CLEAN WATER NOW

CLEAN WATER NOW is an innovative, science-based organization committed to solution-oriented collaboration as a means of developing safe, sustainable water supplies and preserving healthy ecosystems.

To: SWRCB **Date:** May 9, 2016

Re: STATE WATER RESOURCES CONTROL BOARD ORDER WQ 2016-00XX-DDW
DRAFT WATER RECLAMATION REQUIREMENTS FOR RECYCLED WATER USE (**FINDING 34—DRAFT)**

From: **Clean Water Now** (CWN--Est. 1998)

RECEIVED
5-9-16
SWRCB Clerk

Attention: Sherly Rosilela (Staff)

SWRCB:

CWN is appreciative of the opportunity to provide comments to the DRAFT. We applaud the addressing of supply side concerns by the State.

FINDINGS
PURPOSE AND APPLICABILITY

34. The State Water Board recognizes the need for streamlined permitting consistent with the State Water Board's Recycled Water Policy. The State Water Board's intention in the issuance of this statewide order is to provide consistent regulation of non-potable uses of recycled water statewide. To provide such consistency, the State Water Board intends that regulatory coverage under an existing Regional Water Board general order or conditional waiver for non-potable uses of recycled water (landscape irrigation, golf course irrigation, dust control, street sweeping, etc.) will be terminated by the applicable Regional Water Board within three (3) years after adoption of this General Order. Enrollees covered by a Regional Water Board general order or conditional waiver for non-potable uses of recycled water may continue discharging under that authority until the applicable Regional Water Board issues a Notice of Applicability to an Administrator per the terms of this Order.

First, we wish to add our unequivocal voice of support to the submission dated February 22, 2016 by the General Manager of our local wastewater JPA, the South Orange County Wastewater Authority (SOCWA). We share many of SOCWA's reservations and concerns.

CWN finds resonance with and is highly supportive of SOCWA GM Betty Burnett's estimable comments. We are especially focused upon the **"Lack of regulatory authority/Control of User"** aspect she emphasized and desire to expand upon that critical element (see below).

Second, CWN, now in its 19th year acting primarily as a water quality and watershed protection watchdog NGO, sees a clear nexus with the long held concerns we hold over the SDRWQCB Stormwater Permit (MS4) history, what we perceive as lapsed regulatory product, lax field implementation, plus poor monitoring and enforcement processes.

In that 19 years, we have **never** observed an MS4 Copermittee in South Orange County (SOC) comply with the appropriate, in place Permit. It is our contention that not only have Copermittees been chronic violators of both the federal CWA and Porter-Cologne, but delay implementation by continuously objecting to and appealing each Permit asap/post haste after the SDRWQCB has ratified them.

This stalling tactic, abusing public stakeholder's funds, is an anathema to CWN. As SOC has numerous 303 d listed impaired waterbodies, our watersheds increasingly urbanized and thus in a state of entropy (eco-habitat, physical characteristics/erosion and water quality degradation), we find it an unconscionable, traitorous contradiction that the public's own funds are being used against its best environmental interests, including non-compliance with our HSA Basin Plan Objectives.

CWN has personally observed that although these Permits are **supposed** to be renewed every 5 years, increasingly more stringent and prescriptive thus honoring the spirit and goals of said CWA/Porter-Cologne, the MS4 Copermittees have achieved tremendous economic

benefits by filing extensive and hence expensive, protracted legal objections (appeals) plus post-certification negotiations each time.

This has resulted in longer periods than the 5-year renewal process originally mandated. CWN believes there is a strong case to be made that the Copermittees in Region 9 have intentionally delayed the renewal process for (at minimum) 4 years total, thus saving $$$ millions/year via non-compliance, non-implementation.

FACT: The original MS4 Permit R9-96-03 renewal was delayed from 2001 until 2002.

FACT: The next iteration, MS4 Permit 2009 (R9-2009-001, enjoyed a 7-year renewal period, once again stalled by Copermittees protracted legal challenges.

