groundwater recharge, not irrigation, since soils will remove the contaminants in the recycled water. If recycled water is used for irrigation, the contaminants will enter our food supply. (2.2)

Response:
It is CDPH rather than the State Water Board that establishes criteria for the protection of public health from the use of recycled for irrigation of crops. To our knowledge, CDPH has found this practice to be safe if their Title 22 requirements are met. Recycled water has been used for many years to irrigate crops and staff is not aware of any detrimental health effects from this practice.

Comment Summary b: Neither the proposed Policy nor the Staff Report identify how Resolution No. 77-1 is broken and needs to be fixed. Staff training programs or written guidance documents may best address regulatory uncertainty or uniform interpretation of the State Water Board's policies. (8.1)

Response:
The purpose of the proposed Policy is explained in Section 1A of the Staff Report. Resolution No. 77-1 remains a basis for State Water Board policy. It does not, however, address the issues brought forth by the Recycled Water Task Force. Staff considered the development of a guidance document and initially drafted such a document. The State Water Board, however, received concerns from the public that the issuance of such a document would create an "underground" regulation. Therefore, the State Water Board plans to consider adopting this proposed Policy as policy for water quality control, which is subject to review under the Administrative Procedures Act.

Comment Summary c: It has been four years since the concept of a storm water policy has been proposed. If the state is to increase the use of storm water by 500,000 acre-feet per year, this important policy should be issued as soon as possible. (16.7)

Response:
Not a comment on a regulatory provision of the proposed Policy.

Comment Summary d: Central basins and aquifers should be considered for their unique attributes and have specific policies for inland basins versus coastal basins. (20.2)

Response:
We are aware that each basin has unique attributes. Line 202 of the proposed Policy states that salt and nutrient management plans shall be tailored to address the water quality concerns in each basin. The adopted plans are intended to establish the basis for limitations on discharges of salt and nutrients in each basin.

Comment Summary e: The proposed Policy should consider the use of grey water for onsite irrigation purposes. (20.5)

Response:
It is the Department of Water Resources (DWR) rather than the State Water Board, that has the responsibility for establishing regulations for grey water. DWR's regulations are to be implemented by the County Health Departments.

Comment Summary f: The proposed Policy should consider the use of untreated, non-potable groundwater to augment water supply to offset high seasonal demands. (20.6)

Response:
This comment is outside the scope of this policy, which concerns recycled water. However, we expect that this use would be considered during development of the salt/nutrient management plans.

Comment Summary g: The proposed Policy should consider the use of recycled water for indoor industrial use, dust control, soil compaction, and street cleaning. The resolution adopting the proposed Policy should include a statement to encourage the Regional Water Boards to support these uses. Since they pose minimal risk, they should be approved with little or no analysis. (38.4)

Response:
Detailed requirements for these specific uses are outside the scope of this policy. However, the uses listed are allowed under the CCR Title 22, Water Recycling Criteria. We do not consider the additional language in the proposed Policy to be necessary, since the proposed Policy encourages the use of recycled water in general.

Comment Summary h: Give households free catchment systems or ones at a deep discount. Require developers to use the LEED water guidelines as their standard. (41.2)

Response:
This comment does not appear to be a recommendation for modifying the proposed Policy.

Comment Summary i: The proposed Policy uses terms that need to be defined – "recycled water", "municipal wastewater sources", "local water and wastewater entities", "local salt/nutrient contributing stakeholders", "storm water", "conservation", "sustainable use", "nutrients", "salts", "basin or sub-basin", "landscape irrigation projects", "emerging contaminant". (44.1)

Response:
In an abundance of caution, staff has edited the proposed Policy to clarify that the use of the term "recycled water" conforms to the Water Code definition. The additional terms are in common usage and do not require definition in the Policy.

Comment Summary j: The proposed Policy needs clarification on how it applies to existing master reclamation permits, waste discharge requirements, and master reclamation permits. (45.8)

Response:
Additional clarification is not necessary. The proposed Policy would apply to the Regional Water Boards' issuance of all new water reclamation requirements, waste discharge requirements, master reclamation permits and would apply to existing requirements or permits when then are renewed. The permit streamlining provisions, however, only apply to facilities that meet the streamlined permitting criteria.

Comment Summary k: The proposed Policy should provide broad guidance and be flexible so that local conditions can be taken into consideration. The state should not prescribe conditions that are applicable to all regions. Recognize that local conditions do not allow a "one size fits all" approach. (45.10, 45.14)

Response:
The proposed Policy provides a balance between providing statewide direction to ensure consistency and providing Regional Water Board autonomy to allow for site-specific requirements. The proposed Policy was developed to provide for more consistent regulation of recycled water.

Comment Summary l: The draft policy only applies to the permitting of recycled water projects and does not grant either the State Water Board or the Regional Water Board new authority to permit these projects. To clarify this, the proposed Policy should be edited on lines 39 and 76. (49.1)

Response:
The proposed policy has been edited to provide a reference to Water Code section 13050(n). Hence, the propose edit to line 39 is unnecessary. The edit to line 76 concerning intent to expand existing State Water Board authority is also unnecessary. Only the state Legislature can expand the State Water Board's authority. The State Water Board cannot do so through the adoption of a policy.

