

## Response to Written Comments

### CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD NORTH COAST REGION

#### Proposed Resolution No. R1-2022-0040

#### POLICY STATEMENT FOR GROUNDWATER PROTECTION IN THE NORTH COAST REGION

October 7, 2022

#### Comments Received

The public comment period for Draft Resolution No. R1-2022-0040, *Policy Statement for Groundwater Protection in the North Coast Region* was April 24 to May 23, 2022.

Timely comments were received from the following:

- A. George Hollister – Mendocino County Farm Bureau
- B. Zac Robinson – Winery Owner
- C. David Noren – Private Citizen
- D. Mario Kalson – Humboldt County Department of Environmental Health

Copies of timely written comments have been provided to Regional Water Board members and are available for the public upon request.

Regional Water Board staff held tele-conferences and had email exchanges with several of the listed commenters to discuss their comments. Responses to comments contained in this document consider comments made during the tele-conferences and email exchanges.

In this document, comments from the Public are summarized, followed by Regional Water Board staff response. Text added to the Proposed Resolution is identified by underline and text to be deleted from the Proposed Resolution is identified by ~~strike-through~~ in this document. The term “Draft Resolution” refers to the version of the resolution that was sent out for public comment. The term “Proposed Resolution” refers to the version of the resolution that has been modified in response to comments and is being presented to the North Coast Regional Water Quality Control Board (Regional Water Board) for consideration.

#### Mendocino County Farm Bureau (MCFB) Comments

**MCFB Comment 1:** P.15 Resolutions. MCFB appreciates that agricultural groundwater use is recognized in the document as a beneficial use of water and an economic driver for the region. MCFB suggested there be consideration for including an additional statement into one of the resolutions to further describe the need to protect the range of beneficial uses of groundwater, specifically agricultural groundwater use, in the future.

**Response to MCFB Comment 1:** The beneficial uses of groundwater in the North Coast Region include Municipal and Domestic Water Supply, Agricultural Supply, Industrial Service Supply, Industrial Process Supply, Native American Culture, Freshwater Replenishment to Surface Waters, and Aquaculture. The Water Quality Control Plan for the North Coast Region (Basin Plan) establishes water quality objectives for the protection of these beneficial uses. Groundwater water quality objectives in the North Coast Region include objectives for bacteria, chemical constituents, radioactivity, taste and odors, and toxicity. Water quality objectives for the listed beneficial uses are designed to adequately protect the quality of groundwater for future generations. Groundwater beneficial uses of Municipal and Domestic Water Supply, Agricultural Supply, Industrial Service Supply, Industrial Process Supply have been listed in the Basin Plan since 1974. Groundwater beneficial uses of Aquaculture and Native American Culture were added to the Basin Plan in the mid-2000s.

In response to this comment and a subsequent tele-conference with the commenter, the first paragraph following: “THEREFORE, BE IT RESOLVED THAT,” was moved to replace the first resolve (therefore numbering of the subsequent resolves were increased by one) and the word “beneficially” was added after the word “currently” in the same paragraph. The revised language is as follows:

- 1. Continue to recognize that the Regional Water Board is committed to the protection of high-quality groundwater and the restoration of degraded groundwater to support all beneficial uses now and in the future especially given increasing reliance on groundwater in the North Coast Region. Groundwater supplies in the North Coast Region are currently beneficially used for: 1) drinking water, sanitation, and hygiene consistent with the Human Right to Water described in Regional Water Board Resolution No. R1-2019-0004<sup>1</sup>; 2) agriculture and industry which are major economic drivers in the region, 3) Native American ceremonies and traditions; 4) aquaculture operations; and 5) replenishment of flows to streams (e.g. contribution to instream flows) to maintain beneficial uses of surface water, especially cold freshwater habitat, migration of aquatic specifics, wildlife habitat, and spawning, reproduction, and early development of fish.*

**MCFB Comment 2:** P.16 Resolve 2 (formerly Resolve 1). Regarding Resolve 2, MCFB feels that it would be beneficial if this resolution acknowledged that the manner of compliance cannot be fully dictated within Waste Discharge Requirements (WDRs) (i.e., irrigated ag permits cannot dictate what BMPs a discharger uses-they can only prescribe the end result/regulation and how the discharger gets there is up to the discharger.