FACT: The MS4 that was to unify **ALL** three (3) major Stormwater Permits within the SDRWQCB purview was ratified in May of 2013 (R-2013-0001), yet the Copermittees stretched the 5-year renewal process out an additional year by petitioning and acquiring an amended 2013: The R9-20015-0010, thus 6 years after the 2009 iteration.

The SDRWQCB delegates, confers upon the Copermittees local lead agency adverse water quality impact enforcement, i.e., both the **RESPONSIBILITY** and **ACCOUNTABILITY** aspects.

It is they who have the explicitly stated **"regulatory authority"** that SOCWA notes in its petition. Empowerment to do so by the water and sanitation industry is specious, unsupported and nebulous at best.

After reviewing some of the other comments to the **DRAFT** under consideration (**Order WQ 2016-00XX-DDW**), CWN is concerned the water industry is typified as the culprit. It shouldn't be held ultimately responsible for customer's (Users) carelessness, increasing pollutant loading due to migration dynamics (low flow runoff to MS4 Systems).

This includes Title 22 landscape irrigation issues, the subject of this DRAFT. Modifying User activities is a task mandated for MS4 entities.

The 4 years of avoidance by the MS4 Copermittees constitutes nearly an entire 5-year cycle as originally mandated. By now, after 20 years subsequent to the R9-96-03, the SOC Copermittees should already **BE** in compliance with the CWA/Porter-Cologne and latest MS4 Permit.

TRANSLATION: Instead of 4 iterations (Permits) we've only had 3.

Worse, the **"safe harbor"** clause in the R9-2015-0010 basically grants categorical immunity to Copermittees from 3rd party litigation via Water Quality Improvement Plans (WQIP). They are allowed an additional 2 years to design, seek Board certification of the WQIP, then an additional 10 years to implement it. This adds 12 years to an already deficient 20 years of non-compliance.

As a result, alarmed by the Dr. Spock (permissive) tone of the SDRWQCB, CWN has joined San Diego CoastKeepers and the Coastal Environmental Rights Foundation in their appeal of the R9-2015-0010 Permit to the State.

We feel this immunity to be not only an abomination but illegal, constituting CFR enjoinders regarding **"anti-degradation."** We also believe that legislative amendments, not decrees by either US or Cal EPA, should be the proper venues if such **reverse course, back-sliding** mentality is under consideration.

If the SWRCB sustains the SDRWQCB Permit as written, we are prepared to support and testify in state or federal courtrooms, and will focus upon the SDRWQCB's failure to oversee and punish the MS4 Copermittees abject lack of source control and strident enforcement.

Nonetheless, the SOC Copermittees have also filed appeals. They desire extended immunity, exclaimed in 2015 that they merited immunity

before the local WQIP is even approved by the SDRWQCB, i.e., while the WQIP itself is in progress. **Would this safe harbor clause also provide Title 22 Users such immunity from 3rd party litigation?**

CONCLUSION:

CWN profoundly believes that Reuse/Recycling will become more pertinent for the SOC region due to our lack of significant subterranean storage or funds/dynamics for aggressive capture and surface storage.

Appropriate land is precious, entitlements and water rights great jurisdictional hurdles, plus surface basins/reservoirs are extremely problematic, i.e., technologically, physically and fiscally.

Consensus and regional collaboration regarding reuse and recovery (harvesting/recycling) of both low, moderate and high flow via impoundments (diversions) is therefore of great interest to us.

SOC has only one (1) notable aquifer, the San Juan Basin. The remainder of SOC water sources are either surface or subterranean stream flows, designated and regulated as such, i.e., surface waters by the SDRWQCB. So we're already highly monitored and regulated.

CWN believes that the water and sanitation districts will be taking a much larger role in general reclamation activities due to the increased populations **AND** attendant water demands. Drought cycles exacerbate what are already existing deficient production supplies: Both local and imported sources.

