

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF DRINKING WATER  
DECEMBER 19, 2023**

**ITEM 3**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT REGULATIONS FOR DIRECT POTABLE REUSE.

**DISCUSSION**

Pursuant to sections 13521 and 13561.2 of the Water Code and sections 116271 and 116375 of the Health and Safety Code, the State Board is proposing to adopt regulations establishing uniform water recycling criteria for direct potable reuse – which is the planned introduction of treated wastewater either directly into a public water system or into a raw water supply immediately upstream of a water treatment plant – such that adherence to the criteria would result in public health being adequately protected.

Water Code section 13561.2 requires the State Water Board to develop and adopt uniform water recycling criteria for direct potable reuse through raw water augmentation by December 31, 2023. Prior to adopting regulations for direct potable reuse, section 13561.2 mandates that State Water Board submit the proposed criteria to the expert review panel convened pursuant to section 13561.2, subdivision (c) (Expert Panel). Section 13561.2 further mandates that the State Water Board shall not adopt the subject regulations unless and until the Expert Panel reviews the proposed criteria and adopts a finding as to whether, in its expert opinion, the proposed criteria would adequately protect public health. On October 12, 2023, the Expert Panel made a finding that the proposed regulations would adequately protect public health.

In addition to the review by the Expert Panel, the scientific basis and scientific portions of the proposed direct potable reuse regulations were reviewed through an external peer review process, as required by Health and Safety Code 57004. The external review process was completed on June 21, 2021. The peer reviewers who provided assessment found the scientific basis for the proposed regulations to be sound, adequate, and reasonable, and met the statutory condition that the scientific portion of the proposed regulations is based upon sound scientific knowledge, methods, and practices. The peer review comments were shared with the Expert Panel prior to its initial meeting and were included as an appendix in the Initial Statement of Reasons.

The proposed direct potable reuse regulations do not require any public water system or water recycling agency to participate or engage in direct potable reuse. Prior to permit approval of a direct potable reuse project, the proposed regulations require the applicant to provide public notice, hold at least one public hearing, and post public

information to ensure the public has the opportunity to review project information and provide comments to a public water system on a direct potable reuse project prior to approval.

On July 21, 2023, the Notice of Proposed Rulemaking for the proposed regulations was published in the California Regulatory Notice Register ([July 21, 2023 – No. 29-Z](#)) pursuant to the requirements of the California Administrative Procedure Act (APA). Publication of the Notice of Proposed Rulemaking begins a mandatory public comment period of no less than 45 days. During the public comment period, which the State Water Board set for 49 days, 27 comment letters were received. During the public comment period, the State Water Board held an APA public hearing during a State Water Board Workshop on September 7, 2023. Following the conclusion of the public comment period on September 8, 2023, the State Water Board reviewed each comment received during the comment period, including oral comments received at the public hearing.

The State Water Board staff determined that substantive revisions should be made to the proposed regulations and pursuant to the APA, the revised proposed regulations would need to be released for an additional public comment period of no less than 15 days. On October 12, 2023, the Expert Panel made a finding that the proposed regulations, as revised, remain adequately protective of public health. Accordingly, on October 19, 2023, the State Water Board published a Notice of Public Availability of Changes to Proposed Direct Potable Reuse Regulations and Addition of Material to the Rulemaking Record.

Following the conclusion of the 15-day public comment period on November 6, 2023, State Water Board staff reviewed the comments received and concluded no substantive revisions to the proposed regulations were necessary.

State Water Board staff will address each comment received during the public comment periods in the Final Statement of Reasons, as required by the APA, and will present a summary of comments, staff responses, and revisions to the proposed regulations at the State Water Board adoption hearing. If the State Water Board adopts the resolution, the rulemaking package containing the proposed regulations will be submitted to the Office of Administrative Law (OAL) for review. Once OAL approves the regulatory action and it is filed with the Secretary of State, the regulations will be published in the California Code of Regulations.

More information about the rulemaking record, including documents that were made available during the 45-day and 15-day public comment periods, is posted on the program webpage at:

[https://www.waterboards.ca.gov/drinking\\_water/certlic/drinkingwater/dpr-regs.html](https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/dpr-regs.html)

## **POLICY ISSUE**

Should the State Water Board adopt the proposed regulations for direct potable reuse?

## **FISCAL IMPACT**

If approved by OAL, the proposed regulations will establish uniform criteria for direct potable reuse that will adequately protect public health. There are no additional costs to the regulated community associated with the adoption of the proposed regulations. The regulations are only applicable to agencies that choose to engage in the planned introduction of treated wastewater either directly into a public water system or into a raw water supply immediately upstream of a water treatment plant. The regulations do not require any entity to engage in a direct potable reuse project. The requirements proposed in the regulations would likely occur through existing permitting processes in the absence of the regulations. Therefore, the baseline from which to compare the impacts of the regulations (i.e., requirements prior to the adoption of the proposed regulations) is substantially the same as those that would apply as a result of the regulations.

## **REGIONAL BOARD IMPACT**

The proposed regulations require that the municipal wastewater used in a direct potable reuse project be from an entity in compliance with a National Pollutant Discharge Elimination System (NPDES) permit and/or waste discharge requirements issued pursuant to article 4, chapter 4, division 7 of the Water Code. An entity wishing to provide municipal wastewater to a direct potable reuse project that does not have waste discharge requirements or one that is not current may apply to the appropriate Regional Board to be covered under a permit issued pursuant to article 4, chapter 4, division 7 of the Water Code. It is likely that that a direct potable reuse project will require modification of an existing NPDES permit or waste discharge requirements or issuance of a new permit due to changes to discharge points, a new discharge, and/or modifications to operations. Because the appropriate permits will need to be issued before a direct potable reuse project can begin operations, any modification to an existing permit or issuance of a new permits will need to proceed on a parallel track, and in coordination with, the development and approval of a direct potable reuse project.

The proposed regulations do not preclude the Regional Boards from regulating components of a direct potable reuse project that involve discharges to the waters of the state or from establishing criteria that are more stringent in the waste discharge requirements, particularly with respect to ensuring that healthy ecosystems are maintained.

## **STAFF RECOMMENDATION**

The State Water Board should adopt the proposed regulations for direct potable reuse.