March 9, 2020

Dr. Jean-Pierre Wolff, Chair
Members, Central Coast Regional Water Quality Control Board (Regional Board)
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San Luis Obispo, CA 93401
Email: centralcoast@waterboards.ca.gov

SUBJECT: Comments on Draft Order No. R3-2020-0004, Waste Discharge Requirements for the Cayucos Sanitary District

Dear Chair Wolff and Members of the Board:

The California Association of Sanitation Agencies (CASA) and WateReuse California (WateReuse CA) appreciate the opportunity to provide comments on the Draft Order establishing requirements for recycled water production and the discharge of treated effluent from the Cayucos Sanitary District’s Water Resource Recovery Facility. CASA is a nonprofit association representing more than 125 public agencies and municipalities that provide essential public services throughout the state to protect the environment and public health, including wastewater collection, treatment, and recycling, biosolids management, and resource recovery. The mission of WateReuse CA is to promote responsible stewardship of California’s water resources by maximizing the safe, practical and beneficial use of recycled water.

CASA and WateReuse CA are strong proponents of maximizing water reuse in California and appreciate the Regional Board’s interest in increasing reuse in the Central Coast. We have been actively engaged in development of the Recycled Water Policy, supporting research and regulations for potable reuse, and efforts to increase funding for recycled water projects. As statewide organizations, we do not typically comment on matters pending before the nine regional water quality control boards. We do weigh in, however, when a proposed action raises significant issues with the potential to set a precedent for other recyclers and discharges in the state.

As discussed in detail below, the proposed mandate for Cayucos Sanitary District (District) to recycle 100% of its treated effluent within a 10-year time frame is of serious concern to our members. The mandate/discharge ban contained in Special Provision 6 is unwarranted, impractical, and cost prohibitive. We believe the provision as drafted exceeds the Regional Board’s authority as a water quality regulatory agency. Moreover, we do not believe that individual utility mandates are effective in advancing recycled water given the many complex factors that affect the feasibility of recycling, many of which are outside the agency’s control.

The Recycling Mandate Should be Replaced with a Feasibility Study
We understand and share the Board’s desire to maximize recycling as part of a sustainable water supply future. Given the many complexities that affect where, when, and how much any individual agency can realistically recycle, the necessary first step is to study the cost, regulatory framework, customer base, technical and jurisdictional impediments and other
factors that are relevant to creating a viable program. The proposed permit puts the cart well ahead of the horse by mandating the recycling first and then directing the District, in essence, to “go figure it out.”

As an alternative, we recommend that Special Provision 6 be recast as a requirement for a special study on the feasibility of maximizing water recycling. We understand that the Coastal Commission has already conditioned its approval of the outfall on completion of such a study. The results of the study can be considered in developing the next five-year permit, or this permit could be reopened if necessary to incorporate appropriate provisions and milestones to implement the District’s plan to recycle dry weather flows that can be viably put to beneficial use. This would be consistent with the Recycled Water Policy.

**The Special Provision for Recycling is Inconsistent with the Water Board’s Recycled Water Policy**

The State Water Resources Control Board’s Recycled Water Policy sets forth the state’s goal of beneficially reusing wastewater that can viably be recycled. The Recycled Water Policy goal states:

> Reuse all dry weather direct discharges of treated wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters that can be viably put to a beneficial use. For the purpose of this goal, treated wastewater does not include discharges necessary to maintain beneficial uses and brine discharges from recycled water facilities or desalination facilities.

In adopting this goal the Water Board considered—and expressly rejected—mandating specific percentages of recycling.

Among other considerations, the Board was mindful of the fact that the regulatory framework necessary for agencies like Cayucos Sanitary District to plan and implement projects to recycle significant volumes of water does not exist. Existing beneficial reuse options are limited. The State Water Board is charged with developing regulations for Direct Potable Reuse by 2023. Until that regulatory scheme has been developed it will be nearly impossible for agencies to plan for, let alone implement, projects to meet the Water Board goal, let alone an enforceable permit mandate.

**The Proposed Permit Presumes that 100% Recycling is Achievable**

Without any information in the record to conclude that 100% recycling—or anything close to it—is feasible, the permit nonetheless would establish an enforceable permit condition requiring it. We understand that the District will produce Title 22 tertiary recycled water, which is suitable for a variety of nonpotable uses. However, use of tertiary recycled water for irrigation is seasonally limited. Wet weather conditions would reduce or eliminate demand. If the District ultimately elects to pursue potable reuse such as reservoir augmentation, the advanced treatment process needed to comply with regulations would generate brine that would have to continue to be discharged, along with off-spec water.
The proposed order does provide a limited “out” in the form of an infeasibility option, but this provision would still require recycling of 100% of the dry season flows and maximizing the wet weather recycling—again without any evidence that this would be technically or economically feasible.