CWN wishes to make the SWRCB aware that instances such as this DRAFT, hindering or hampering, limiting evolutionary strategies is counter-intuited. It has been CWN's experience over its 19-year arc that the water industry has been the more mature community-responsive, positive stakeholder element, infinitely more protective and ecologically ethical than the MS4 Copermittees.

There is no small irony that the water/san districts have greater/higher hurdles to clear, more restrictions yet in our opinion, answer the call, meet the oversight and jurisdictional challenges, comply more fully. If not, they are hammered via ACLs *et al*. Non-compliance with MS4 Permits appear to headed towards having ZERO consequences.

To the best of our knowledge, not one (1) single public entity (local lead agency) has ever been fined, i.e., punished mildly or otherwise by the Copermittees or the SDRWQCB regarding MS4 violations. **ACLs for SSOs? YES. For MS4/AB 411 Exceedance violations? NO.**

CWN feels that the various divisions within the SWRCB need to address the disparities, these at times dysfunctional, disjointed and truncated aspects of the various Permits it issues.

The water/san agencies are hobbled by the lack of cohesive, coherent strategy leadership by Cal/EPA, in this case initiate tactics that often put the industry at cross-purposes with the MS4 Copermittees.

The water/san industry will assist with the MS4 Permit compliance if allowed the resource supply opportunities, the exploration of local sustainability that reclamation/recycled constitutes. CWN has increasing confidence that if any entity can **"solve the riddle"** of formerly called nuisance flows, it is the water reclamation/recycle industry.

CWN therefore supports the noted **"streamlined permitting,"** but would reiterate a longstanding concern: If the MS4 Copermittees aren't held to strict performance O & M compliance standards, then the potential for capture and reuse of excess surface flows or reclamation by POTWs/Water districts involves the inheritance of damaged goods.

Contaminants transported off-site due to lack of/failure to control and enforce by Copermittees result in the water/san districts inheriting pollutant-laden excesses that don't deserve safe harbor shelters (immunity).

CWN is hopeful that the SWRCB will make note of and take into serious consideration the present incongruences, the disharmony between the DDW, DWR, CDPH, MS4 and other Permits. As we've noted, many times they are inconsistent and dissonant with each other when they have great potential compatibility only needing more exploration.

CWN believes that they are not synchronized, have inherent conflicting elements that could be remedied in a proactive manner if the SWRCB MS4 Permits were integrated into DDW staff's mindset. They **are** called permits, but they should **NOT** permit pollutant migration that results in the increasing impairment of drainages, at their Point Of Discharge (or capture) with obviously debilitating volumes.

One of the most egregious are the alarming number of diversions of stormwater-to-wastewater treatment plants here in SOC.

Laguna Beach alone now has 25 such low flow diversions that allow up to 50,000 gd as agreed to by the SDRWQCB. That's an additional 1.25 mgd being commingled with influent at the Coastal Treatment Plant in Aliso Creek Canyon, POD the Aliso Creek Ocean Outfall Pipe.

Insult to injury, imprudent and capricious in our opinion, the SWRCB and other EPA branches have not only blessed but funded these diversions via grants, etc. This encourages chronic violators. **DETTERANCE DRIVES COMPLIANCE**, not borderline collusive acquiescence, tacit admissions of regulatory oversight failure.

These diversions and others in the region are placing an increasingly unacceptable and onerous burden upon SOCWA's facilities. They were not designed for accepting the gamut of toxic organic/non-organic constituents of urban runoff (PAHs et al), hence they neither remove or reduce unless additional, expensive ATW are added.

These pollutants pass through and are discharged from the two (2) major ocean outfalls in SOC, jeopardizing the SOCWA's NPDES Permits

for these PODs. Dilution is not the pollution solution: Pre-emptive, proactive removal and reduction are, including the CECs referenced.

As very little, limited funds, plus physically limiting buildout space, are available to upgrade **ALL** SOCWA plants to a tertiary (ATW) level in the immediate future, this is a bankrupt, permissive tactic.

