



# COACHELLA VALLEY WATER DISTRICT

*Established in 1918 as a public agency*

GENERAL MANAGER  
Jim Barrett

ASSISTANT GENERAL MANAGER  
Robert Cheng

June 25, 2018

**Public Comment**  
**Proposed Recycled Water Policy Amendment**  
**Deadline: 6/26/18 by 12 noon**

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



Dear Ms. Townsend:

Subject: Comment Letter – Proposed Recycled Water Policy Amendment

The Coachella Valley Water District (CVWD) appreciates the opportunity to provide comments on the proposed Recycled Water Policy amendment. CVWD provides domestic water, wastewater, recycled water, irrigation/drainage and regional stormwater protection services to more than 107,000 homes and businesses across 1,000 square miles in the Coachella Valley.

Recycled water is a key component of CVWD's long-range water management plans. CVWD recognizes the benefits of providing statewide consistency for permit requirements for recycled water projects but is concerned that some of the proposed amendments undermine the goal of the policy to promote the use of recycled water. We encourage the State Water Resources Control Board to continue its support of the increased development and use of recycled water as one piece of a broader strategy to mitigate the effects of long-term drought, climate change, and water supply uncertainty.

Please find enclosed comments on the proposed Recycled Water Policy amendment. We appreciate your consideration of these comments. If you have any questions, please call Steve Bigley, Director of Environmental Services, (760) 398-2661, extension 2286.

Sincerely,

Steve Bigley  
Director of Environmental Services

Enclosure/1/as

ZRdR: ms\Env Svcs\WR\2018\June\CVWD RWP Amendment ltr.docx  
File: 0022.114.28, 0932

**Coachella Valley Water District**  
**Comments – Proposed Recycled Water Policy Amendment**  
**June 26, 2018**

Section 3. Goals and reporting requirements to track recycled water

The reporting requirements for municipal wastewater treatment plants set forth in section 3 have the potential to impose significant costs on the plant operators, which may be passed on to the public. We appreciate the value of the data that will be generated by such reporting. However, implementing these requirements by way of executive order, as proposed in section 3.2, would be ill-advised as it may constitute an impermissible underground regulation.

Any rule or standard of general application is a “regulation” that must be adopted pursuant to the California Administrative Procedures Act (APA). “Regulation” is defined as “a rule or standard of general application” that implements the law enforced by the state agency imposing the rule or standard. (*Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 259 – 261; Gov. Code § 11340.600.) The proposed reporting requirements would meet that definition. The proposed reporting requirements also have the potential to impose a significant financial burden on municipal wastewater treatment plant operators and recycled water producers. Compliance with the APA would ensure that this financial impact is properly evaluated. (Gov. Code, §§ 11346.3 and 11345.5, subd. (a)(6).) The State Water Board should commit to complying with the established rulemaking process under the APA.

We recommend that the Draft Recycled Water Policy be revised to provide that reporting requirements will be adopted pursuant to the established rulemaking procedures set forth in Government Code section 11340 et seq. to ensure adequate public discussion and debate on the merits of the proposed reporting requirements and the potential financial impact.

With the foregoing in mind, we recommend that subsections 3.2.1 and 3.2.2, including all subsections thereunder, be deleted and subsection 3.2 be revised to read as follows:

3. Goals and reporting requirements to track recycled water
  - 3.2 Reporting requirements.

The State Water Board will evaluate progress toward these goals and revise the goals or establish mandates as necessary. To support this evaluation, the State Water Board will adopt regulations to require electronic reporting by municipal wastewater treatment plants of the volume of influent, treated water produced, and treated water disposed of, and to require recycled water producers to electronically report the volume of treated water produced and disposed.

Section 5. Wastewater change petitions

The Draft Policy includes a new section, Section 5, that addresses wastewater change petitions submitted to the State Water Board pursuant to Water Code section 1211. We support encouraging

early coordination by the recycled water project proponent with the various regulatory entities to facilitate and expedite, to the degree possible, the implementation of recycled water programs.

