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State Water Resources Control Board

## NOTICE OF PROPOSED RULEMAKING

**TITLE 22. SOCIAL SECURITY**  
**DIVISION 4. ENVIRONMENTAL HEALTH**  
**CHAPTER 3 (Water Recycling Criteria) & CHAPTER 17 (Surface Water Treatment)**

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Board) proposes to amend or adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed regulatory action.

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### SUMMARY OF PROPOSED REGULATORY ACTION

The State Board proposes to amend California Code of Regulations, Title 22, Division 4, Chapters 3 and 17, for the purpose of establishing regulations governing the planned placement of recycled water into a surface water reservoir that is used as a source of domestic drinking water supply; a process known as surface water augmentation (SWA). The adoption of “Surface Water Augmentation Using Recycled Water” regulations will:

- Amend Article 1, Chapter 3, to amend an existing definition and establish definitions related to SWA.
- Adopt Article 5.3, Chapter 3, Division 4, to establish criteria applying to water recycling agencies that may choose to engage in SWA with a public water system (PWS).
- Adopt Article 9, Chapter 17, Division 4, establishing criteria for a PWS that may choose to utilize a reservoir augmented with recycled water.

### WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any person, or his or her representative, may submit written comments relevant to the proposed regulatory action to the State Board. The written comment period closes at 12:00 p.m. on September 12, 2017. The State Board will only consider comments received at the State Board offices by that time. Submit written comments via at least one of the following:

**Electronic mail (email):** [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**FAX:** (916) 341-5620

**Postal Mail:** Ms. Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000

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

Persons delivering comments must check in with lobby security and have them contact Ms. Jeanine Townsend at (916) 341-5600.

Also, please indicate in the subject line and/or on the cover page of submittals: **“Comments – Proposed SWA Regulations”**.

All comments, including email or fax transmissions, should include the author’s name and U.S. Postal Service mailing address in order for the State Board to provide any notices that may be required in future.

Due to the limitations of the email system, emails larger than 15 megabytes (MB) may be rejected and will not be delivered and received by the State Board. Therefore, emails larger than 15 MB should be submitted under separate emails or another form of delivery should be used.

The State Board requests but does not require that written comments sent by mail or hand-delivered be submitted in triplicate.

The State Board requests but does not require that if reports or articles in excess of 25 pages are submitted in conjunction with the comments, that the commentator provide a summary of the report or article and describe the reason for which the report or article is being submitted or is relevant to the proposed regulation.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

## **PUBLIC HEARING**

The State Board will conduct a public hearing regarding the subject proposed regulations at the time and place noted below. At the hearing, any person may present comments orally or in writing relevant to the proposed action described in this notice.

DATE: September 7, 2017  
TIME: 9:30 a.m.  
PLACE: California Environmental Protection Agency  
State Water Resources Control Board  
Coastal Hearing Room  
1001 I Street, Second Floor  
Sacramento, CA 95814

A quorum of the State Board members may attend this public hearing, but will not take action.

## **SPECIAL ACCOMMODATION REQUEST**

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk to the Board at (916) 341-5600 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

## **SI NECESITA ARREGLOS ESPECIALES**

Conforme a la Sección 7296.2, del Código del Gobierno de California, los siguientes servicios o arreglos especiales pueden ser solicitados:

- Servicio de intérprete durante la audiencia;
- Documentos en otro idioma o en un formato alterno;
- Arreglos razonables relacionados a una discapacidad.

Para pedir estos arreglos especiales o servicios en otro idioma, puede contactar a la Secretaria de la Junta (Board) al (916) 341-5600 lo más pronto posible, pero a más tardar 10 días hábiles antes de la fecha de la audiencia de la Junta (Board). Los usuarios del Sistema TTY/TDD/Voz-a-Voz pueden marcar el 7-1-1 para utilizar el California Relay Service.

