



CVCWA
Central Valley Clean Water Association
Representing Over Fifty Wastewater Agencies



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February 11, 2016

Via Electronic Mail Only

Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
commentletters@waterboards.ca.gov

RE: February 16, 2016 Board Meeting – Resolution Adopting the Human Right to Water As a Core Value and Directing Its Implementation in Water Board Programs and Activities

Dear Ms. Marcus:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the Draft Resolution Adopting the Human Right to Water As a Core Value and Directing Its Implementation in Water Board Programs and Activities (Draft Resolution). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. In this letter, we provide the following comments regarding the need to balance consideration of the human right to water along with all demands made on the state's waters, as required by the Porter-Cologne Water Quality Control Act (Porter-Cologne).

As a preliminary matter, CVCWA agrees with the fundamental principle that all Californian's should be provided safe drinking water for the purposes articulated in Water Code

section 106.3. Accordingly, it is important that the State Water Resources Control Board (State Board) and the Regional Water Quality Control Boards (Regional Boards) consider their actions, and the impact that such actions have, with respect to potential impacts on waters of the state that serve as a source of drinking water. However, CVCWA believes that such principles are already embodied in Porter-Cologne, the federal Clean Water Act, and State and Regional Board policies, and that the proposed resolution is unnecessary. Moreover, by adopting the human right to water as a “core value,” CVCWA is concerned that State Board is reprioritizing beneficial uses in a manner that is inconsistent with the Legislature’s express intent in Porter-Cologne.

First, existing law requires the State Board and Regional Boards to consider all beneficial uses when adopting water quality control plans, policies, permits, and when taking other actions. This includes the municipal and domestic supply (MUN) beneficial use, which includes “uses of water for community, military, or individual water supply systems including, but not limited to, drinking water supply.” When adopting permit limitations for discharges to waters of the state, the most sensitive beneficial use controls and permit limitations are set at levels necessary to protect that sensitive beneficial use. Thus, in situations where MUN is the most sensitive beneficial use for any given constituent, permit limitations will be adopted to ensure that discharges do not cause or contribute to a violation of an applicable drinking water standard. In cases where other beneficial uses are more sensitive (e.g., aquatic life uses), permit limitations are set at levels that are well below levels otherwise necessary to protect the MUN beneficial use. In other words, consideration of the MUN beneficial use is already required, making the Draft Resolution unnecessary.

Second, with respect to the state’s authority to regulate dischargers and potential water quality impacts on the state’s waters, Porter-Cologne expressly states that “activities and factors which may affect the quality of waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” (Wat. Code, § 13000.) Thus, Porter-Cologne requires the State Board and Regional Boards to balance all beneficial uses when making decisions, and does not dictate that one beneficial use is of higher importance as compared to others. CVCWA is concerned that the Draft Resolution as proposed could be interpreted to put the human right to water (i.e., the MUN beneficial use) as a higher priority than other beneficial uses, and that Draft Resolution would alter the balancing considerations as currently required by Porter-Cologne.

Specifically, CVCWA is concerned that Resolution Clause No. 6 fails to properly reflect the balancing requirements of Porter-Cologne. Further, the reference to providing replacement water seems to be misplaced, or at the very least, lacks context for its inclusion. It is our understanding that this phrase is supposed to capture the concept that Regional Board’s have numerous policy options with respect to addressing discharges that might otherwise impact drinking water, rather than just prohibiting the discharge as is otherwise implied by Resolution

Clause No. 6. In particular, CVCWA wants to assure that the Draft Resolution is not used to stifle policy discussions that are occurring in processes such as CV SALTS. California faces significant challenges with respect to nitrate water quality issues and other constituents of concern and creative solutions at a regional and/or local level must be allowed and incentivized. To address CVCWA's concerns, CVCWA recommends that the Draft Resolution be revised to reflect the balancing requirements of Porter-Cologne, especially with respect to direct reference to the regulation of discharges. Further, CVCWA recommends that the last sentence be set forth in a separate clause to provide additional context for its inclusion. Accordingly, CVCWA recommends that Resolution Clause No. 6 be revised, and that a new resolved clause be added to the resolution. CVCWA's suggested revisions are provided here:

Resolution Clause No. 6:

~~Preventing and/or addressing~~ Regulating discharges that could threaten human health by causing or contributing to pollution or contamination of drinking water sources, ~~are~~ is among one of the Water Boards' highest priorities, and such discharges should be regulated to the attain the highest water quality which is reasonable, considering all demands being made and to be made on the waters of the state. ~~Providing replacement water is an interim solution that may be used to address such discharges while long-term water quality solutions are developed.~~

New Resolution Clause:

When regulating discharges that could threaten human health by causing or contributing to pollution or contamination of drinking water sources, Regional Boards should consider all options for ensuring safe drinking water, including the option of allowing for ~~Providing~~ replacement water being provided as an interim solution that may be used to address such discharges while long-term water quality solutions are developed. The State Board further encourages Regional Board's to develop policies that allow for and incentivize local and regional efforts for providing replacement water where appropriate while long term water quality solutions are developed and implemented.

The revisions recommended by CVCWA will help to ensure that the Draft Resolution does not inadvertently re-prioritize the MUN beneficial use over all others, and will further clarify that Regional Board's should consider all policy options.

Felicia Marcus, Chair

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We appreciate your consideration of these comments. If you have any questions or if CVCWA can be of further assistance, please contact me at (530) 268-1338 or eeofficer@cvcwa.org.

Sincerely,



Debbie Webster,
Executive Officer