



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

JAN - 9 1996

9-7

Loren E. Duff
EXECUTIVE SECRETARY

December 22, 1995

To: Board of Directors (Water Planning and Resources Committee--Information)
(Legal and Claims Committee--Information)

From: *[Signature]* General Manager

Submitted by: General Counsel

[Signature]
[Signature]

Subject: Discussion of Agencies' Positions on Proposed Amendment to State Water Resources Control Board Resolution No. 92-49 Regarding Groundwater Cleanup and Establishing Containment Zones

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

This letter is an update on the progress of the State's containment zone proposal. Staff is continuing to work with member agencies, the Association of Ground Water Agencies (AGWA) and the Los Angeles Regional Water Quality Control Board developing a unified position on the proposed policy.

The State Water Resources Control Board (State Board) has proposed an Amendment to Policy No. 92-49 (Amendment) which would assign broad authority to the Regional Water Quality Control Boards (Regional Boards) to allow dischargers to suspend groundwater cleanup activities, in certain instances, in areas where water quality objectives cannot be either cost effectively met or achieved within a reasonable time period. The Amendment refers to these areas as containment zones. It represents a significant change in the State and Regional Boards' responsibility to protect water quality throughout the State. If not properly administered, it could result in the shift of groundwater cleanup costs from polluting parties to water agencies.

Originally, this Amendment was aimed at helping small businesses, such as dry cleaners and gas stations with leaking underground fuel tanks. There is a legitimate concern that extremely expensive cleanup operations are often required even though they result in minimal environmental benefits due to the inflexibility of cleanup requirements. Metropolitan is sensitive to this concern and recognizes that flexibility is needed to address those cases where cleanup has

great costs with minimal results. Metropolitan would support the original concept of the Amendment if groundwater basins used for drinking water purposes are excluded from its provisions. In its present form the proposed change is being opposed, in conformity with the Board's Policy Principles on groundwater protection.

Testimony supporting the Amendment has not come from the intended beneficiaries, however, but from major industries seeking far wider use of this limited proposal. Such expansion of the scope of the Amendment is a threat to cleanup and protection of groundwater basins used for drinking water. Therefore, it is necessary to participate in the administrative hearings on the Amendment to insure that appropriate groundwater safeguards are included in the amended policy.

DETAILED REPORT

The State Board proposed Amendment to Policy No. 92-49 (Amendment) which would grant broad authority to Regional Boards to allow dischargers to suspend groundwater cleanup activities in areas where water quality objectives cannot be either met cost-effectively or achieved within a reasonable time period. Originally, this was a permit streamlining proposal to assist small businesses, such as dry cleaners and gas stations with leaking underground fuel tanks. Often required clean-up requirements, in such situations, result in minimal environmental benefits and are extremely expensive due to the inflexibility of cleanup requirements. It is recognized that this situation should be remedied.

However, presentations and submittals to the State Board on this matter have been predominated by major industries rather than the small business entities intended to be benefited. There is a danger that the amended rule will exempt dischargers from clean-up responsibilities in situations far beyond that contemplated at the time the proposed amendment was announced. The effect of this would be to place the cost of such clean-up upon water agencies seeking to utilize groundwater in an exempted containment zone.

Significantly, the need for the proposed amendment has been questioned. Dr. Robert Ghirelli, Executive Officer of the Los Angeles Regional Board, has commented that the Amendment is unnecessary and could become a cumbersome process severely adversely affecting the Regional Boards' workload. Dr. Ghirelli feels that the Regional Boards already have the requisite authority to take care of the issue on a case-by-case basis. While this view is not shared by representatives of the other Regional Boards, it is worthy of consideration because recognition of this existing Regional Board authority could remedy the situation without much of the controversy and concern which has surrounded the scope of the proposed amendment.

Staff is involved with discussions among groundwater agencies, AGWA and the Los Angeles Regional Board to develop suggested comments and amendments for the proposal.

The following suggestions are being coordinated and refined in conjunction with other water agencies and AGWA:

** Initially Test the Amendment on a Pilot Basis*

The Amendment initially should be implemented on a Pilot Basis in a containment zone area not used for drinking water. This would permit an evaluation of potential State-wide impacts and the making of any necessary adjustments before full implementation. This is particularly appropriate since the State Board staff has stated that it is impossible to presently evaluate what it calls "the significant impacts to groundwater" of the proposed policy amendment. The staff also states that significant mitigation measures will have to be developed such as alternative water supplies and pump and treat systems. No hint as to how this will be accomplished is supplied. Given these concessions, it is difficult to understand how the State Board intends to rely on a Functional Equivalency Document (FED) instead of a full Environmental Impact Report (EIR) to review the potential impacts of the Amendment. A major advantage of the Pilot Test would be that under that circumstance a FED would be appropriate and overcome the need to prepare a full EIR at this time.

** Prohibit Containment Zones in Groundwater Basins Used for Drinking Water*

The proposed Amendment permits a Regional Board to designate a containment zone of any size in any basin. This presents the threat of contamination migration which could endanger significant volumes of groundwater. Further, provisions in the Amendment, as presently written, allow a Regional Board to consider modifying basin beneficial uses (and applicable water quality objectives). This undermines other Amendment provisions safeguarding groundwater. The solution to these problems is to prohibit the creation of containment zones in groundwater basins used for drinking water. Such a change in the Amendment is being sought.

** Require Regional Board Consideration of Affected Water Agency Comments in Containment Zone Proceeding*

Due to the potential threat, the Amendment should be modified to require findings regarding impacts of proposed zones on drinking water supplies by overlying water agencies. These findings must be presented and taken into consideration as part of the administrative proceedings before the Regional Boards considering whether to create such a zone. This Amendment change is essential to protect the substantial investment of water agencies in groundwater supplies.

** Require Ongoing and Periodic Review of Containment Zone Status*

Once a containment zone has been created no further State or Regional Board review of the zone is required by the Amendment. This ignores the fact that contaminants may subsequently move causing a threat to adjacent areas or systems. Without periodic review, a

failed containment and/or monitoring system may go unnoticed for years. Periodic review is essential to insure the protection of adjacent areas. An additional benefit is that such review may reveal changed conditions which with then economically feasible means would permit cleanup or use of groundwater. Changes in the proposed Amendment to include such ongoing review are being sought.

Metropolitan and other local water agencies have commented on previous drafts of the Amendment regarding insufficient protection for groundwater and drinking water quality. Currently, all are waiting for the response of the State Board to comments presented by the water agencies at the Board's November 8, 1995, hearing. The State Board is expected to hold a workshop on the proposed Amendment on February 7, 1996 and to formally consider the matter at a subsequent meeting.

AGWA considered this matter at its December 1995 meeting. A formal position paper is being developed by AGWA members for consideration at AGWA's January 23, 1996 meeting. The results will be reported to your Board as soon as possible thereafter.

As previously noted, Metropolitan staff is continuing to work closely with other water agencies, the Los Angeles Regional Board and AGWA to develop a coordinated position to present at the State Board Workshop. In addition, discussions will be initiated with proponents of the amendment to determine if accommodation of views can be reached on any of the existing issues. Staff will continue to update the Board on these developments.