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March 10, 2008

Tam Doduc, Chair
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

RE: Proposed Recycled Water Policy

Dear Chair Doduc and State Board Members

The Water Authority supports the use of recycled water in California in a manner that is protective of water quality. The Water Authority requests that the State Water Resources Control Board not adopt the draft Recycled Water Policy for California. While we had hoped that the revised Policy would help achieve the state's goal of removing barriers for the use of recycled water, we regrettably find ourselves faced with a draft Policy that, as written, does not accomplish this goal. For this reason, we urge the Board not to adopt the proposed Policy.

While we appreciate some of the revisions to the prior draft, such as removal of the requirement to provide financial assurances and the adjustment of the provisions relating to maximum total dissolved solids (TDS), a number of the policy provisions do not advance the goal of increasing the use of recycled water in California. These issues are described below.

1. Salt Management Plans:
   a. The State Board policy requires Regional Boards to develop salt management plans, but there is nothing in the policy that defines what would constitute a salt management plan. Recycled water use alone should not be the trigger for preparing a salt management plan. When developing the salt management plans, the policy should require the Regional Boards to evaluate the salt balance in the basin. The salt balance should take into consideration all sources of salt and credit those activities that remove salt from the basin. Regional Boards should be required to consider recommended salt management approaches from the local Integrated Regional Water Management Plan, and institute a process to obtain input from all stakeholders.

b. Where required, the salt management plans must be completed within five years with a possible five-year extension if significant progress is being made. However, the policy does not include any ramifications where Regional Boards do not institute salt management plans in a timely fashion. In fact, if a Regional Board does not implement a salt plan within the time frames recommended by the policy, the Regional Board would be allowed to establish recycled water requirements on a case-by-case basis. This policy could discourage the adoption of salt management plans where Regional Boards prefer to regulate on a case-by-case basis.

2. Interim Requirements:
   a. The proposed policy allows recycled water use where the TDS of the recycled water shall not exceed the monthly average TDS concentration in the potable water supply, plus 550 mg/L. Many public water agencies may not maintain monthly TDS data. In addition, increases in basin TDS levels are long-term water quality issues. Therefore, we recommend that compliance with the TDS requirement be based on an annual average instead of a monthly average.
   b. The proposed policy requires the development and implementation of nutrient management practices where the recycled water nitrogen concentration is greater than 3 mg/L. However, the proposed policy does not state or define what is meant by nutrient management practices. The staff report and certified regulatory program analysis states that this is economically and technically feasible, but does not include any data to support this conclusion. In addition, because fertilizers are added by the end users of recycled water, education of the customers on nutrient management practices and the nutrient levels present is water would be a more economically feasible alternative and would accomplish similar results.

3. Narrative Toxicity Objectives: The policy allows Regional Water Boards to establish recycled water limits based on narrative toxicity limits, which are more stringent than drinking water standards without an adequate basis in science. This policy undermines the ability to plan for projects by introducing a level of uncertainty as to what limits might be established, at what level, and at what associated cost.
   a. The policy applies the narrative toxicity standards for both irrigation and groundwater recharge projects. For irrigation projects, the Regional Board should be required to make a finding that the

constituent is likely to reach groundwater in concentrations that can be measured under approved analytical methods and that the presence of the constituent in groundwater could adversely affect a designated beneficial use.

b. Although it is preferable for the California Department of Public Health to establish all new health related standards, as a minimum, we recommend that Section IV.B of the policy be changed to ensure that Regional Boards use a scientific-based approach as follows:
   i. When determining whether adequate information is available to characterize the toxicity of the constituent, Regional Boards should be required to obtain and consider recommendations from the Office of Environmental Health Hazard Assessment (OEHHA).
   ii. When determining whether approved analytical methods are available, Regional Boards should be required to obtain and consider recommendations from the California Department of Public Health, Environmental Laboratory Accreditation Program (ELAP).
   iii. To support the determination that a new numerical standard is necessary, Regional Boards should be required make a determination that the benefits of establishing the new numerical standard outweigh the costs to achieve that standard.

4. The anti-degradation language does not adequately address the components of the Anti-degradation Policy, particularly with regard to defining prevention of nuisance and pollution, maximum benefit and best practical treatment and control (BPTC). Without addressing this issue, the Draft Policy cannot insure it will not unreasonably affect beneficial uses.

5. The policy includes numerous references to the Clean Water Act without explaining how the Act is relevant or applicable to recycled water irrigation and recharge. Once again this uncertainty about the policy's intent, and what is intended by Clean Water Act compliance, creates a regulatory environment that can frustrate the development of projects.

These issues must be satisfactorily addressed in order for our agency to support a Recycled Water Policy. If you have any questions regarding this letter, please contact Toby Roy at (858) 522-6743.

Sincerely,

Ken Weinberg
Director of Water Resources