

To: The California State Water Resources Control Board

Friends of the North Fork (American River, "Friends") formed in 2005 and submits these comments on the Draft Final Report, Monitoring Strategies for Constituents of Emerging Concern (CECs) in Recycled Water: Recommendations of a Science Advisory Panel ("Draft").

The Panel for the Draft: Prof. Dr.-Ing.Jorg E. Drewes Panel Chair (Germany), Dr. Paul Anderson (MA), Dr. Nancy Denslow (FL), Mr. Walter Jakubowski (WA), Dr. Adam Olivieri (CA), Dr. Daniel Schlenk (CA), and Shane Snyder (AZ).

The Stakeholder Advisory Group of the Draft: Sean Bothwell (California Coastkeeper Alliance), Ann Heil (Los Angeles County Sanitation District), Roberta (Bobbi) Larson (Executive Director, California Association of Sanitation Agencies), Mark Millan (City Council member, Town of Windsor), Jeff Mosher (Chief Research Officer, Water Environment and Reuse Foundation), Megan Plumlee, Ph.D., P.E.(Director of Research and Development, Orange County Water District), Toby Roy (Water Resources Manager, San Diego County Water Authority), Jennifer West (Managing Director, WaterReuse California), Debbie Webster (Executive Officer, Central Valley Clean Water Association (CVCWA). Friends of the North Fork requested to join this Stakeholder Group and instead of was directed by SCCWRP to the Coastkeeper Alliance that has positions diametrically in opposed to key positions of Friends.

CVCWA--Central Valley Clean Water Association, is active on North Fork American River and other surface waters, including to the detriment of water quality in the American River basin and its North Fork. "CVCWA is currently comprised of over 50 public wastewater collection and treatment member agencies, representing over 7 million people in the Central Valley. Additionally, CVCWA has over 20 associate members. Our members are public and private organizations charged with the responsibility for collecting, treating, recycling, and disposing of wastewater in a safe, responsible and economical manner."

<http://cvcwa.org/about>

<http://cvcwa.org/leadership2>

1. Thank and end the Panel and its delegation to dischargers and ocean water research

Both in its useful work including some issue and research need identification and research, the panel process helps us to decide what to do next. From now on, unlike up to now, the public will be informed and have a role.

This must be the final use of an expert panel recycled water-related report and the accompanying giving over of its authority in this manner. The process and the SCCWRP management of the process have nothing of further value further to contribute as experts and managers that could be worthwhile.

2. The Draft and the proceedings that led up to it violate the California Constitution

The State Water Resources Control Board ("Board") is charged, among other things with regulating the water quality of the waters of the State. Instead, in this matter and in the proceedings that led up to the Draft, and in proceedings that are connected to it and relied upon in it, the Board has improperly directed, allowed and delegated its responsibility to other organizations. This delegation is largely made to sewage effluent dischargers. Bayside Timber Co. v. Board of Supervisors of San Mateo County (1st Dist. 1971) 20 Cal. App. 3d 1, 97 Cal. Rptr. 431. This decision found the Board of Forestry unconstitutional. See Tomas Lundmark, Regulation of

Private Logging in California, 5 Ecology L. Q. 139 (1975). Available at: <http://scholarship.law.berkeley.edu/elq/vol5/iss1/4>

https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://r.search.yahoo.com/_ylt=Az_6wigLsplajBcAhmEPxQt.;_ylu=X3oDMTEyN29uY3VrBGNvbG8DZ3ExBHBvcwMzBHZ0aWQDQjQxMjNfMQRzZWMDc3I-/RV=2/RE=1520050827/RO=10/RU=http%3a%2f%2fscholarship.law.berkeley.edu%2fcgi%2fviewcontent.cgi%3farticle%3d1100%26context%3delq/RK=2/RS=wgTImORhMxKawfmoYOAz1J9M7.s-&httpsredir=1&article=1100&context=elq

3. The Draft is and further use of Panels would be prohibited public expenditures.

The Draft establishes that case that a Code of Civil Procedure section 526a proceeding could lie against the Board.

4. If the board relies on the Draft without using it as a point of departure for additional work without relying on it, and if the Board does not terminate the Expert Panel process, a court injunction should be sought as is appropriate.

5. The public and drinking water suppliers have little involvement in the Draft

The Board and those to whom it delegates the Draft proceedings have made no meaningful effort to adequately inform and involve the public in a process and decisions that could affect many, if not most of them. The Draft also has little input from affected drinking water suppliers throughout the state that do not also treat wastewater. For the public like friends, the board does not assure the input is meaningful considered, and they are precluded from being identified and included as stakeholders.

6. The Draft describes and its groups demonstrate the possibility of potential conflicts of interest if a sewer plant discharger uses its own treated effluent for a potable use project.

The Board's process up to now has invited this conflict, if indeed, the Board's Recycled Water Policy has not created it. This very real potential must be addressed.