Comment Summary m: The proposed Policy would be clearer if it were divided into two sections, one titled Recycled Water Policy and the other titled Implementing the Policy. (49.4)

Response:
Although there is some merit in this suggestion, we do not consider the proposed reformatting and editing to be necessary.

Comment Summary n: The San Diego Regional Water Quality Control Board is imposing requirements on a diversion of stream flow that would otherwise flow to the Pacific Ocean. The diverted flow would be used to supplement the recycled water supply. (55.4)

Response:
This appears to be a comment on a tentative Regional Water Quality Control Board order rather than a comment on the proposed Policy.

Comment Summary o: The California Energy Commission is requiring power plants to use recycled water. If the proposed Policy is to be successful, it must take similar aggressive positions. (58.6)

Response:
Water Code sections 13552.4 through 13554 give public agencies authority to require the use of recycled water for landscaping, cooling water, and toilet flushing at new facilities provided that recycled water is available and certain other conditions are met. The proposed Policy requires agencies to use this authority to meet the mandates established by the proposed Policy. The proposed Policy takes an aggressive but appropriate approach to requiring the use of recycled water within the limits of its authority.

Comment Summary p: Instead of adopting the proposed Policy and creating an unneeded layer of regulation, the State Water Board should develop and enforce water quality objectives and TMDLs and should immediately enforce the southern Delta water quality objectives. (60.8)

Response:
The State Water Board has the authority and the discretion to set statewide policies. In the proposed Policy, it is exercising that discretion appropriately.

Comment Summary q: We strongly recommend that the State Water Board that the State Water Board not adopt the proposed Policy. It needs significant additional discussion and the participation of additional parties. In many areas, recycling and conservation does not provide benefits. (60.10)

Response:
The proposed Policy was developed through the work of a stakeholder group that represented broad water interests. The State Water Board has also considered extensive comments received from the public. We do not consider further discussion to be necessary.

Comment Summary r: The proposed Policy should conform to the Cal/EPA Bill of Rights. (69.1, 112.1)

Response:
The Cal/EPA Bill of Rights applies to any permit issued by the State and Regional Water Board. A reference to the Bill of Rights in the proposed Policy is not necessary.

Comment Summary s: Various commenters made comments that were not concerning a regulatory provision. (50.1, 52.2, 67.1, 102, 103, 104, 106, 115, 118)

Response: Not a comment on a regulatory provision.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) / STAFF REPORT

Comment Summary a: Adoption of the draft Policy requires the preparation of an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA). (5.11, 8.3, 66.10)

Response:
The Secretary for Resources has certified the State Water Board's process for adopting water quality plans and policies as an exempt regulatory program under Public Resources Code Section 21080.5. Consequently, the State Water Board need not prepare an EIR to adopt the draft Policy. [California Code of Regulations (CCR) Title 14, §15251(g)]. Instead, the State Water Board must comply with CCR Title 23, Section 3777. This section requires preparation of an environmental checklist and a written report containing: a brief description of the Policy, reasonable alternatives, and mitigation measures. The Draft Staff Report and Certified Regulatory Program Environmental Analysis prepared for the Draft Recycled Water Policy meets the requirements of Section 3777.

Comment Summary b: The requirement to permit groundwater recharge projects using reverse osmosis within one year may not allow sufficient time for regional water boards to complete the necessary CEQA review. (7.4)

Response:
One year should be sufficient to complete the CEQA review for a particular recharge project if the regional water board assigns a relatively high priority to these projects, as is contemplated by the draft Policy.

Comment Summary c: The use of recycled water will affect agriculture by resulting in possible embargo actions against California crops. (5.22)

Response:
There is no information in the record suggesting the draft Policy would affect agriculture. The irrigation component of the draft Policy addresses landscape irrigation and not agricultural irrigation.

Comment Summary d: If the Policy applies to non-municipal sources of recycled water, the CEQA document is inadequate. (17.3)

Response:
The Policy has been revised to clarify that the Policy only applies to recycled water from municipal wastewater sources.

Comment Summary e: Incidental runoff of recycled water is a potentially serious adverse impact. The environmental analysis needs to explain how mitigation measures will address this issue. (5.17, 5.33).

Response:
The draft Policy contains prescriptive requirements to minimize any impacts from the incidental runoff of recycled water from irrigation sites. These requirements are specified in Section 7.a of the draft Policy and include: (1) implementation of an operations and management plan that provides for prompt detection and correction of leaks (2) proper design and aim of sprinkler heads, (3) refraining from application during precipitation events, and (4) management of any ponds such that no discharge occurs unless the discharge is a result of a 25-year, 24-hour storm event or greater, and there is prior approval for the discharge by the appropriate Executive Officer.

Comment Summary f: One commenter stated that he was commenting as an expert and that as such his opinions must be assumed to identify potentially significant adverse effects until proven otherwise. (5.14, 6.1).

Response:
With regard to assessing the credibility of expert opinion, the qualifications of the expert and the basis for the opinion are central considerations. Expert testimony, by itself, that a project may have a significant adverse environmental impact, is insufficient. This testimony must be supported by substantial evidence in the record. There is not substantial evidence in the record to support the assertion that significant adverse environmental impacts may occur if recycled water use increases.

