

**Summary of Key Issues
Stakeholders Negotiations - SWRCB Draft Recycled Water Policy
July 8, 2008**

Subject	Specific Issue	Water Industry's Position	Environmental Community's Position	Strategic Considerations
Mandate for the Use of Recycled Water -- Quantity of Mandate	What quantity of recycled water should the SWRCB require be met by the draft policy?	200,000 af by 2020 (over existing levels) and an additional 300,000 af by 2030 (again, over existing levels).	Support.	<p>The environmental community points to California's failure to meet the voluntary statutory goals for recycling and insists that some type of "mandate" be included in the draft policy. We consulted the unfunded applications for Proposition 50 construction grants in 2007 for recycled water projects to determine the potential "pent-up demand" for recycled water projects. Our understanding is that local agencies applied to the SWRCB for funding for about 400,000 af in recycled water projects that were denied. Based on those applications, we believe that the "mandate" for a total of 500,000 af in additional recycled water projects by 2030 merely captures local agencies' present plans, with a very modest increase in projects over 22 years.</p> <p>It is important to note that the concept for including a mandate in the draft policy does not identify a single agency/entity that is responsible for meeting the mandate and there are no consequences if the mandate is not met. Instead, the SWRCB would re-evaluate whether progress is being made in 2012 and 2016. If made part of the draft policy, this approach allows local agencies the greatest flexibility to move forward with recycled water projects, as may be appropriate under local circumstances.</p>
-- Waste and Unreasonable Use	Should the draft policy include a statement indicating that using potable water when recycled water is a waste/unreasonable use of water?	Yes, provided that the draft policy does not extend beyond the provisions of existing law.	Support.	While agencies may have valid concerns about the real life applicability of this legal "hammer" to particular circumstances, we believe this is acceptable as a mere restatement of existing law. Including a provision like this is an important corollary to the goal of treating recycled water as a valid sustainable water supply rather than a disposal of waste.
-- Mandate for making recycled water available in NPDES Permits	Should the draft policy require regional water boards to include a provision in some or all NPDES permits requiring that recycled water that would otherwise be discharged be made available for use by a water purveyor?	There are varying views within the water community. The wastewater community generally objects to this type of mandate as overly simplistic and is concerned about vulnerability to citizen suits if this provision is included in the federal NPDES permit.	Support.	While we generally believe that wastewater agency reluctance is not a major factor in our ability to meet our recycled water goals, the environmental community and some in the drinking water community believe that a limited mandate that only requires tertiary treated recycled water to be made available to a willing purveyor for beneficial use. However, inclusion in an NPDES permit has associated liability for the wastewater community, and no concomitant consequences for the drinking water community. Existing law has provisions for dealing with this issue. should consider whether there is another acceptable approach to this type of "mandate,"
Roles of the SWRCB, Regional Boards, CDPH, CDWR and the CPUC	Should the draft policy include an express statement describing the respective roles of the SWRCB, the Regional Boards and other agencies?	Yes. One of the key contributing factors to the current impasse has been the efforts of the Regional Boards to second-guess CDPH.	General agreement, provided that the language does not eliminate the important role of the Regional Boards in protecting water quality (beyond the role of CDPH in protecting public health).	While the water industry view is that CDPH should have primacy in protecting the drinking water use, the environmental community has been consistent in voicing the view that there is a role for the regional water boards in protecting beneficial uses and applying the antidegradation policy. The draft policy could place some restrictions and clarification regarding the respective roles of the agencies and eliminate the most egregious regional water board "second guessing," particularly under the guise of protecting public health.
Irrigation Projects				

