

MEMORANDUM OF AGREEMENT BETWEEN
THE DEPARTMENT OF HEALTH SERVICES
AND
THE STATE WATER RESOURCES CONTROL BOARD
ON USE OF RECLAIMED WATER

This Memorandum of Agreement (hereafter MOA) is made between the Department of Health Services (hereafter Department) and the State Water Resources Control Board (hereafter SWRCB) on behalf of itself and the nine California Regional Water Quality Control Boards (hereafter RWQCBs). This MOA sets forth principles, procedures, and agreements to which these agencies commit themselves relative to use of reclaimed water in California. It is effective upon the date that it is executed by both parties.

I. PURPOSE AND SCOPE OF MOA

Water reclamation involves several activities that have potential impacts on public health. The primary activities are the introduction of pollutants into the wastewater collection system, wastewater treatment, storage and distribution of reclaimed water, and the use of the reclaimed water. The planning, design, construction, and operation of the various facilities associated with these activities all require oversight by regulatory agencies to ensure protection of public health.

This MOA is intended to assure that the respective authority of the Department, the SWRCB, and the RWQCBs relative to use of reclaimed water will be exercised in a coordinated and cohesive manner designed to eliminate overlap of activities, duplication of effort, gaps in regulation, and inconsistency of action. To that end, this establishes basic principles relative to activities of the agencies hereto and the RWQCBs, clarifies primary areas of responsibility and authority between these agencies, and provides for methods and mechanisms necessary to assure ongoing, continuous future coordination of activities relative to use of reclaimed water in this State.

The MOA is intended to serve as an umbrella agreement between the agencies hereto. It will be supplemented, as appropriate, by addenda which will reflect any additional agreements, commitments and understandings arrived at by the agencies hereto. This MOA replaces the previous MOA on use of reclaimed water executed on 5 December 1988.

II. GENERAL BACKGROUND

A. Basic Authorities and Responsibilities

In order to supplement existing surface and ground water supplies to help meet water needs in the State, it is State policy that use of reclaimed water in the State be promoted to the maximum extent (California Water Code, Sections 13510-13512). One of the primary conditions on the use of reclaimed water is protection of public health (Water Code Sections 13521, 13522, 13550(a)(3)).

The Department is the primary State agency responsible for protection of public health and the regulation of drinking water. The Legislature has defined several specific regulatory responsibilities of the Department related directly or indirectly to water reclamation activities including: establishment of statewide water reclamation criteria; advising RWQCBs in the drafting of water reclamation requirements (permits); review and approval of certain proposed water reclamation projects; abatement of contamination resulting from use of reclaimed water where public health is seriously threatened; and control of cross connections between potable and nonpotable water systems.

The SWRCB and the RWQCBs are the primary State agencies charged with the protection, coordination, and control of water quality and the assignment of water rights in the State. Specific regulatory responsibilities affecting water reclamation include approval of pollutant source control programs for wastewater collection systems, issuance and enforcement of water reclamation requirements to producers and users of reclaimed water, definition of beneficial uses of surface and ground water bodies through the establishment of water quality control plans, regulation of operators of wastewater and water reclamation treatment plants, and water right determinations regarding water reclamation.

To assure protection of public health where reclaimed water use is involved, the Department has been statutorily directed to establish uniform statewide reclamation criteria for the various uses of reclaimed water (Water Code Section 13521). The Department has promulgated regulatory criteria which are currently set forth in Title 22, Division 4, Section 60301 et seq., California Code of Regulations. The Department's regulatory criteria include specified approved uses of reclaimed water, numerical limitations and requirements, treatment method requirements and performance standards. The Department's regulations allow use of alternative methods of treatment, in some cases, so long as the alternative methods used are determined by the Department to assure equivalent treatment and reliability.