**Response to MCFB Comment 2:** The intent of Resolve 2 (formerly Resolve 1) is to support Regional Water Board staff in developing internal guidance for preparing WDRs consistent with existing policies and regulations. Resolve 2 states the following: “In

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<sup>1</sup>[https://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2019/19\\_0024\\_NCRP\\_Resolution.pdf](https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2019/19_0024_NCRP_Resolution.pdf)

coordination with State and Regional Water Board staff, continue to advance internal guidance for WDR permit writers which informs selection of effluent limitations and/or appropriate BMPs to control discharges, compliance with the State anti-degradation policy, evaluation of potential changes to groundwater quality, evaluation of receiving water quality, identification of sensitive receptors and selection of monitoring and reporting requirements. Implementation of this action will address challenges associated with lack of guidance for WDR permit writers described in Finding 26.”

Finding 26 states the following: “In preparing NPDES Permits (for point source discharges to surface waters), Regional Water Board staff benefit from a federally promulgated permit writer’s manual (in addition to the State Implementation Policy) which provides guidelines for evaluating the potential for discharges to exceed water quality objectives and compliance with the State Anti-Degradation Policy, in selecting effluent limits, and in selecting monitoring and reporting requirements. In preparing individual WDRs for discharges of wastewaters, Regional Water Board staff do not benefit from guidelines contained in the NPDES permit writer’s manual and thus some inconsistency and inefficiency arises in selecting effluent limits, evaluating the potential for discharges to exceed water quality objectives, compliance with the State’s anti-degradation policy, and in selecting monitoring and reporting requirements.”

The comment indirectly references Water Code Section 13360 which states “No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.” The intent of Water Code Section 13360 is to prevent unwarranted interference with the resourcefulness of the party subject to a waste discharge requirement; it does not preclude regulation of discharges of pollutants.

Furthermore, the State Water Board Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program requires a Nonpoint Source control implementation program include a description of the Management Practices and other program elements that are expected to be implemented to ensure attainment of the implementation program’s stated purpose(s), the process to be used to select or develop Management Practices, and the process to be used to ensure and verify proper Management Practices implementation.

A Regional Water Board must be able to determine that there is a high likelihood that the program will attain water quality requirements. This will include consideration of the Management Practices to be used and the process for ensuring their proper implementation. It also will include other factors such as the level of discharger participation and the effectiveness of the Management Practices implemented. Management Practices must be tailored to a specific site and circumstances, and justification for the use of a particular category or type of Management Practices must show that the Management Practices has been successfully used in comparable circumstances. If a Management Practice has not previously been used, documentation to substantiate its efficacy must be provided by the discharger. A Regional Water Board

must be convinced there is a high likelihood the Management Practices will be successful.

Staff and the public will be well served through development of internal guidance on the appropriateness and effectiveness of BMPs for a given type of waste discharge.

No changes were made to the Proposed Resolution in response to this comment.

**MCFB Comment 3:** P.17 Resolve 7 (formerly Resolve 6). This resolve speaks to the need to, “Consider the need for a general order or a waiver of waste discharge requirement for groundwater recharge using untreated surface waters which protect groundwater quality while encouraging and incentivizing groundwater recharge projects.”

If Region 1 decides to move forward with the development of a general order for discharge requirements related to groundwater recharge, the timeliness of this order development should be considered. With numerous groundwater basins in the region being under SGMA plans, groundwater recharge projects are gaining more attention. The current drought conditions and surface flow reductions are adding to the popularity of looking at how to improve groundwater stores when surface flows are available.