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-- Streamlined Permitting (i.e., permit issuance within 90 days of application)	When should irrigation projects be able to take advantage of streamlined permitting?	Any time that there are not "unusual circumstances" such as irrigation overlying a pristine groundwater basin that is free of any pollutants or contaminants. This standard would, effectively, mean that irrigation projects in most of California's urban areas would be able to obtain streamlined permitting.	The Regional Boards should have substantial discretion to identify "unusual circumstances." For instance, irrigation projects that overlie groundwater basins that meet all primary MCLs should not be eligible for streamlined permitting.	Part of defining the rule is defining the exceptions. Throughout this process, our goal has been to devise a policy that facilitates 80 percent of the potential projects, recognizing that some projects, however meritorious, will simply require additional scrutiny. The goal here is to define "pristine" basins and unusual circumstances in such a way that the vast majority of irrigation projects can be "fast tracked." It should be noted that the negotiations have focused almost exclusively on the use of recycled water in urban areas. There are two reasons that we have avoided discussion of the agricultural use of recycled water. First, the issues associated with urban use of recycled water are already quite difficult; adding the additional complexities associated with the agricultural use of recycled water would probably have doomed the negotiations. Second, and related, we believe that if we can make progress on questions relating to urban irrigation projects, the subsequent negotiations relating to the agricultural use of recycled water are likely to be more successful.
-- Monitoring	Should there be site-specific monitoring for each recycled water irrigation project or should these projects rely on monitoring as part of the regional salt/nutrient plans?	Requiring each recycled water irrigation project to have site-specific monitoring is not necessary to protect public health or the environment if the project incorporates best management practices.	Agreed.	The notion that individual projects might be saddled with the cost of installing groundwater monitoring wells is of significant concern; the agreement from the environmental community on this issue is important to facilitate recycled water irrigation projects.
-- Incidental Runoff and Recharge	<p>1. Should there be an absolute ban on the discharge of recycled water to receiving waters?</p> <p>2. Should any such discharge constitute a violation of the policy and open the permit holder to an enforcement action?</p>	<p>1. The draft policy should not contain a ban or prohibition on the discharge of recycled water to receiving waters. Irrigation projects using recycled water will – inevitably – result in the incidental runoff of recycled water to a local storm sewer system (or, in some cases to a stream) and may also the incidental recharge of a groundwater basin with recycled water.</p> <p>2. If the SWRCB wishes to encourage the use of recycled water, the draft policy needs to clearly state that the incidental runoff/recharge from a project that is reasonably designed and operated to prevent such runoff/recharge is not a violation of the draft policy and should not be the grounds for an enforcement action.</p>	<p>1. The draft policy must include a prohibition on the discharge of recycled water to receiving waters. This is a simple restatement of state and federal law.</p> <p>2. The draft policy must include a statement that the incidental runoff or recharge of recycled water allows the SWRCB or a Regional Board to consider an enforcement action and to take an enforcement action if the permit operator does not repair the problem as soon as practicable or within two weeks.</p>	Our strategy is to include in the draft policy a set of best management practices that take all reasonable precautions to avoid incidental runoff/recharge, and that provide for a set period of time to "cure" any runoff that occurs despite the implementation of these best practices (i.e. due to a broken sprinkler head). Without getting into the debate about what the Clean Water Act does or does not require, we believe that a combination of BMPs and coverage under the municipal separate storm sewer system (MS4) permits for minor amounts of runoff is a prudent (and lawful) way to address the issue. This is an important issue to the SWRCB and its staff; we need to make sure that we provide them with a explanation of how they can comply with the CWA in a way that works for our members.

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Groundwater Recharge Projects	Should the requirements for groundwater recharge projects be limited to those mandated by CDPH?	For the protection of human health, yes. We acknowledge that there is a role for the Regional Boards in protecting other beneficial uses of groundwater, such as agricultural irrigation. We understand, however, that CDPH already considers many of the geochemistry issues that concern the environmental community; we want to avoid giving the Regional Board "two bites at the apple."	The Regional Boards should have authority to impose additional requirements in order to protect all designated beneficial uses of a groundwater basin. In addition, a Regional Board should have authority to impose additional requirements to avoid impacts on existing groundwater contaminant plumes, to avoid changes in geochemistry due to the recharge of recycled water, or to protect a groundwater basin that meets all primary MCLs. The environmental community agrees that the Regional Boards should not impose enforceable limitations based on CDPH notification levels	The proper role of CDPH and the regional boards has received a great deal of discussion. As noted above, rather than attempt to write the Regional Boards entirely out of the process, it is more promising to clearly describe and define their proper role. Our goal is also to require a Regional Board to identify the factual data that might indicate that CDPH has not protected a designated beneficial use and so focus discussion on facts and applicable science, not a Regional Board's impressions.
Antidegradation Policy (SWRCB Resolution 68-16)				
-- Groundwater Recharge Projects	<ol style="list-style-type: none"> 1. What constitutes "high quality" water for the purpose of Resolution 68-16? 2. How may a project satisfy the requirements of the antidegradation policy? 	<ol style="list-style-type: none"> 1. Resolution 68-16 does not define the term "high quality" water and there is no clear definition that agencies can use to guide decisions. The water industry proposes that this term not merely mean compliance with all water quality objectives but, instead, refer to an ambient groundwater quality that is significantly below (i.e., better than) all applicable water quality objectives. 2. A water agency can satisfy the requirements of Resolution 68-16 by any means reasonably acceptable to a Regional Board, including the methods used in connection with the Santa Ana N/TDS plan or any other method relying on the long-term conjunctive use of surface water, stormwater and groundwater. 	<ol style="list-style-type: none"> 1. Unknown. It appears that a high quality water may include most waters of the state. 2. Unknown. 	Because groundwater recharge projects already have to undergo a very rigorous analysis in order to meet CDPH's case-by-case requirements (including a CDPH version of anti-degradation) we do not believe this is a major disagreement with the environmental community but simply a matter of settling on the range of approaches that may be used by a project to satisfy Resolution 68-16.
-- Irrigation Projects	How should any impacts of	Evaluating individual irrigation	Irrigation projects must satisfy the	One of the key water industry goals in these negotiations was to move away from the concept