The District is not a water purveyor, which means it cannot by itself ensure compliance with the recycling mandate. Including this requirement in an NPDES permit, enforceable by third parties, exposes the District to significant liability. It also places the District in an unequal bargaining position with regard to negotiation of purveyorship contracts.

**The Time Frame is Unrealistic**
The proposed order requires the District to achieve 100% recycling within 10 years of commencing outfall operations. This timeframe is far too short to complete the multiple steps the permit itself acknowledges would be required: entering into contracts, identifying use sites and customers, planning, design, environmental permitting, construction, rate setting, financing and stakeholder engagement. To put this in perspective, some of the most ambitious recycling projects underway in the state currently have 20 to 30 year project schedules, and when fully operational will still not meet the proposed 100 percent discharge reduction.

Most water recycling projects are done in phases for a variety of reasons. Gradually phasing in reuse over time is more feasible financially, helps to build public support and confidence in recycled water, and gives permittees experience with the technologies to build on progress made over time. A short term 100% mandate is not only infeasible it is also unwise, as it does not allow for addressing these types of considerations in a thoughtful and locally driven adaptive manner.

**Compliance with the Recycling Mandate Would be Cost Prohibitive**
The 10-year timeline and 100% recycling mandate will increase the costs to this small District’s ratepayers. The one-sided mandate—on the sanitary district alone—will place the District at a serious disadvantage in negotiating with water purveyors and customers regarding the rate at which recycled water would be sold, the cost of delivery and the cost of additional treatment infrastructure. Knowing that the District is under a strict requirement, there is little incentive for partner entities to engage in cost sharing or fair pricing of the water.

Further, the District may never be able to achieve the 100 percent, 365 days a year mandate, which will require additional costly facilities and will have significant impacts to the ratepayers. It is surely not achievable without potable reuse or reservoir augmentation, both of which would require advanced treatment including reverse osmosis. The price of the water produced would be very expensive, and the District could run afoul of Proposition 218 and other laws if it were to shift the cost for producing water supply to its existing customers.

**The Regional Water Board Does Not Have the Authority to Mandate Recycling**
Water Code section 13360(a) provides that a regional water quality control board may not specify the “particular manner” in which compliance may be had with waste discharge
requirements. The Regional Board may set effluent and receiving water limitations and impose prohibitions where information in the record demonstrates that those requirements are necessary to protect water quality. The proposed order goes beyond this authority to dictate a particular water supply management program in the form of recycling.

The Regional Board lacks the authority to require the District, a local agency, to recycle its wastewater. The District governing Board has the exclusive authority to decide whether to reuse or discharge wastewater produced by a POTW. (Los Angeles Waterkeeper v. State Water Resources Control Board. et al., Los Angeles Superior Court Case No BS171009 (2019) (LA WaterKeeper) Water Code section 1210 provides that “the owner of a wastewater treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated wastewater...”

As the Los Angeles Superior Court found in rejecting a claim that wastewater agencies should be required to recycle water under the waste and unreasonable use provisions of the California Constitution:

None of the facts concerning recycling are before the Regional Board when it considers a permit (citations omitted), and no law mandates the use of recycled water. At best, the Regional Board has the authority - in furtherance of state policy to do so (Water Code 13576) -- to encourage the recycling of wastewater. (LA WaterKeeper at p.32.)

The proposed permit goes even further by requiring not only full reuse but specifying that the District demonstrate that the selected reuse approach will “achieve the highest beneficial impact and best uses possible of the recycled water.” (Proposed Permit at. P.20.) The permit would mandate not only that the District recycle its water but that the Regional Board would have the final say as to how the water is used, without regard to cost or feasibility. The District’s treated wastewater belongs to the agency, and the Regional Board does not have the legal authority to substitute its judgement for that of the locally elected governing board regarding the appropriate use of the water.

We would be pleased to discuss our concerns and our recommendation further with you in advance of the permit hearing. Please contact Bobbi Larson at (916) 469-3874 or blarson@somachlaw.com if you have questions or need additional information.

Sincerely,

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