Comment Summary g: There is a significant public health risk associated with the use of recycled water, including direct exposure to recycled water and indirect exposure to soils irrigated with recycled water. The primary concern is pathogenic organisms in recycled water, including some that are resistant to antibiotics. Genetic fragments, personal care products, and pharmaceuticals are also a concern. Because of the

potential impact on public health, the preparation of a more thorough environmental analysis is required to fully discuss the human and environmental health implications and potential alternatives. (5.28, 5.32, 5.35, 10.1)

Response:
Although some studies have demonstrated the presence of antibiotic resistant bacteria in certain treated wastewater, establishing criteria for pathogens, genetic fragments, and pharmaceuticals in recycled water is a CDPH responsibility. CDPH is responsible for establishing water recycling criteria (Water Code section 13521).

With respect to genetic fragments, CDPH reports that these constituents have been found in drinking water and recycled wastewater, that their impact on public health is unknown, and that this potential impact may warrant further study. Nevertheless, since CDPH has not yet established criteria for public health protection from these materials, it is not the role of the State Water Board to establish limits that would conflict with CDPH's actions on this matter.

At most, the commenter has identified a potential need for additional scientific research. The advisory panel, to be established by the draft Policy, would review this research as it is developed and advise the State Water Board of any recommended changes to the Policy.

Comment Summary h: The staff report needs to consider the risk of aerosolized pathogens arising from the use of recycled water. (5.24)

Response:
The draft Policy only allows the use of recycled water that has been treated to meet CDPH criteria, which require protection of public health, including protection from pathogen exposure.

Comment Summary i: In its discussion of the benefits of recycled water the Policy states: "Other public agencies are encouraged to use this presumption in evaluating the impacts of recycled water projects on the environment as required by CEQA." While the project-specific CEQA analysis may indicate there are no significant environmental impacts, the state should not presume that this is true of every project. (45.11)

Response:
The quoted text, from Section 3 of the draft Policy, is prefaced by a finding that recycled water that is sufficiently treated, in accordance with the Policy, so as not to adversely impact public health or the environment is presumed to have a beneficial impact. The draft Policy merely encourages other agencies to adopt this presumption, it does not require it. There is nothing in the Policy to suggest that this encouraged presumption cannot be rebutted by evidence to the contrary when a specific recycled water project is evaluated under CEQA.

Comment Summary j: The conclusion by Board Staff that the impacts of recycled water irrigation are less than significant should be reevaluated in light of the studies that have shown that endocrine disruptors are present in recycled water and that they can accumulate in soils and ground water, bio-accumulate in crop and animal tissues, and can move via erosion and incidental runoff when recycled water is utilized for irrigation. (6.2, 11.1, 27.1)

Response:
Recycled water is and has been utilized in the state for irrigation and other uses. State Water Board staff recognizes that the result of the proposed Policy may be increased use of recycled water in the state. To date, State Water Board staff is not aware of any problems resulting from CECs in recycled water utilized for irrigation reuse. However, State Water Board staff recognizes that the state of knowledge regarding CECs is incomplete and, as a result, is proposing a research program described in paragraph 10(b) of the proposed Policy.

Comment Summary k:
The Draft Staff Report indicates that the policy's implementation would not violate any water quality standards with proper mitigation, but there is no discussion of what that mitigation is or how it will be accomplished. (32.3)

Response:
Section 8.a of the Environmental Checklist included in the Draft Staff Report describes the mitigation as follows: “The proposed Policy, however, mitigates this effect by requiring the development of regional salt/nutrient management plans that would consider all sources of salts and nutrients and that would prescribe requirements for meeting groundwater quality objectives for all dischargers within a basin.”

Comment Summary l:
Water quality mitigation measures would need to remove the contaminants to a level of no impact. (32.4)

Response:
Mitigation measures need only reduce impacts to a less than significant level, not a “no impact” level as suggested.

Comment Summary m:
The Draft Staff Report notes that there would be less than significant impacts from substantial additional sources of polluted runoff. This statement can not be made, given the fairly large gray area as to what really constitutes incidental runoff. (32.4)

Response:
Paragraph 7.a of the proposed Policy describes in detail the State Water Board definition of what constitutes incidental runoff. Paragraph 7.a. goes on to require implementation of four specific management practices to ensure that any impacts from incidental runoff will be less than significant.

Comment Summary n:
By offsetting certain volumes of potable water with recycled water, this will free up large volumes of potable water and that can then be applied directly to new development. (32.4)

Response:
This assertion is speculative. At best, the proposed Policy will partially offset the ongoing water shortage in the state and mitigate chronic drought conditions.

Comment Summary o:
Through the impact of pollutants and contaminants that are not fully removed from recycled water, e.g., endocrine disrupters and pharmaceuticals, available aquatic habitat may be substantially reduced. (32.4)

Response:
There is no substantial evidence in the record that either landscape irrigation or groundwater recharge with recycled water containing low concentrations of pollutants may lead to a significant reduction in available aquatic habitat.