B. Water Reclamation Requirements and Reports

All persons who reclaim or propose to reclaim water, or who use or propose to use reclaimed water, must file a report with the appropriate RWQCB (Water Code Section 13522.5). If a RWQCB determines that it is necessary to protect public health, safety, or welfare, it may prescribe water reclamation requirements where reclaimed water is used or proposed to be used (Water Code Section 13523). Where regulatory criteria have been adopted, no person may either reclaim water or use reclaimed water until the appropriate RWQCB has either issued reclamation requirements or waived the necessity for such requirements (Water Code Section 13524). In the process of issuing reclamation requirements, the RWQCBs must consult with and consider recommendations of the Department (Water Code Section 13523). Any reclamation requirements which are issued by the RWQCBs, whether applicable to the claimer or to the user of reclaimed water, must be in conformance with any regulatory reclamation criteria adopted by the

Department. Water reclamation requirements for a proposed use of reclaimed water that is not specifically addressed in the Title 22 water reclamation criteria adopted by the Department are considered on a case-by-case basis.

The RWQCBs have the option of issuing a master reclamation permit in lieu of individual water reclamation requirements for a project involving multiple users. Such permits would combine the waste discharge requirements pursuant to Water Code Sections 13260 et seq. and water reclamation requirements. A master permit may be issued to a supplier or distributor, or both, of reclaimed water. The procedures for adoption by the RWQCBs are the same as for water reclamation requirements and include the same consultation with the Department (Water Code Section 13523.1). Except upon written request from a RWQCB, the reporting requirement in Section 13522.5 is waived for users supplied with reclaimed water from a supplier or distributor operating under a master permit (Water Code Section 13522.5). However, other reporting and plan review requirements, such as those specified in the Title 22 reclamation criteria, may be included as requirements in the master permit. In addition the RWQCBs have the option of issuing general waste discharge requirements or general water reclamation requirements, under which all producers of reclaimed water may apply to be covered, in lieu of individual orders.

Water Code Section 13554.2(e) requires the Department to review and approve proposed water reclamation projects (within specified time frames) that are submitted to the Department by producers or distributors of reclaimed water for review. The Department may delegate some or all of its responsibilities, with respect to review and approval of a proposed project, to a local health department with the concurrence of the project proponent (Water Code Section 13554.2(c)). The reclaimed water producer or distributor submitting the proposed project for review must reimburse the Department for its cost of conducting the review and issuing the approval or denial (Water Code Section 13554.2(a)).

Where reclaimed water use is involved or proposed, the RWQCBs have the authority to require construction reports and such other reports as may be necessary to assure protection of both public health and water quality (Water Code Section 13523). Additional engineering, construction, and operational reports are specified in the Title 22 criteria adopted by the Department.

C. Regulatory Enforcement

Where use of reclaimed water is involved, the RWQCBs have the exclusive authority to enforce water reclamation requirements. In extreme cases involving serious public health threats, the Department may take steps to abate any contamination which may result from use of reclaimed water (Water Code Section 13522). The RWQCBs may undertake various enforcement actions, both of a civil nature and relative to criminal sanctions, for failure to file necessary reports, for reclamation or use of reclaimed water without reclamation

requirements, or for violation of any reclamation requirements imposed by a RWQCB (Water Code Sections 13522, 13522.7, and 13525).

In addition to the authority vested in the SWRCB, the RWQCBs, and the Department relative to the use of reclaimed water, various local health agencies have an independent and autonomous role and authority to impose additional requirements and take enforcement actions with respect to water reclamation pursuant to local ordinances.

D. Cross Connection Control

The Department has responsibility for protection of potable water systems through cross connection control and backflow prevention. (Health and Safety Code Division 5, Part 1, Chapter 7.9, Sections 4049.50 et seq.; California Code of Regulations, Title 17, Division 1, Chapter 5, Group 4, Article 2, Sections 7601 et seq.). The Department has specified the backflow protection measures required at sites where reclaimed water is used.

E. Source Control

The federal Clean Water Act mandates municipal wastewater dischargers of 5 MGD or more into surface waters have an industrial pretreatment program (Clean Water Act, Sections 301 and 307). The purpose of this program is to control the input of constituents into sewer systems that could be harmful to wastewater treatment processes, treatment plant personnel, or the ability of a plant to meet effluent limitations. These requirements are implemented through the National Pollutant Discharge Elimination System (NPDES) permits issued by RWQCBs. Annual reports on the pretreatment programs submitted by the dischargers are reviewed by the RWQCBs. In addition, RWQCBs conduct inspections periodically to monitor these programs.