It would be suggested to discuss how Region 1 can best move forward with the order described in Resolve 7 so that regulation development does not impede local SGMA GSA’s or other projects that are looking into groundwater recharge projects.

**Response to MCFB Comment 3:** Other than the Statewide General Order for Aquifer Storage and Recovery Projects<sup>2</sup>, there is no general permit or waiver of WDRs for groundwater recharge projects. At this time, the Regional Water Board may consider adopting an individual WDR or waiver of WDRs for a particular project. WDRs and individual waivers of WDRs include a public comment period and public hearing, and typically require a 4-to-8-month lead time from the time a complete report of waste discharge application (including CEQA findings/documents) is received. However, Executive Order N-7-22 provides a CEQA exemption for groundwater recharge projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife<sup>3</sup>. Developing a permitting pathway for these types of groundwater recharge

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<sup>2</sup> State Water Board Water Quality Order 2012-0010, General Waste Discharge Requirements for Aquifer Storage and Recovery Projects that Inject Drinking Water into Groundwater (ASR General Order).

<sup>3</sup> The Executive Order states: To help advance groundwater recharge projects, and to demonstrate the feasibility of projects that can use available high water flows to recharge local groundwater while minimizing flood risks, the Water Board and Regional Water Quality Control Boards shall prioritize water right permits, water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife. For the purposes of carrying out this paragraph, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, and Chapter 3 (commencing with section 85225) of Part 3 of Division 35 of the Water Code and regulations adopted pursuant thereto are hereby suspended to the extent necessary to address the

projects is a priority for Regional Water Board staff. Staff proposed the addition of groundwater recharge projects as an eligible category to the Conditional Waiver for Specific Categories of Low Threat Discharges<sup>4</sup>, which will be considered for readoption in late 2022 and would reduce the lead time to 2-3 months from the time a complete notice of intent to enroll in the Order is received. The Regional Water Board considers groundwater recharge projects to be a top priority and does not intend for the development of suitable WDRs or waiver of WDRs to impede groundwater recharge projects.

The Proposed Resolution was revised in response to this comment. Resolve 7 (formerly Resolve 6) has been revised as follows: “Consider Prioritize the need for development of a general order or a waiver of waste discharge requirements for groundwater recharge using untreated surface waters which protects groundwater quality while encouraging and incentivizing groundwater recharge projects. Implementation of this action would address some of the regulatory challenges and complexities related to the development and implementation of groundwater recharge projects as described in Finding 30 above. Governor Newsom’s Executive Order N-7-22 directs Regional Water Boards to prioritize water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife.”

**MCFB Comment 4:** The discussion of recycled water and Salt and Nutrient Management Plan (SNMPs) in Resolve 9 (formerly Resolve 8), along with findings on Page 11, conjure the question of how Region 1 is envisioning the intersection of SNMPs with future permits other than those related to recycled water. MCFB is concerned that additional requirements for an SNMP, incorporated into future project level or program level permits could add to monitoring requirements and restrictions for agricultural water use.

**Response to MCFB Comment 4:** The Recycled Water Policy directed regional water boards to evaluate each groundwater basin or subbasin in its region and identify basins through a resolution or executive officer determination where salts and/or nutrients are a threat to water quality and therefore need salt and nutrient management planning to achieve water quality objectives in the long term. North Coast groundwater basins were evaluated and prioritized consistent with the Recycled Water Policy. The Regional Water Board adopted Resolution No. R1-2021-0006 which identified priority groundwater basins and provided direction to staff on salt and nutrient management planning. The groundwater basin prioritization results provide information about the

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impacts of the drought. This suspension applies to (a) any actions taken by state agencies, (b) any actions taken by local agencies where the state agency with primary responsibility for the implementation of the directives concurs that local action is required, and (c) permits necessary to carry out actions under (a) or (b). The entities implementing these directives shall maintain on their websites a list of all activities or approvals for which these provisions are suspended.

