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Established 1908

October 18, 2016

Public Comment  
Water Quality Enforcement Policy  
Deadline: 10/18/16 12:00 noon

Via ELECTRONIC MAIL to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



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

**Re: Public Water Agencies Group Comments on the Proposed Changes to the Water Quality Enforcement Policy**

Dear Ms. Townsend:

We represent the Public Water Agencies Group (the “Group”), an informal association of 16 public agency water suppliers<sup>1</sup> who provide wholesale and retail water service in Los Angeles County. We appreciate the State Water Resources Control Board (the “State Board”) providing this opportunity to comment on the proposed changes to the State Board’s Water Quality Enforcement Policy (“Enforcement Policy”). While we agree that changes to the Enforcement Policy are needed, we are particularly concerned about the effect of the proposed changes in relation to penalties imposed for discharges of potable water – discharges that are acknowledged to pose only de minimus risk to water quality.

**I. INTRODUCTION**

Since adoption of the Statewide Permit for Drinking Water System Discharges to Waters of the United States (the “Statewide Permit”), discharges from drinking water systems are regulated as wastes and are subject to the Enforcement Policy. However, potable water discharges, pose only a de minimus threat to water quality. Changes are needed throughout the

<sup>1</sup> The Group consists of Crescenta Valley Water District, Kinneloa Irrigation District, La Habra Heights County Water District, La Puente Valley County Water District, Newhall County Water District, Palmdale Water District, Pico Water District, Quartz Hill Water District, Rowland Water District, San Gabriel County Water District, San Gabriel Valley Municipal Water District, Sativa-Los Angeles County Water District, South Montebello Irrigation District, Three Valleys Municipal Water District, Valley County Water District and Walnut Valley Water District.

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proposed revised Enforcement Policy to properly reflect the de minimus threat posed by these types of discharges and to ensure consistency with how discharges are treated under the Statewide Permit. Without such changes, water suppliers may be placed in a situation where they are in compliance with the Statewide Permit, but could face penalties under the Enforcement Policy.

## II. COMMENTS

**(a) Allowances for environmental justice, disadvantaged communities and small communities should be extended to potable water system and municipal separate stormwater system discharges.**

2 Sections I.G. and I.H of the draft Enforcement Policy acknowledge the financial hardships that small communities and small disadvantaged communities face. Appendix A then outlines how to apply enforcement and compliance assistance for those communities. However, that assistance applies only to publicly-owned treatment works and sewage collection services. Potable water systems and municipal separate stormwater system discharges are also regulated by NPDES permits, and therefore are subject to this Enforcement Policy, but are not covered by Sections I.G and I.H. Those types of systems also serve disadvantaged and small communities and should be offered the same informal enforcement and compliance assistance as publicly-owned treatment works and sewage collections systems.

**(b) Proposed changes to the Enforcement Priorities for Discretionary Enforcement Actions do not adequately differentiate between classes of violations, and contradict provisions in the Statewide Permit.**

3 Section II.A of the proposed Enforcement Policy indicates that "Discharges causing or contributing to in-stream turbidity in excess of 100 nephelometric turbidity units (NTU) in receiving waters with beneficial uses of COLD, WARM, and/or WILD, except during storm events" (at p. 6) would be considered Class I violations. However, the Statewide Permit allows drinking water discharges with turbidity greater than 100 NTU for up to 10 minutes. This Statewide Permit provision appropriately recognizes the unpredictable nature and minimal threat posed by discharges from drinking water systems. The proposed revision to the draft Enforcement Policy should reflect this same Statewide Permit condition and should incorporate into the Enforcement Policy the language in the Statewide Permit.

In addition, it is unclear what types of violations would be considered Class II, and why the proposed revisions remove Class III violations from the Enforcement Policy. Additional explanation is needed for both of these proposed revisions.

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**(c) Susceptibility to cleanup or abatement should properly reflect the nature of the discharge, whether it is possible to clean it up, and the natural attenuation of chlorine in discharges from drinking water systems.**

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Section VI.A. Step 1, Factor 3 outlines the score that would be assigned in calculating a penalty if the discharger cleans up a percentage of the discharge (see page 16). Due to the nature of potable water discharges, there is no way to clean up the discharges once they have reached a receiving water, and therefore these types of discharges would be assigned a score of 4. Additionally, this Factor notes that "natural attenuation of discharged pollutants in the environment is not considered cleanup or abatement for purposes of evaluating this factor" (page 17). This statement is inconsistent with the Statewide Permit, which provides that natural attenuation is an accepted Best Management Practice (BMP) for discharges from drinking water systems. Language in this section of the revised draft Enforcement Policy should be modified to reflect this accepted BMP for drinking water systems' potable water discharges.

**(d) Maximum penalties for discharges of recycled water should also apply to drinking water system discharges.**

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The proposed Enforcement Policy update includes a provision for discharges of recycled water that "the Water Boards may elect to use a maximum of \$1.00 per gallon" (at p. 19). However, that maximum penalty does not apply to drinking water system discharges, which typically are of higher quality than drinking water discharges. Also, this provision should be extended to discharges from drinking water systems because the chemistry of potable water is very similar to that of recycled water that has been treated for reuse.

**(e) Changes to the violator's conduct factors should properly incentivize "good behavior" by including appropriate multipliers for all factors and should limit the "lookback" period for historical violations.**

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Table 4 in Section VI.A. Step 4 proposes a number of new multipliers for all three factors listed under Violator's Conduct. In order to incentivize "good behavior," the Enforcement Policy should include multipliers that are less than 1 in all three factors. For example, removing the 0.5 multiplier for "Degree of Culpability" removes the credit for discharges that are cooperative, responsive, and collaborative with the Water Boards.

In addition, there needs to be limitations applied in the "History of Violations" factor. There should be a prescribed timeframe on how far back the Water Boards can consider when looking at an agency's history, and there should also be an upper limit on this multiplier. Additional rationale is needed for how this multiplier is applied.

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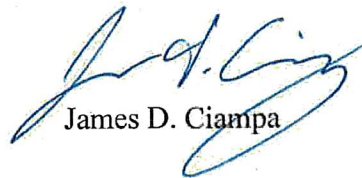
**(f) More information and outreach are needed to ensure that all stakeholders understand how the proposed Enforcement Policy changes will apply.**

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The State Board has not held any stakeholder outreach on the proposed changes to the Enforcement Policy. The Group encourages the State Board to consider holding some technical workshops throughout the state in order to provide opportunities for public comment and interaction, to clarify the impact these changes will have on stakeholders.

### **III. Conclusion**

Considering the overall de minimus threat that discharges of potable water pose to water quality, changes are needed throughout the proposed Enforcement Policy revisions, particularly to ensure consistency with the Statewide Permit. In addition, more outreach and explanation of the significant changes that are being proposed is needed. We hope the State Board will conduct stakeholder outreach throughout the state to resolve remaining uncertainty regarding these significant proposed changes.

Very truly yours,



James D. Ciampa

JDC/cc

cc: Public Water Agencies Group (via e-mail)

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