## **AUTHORITY AND REFERENCE**

Pursuant to Water Code sections 13521 and 13562, and Health and Safety Code sections 116271 and 116375, the State Board is authorized to adopt the subject regulations. This action is proposed to implement, interpret, and make specific one or more of the following: Sections 13520, 13522, 13522.5, 13523, 13523.1, 13524, 13560, 13561, 13564, 13565 and 13567, Water Code; and Sections 116275, 116365, 116375, 116385, 116390, 116400, 116530, 116535, 116550, 116551, and 116735, Health and Safety Code.

## **INFORMATIVE DIGEST**

**Background and Summary of Existing Relevant Laws:** All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (U.S. EPA) under the U.S. Safe Drinking Water Act (SDWA) of 1974, as amended (42 U.S.C. §300f et seq.), as well as by the State Board under the California SDWA (Health & Saf. Code, div. 104, pt. 12, ch. 4, §116270 et seq.). Pursuant to section 116270 of the Health and Safety Code, et al., it is the objective of the California SDWA for a PWS to deliver drinking water to consumers that is, at all times, pure, wholesome, and potable. The ability to meet this objective is a reflection of the water quality and quantity of a PWS's source of supply, the PWS's ability to treat the source of supply (if necessary), and the PWS's ability to deliver drinking water, all in a manner that ensures compliance with all applicable drinking water standards.

In September 2010, Senate Bill 918 (SB 918) was signed by the Governor and filed with the Secretary of State, establishing Chapter 7.3 ("Direct and Indirect Potable Reuse"), under Division 7 of the Water Code. Specific to the proposed SWA regulations and among other things, SB 918 authorized and mandated the State Board to develop and adopt uniform water recycling criteria for:

- each varying type of use of recycled water where the use involves the protection of public health (see Water Code section 13521<sup>1</sup>).
- surface water augmentation, as defined by SB 918, by December 31, 2016, if an expert panel, convened and administered by the State Board pursuant to the bill's statutory requirements, found that the State Board's criteria would adequately protect public health (see Water Code section 13562).

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<sup>1</sup> Although Water Code section 13521 predates SB 918, the nexus to the proposed SWA regulations was recognized by SB 918's establishment of Water Code section 13560(b).

In addition, SB 918, along with amendments to pertinent sections of the Water Code via 2013's SB 322, required the State Board to select the expert panel members in consultation with an advisory group. The advisory group was mandated to consist of "no fewer than nine representatives of water and wastewater agencies, local public health officers, environmental organizations, environmental justice organizations, public health nongovernmental organizations, the department, the State Board, the United States Environmental Protection Agency, ratepayer or taxpayer advocate organizations, and the business community." In addition, SB 918 and SB 322 mandated minimum qualifications for the expert panel (see Water Code section 13565).

**Comparable Federal Statute and Regulations:** There are no federal regulations or statutes that address the specific subject addressed by the proposed regulations.

**Policy Statement Overview and Summary of Proposed Regulatory Action:** The State Water Resources Control Board (State Board) proposes to adopt regulations governing the planned placement of recycled water into a surface water reservoir that is used as a source of domestic drinking water supply; a process known as surface water augmentation (SWA). As a source of drinking water supply, rather than treated recycled water being directly delivered to customers for human consumption, the treated recycled water in the reservoir would be subject to further treatment by a public water system's (PWS's) surface water treatment plant before being delivered to customers for human consumption. Existing law requires the State Board to adopt uniform water recycling criteria for SWA by December 31, 2016; subject to the condition that a statutorily mandated expert panel has made a finding that such criteria would adequately protect public health.

