



June 26, 2018

Jeanine Townsend
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

VIA EMAIL: commentletters@waterboards.ca.gov

Subject: Comment Letter – Proposed Recycled Water Policy Amendment.

Dear Ms. Townsend,

The Bay Area Clean Water Agencies (BACWA) appreciates the opportunity to comment on the proposed Recycled Water Policy Amendment (Proposed Amendment). BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 7.1 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health.

BACWA supports the efforts of the State Water Board to promote the use of Recycled Water via the Recycled Water Policy. Our comments provide recommendations on how to further streamline recycled water planning and permitting, and encourage new recycled water projects without introducing additional risk to public health.

1. Minimizing the direct discharge of treated municipal wastewater is not an appropriate goal for the Policy

The Proposed Amendment includes a new narrative goal (Section 3.1.2) to minimize the direct discharge of treated municipal waste water to enclosed bays, estuaries and coastal lagoons, and ocean waters, except where necessary to maintain beneficial uses. The proposed goal only provides exceptions for beneficial uses and brine discharge.

We are concerned that the proposed goal does not account for the cost-effectiveness, feasibility and affordability of recycled water implementation and other site-specific conditions across jurisdictions. Whether recycled water is feasible and can be provided at reasonable cost are conditions specified in the California Water Code. There is also concern that the goal will eventually evolve into a mandate via legislation.

The goal to minimize discharge to the Ocean also appears to penalize irrigation recycled water projects, or other projects where demand is seasonal, compared to recycled water projects with year-round demand. In Regional Water Quality Control Board (Regional Board) Region 2, agencies are looking at recycled water irrigation projects as one of many tools to reduce nutrient loads to the San Francisco Bay. Irrigation reuse projects can also contribute toward meeting TMDLs for other contaminants

For the reasons stated above, the proposed goal to minimize the discharge of treated municipal wastewater without consideration of affordability, cost-effectiveness, feasibility, and other site-specific conditions will not be achievable for all jurisdictions and agencies. BACWA recommends that this proposed goal be removed from the Policy, or at least moved to the “benefits” section of the Policy and reframed to maximize recycled water use. The State should encourage more water recycling by focusing on prioritizing funding for implementation of recycled water projects.

2. State Water Board should allow blanket transition of R2-1996-011 permittees

Section 11.2 terminates permit coverage of non-potable recycled water uses under existing Regional Water Board general orders one year from the effective date of the Proposed Amendment. Under this section, Regional Water Boards are required to transition enrollees from these orders into Order WQ 2016-0068-DDW (General Order 2016) before that termination date. The Proposed Amendment is silent on the process to be used by the Regional Boards for these transitions and does not appear to provide the additional resources needed by the Regional Boards to accomplish these transitions.

Region 2’s General Order 96-011 has more than 25 enrollees. Most of these enrollees have been successfully operating under General Order 96-011, producing and delivering recycled water to their users with no issues for more than 15 years. Without additional staffing allocations, Region 2’s staff is unlikely to be able to complete transitioning all 25+ agencies under General Order 2016 by the termination date. Discontinuity of permit coverage is a serious concern to BACWA member agencies. These agencies have

invested heavily in infrastructure and most have been delivering recycled water to their customers for more than a decade.

To avoid discontinuity in permit coverage, BACWA recommends the Proposed Amendment allow the current General Order 96-011 enrollees be automatically covered under General Order 2016 upon the effective date of the Proposed Amendment, or granted immediate coverage prior to the General Order 96-011 termination date. The automatic transition will ensure consistency with permit and monitoring standards.

The Notice of Intent (NOI) included with General Order 2016 recognized that it was unnecessary for permittees already covered by an existing order authorizing water recycling to resubmit all the information previously submitted to obtain that prior coverage. Furthermore, the NOI allowed for automatic coverage of enrollees covered under Order WQ 20140-0090-DWQ. See the specific language as quoted below (NOI p. A-1):

“Applicants that have been previously issued an order authorizing water recycling may be able to submit an abbreviated information package. Such applicants should contact Regional Water Board and State Water Board staff to determine the application information needs.

Enrollees covered under Order WQ 2104-0090-DWQ who wish to continue coverage must acknowledge in writing their consent to coverage under this General Order. Enrollees who submit the required documentation will automatically be covered under this General Order. The State Board will provide existing enrollees with a form for this purpose. A new NOI is not required if the project has not materially changed.