In the case of most water reclamation projects, all of the constituents of concern for public health protection are covered by current pretreatment programs. There is the potential that for certain types of reuse, particularly indirect potable reuse, some constituents would not come under the authority of the federal statutes to control through a pretreatment program. However, RWQCBs have the authority to include additional pretreatment program requirements or broader source control requirements in permits. Once such requirements are a part of a permit, the wastewater agency would be obligated to comply with the permit and the RWQCB would have authority to enforce the requirement.

F. Potable Water Supply Source Control

Planned indirect potable reuse of reclaimed water is commonly practiced in California through artificial ground water recharge with reclaimed water. Furthermore, indirect potable reuse is being proposed through the introduction of reclaimed water into a water supply reservoir that would serve as a raw water supply for a potable water system. The

Department has the responsibility to identify when and under what conditions a raw water supply is suitable for potable purposes.

G. Operator Certification

The qualifications of operators of wastewater treatment plants are determined by the SWRCB (Water Code Section 13627; California Code of Regulations Title 23, Chapter 26, Sections 3670 et seq.) Where water reclamation is involved, the SWRCB may require operators to be certified wastewater treatment plant operators. The water reclamation criteria promulgated by the Department states that operators of water reclamation plants shall meet the requirements for wastewater treatment plant operators specified by the SWRCB (California Code of Regulations, Section 60325).

H. Water Rights

Under certain conditions the use of potable water for nonpotable purposes is a waste or unreasonable use of water if reclaimed water is available (Water Code Sections 13550 et seq.). It is the responsibility of the SWRCB to make determinations under this provision. The SWRCB does not as a matter of course make this determination; such determination typically occurs in an adversarial proceeding after a complaint is filed. One of the conditions of the determination is that there is concurrence with the Department that the use of reclaimed water will not be detrimental to public health.

Prior to making any change in the point of discharge, place of use or purpose of use of treated wastewater, the owner of any wastewater treatment plant must obtain approval of the SWRCB (Water Code Sections 1210-1212). The Division of Water Rights of the SWRCB reviews and acts on such changes pursuant to the provisions of Section 1700 et seq. of the California Water Code. If a change in discharge or use of treated wastewater would occur due to a water reclamation project undertaken in response to a discharge restriction or other action by a RWQCB exercising its regulatory authority under Division 7 (commencing with Section 13000) of the Water Code, prior approval under Sections 1210-1212 is not required.

III. GENERAL PRINCIPLES

The general principles hereby agreed to by the Department, the SWRCB, and the RWQCBs are as follows:

- A. All requests for water reclamation requirements submitted to a RWQCB pursuant to Section 13522.5 shall be considered to be a request for review by the Department pursuant to Section 13554.2, since Departmental review and recommendations are required by Section 13523.

- B. Wherever feasible, the Department shall use the issuance of water reclamation requirements by a RWQCB as the preferred method of granting Departmental approval to a proposed project to avoid the issuance of separate project approvals by the Department.
- C. Reclamation requirements issued by the RWQCBs will impose all applicable statewide reclamation criteria adopted by the Department and set forth in Title 22 regulations.
- D. The Department will identify in its recommendations to a RWQCB with respect to proposed water reclamation requirements any conditions upon which its approval of a proposed project is based. The RWQCB staff will incorporate any "conditions of approval" submitted as part of the Department's recommendations into the water reclamation requirements proposed for adoption by the RWQCB.
- E. Each agency hereto, when evaluating policies and procedures of its programs that affect water reclamation, shall consult with the other agency before adopting new policies or procedures.
- F. Each agency hereto shall, to the maximum extent compatible with fulfillment of its primary responsibility to protect and preserve public health and water quality, promote and facilitate use of reclaimed water in this State.
- G. As the primary enforcement agencies, the RWQCBs will enforce all aspects of the water reclamation requirements including the Title 22 regulatory requirements. The Department will provide technical assistance to the RWQCBs in carrying out the enforcement program. Where a public water system is involved in the supplying or distribution of the reclaimed water, the Department will use its enforcement authority over public water systems (such as cross connection control) to assist the RWQCBs in their enforcement efforts.