7. The composition of the Panel is inapt for the assigned tasks

Epidemiology takes a back seat. The panel does not have an individual with cross training in medicine and microbiology who also understands the problems with sewer plants, and the input and C.V. of commenter Edo McGowan who does is not recognized.

The Board needs to develop staff scientific expertise in-house and not convene outside panelists every three to five years. The need is ongoing.

8. Consistent with the routine practices of both the Board and the Central Valley Regional Water Quality Control Board, the Draft stakeholder group is a formal vehicle for dischargers of pollutants to influence water quality decisions.

Internal lobbying like this should be prevented.

9. The nature of the review in the Draft and its conclusions suggest that the use and application of Environmental Toxicology is unsuited for the tasks at hand.

As sub-proceeding involving an in-depth assessment of the applicability of Environmental Toxicology as a field and the methods used for the Draft is necessary. Environmental Toxicology may very well in a Draft like this misappropriate Rachel Carson's work as a basis for it.

10. Risk-based analysis being used that resulted from an earlier panel is unsuitable.

The only assessment alternative that I know to be acknowledged by the Panel is the precautionary principle, but the Panel states that risk assessment is the law for potable recycled water in California. This requires assessment or reassessment by the Board.

11. The Board practices in the Draft indicate a missing or inadequate understanding, use of and failure to assess the Board's Safety Culture.

If the Board has a safety culture, it needs to be stated and formally adopted.

12. The Board must make up for the near total failure of the Draft to address the mechanisms and science of pandemics that could result from recycled wastewater practices.

Friends in current recycled water CEQA scoping comments reviews a number of scientific issues that must be developed as part of this proceeding. It would be a Board failure to address the issue of pandemic and other public health issues only as part of CEQA disclosure. Friends CEQA comments are incorporated here by reference.

13. The Draft's approach to antibiotic resistance is nothing if not a gross safety culture failure.

It's ironic that the operative sentence of Section 9 on ABR is, "However, most data are from locations from outside California and even outside the U.S." Ironic because six of the eight Panel members are from outside California and the US.

Then in Section 9 and the Executive Summary the Panel falls back on earlier panels regarding the absence of standardized methods for investigating its occurrence and removal, and risks.

The Panel's conclusion that the Board not change its current antibiotic resistance policy until there is, "...More definitive research showing an actual relationship of antibiotic resistance to recycled water" is unacceptable. The Board must not follow the recommendation to do nothing to change in the face of uncertainty.

14. Each POTW must be individually evaluated to determine its potential eligibility to be considered for being a source of potable water.

The Draft's and the Board's other recycled water efforts fail to require the essential POTW-by-POTW assessment that must take place before the individual POTW is considered as source water for potable use.

I studied the first major revision of the California Porter Cologne law in law school. About twelve years later in 1982 I testified to Congress for the Sierra Club on Industrial Pretreatment when the Clean Water Act was up for reauthorization. I then followed and worked on development of and implementation of the New York City Industrial Pretreatment Program ("IPP").

The vast difference in New York City's 12 POTWs is mirrored throughout California. There is not reasonable questioning that some POTWs should be eliminated from consideration. The state of and the audits of their IPP must be part of this initial evaluation.

The self-appointed "stakeholder group" relied upon by the Board 2008-2009 did not consider the IPP as a factor in its advocacy. This is a fundamental indicator of that ersatz stakeholder group and its ocean environmental group that excluded Friends for participating. That was an exclusionary process that SWRRC and the Board continue through this Draft.

The Board now does recognize the importance of the IPP to the sources of potable drinking water, but there is no indication that the Draft, the Board, or anyone else has any idea how to factor this into potable drinking water regulation. In 1982 IPP was recognized as critical to the problem of contaminated biosolids and ocean dumping of sludge creating dead zones. Today, the functioning of IPP programs, and the lack of them in general for dischargers with less than 5mgd, have yet to be recognized as an essential part of CEC and potable water use.

An Industrial Pretreatment process needs to be convened as part of any further consideration of potable water.

15. The Draft makes evident the Board's unspoken State policy to use consumer bodies to receive, "treat/process," "dispose," transport, and safely harbor contaminants that are in drinking water.

Treated municipal water contains a vast number of CEC's that do not have limits or that are regulated but nonetheless are in drinking water in "acceptable" levels. The Draft and CEC's perhaps for the first time do not allow the Board to ignore the fact that we rely on our bodies to manage and, hopefully, dispose of, both regulated and unregulated contaminants.

This is cause for the reassessment both of the use of Environmental Toxicology to assess potable reuse on a statewide scale, and to exclude some POTWS from consideration for potable source water.

More basically, CEC's—unregulated contaminants—are mandatory cause to consider and explain in detail if and how to depart from the study progress of sanitation history to separate human waste from drinking water.

Will the Board reconsider and dramatically change the approach to potable drinking water that is demonstrated in the good and the bad in the Draft, and the Panel process that must be terminated?

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