BACWA respectfully requests that the following language be added to the end of Proposed Amendment Section 11.2 to clarify the transition process for enrollees covered under existing General Permits:

Enrollees covered under existing Regional Water Board general orders who wish to obtain coverage under General Order WQ 2016-0068-DDW, or its successor, must acknowledge in writing their consent to such coverage. Enrollees who submit the required documentation will automatically be covered under this General Order. The Regional Board or State Board staff will provide existing

enrollees with a form for this purpose. A new NOI and/or updated Engineering Report is not required if the project has not materially changed.

BACWA questions the need for, and value to be derived from re-reviewing previously submitted and approved Engineering Reports for existing, operating recycled water projects that have not materially changed. BACWA also requests that any Engineering Report review deemed necessary be deferred until SWB DDW staff have developed updated “Guidelines for the Preparation of n Engineering Report for the Production, Distribution, and Use of Recycled Water.” The latest version was last updated March 2001. Updated guidelines are necessary to provide a transparent benchmark for how previously submitted reports will be evaluated for “consistency with all applicable regulations” per Proposed Amendment Section 11.3.1.

3. Funding for Recycled Water Projects should be prioritized

Section 3.4 of the Proposed Amendment requests that other State agencies use their respective authorities to increase the use of recycled water. We recommend that the Proposed Amendment recognize the need for additional funding assistance to facilitate the development of recycled water projects. The Proposed Amendment should request other State agencies to prioritize funding for recycled water projects. Other State agencies should also be encouraged to provide expedited and streamlined funding application reviews to facilitate implementation of recycled water projects.

4. Wastewater Change Petitions should be streamlined

Section 5 of the Proposed Amendment addresses wastewater change petitions that may be required pursuant to Water Code section 1211 if a recycled water project results in reduced stream flows. Most recycled water projects, certainly where the Producer is also regulated by an NPDES permit, will by definition result in a reduced volume of discharge to a receiving water body. To encourage the expansion of recycled water, wastewater change petitions for recycled water projects should not be required under most circumstances, and the review of petitions should be streamlined and expedited. The Proposed Amendments should be revised to clarify that not “every” project triggers a full 1211 analysis, learning from the challenges resulting from overly broad language in the original Amendments stating the intent that “every” groundwater basin needed to develop a salt and nutrient management plan. Specifically, the Proposed Amendment should include the following:

- a) There should be language about *de minimis* changes that can bypass the 1211 process. This may include recycled water projects that decrease discharges to tidal sloughs or projects that decrease discharges below a certain threshold (such as 10%).
- b) Division of Water Rights should improve coordination with the State Water Board's Division of Financial Assistance and other funding agencies, who already review the information required in wastewater change petitions as part of CEQA review or other permitting.
- c) There should be a streamlined review process for projects that reduce flows to streams or waterways where there is no downstream legal user, and projects where there has already been review of the downstream impacts of the wastewater treatment facility and recycled water program. The streamlined review should consider previous CEQA or other environmental review that evaluated impacts on instream uses at discharge rates that incorporate expected expansions of a facility's recycled water program.
- d) The State Water Board or Regional Board should identify streams where a cumulative impact analysis will be required for recycled water projects. A cumulative impact analysis should be the exception, not the norm.

5. Salt nutrient management plans should be incorporated into Groundwater Sustainability Plans where possible

The Proposed Amendment requires Regional Boards to evaluate and prioritize groundwater basins for SNMP development based on the GAMA or CASGEM system, or more region-specific factors in basin evaluation (Section 6.1.3) that better represent conditions of the region. BACWA supports this proposed change that recognizes the importance of providing flexibility at the regional level to evaluate the need for SNMPs. The proposed approach for groundwater basin evaluation also more closely mirrors the CASGEM evaluation and ranking approach and is more likely to accurately prioritize basins on the basis of salt (TDS) and nutrient (nitrate) issues than the USGS/GAMA approach previously recommend by the State Water Board to the Regional Water Boards that incorporates number of leaking underground storage tanks and also pesticide use in its ranking.

BACWA believes that continued inclusion of SNMP requirements within the Recycled Water Policy is misplaced. Development and implementation of effective SNMPs needs to be part of a larger stakeholder effort to manage the quantity and quality of groundwater in California given the minimal contribution of salts and nutrients from recycled water projects compared to other sources in most basins. Staff report Figure 4-4 shows that the

percent of water use from recycled water on a region-wide basis ranged from 1 to 17% with a median of 2%. Section 6.1.2 of the Proposed Amendment states that “[s]alts and nutrients from all sources must be managed on a basin-wide or watershed-wide basis in a manner that ensures attainment of water quality objectives and protection of beneficial uses” and encourages water and wastewater entities, together with local salt and nutrient contributing stakeholders, to collaboratively develop SNMPs for groundwater basins, as required.