<sup>4</sup> Order No. R1-2017-0039

need for salt and nutrient management in the development of waste discharge requirements and associated monitoring and reporting programs. The groundwater basin prioritizations themselves are non-regulatory and do not directly impose new requirements on dischargers. With respect to agricultural water use, when irrigated lands permits are developed, they will require nutrient management plans which must consider nutrient loading from irrigation water and nutrient application. Groundwater basin prioritization will be a consideration in the level of reporting required.

No changes were made to the Proposed Resolution in response to this comment.

### **David Noren Comments**

**General Response to David Noren Comments:** Staff appreciate the commenter's support for the draft resolution.

**David Noren Comment 1:** The Policy as drafted provides an emphasis for the protection of priority groundwater basins that are located throughout the Region. These groundwater basins are prioritized for protection based upon several factors including the threat of impairment from salt and nutrients. The rationale for identifying these groundwater basins recognizes the complexities and challenges of implementing regulatory processes and policies for identifying and protecting the high quality of waters.

**Response to David Noren Comment 1:** Staff appreciate the comment. No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 2:** The North Coast Region is rightly identified as having high-quality groundwater resources that pursuant to anti-degradation policies, especially State Board Resolution 68-16, provide the regulatory basis for the development of regulatory processes to fully protect the high-quality groundwater resources in the identified basins. The use of additional policy measures is appropriate as the quality of groundwater resources is vitally important as a major resource that is used for a variety of beneficial uses, especially domestic water supply throughout the region.

**Response to David Noren Comment 2:** Staff appreciate the comment and note the State Water Board Policy for Maintaining High-Quality Waters (Resolution 68-16) does allow Regional Water Boards to permit limited degradation of groundwater quality under certain conditions but application of Resolution 68-16 to individual permitting decisions may not directly consider water quality impacts on a cumulative basin-wide scale. The State Water Board Recycled Water Policy provides a mechanism to consider basin-wide impacts through Salt and Nutrient Management Planning.

No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 3:** I fully appreciate and support the statement that waste discharge limitations and cleanup levels should not be set to utilize the full assimilative capacity of receiving waters. Staff has the use of the Basin Plan and the use of Water Quality Objectives to fully implement the elements of Policy 68-16 to use stringent waste discharge limitations and cleanup levels to be fully protective of water quality and the protection of high-quality waters

**Response to David Noren Comment 3:** Staff appreciate the comment. No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 4:** The Policy should consider a statement to recognize that much of the Region is located outside of the identified Priority Basins and further recognize that the proposed policy measures and the development of regulatory actions that will come from the process should also be developed to also provide protection of these undefined basins and outliers. Much of these areas have significant beneficial uses and pursuant to anti-degradation requirements should be afforded the same levels of protection and be included in whole or part in the regulatory actions for protection and enhancement of these resource areas.

**Response to David Noren Comment 4:** The Water Code makes no distinction in the regulation of waste discharge inside or outside a priority groundwater basin. The Recycled Water Policy requires evaluating and prioritizing groundwater basins for salt and nutrient management planning. Salt and Nutrient Management Planning can lead to waste discharge requirements which account for the cumulative impact of salt and nutrient loads within a groundwater basin. The proposed Policy Resolution covers the entire North Coast Region and does not limit groundwater protection to priority groundwater basins.

No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 5:** The Policy rightly recognizes that data gaps exist in the current understanding of existing water quality conditions and uses. The Policy should consider a process for the development of ongoing data gathering that will provide information to understand these data gaps and inform further actions in the future. Actions to better understand the data gaps can be paired with other ongoing regulatory and non-regulatory actions such as GAMA, Title 22 water quality testing for public water systems and the development of actions pursuant to the Sustainable Groundwater Management Act (SGMA) that is driving for the development of groundwater monitoring networks within many of the priority basins for the purpose of understanding water supply and groundwater availability. The pairing of the regulatory actions could provide an opportunity to optimize the efforts of various agencies that oversee and work towards the sustainable supply of groundwater by including efforts and actions that would further monitor groundwater quality and provide a standardized and defensible process to define and understanding the water quality and hydrogeologic conditions within the basins.