However, Section 5 improperly expands the authority of the State Water Board and creates duplicative, and potentially competing, environmental analyses, thus undermining the purpose of the Draft Recycled Water Policy of encouraging recycled water projects. In addition, Section 5 needlessly restates established law governing water rights and the State Water Board's jurisdiction over water right change petitions. We recommend that Section 5 be clarified and significantly streamlined.

Water Code section 1211, subdivision (a) provides that a proposed change to the point of discharge, place of use or purpose of use of treated wastewater that will result in a decrease in the flows of any portion of a watercourse requires approval by the State Water Board. Section 1211, subdivision (b) exempts from the requirements of subdivision (a) any change that will not result in a decrease in the flows of a watercourse.

Subsection 5.1 restates the requirements of Water Code section 1211. However, the language in subsection 5.1 is broader than merely change petitions. As written, subsection 5.1 requires a recycled water project proponent to obtain State Water Board approval prior to receiving state funding for the treatment or use of recycled water, regardless of whether the project involves a change petition. This requirement is in excess of the State Water Board's authority. Section 1211 does not grant the State Water Board authority to approve or deny wastewater treatment projects that do not involve a change in the point of discharge, place of use or purpose of use of treated wastewater.

Subsection 5.1 also states that proposed changes to wastewater discharges must receive (a) a determination from the State Water Board's Division of Water Rights that an order approving the change is not required; or (2) State Water Board approval for the proposed change pursuant to Water Code section 1211. The requirement that a recycled water project proponent obtain a State Water Board determination that the project will not result in a decrease in flows is directly contrary to the language of section 1211, subdivision (b). Section 1211, subdivision (b) expressly exempts from State Water Board jurisdiction those projects that will not result in a decrease in the flows of a watercourse. Nothing in section 1211 obligates a wastewater treatment plant operator to obtain a State Water Board determination that the proposed change is exempt, and nothing requires such a determination before obtaining state funding. Furthermore, there is no process for obtaining such a determination from the State Water Board. Presumably the State Water Board would use the same, or similar, process used to approve a change petition. Wastewater change petitions can take anywhere from six months to five years, depending on the complexity and degree of opposition. Adoption of the same, or similar, process for a project that does not decrease stream flows has the potential to significantly delay projects and discouraging project proponents, and thus is contrary to the State Water Board's stated goal of encouraging recycled water projects.

Because section 5.1 of the Draft Policy impermissibly exceeds the State Water Board's authority and has the potential to discourage recycled water project, we recommend that subsection 5.1 be deleted.

Subsection 5.2 is merely a restatement of the State Water Board's responsibilities when evaluating any water rights change petition and is unnecessary in the context of a policy document. We recommend it be deleted.

Finally, subsection 5.3, as written, appears to state that the State Water Board has authority, in addition to and separate from the requirements of CEQA, to determine the cumulative effects of a wastewater change petition. This potentially creates a duplicative process not authorized by law, and without any guidelines for how the State Water Board would conduct its cumulative impacts analysis. To the extent subsection 5.3 is simply a restatement of the State Water Board's authority as a lead agency under CEQA for wastewater change petitions, this subsection is unnecessary in the context of a policy document. In this instance, it also has the potential to create confusion as to the scope and extent of the State Water Board's authority to analyze the cumulative effects of a wastewater change petition. We recommend that subsection 5.3 be deleted.

With the foregoing in mind, we recommend that subsections 5.1, 5.2, 5.3 and 5.4 be deleted and section 5 be revised to read as follows:

#### 5. Wastewater change petitions

In many cases, recycled water project proponents will be required to obtain approvals from several regulatory agencies prior to implementing their project. If the proposed recycled water project will result in reduced stream flows, an approved "wastewater change petition" may be required pursuant to Water Code section 1211. For this reason, the State Water Board encourages early coordination by the recycled water project proponent with the State Water Board's Division of Water Rights and Division of Financial Assurance, the applicable regional water board or boards, Department of Water Resources, and the Department of Fish and Wildlife, as necessary, in the process of funding and permitting recycled water projects.

Approval of a wastewater change petition shall not be construed to release any recycled water project proponent from the obligation to comply with any regional water board requirements applicable to the recycled water project.