In essence, the SDRWQCB has capitulated, acquiesces and supports financially that which it **should** be diametrically opposed to: Allowed the MS4 Copermittees to increase the degradation of these POTW facilities, their processes potentiality and their affluent discharges.

MS4-to-Wastewater diversions only move the problem, resulting in toxic bundles being discharged *en mass*, in violation of the Ocean Plan. CWN seriously doubts that under present POTW conditions SOCWA is happy about accepting these **"gifted"** volumes of problematic influent.

The CECs this DRAFT notes are just coming up on the radar screen, but their removal or significant reduction is a Promethean task that technology is still trying to grapple with. Emerging and Advanced Best Management Practices (structural BMPs, i.e., BETS and BATS) have inexplicably disappeared from Regional Board WQIP dialogue.

The reality is harsh but clear: There is increasing pressure being placed upon water/san districts to accept runoff, assist the MS4 Copermittees to achieve compliance. There is also extreme pressure being placed upon the water/san districts to evolve, to plan forward further into the future thus assuring sustainable, long term Title 22 and Title 17 supplies a generation (25 years) **"down the dusty drought, increasingly limited import supply road."**

The SWRCB should be a partner and innovative leader in a recalibrated, organized vision. It needs to step up, coordinate and make cohesive master plans that take into consideration, i.e., that meld/unify **ALL** water permits, to see them in an interactive, related manner.

Each water-related permit must no longer be seen in a vacuum, in isolation, as individual silos, independent of each other. That said, making the SNMP stakeholders, the local SWRCB, DDR, DWR and CDPH water/san permittees responsible for the behavior of HOA (common open space/landscape) and commercial Users O & Ms creates an intimidating and we feel unnecessarily monolithic regulatory overlay.

CWN attended, actively participated and submitted formal comments to the SDRWQCB regarding the SOC SNMP as drafted by SOCWA staff. We understand the ramifications of not only that plan but also the activities of the other water districts AWT facilities/strategies plus the San Juan Basin Authority (also a JPA like SOCWA).

CWN is very pleased to observe that CECs are being taken seriously, i.e., reduction/removal goals and broadcast logistics kept foremost in local Administrator's plans.

While oversight agencies like the SWRCB and CDPH do a great job of monitoring and driving anti-degradation compliance regarding local plans for both Title 22 & 17 supplies, CWN continues to have grievous concerns about words like **"control."**

With a motor vehicle as a metaphor, the Administrators/Producers must responsibly sell a unit that's safe to drive under the gamut of road conditions it will face; delivered with caveats regarding potential misuse, that is eventual abuse by the purchaser. (Driver-related violations)

They cannot guarantee, nor have 100% **"control"** over **HOW** the vehicle is used. That is up to the owner (User) and the local enforcement monitoring agency, in this case MS4 Copermittees.

The local Administrator(s) can only specify/explain, educate User's limited approved conditions for broadcast implementation/installations after delivering safe, healthy supplies that meet State standards.

Once again, as to what happens **AFTER** point of sale/purchase, it is the responsibility of the MS4 Copermittees to perform their existing tasks as described and prescribed in the NPDES Stormwater Permits.

Placing further burdens, redundantly, upon Producers is unnecessary as the SOC WQIP for the region's MS4 Permit is already a work in progress, just past halfway to the certification hearing by the SDRWQCB tentatively scheduled for summer of 2017.

Juvenal, the Roman poet put it very succinctly: ***"Quis custodiet ipsos custodes?"*** (Who will guard the guardian; who watches over the watchman?).

The State needs to coordinate and then meld regulatory and jurisdictional efforts, to rectify the multiple guardian/oversight layers and streamline enforcement policies, procedures and protocols.

It should clearly define/delineate roles without equivocation, removing murky, expensive, over-lapping and unnecessarily redundant monitoring requirements.

Having an infinite number of public agency watchdogs seems frivolous and, more importantly, both untenable AND economically infeasible.

Respectfully submitted by:

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