*Problem Statement:* The objective of the California Safe Drinking Water Act (SDWA) is to ensure that a PWS reliably delivers water for human consumption that is, at all times, pure, wholesome, and potable. With the limited availability of new surface water sources, the overuse of groundwater sources, the projected effect of climate change, including the potential for more frequent severe droughts, along with continued population growth, California is challenged to continue meeting the objective of the SDWA. Furthermore, in February 2009, the State Board updated its Water Recycling Policy through the adoption of [Resolution No. 2009-0011](#). The resolution includes the goal of significantly increasing the use of recycled water in California, including increasing the use of recycled water - beyond 2002 levels - by at least one million acre-feet per year by 2020, and by at least two million acre-feet per year by 2030. Indirect potable reuse – where recycled water, after appropriate treatment, is used to ultimately supplement sources of drinking water supply utilized by a PWS – is one means to help address the aforementioned challenges.

*Objective (Goal):* The broad objective of this proposed regulatory action is to:

- Through adoption of regulations, establish uniform water recycling criteria for the planned placement of recycled water into a surface water reservoir used as a source of water supply for a PWS, such that the adherence to the criteria would result in public health being adequately protected.

*Benefits:* The anticipated benefits, including any nonmonetary benefit to the protection of public health and safety of California residents, worker safety, and the state's environment, from this proposed regulatory action are:

- Providing a relatively reliable, drought-proof, and sustainable option for augmenting a surface water reservoir that is used as a source of domestic drinking water supply by California PWSs.
- Providing an additional means for achieving the goals for increased beneficial use of recycled water in California.
- Although the absence of SWA regulations wouldn't preclude the permitting of SWA projects, the adoption of uniform criteria in the form of SWA regulations is expected to streamline the permitting process.

The proposed SWA regulations would establish *minimum* uniform water recycling criteria for the purpose of adequately protecting public health with respect to the planned placement of recycled water into a surface water reservoir that is used as a source of domestic drinking water supply. The proposed regulations would not preclude the Regional Water Quality Control Boards (Regional Boards), via their authority and responsibility, from imposing more stringent requirements when issuing a waste discharge and/or water recycling permit to water recycling agencies that may choose to engage in SWA, including having to meet National Pollutant Discharge Elimination System (NPDES) requirements established by the U.S. Environmental Protection Agency (U.S. EPA).

In accordance with the aforementioned mandates and pursuant to Water Code sections 13521 and 13562, and Health and Safety Code sections 116271 and 116375, the State Board proposes the following changes to Title 22:

- Amend Article 1, Chapter 3, Division 4, to amend an existing definition and establish definitions related to SWA, which includes the proposed amendment or adoption of sections summarized as follows:
  - Section 60301.120 (Augmented Reservoir), defining an augmented reservoir that is used as a source of domestic drinking water supply;
  - Section 60301.450 (Indicator Compound), amending an existing definition so as to not be restricted only to groundwater replenishment IPR projects and correct grammar;

- Section 60301.850.5 (Surface Water), clarifying that “surface water” has the same meaning as defined in Chapter 17;
  - Section 60301.851 (Surface Water Source Augmentation Project or SWSAP), establishing a definition and a term for the type of project related to the planned augmentation of a surface water reservoir with recycled water;
  - Section 60301.852 (Surface Water Source Augmentation Project Public Water System or SWSAP PWS), establishing a definition and term for a public water system choosing to participate in the planned augmentation of a surface water reservoir with recycled water;
  - Section 60301.853 (Surface Water Source Augmentation Project Water Recycling Agency or SWSAP WRA), establishing a definition and term for a water recycling agency choosing to deliver recycled water for the purpose of augmenting a surface water reservoir.
- Adopt Article 5.3, Chapter 3, Division 4, to establish criteria applying to water recycling agencies involved in the planned placement of recycled water into a surface water reservoir used as a source of drinking water supply by a PWS, which includes the adoption of sections summarized as follows:
    - Section 60320.300 (Application), establishing the general applicability for the requirements of the Article;
    - Section 60320.301 (General Requirements), establishing general requirements, including overarching requirements and those criteria that do not fall within the more specific subject matter in subsequent sections;
    - Section 60320.302 (Advanced Treatment Criteria), setting forth minimum treatment criteria and requirements for the recycled water to be delivered to an augmented reservoir;
    - Section 60320.304 (Lab Analyses), establishing minimum requirements related to the analyses of chemicals and contaminants;
    - Section 60320.306 (Wastewater Source Control), establishing minimum requirements and criteria related to the origin and control of raw wastewater to be ultimately treated and used for SWA projects;
    - Section 60320.308 (Pathogenic Microorganism Control), establishing minimum requirements for the control of pathogenic microorganisms;
    - Section 60320.312 (Regulated Contaminants and Physical Characteristics Control), establishing minimum requirements for the control of regulated contaminants and physical water quality characteristics that are commonly regulated in drinking water;
    - Section 60320.320 (Additional Chemical and Contaminant Monitoring), establishing requirements for the monitoring of chemicals and contaminants beyond regulated contaminants and pathogenic microorganisms;
    - Section 60320.322 (SWSAP Operation Plan), establishing minimum requirements and criteria of an water recycling agency’s operation plan for a surface water source augmentation project;
    - Section 60320.326 (Augmented Reservoir Monitoring), establishing the minimum monitoring requirements for an augmented reservoir;