#### Section 6. Salt and nutrient management plans

Section 6.2.6 establishes new requirements for Regional Water Boards, in consultation with stakeholders, to assess and review monitoring data generated from Salt and Nutrient Management Plans approximately every 5 years but no more than every 10 years and outlines the elements to be included in these periodic reviews. Periodic reviews are vital to understanding trends in groundwater quality, the ability of the monitoring network to characterize groundwater quality in the basin, data gaps, and assimilative capacity. While we encourage these periodic reviews, we believe that this section could benefit from greater clarity regarding the role of the entities that developed the Salt and Nutrient Management Plans. The involvement of these entities is crucial since they will be the most familiar with the plan implementation and resulting data. However, it should be clearly stated that the burden of these periodic reviews will not fall on the entities that developed Salt and Nutrient Management Plans. These entities have already covered the cost of developing the plans, costs which were considerable for some basins (more than \$600,000 for the Coachella Valley Basin) due to the need for highly technical modeling, as well as on going costs of implementing monitoring. Particularly since as stated in section 6.2.7, results of these periodic reviews may require updates to the Salt and Nutrient Management Plans. Given the importance of detecting valid trends and the effort that will be expended in the assessments and updates, we encourage the State Water Board to consider periodic review at a frequency of every 10 years.

## Section 7. Permitting and antidegradation analysis for non-potable recycled water projects

Section 7.3.2.1.3. states that for irrigation projects, application of recycled water should be at a rate that minimizes percolation below the root zone. Recycled water will need to percolate below the plants' root zone or the plants will not survive. This is a critical irrigation method for golf courses irrigating with recycled water. Depending on soil type, the water may indeed percolate past the root zone without overwatering. Plant root zones vary depending on the type of plant and frequency of irrigation. The root zone can extend 12" and the depth to groundwater can be considerably deeper, thus unlikely to have an impact on the groundwater water quality. The operation and management plan cannot be a one-size-fits-all, even if the customer type is the same. This should be a best management practices (BMP) or guidelines document rather than an operation and management plan. This BMP information is already included in most Salt and Nutrient Management Plans and should not be prescribed as a separate operation and management plan.

## Section 8. Permitting and antidegradation analysis for groundwater recharge projects

Section 8 needs to be revised to clarify that it applies only to recharge projects using recycled water. Section 8.1, permitting for groundwater recharge projects, is too broad, insofar as it arguably is applicable to all groundwater recharge projects and not merely those that involve recharge with recycled water. As written, the Draft Policy requires all groundwater recharge projects to comply with regulations related to recycled water (see subsection 8.1.2.1.) Clearly this would be inappropriate for groundwater recharge projects that recharge the groundwater basin with local storm water or imported water, such as State Water Project water.

A challenge, both for the Regional Water Quality Boards and for entities developing Salt and Nutrient Management Plans, has been the lack of guidance for calculating assimilative capacity for a basin or subbasin. In some cases, this lack of clarity has resulted in Salt and Nutrient Management Plans not being accepted by Regional Water Quality Boards due to disagreements about the approach that should be used to calculate assimilative capacity. The proposed amendments do not provide clarification on this matter. However, section 8.2.4.1 provides guidance for calculating assimilative capacity for recycled water projects where Salt and Nutrient Management Plans have not been accepted. As stated, the baseline assimilative capacity shall be calculated by comparing the mineral water quality objective with the average concentration of the basin or subbasin. We believe that this approach is sound and should be broadly adopted within the Draft Recycled Water Policy to provide clear guidance in the development and acceptance of Salt and Nutrient Management Plans.

## Section 11. Maximizing consistency in permitting recycled water projects

Section 11.2 states that coverage under existing regional water board general orders for non-potable water uses of recycled water will terminate one year from the effective date of the proposed Recycled Water Policy. Regional Water Boards shall, where appropriate, transition enrollees from these orders to Order WQ 2016-0068-DDW by the same date. As written, this opens the possibility that prospective enrollees may lose coverage if requirements to transition to Order WQ 2016-0068-DDW are not met by the effective date, including filing an NOI, providing the required documentation, and receiving authorization from the Regional Water Boards. We believe that it is prudent to clarify how coverage for recycled water projects will be maintained during this transition period.