**Response to David Noren Comment 5:** Where necessary to ensure compliance with Water Quality Objectives and the Policy for Maintaining High-Quality Waters, staff include groundwater monitoring within the Monitoring and Reporting Programs of adopted regulatory measures. Over the last decade, use of the State Water Board GeoTracker database has expanded to manage groundwater quality data from many types of regulated sites. Regional Water Board staff are working to include the requirement for submittal of groundwater monitoring data to GeoTracker into all waste discharge permits. GeoTracker data are linked to the Groundwater Ambient Monitoring and Assessment Program (GAMA) Groundwater Information System along with water quality data from the Division of Drinking Water and GAMA regional studies. The GAMA Aquifer Risk Map<sup>5</sup> is a publicly available web-based tool which is intended to help prioritize areas where domestic wells and state small water systems may be accessing groundwater that does not meet primary drinking water standards (maximum contaminant level or MCL).

No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 6:** The Groundwater Sustainability Plans that have been prepared for the medium and high priority groundwater basins pursuant to SGMA have a place for the implementation of the Groundwater Protection Policy by the NCRWQCB and would offer a powerful and potentially effective coupling of regulatory processes and actions for the protection and enhancement of groundwater resources throughout the Region. This is potentially significant given the limitations of SGMA with respect to the establishment and application of regulatory authority and the NCRWQCB Basin Plan and Porter-Cologne provides a potential synergy of regulatory processes. I would encourage that the NCRWQCB include actions by staff to be involved and active within the application of SGMA within the various basins.

**Response to David Noren Comment 6:** Staff appreciate the comment and have actively participated and provided comments on Groundwater Sustainability Plans developed for the seven medium priority groundwater basins in the North Coast Region. No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 7:** I appreciate and recognize the importance to include groundwater areas outside of the SGMA basins - i.e., Wilson Grove Highlands, Alexander Valley, Cloverdale, Fort Ross Terrace Deposits, etc - as Priority Basins pursuant to this Policy. Again, a statement within the Resolution to include areas outside of the identified basins should be included for gathering information and implementing policy actions to also be protective of these areas.

**Response to David Noren Comment 7:** Staff appreciate the comment. Please refer to the Response to David Noren Comments 4 and 5. No changes were made to the Proposed Resolution in response to this comment.

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<sup>5</sup><https://gispublic.waterboards.ca.gov/portal/apps/webappviewer/index.html?id=17825b2b791d4004b547d316af7ac5cb>



**David Noren Comment 8:** The recognition of the existing governance and management activities is an important piece of this Policy that recognizes that the State of California and the NCRWQCB have existing regulatory programs that are fully developed for many of the proposed actions of this Policy. The trick will be to better develop and implement these tools for the more effective implementation of actions that come from these governing actions to better understand and protect groundwater resources

**Response to David Noren Comment 8:** Staff appreciate the comment. No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 9:** The resolution recognizes the complexities and potential limitations of existing programs. It will be very important for staff to develop a prioritization of actions within the existing programs and policies to continue to improve the effectiveness of these actions. The resolution includes discussion of the limitations of these programs - i.e., a significant backlog of outdated Waste Discharge Requirements for existing facilities, a potential for impairment to groundwater from Industrial and Municipal Stormwater discharges, septics, dairies, the Onsite Wastewater Treatment System policy, and small and disadvantaged communities. The understanding of these challenges and limitations is the first step to understand and inform action going forward. The process of the Triennial Review and annual work plan by the various regulatory units within the agency should be coordinated to understand these limitations and to develop tools to manage and improve the application of these programs and policies. This will likely take time and effort but the understanding and planning for future actions is an important process that will benefit staff and the regulated community for the effective use and application of regulatory processes going forward.