- Section 60320.328 (Reporting), establishing water recycling agency reporting requirements, unique to SWA projects;
  - Section 60320.330 (Alternatives), establishing criteria with respect to thresholds for approval for potential alternatives for the requirements established via Article 5.3.
- Adopt Article 9, Chapter 17, Division 4, establishing requirements for a PWS choosing to utilize a reservoir augmented with recycled water, summarized as follows:
    - Section 64668.05 (Application), establishing the general applicability for the requirements of the Article;
    - Section 64668.10 (General Requirements and Definitions), establishing definitions and general requirements for PWS choosing to participate in the planned augmentation of a surface water reservoir with recycled water;
    - Section 64668.20 (Public Hearings), establishing requirements related to the need to participate in at least three public hearings prior to using an augmented reservoir as a source of supply for drinking water;
    - Section 64668.30 (SWSAP Augmented Reservoir Requirements), establishing requirements pertaining to an augmented reservoir, including but not limited to baseline monitoring, theoretical retention time, and minimum criteria associated with reservoir attenuation.

The net effect of the proposed regulations would be to establish specific regulatory criteria for general application by WRAs and PWSs choosing to engage in the planned placement of recycled water into a surface water reservoir that is used as a source of domestic drinking water supply.

**Evaluation of Inconsistency or Incompatibility with Existing State Regulations:**

The State Board evaluated this proposal as to whether the proposed regulations are inconsistent or incompatible with existing California state regulations. This evaluation included a review of California’s existing regulations, potentially related to indirect potable reuse (IPR) by way of SWA, including the State Board’s existing general regulations. It was determined that no other state regulation addressed the same subject matter and that this proposal was not inconsistent or incompatible with other state regulations. However, it should be noted that on June 18, 2014, the California Department of Public Health adopted regulations for another form of IPR, where recycled water is used for the purpose of replenishing groundwater basins that are used as a source of domestic drinking water supplies. For those portions comparable, the proposed SWA regulations are substantially consistent with the existing regulations for IPR through groundwater replenishment. Therefore, the State Board has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations.



## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The State Board has made the following determinations:

- Mandate on local agencies and school districts: No new mandate to local agencies or schools is proposed.
- Cost or savings to any State Agency: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in Federal funding to the State: None.
- Significant statewide adverse economic impact or directly affected businesses, including ability to compete: None. The State Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.

## **STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

Adoption of the proposed regulations will not: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; 3) affect the expansion of businesses currently doing business in California; or 4) affect worker safety or the environment. Adoption of the proposed regulations may have a positive effect on the health and welfare of California residents by providing minimum uniform criteria for ensuring protection of public health, which will serve to streamline the existing permitting process for agencies choosing to engage in a surface water augmentation project.

## **BUSINESS REPORT**

The State Board has determined that the proposed regulations would not require reports from businesses.