IV. PROGRAM PROVISIONS AND COMMITMENTS

To assure fulfillment of the purposes and principles set forth in this MOA, the agencies hereto commit themselves to the following programmatic approaches and procedures:

- A. The RWQCBs will submit copies of proposed project reports or proposals to use reclaimed water as they are received rather than waiting until draft water reclamation permit requirements are completed in order to allow adequate time for review and, if necessary, preliminary discussion between the agencies.
- B. The Department agrees to review and respond to water reclamation proposals and proposed water reclamation requirements within 30 days of receiving such referrals from the RWQCB. Should the Department determine that the project report is incomplete [per Water Code Section 13554.2(e)], it will immediately inform the RWQCB and indicate the additional information needed in order to complete the review of the proposed project.

- C. In the event a recommendation of the Department is deemed by the RWQCB staff to be inappropriate for inclusion into water reclamation requirements, it will advise the appropriate District Office of the Department. The two agencies agree to meet and try to resolve any differences.
- D. When requested by the Department, the RWQCB staff will incorporate a condition into a proposed master permit requiring the producer or distributor of the reclaimed water to submit plans, specifications, reports, or other specified material, to the Department for review and approval for specified new uses or new use areas that are added subsequent to the issuance of the master permit.
- E. The Department will incorporate into any local delegation a requirement that the local agency abide by the terms and conditions of this MOA in the same manner as the Department.
- F. When deemed necessary by the RWQCB, the Department will attend any RWQCB meeting or hearing to explain or defend any of the Department's conditions of approval or recommendations.
- G. The RWQCBs will defer to the Department with respect to any questions involving interpretation of any Title 22 criteria.
- H. RWQCB staffs will not waive reclamation requirements nor propose waiver of reclamation requirements for any proposed use of reclaimed water without consultation with the Department.
- I. The agencies will work jointly to develop a definitive statement of policy and appropriate guidelines regarding the applicability of the ground water recharge regulations to various reclamation or wastewater disposal facilities.
- J. The agencies agree to keep each other informed of any actions relating to specific projects and will send copies of all correspondence with project proponents or others that relate to a specific project to the other agency.
- K. The Department agrees to try to coordinate its efforts with those of local health departments in order to foster a closer working relationship with local agencies and to reduce any potential conflicts for the RWQCBs.
- L. In recognition of budget and staff limitations, the agencies hereto may be unable to fulfill all of the tasks outlined herein and, therefore, agree to commit to setting priorities that assure public health protection.

- M. The RWQCBs will expeditiously notify the Department of all significant violations of reclamation requirements or improper reclamation uses within their jurisdictions. The Department will expeditiously notify the appropriate RWQCB of improper reclamation uses or violation of reclamation requirements which become known to the Department.

V. DISPUTE AND CONFLICT RESOLUTION

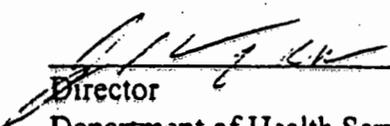
It is the desire of the agencies hereto to establish a speedy, efficient, informal method for resolution of interagency disputes, problems or conflicts. To that end, except as otherwise provided in this MOA, and to the extent not inconsistent with any formal administrative appeals which may be pending, the agencies agree that:

- A. Any concerns, issues or disputes, arising between the RWQCB staffs and the Department that cannot be resolved by meetings and discussions between the RWQCB Executive Officer and the Department's District Engineer will be brought to the attention of the Executive Director of the SWRCB. The Executive Director will attempt to resolve the matter to the satisfaction of both parties and will, if necessary, meet and confer with the Chief of the Department's Division of Drinking Water and Environmental Management.
- B. Nothing contained herein shall be construed to deprive the Department of formal appeal rights relative to any alleged RWQCB action or inaction. In the event of such an appeal, the SWRCB will expedite any review process.

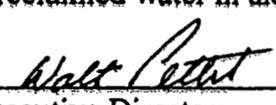
VI. MODIFICATION AND PERIODIC REVIEW

This MOA may be modified in writing at any time by mutual agreement of the agencies hereto. Proposed modifications may be suggested by any agency hereto at any time.

The agencies hereto will meet periodically, not less than once each year, to discuss the actions of each agency relative to this agreement, to devise and agree to appropriate activities for the forthcoming fiscal year, and to consider additional actions and activities which each agency can take to better coordinate their activities and further promote use of reclaimed water in the State.



Director
Department of Health Services



Executive Director
State Water Resources Control Board

Date: 20 Feb 76

Date: 25 Jan 90