**Response to David Noren Comment 9:** Staff appreciate the comment. No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 10:** I would recommend that the resolving actions that are included within the Policy be prioritized with the highest priority to be the development of Waste Discharge Requirements for groundwater recharge projects. In the time of drought and climate change, groundwater recharge from a variety of sources is quickly becoming a recognized tool for the management and enhancement of groundwater and the NCRWQCB needs to be at the forefront of developing regulatory tools that encourage these actions while being fully protective of groundwater resources.

**Response to David Noren Comment 10:** The Proposed Resolution directs staff to develop a Work Plan for implementation of the resolving actions and by December 2023, provide an update on the Work Plan to the Regional Water Board and subsequently incorporate Work Plan actions into the annual work planning process. It is expected that the resolving actions will be prioritized the development of the Work Plan and through the annual work planning process. We also direct the commenter to Response to MCFB Comment 3.

No changes were made to the Proposed Resolution in response to this comment.

**David Noren Comment 11:** There are several minor typographical errors in the resolution which I assume will be corrected in the final draft for consideration by the NCRWQCB. One error is in finding #27 regarding the prohibition of point source discharges that is currently in the Basin Plan. I believe that the finding should read that the Point Source Discharge Prohibition prohibits point source discharges throughout the Region or restricts them to the Eel, Mad and Russian Rivers and their tributaries during the wet season

**Response to David Noren Comment 11:** Finding #27 states the following: “An implication of the successful implementation of the Basin Plan Point Source Discharge Prohibition which prohibits point source discharges throughout the region or restricts them to the Mad, Russian, and Eel Rivers (and their tributaries) during the dry season (see Finding 21), has been a shift to the disposal and discharge of treated wastewater to land. The discharge of treated wastewater to land can result in percolation to groundwater, which if not properly treated and disposed is a threat to groundwater quality.” Staff appreciate the comment and have revised the Proposed Resolution to state the “wet” season vs the “dry” season.

### **Humboldt County Department of Environmental Health (HCDEH) Comments**

**HCDEH Comment 1:** Page 8, item 17: It would be helpful for the Water Board to clarify their role in review of post-closure development projects near solid waste disposal sites. A general statement describing the technical expertise and responsibility toward making recommendations for approval, or denial, of post-closure development proposals at, or near, solid waste disposal sites will help local jurisdictions understand the role of the Water Board with respect to protecting water resources.

**Response to HCDEH Comment 1:** Page 8, item 17 states, “Solid Waste Disposal Sites – The State Water Board Land Disposal Program implements statewide regulations [Cal. Code Regs. tit. 27 § 20080] for sites and facilities where waste is discharged to land. Requirements for siting, operation, and closure of waste disposal sites are enforced through the issuance of WDRs and compliance and enforcement efforts to ensure adequate protection of water quality. These wastes include solid wastes or liquid wastes that that have the potential to impact water quality. Regulated facilities such as landfills, mines, surface impoundments, and waste piles require containment and monitoring in order to protect surface water and groundwater quality. The goals of the program are primarily preventative. However, the program includes a response action component to ensure adequate protection of water quality.”

The Groundwater Protection Policy Statement Resolution is a non-regulatory document which provides information and guidance from the Regional Water Board. Item 17 of the Policy Statement Resolution briefly describes the authority of the Regional Water Board

to regulate solid waste sites. The commenter appears to be seeking clarification about the role of CalEPA agencies with regulatory responsibilities over solid waste sites and development activities which may or may not be a significant change in operations at a closed solid waste site. We direct the commenter to CalRecycle Local Enforcement Agency (LEA) Advisory 51-2<sup>6</sup> which provides guidance and information to the Solid Waste LEA on oversight of disposal site post closure land use pursuant to Title 27, California Code of Regulations (27 CCR), section 21190. Specific topics addressed include regulatory authority, activities subject to the regulatory tiers, site boundary issues, proposal review, local approvals, technical assistance, and site inspections.

No changes were made to the Proposed Resolution in response to this comment.

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<sup>6</sup> <https://calrecycle.ca.gov/lea/advisories/51-2/>