## **EFFECT ON SMALL BUSINESS**

The State Board has determined that the proposed regulations would not affect small business because Government Code chapter 3.5, article 2, section 11342.610 excludes utilities from the definition of small business.

## **CONSIDERATION OF ALTERNATIVES**

The State Board must determine that no reasonable alternative considered or otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to the regulated water systems and affected private persons, or would be more cost-effective to the regulated water systems and affected private persons, yet equally effective in implementing statutory requirements or other provisions of law, than the proposed action.

The State Board invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period, as identified in this notice.

## **WATER CODE SECTION 106.3 CONSIDERATION**

In establishing and adopting the proposed regulations, the State Board considered the statewide policy set forth in section 106.3 of the Water Code and determined the proposed regulations will further the stated policy.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The California Environmental Quality Act (CEQA) mandates that guidelines be adopted that include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from CEQA (Pub. Res. Code § 21084). One of those classes of projects exempt from CEQA is "Actions by Regulatory Agencies for Protection of the Environment" (Cal. Code Regs., title 14, §15308).

The State Board intends to make a finding that adoption of the proposed SWA regulations represents action taken by a regulatory agency pursuant to its general and specific statutory authority for the maintenance and protection of the environment, and that adoption of the proposed SWA regulations satisfies the requirements of Title 14 of the California Code of Regulations (CCR), section 15308, and is a Class 8 categorical exempt project. The State Board intends to further find that there are no facts on the record to indicate or suggest that the proposed SWA regulations fall within any of the enumerated exceptions for the appropriate use of a categorical exemption as set forth in Title 14 CCR, section 15300.2. The State Board intends to find, therefore, that pursuant to Title 14 CCR, section 15300, adoption of the proposed SWA regulations is categorically exempt from CEQA requirements for the preparation of environmental documents.

## **STATE BOARD CONTACT PERSONS**

Requests for copies of the proposed regulatory text, the initial statement of reasons, subsequent modifications of the proposed regulatory text, if any, or other inquiries concerning the proposed action may be directed to:

Michael McKibben, P.E.  
Senior Sanitary Engineer  
State Water Resources Control Board  
1350 Front Street, Room 2050  
San Diego, CA 92101  
Telephone: (619) 525-4023  
Electronic mail address: [michael.mckibben@waterboards.ca.gov](mailto:michael.mckibben@waterboards.ca.gov)

In the event Mr. McKibben is not available to respond to requests or inquiries, please contact:

Sherly Rosilela, P.E.  
Water Resource Control Engineer  
State Water Resources Control Board, Division of Drinking Water  
1001 I Street, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 341-5578  
Electronic mail address: [sherly.rosilela@waterboards.ca.gov](mailto:sherly.rosilela@waterboards.ca.gov)

## **INTERNET ACCESS**

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations may be found on the State Board's Web site at the following address: [http://www.waterboards.ca.gov/public\\_notices/comments/index.shtml](http://www.waterboards.ca.gov/public_notices/comments/index.shtml)

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND THE RULEMAKING FILE**

The State Board has prepared an Initial Statement of Reasons for the proposed regulatory action. The Initial Statement of Reasons includes the specific purpose for the regulations proposed for adoption, and the rationale for the State Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulations are proposed. All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for inspection and copying throughout the rulemaking process. To inspect or copy the rulemaking file at the State Board office, contact the Sherly Rosilela, identified above ("Contact Persons").

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering relevant comments received in a timely manner, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are substantially related to the originally proposed text, the State Board will make the modified text – with changes clearly indicated – available to the public for at least 15 days before the State Board adopts the modified regulations. Any such modifications will also be posted on the State Board Web site. Please send requests for copies of any modified regulations to the attention of the contact persons provided above (“Contact Persons”). The State Board will accept written comments on the modified regulation for 15 days after the date on which they were made available.

## **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person(s) named in this notice, or may be accessed on the Web site address provided above (“Internet Access”).