The passage of SGMA in 2014 provides a new opportunity to move the salt and nutrient management planning component out of the Policy and into the broader reaching groundwater quantity and quality sustainability requirements of SGMA. SGMA was not available in 2009 when the Policy was adopted, so absent another clear “vehicle” the case was made at that time that salt and nutrient management planning should be incorporated into the Policy, with the understanding that all stakeholders contributing salts and nutrients to a given basin would need to be included in such efforts, not just recycled water producers and users. In a similar manner, the 2009 Policy included stormwater and conservation goals which as noted in the staff report (p.34) “*while critically important, are broader than recycled water and the scope of the Policy.*” Since the Policy was last amended, the State Water Board adopted the “Strategy to Optimize Resource Management of Storm Water (Storm Water Strategy or STORMS). As slightly paraphrased from the staff report (p. 34):

“With the development of STORMS and the conservation framework under Executive Order B-37-16, the State Water Board now has more appropriate programs and pathways to develop and oversee stormwater and conservation goals. B(b)ecause this goal would fit better in the Storm Water Strategy ... the goals were removed.”

Here in mid-2018, BACWA believes that it is appropriate that the same logic be applied to moving the majority of SNMP efforts from the Proposed Amendment to SGMA, which also didn’t exist in 2009, with the Regional Water Boards retaining their individual authorities under the Water Code if water quality protections provided under SGMA-driven efforts are deemed insufficient. As discussed in Section 3.4.4 of the May 9, 2018 staff report, “*Incorporating an SNMP into a GSP through application of the concepts discussed below may eliminate duplicative regulatory requirements and help encourage sustainable groundwater management.*” The staff report further details the elements of GSPs (Groundwater Sustainability Plans) and SNMPs, and states that duplication can be avoided if GSAs (Groundwater Sustainability Agencies) incorporate salt and nutrient management planning into their GSPs, including requirements for a basin-wide monitoring plan and water budgets.

BACWA supports inclusion of Section 6.2.1.4 in the Proposed Amendment allowing GSPs developed pursuant to SGMA to be found functionally equivalent to a SNMP. BACWA would respectfully request that the following sentence be added to the end of Section 6.2 to help ensure that Regional Water Board local basin evaluations be incorporated into salt and nutrient planning efforts by other groups:

“The State Water Board also encourages stakeholders to incorporate into their salt and nutrient planning efforts the basin evaluation information developed by each regional water board pursuant to Section 6.1.3.”

For the reasons discussed above, we respectfully disagree with staff’s recommendation to keep the SNMP program housed within the Recycled Water Policy and recommend that the Proposed Amendment include a requirement for the State Water Board to work with DWR and other stakeholders to develop a policy or agreement for migrating the SNMP program into SGMA. We believe that staff’s recommendation places too much emphasis on the administrative challenges of this option, rather than evaluating whether SGMA is a more appropriate program and pathway to develop and achieve the goals of salt and nutrient management planning. Removing the SNMP requirements from the Policy and placing them into SGMA does not alter the State Water Board’s authority over water quality. Section 6.2.1.5 of the draft Policy clearly states that a Regional Board maintains its authority pursuant to Water Code Section 13242 to adopt plans and programs of implementation for the protection of beneficial uses in the basin. Migrating the SNMP program into SGMA would not change this authority.

6. The Proposed Amendment should minimize duplicative reporting requirements

BACWA supports the centralization of recycled water reporting. In addition to tracking progress toward statewide goals, having reliable, consistent recycled water data from agencies will be instrumental in regional water management planning. However, some of the benefits of centralizing and streamlining reporting are lost if recycled water via other reporting avenues are not discontinued.

The State Water Board should implement recycled water reporting via CIWQS, rather than developing a new, redundant database system. Staff’s proposed approach to develop a new recycled water database and then eliminate redundant reporting requirements within CIWQS is unworkable. Agencies already report most influent, effluent, and total recycled water production data required by the Proposed Amendment into the CIWQS database as required by their NPDES Permit. Future reporting requirements should be

integrated into the existing CIWQS reporting system, rather than requiring double reporting.