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	irrigation projects be addressed?	projects (especially with the best management practices described above) for compliance with the antidegradation policy is not necessary and a waste of resources, as little meaningful information will be generated by these piecemeal project specific analyses. Such projects should be evaluated regionally in the salt/nutrient plans, and in the 5 year interim, no additional antidegradation review should be required for irrigation projects.	antidegradation policy but can do so by demonstrating using a mass balance that they will use less than 10% of the assimilative capacity of a basin (20% for cumulative projects) while a salt/nutrient plan is under development or by complying with the plan once it is developed.	that each recycled water irrigation project would need to be subject to antidegradation analysis under Resolution 68-16. In order to address potential cumulative impacts of a large number of projects, the water community proposed that these projects not be subjected to individual antidegradation analyses but, instead, there be a basin-by basin analysis as part of the salt/nutrient management plans. It appears that the environmental community may concur in the basin-by-basin approach, with some caveats.
Emerging Constituents/Chemicals of Emerging Concern	How should the SWRCB prevent the Regional Boards from developing different standards for emerging constituents/chemicals of emerging concern?	The SWRCB should establish a "blue-ribbon" panel to evaluate the peer-reviewed science and make recommendations for permit conditions and effluent monitoring. Regulation of specific CECs is premature at this time.	Agreed.	The agreement reached on how to address CECs is very significant; what we have been able to develop with the environmental community is a more rational and scientifically sound approach than what had been included in the draft SWRCB policy, which left the decision of how to regulate CECs largely within the discretion of the individual regional boards.
Regional Salt/Nutrient Plans	<p>1. Should there be a salt/nutrient management plan for all groundwater basins and/or all watersheds in California?</p> <p>2. If so, how should they be funded?</p>	<p>1. Yes, provided that the plan is locally developed and controlled and focuses on locally-defined problems.</p> <p>2. Plan development should be funded by local agencies. A Regional Board would be responsible for funding its staff participation in the planning process.</p>	<p>1. All watersheds in the state should develop plans.</p> <p>2. Water agencies should fund the plan development and Regional Board positions needed for permitting (including the development of plans).</p>	<p>1. The Regional Boards are, increasingly, moving towards mandating some form of planning process for salts/nutrients, either under the auspices of TMDLs or by means of adopting basinwide planning requirements. Our strategy is to include provisions in the draft policy that offers water and wastewater agencies the opportunity to take the initiative to direct these plans, determine if a plan is needed and if so to focus them on real water quality issues, and base these plans on real data. The alternative is likely to be plans adopted by Regional Boards that are difficult to challenge and that impose substantially greater burdens on the water industry.</p> <p>2. The Regional Boards do not have funding to manage the preparation of salt/nutrient management plans. Because funding can drive the plan process, it appears strategic to agree to fund that process. Nonetheless, staffing up the regional boards is not a guarantee that they will take the process seriously, or that their participation will be meaningful. We welcome input regarding the pros and cons of agreeing to fund the Regional Board's participation in the process or other funding alternatives..</p>

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Incentives for the Use of Recycled Water	Should there be incentives for advanced treatment projects other than those using microfiltration/reverse osmosis?	Yes. Projects using microfiltration/reverse osmosis should receive incentives but, depending on the circumstances, other types of treatment beyond tertiary may achieve the same results more cheaply and so should also receive incentives.	No, other than streamlined permitting for irrigation projects. It is important to encourage all projects to move towards microfiltration/reverse osmosis.	There is little disagreement regarding the environmental community's proposed incentives for recycled water, other than limiting incentives for advanced treatment to microfiltration/reverse osmosis.
General Findings/Conclusions				
-- Beneficial Impact	Should the SWRCB find that the use of recycled water has a beneficial impact on the environment?	Yes. Because of the importance of recycled water to sustainable/reliable water supplies, the SWRCB should find that the use of recycled water in a manner consistent with the draft policy benefits the environment.	Maybe. The environmental community acknowledges that there are benefits from recycled water but also insists that there may be substantial drawbacks to the use of recycled water. At most, the environmental community might be willing to agree that there is a presumption that the use of recycled water benefits the environment.	The purpose of including this type of finding in the draft policy is to limit the extent to which opponents of recycled water projects can use CEQA to challenge such projects. A finding by the SWRCB would serve to limit such challenges, at least on the ground that a recycled water project was contaminating a groundwater basin or the like. It would not address construction impacts, traffic impacts or other sorts of impacts on the environment.