BACWA has experience collecting recycled water data from our member agencies, and understands the difficulties inherent in getting a clear picture of recycled water flows, while avoiding double counting. BACWA would be happy to work with State Water Board staff to give input into database development and help test-drive input forms.

7. Influent flow reporting should be removed, and in-plant use of recycled water should be included

BACWA cautions that the collection of influent flow data may be misleading. If the State Water Board plans to compare influent flows to the flow of effluent discharged and recycled water produced, factors such as in-plant use of recycled water, and other unknown facility-specific factors, would cause those numbers to be inconsistent. The possible confusion resulting from reporting influent flows and comparing them to other flows outweighs any usefulness of the influent data.

Pursuant to the above paragraph, BACWA also recommends that “in-plant use” be added as a recycled water use, both to aid in recycled water flow accounting, as well as to count toward the State Water Board’s recycled water goals.

8. Priority pollutant monitoring should be removed from State General Order

The Proposed Amendment removes the monitoring requirements for priority pollutants from the Recycled Water Policy. Priority pollutants are largely industrial chemicals whose uses have diminished since they were incorporated into regulation over four decades ago. State Water Board staff reviewed priority pollutant monitoring data and concluded that exceedance rates are extremely low. The Proposed Amendment correctly shifts monitoring resources from historic pollutants to emerging contaminants and their potential impacts to potable recycled water projects. Additionally, recycled water is produced from POTW effluent. POTWs will still need to conduct effluent priority pollutant monitoring to satisfy their NPDES permits or WDRs.

BACWA appreciates the removal of duplicative and misaligned monitoring requirements. We recommend that, prior to any deadline requiring the enrollment of new permittees,

the Order WQ 2016-0068-DDW Monitoring and Reporting Program be revised to remove priority pollutant monitoring.

9. Laboratory Accreditation removes the necessity for a Quality Management System

The Proposed Amendment, Attachment A, Section 1.1, requires the development of a Quality Management System for monitoring constituents of emerging concern (CEC). Using an Environmental Laboratory Accreditation Program (ELAP) certified laboratory obviates the requirements related to Quality Management Systems. Attachment A, Section 1.1.1, states that laboratories “*Comply with the management and technical requirements applicable to their operations in accordance with The National Environmental Laboratory Accreditation Conference Institute (TNI) 2016 Standard Volume 1, Module 2...*” The TNI is not yet adopted as the accreditation standard in California. If a laboratory is ELAP accredited, then the laboratory will be compliant with TNI requirements once they are adopted. BACWA recommends that the Proposed Amendment Attachment A, Section 1.1 be replaced with the simple requirement that laboratories be accredited, and that all references to TNI be removed.

10. The Science Advisory Panel on CECs should oversee method development

For CECs analysis, Attachment, Section 1.2.1 states that, “*The State Water Board views the use of drinking water methods as most appropriate, since they are generally more sensitive than wastewater methods. However, this may not always be possible, since there may be characteristics of recycled water (e.g., high total dissolved solids) that may make the use of drinking water methods impractical. A laboratory providing analysis of CECs shall be accredited by the Environmental Laboratory Accreditation Program (ELAP) for whichever method is selected based on (1)-(4) below, if such accreditation is available at the time that monitoring is required to begin. Any modifications to the methods shall be submitted to the State Water Board for review and subsequently submitted to the regional water board in an updated quality assurance project plan.*” BACWA recommends that instead of individual agencies modifying methods and trying to validate them, the State Water Board develop methods through their Science Advisory Panel on CECs and require agencies to consistently follow a standard method. This would address the scenario when ELAP does not include a method within their scope of accreditation.

11. Definitions should be updated to reflect tidally influenced streams

BACWA has two recommended changes for the “Definitions” section:

- a) Tidally influence streams should be differentiated from those that have potential MUN use.
- b) The definition for “Estuaries and coastal lagoons” should consider sloughs subject to tidal influence.

12. Other concerns

In addition to the broad comments listed above, BACWA has two proposed minor modifications:

- a) In this and other State Water Board materials, Reverse Osmosis (RO) Concentrate should not be called “brine” unless it results from an ocean or highly brackish water desalination process. RO Concentrate from a recycled water project has a total dissolved solids in the range of 4,000 to 6,000 mg/L, compared to 35,000 mg/L in seawater. This distinction impacts how it may be treated or discharged.
- b) In Section 8.1.5, BACWA recommends that all groundwater recharge projects, not just those using surface spreading, should be eligible for expedited permitting.

Respectfully Submitted,

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Bay Area Clean Water Agencies

cc: BACWA Board
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