


August 26, 2019  
Prepared and  
submitted by: J. Colston / P. Weghorst  
Approved by: Paul A. Cook 

## ACTION CALENDAR

### IRWD POLICY PRINCIPLES REGARDING PFAS CONTAMINANTS

#### SUMMARY:

IRWD policy position papers are reviewed periodically to determine if the positions are still valid, need to be revised, or if new papers should be written on other issues. Staff is proposing a new policy position for IRWD pertaining to the issues associated with per- and polyfluoroalkyl substances, also known as PFAS. At high enough concentrations, these contaminants can pose threats to human health. Regulations are now being developed that will likely have impacts on IRWD as well as water and sanitation agencies throughout Orange County and the United States. Staff recommends that the Board discuss and adopt IRWD's Policy Principles Regarding PFAS Contaminants.

#### BACKGROUND:

In 2004, IRWD began producing policy papers on topics of particular interest to IRWD. Because of IRWD's standing in the water industry, its position is regularly solicited on issues of vital interest to the industry and the community. In order to keep these position papers current and germane, staff occasionally recommends that the Board review the papers and, when appropriate, incorporate updates or adopt new papers.

PFAS compounds have emerged recently as "contaminants of concern" primarily due to human health impacts. These compounds are often referred to as "forever chemicals" because they decompose very slowly and can therefore accumulate in the environment and in humans. While there are many sources that can expose humans to PFAS (dust in the air, food packaging material, clothing, etc.), state and federal regulators are now acting to limit the amount of PFAS contaminants in drinking water supplies.

Regulatory limitations for PFAS compounds will have implications across the entire water industry, and should be developed thoughtfully. IRWD's policy position will support advocacy, both legislative and regulatory, to promote science-based regulations and appropriate timelines for implementing treatment solutions. The District's policy position will also provide clarity as to how IRWD has modified its operations, and how IRWD suggest Orange County Water District should work with all Groundwater Producer Agencies to develop and implement solutions to what appears to be a groundwater basin-wide problem.

IRWD has posted information on its website [www.irwd.com/services/pfas](http://www.irwd.com/services/pfas) to provide customers information on this topic as the discussion broadens further into mainstream media. To focus its position on this issue for discussions with regulators, legislators, other water agencies and associations, staff recommends that the IRWD Board adopt a policy position paper regarding PFAS contaminants. The draft policy paper is attached as Exhibit "A".

FISCAL IMPACTS:

Not applicable.

ENVIRONMENTAL COMPLIANCE:

None.

COMMITTEE STATUS:

This topic was discussed at the IRWD Board at its Strategic Planning Workshop on August 8, 2019. Due to timing and urgency of this matter, this policy position paper was not reviewed by a committee.

RECOMMENDATION:

THAT THE BOARD ADOPT THE PROPOSED IRWD POLICY POSITION PAPER REGARDING PFAS CONTAMINANTS.

LIST OF EXHIBITS:

Exhibit "A" – Draft IRWD Policy Principles Regarding PFAS Contaminants

## EXHIBIT “A”

### IRWD POLICY POSITION REGARDING PFAS CONTAMINANTS

SEPTEMBER 23, 2019 - **DRAFT**

#### Issue Summary:

The policy issues associated with the cleanup of what are often referred to as “PFAS compounds” in the Orange County Groundwater Basin (Basin), both prior to and after the establishment of regulatory limits in drinking water, are complex and likely to be controversial. To help guide IRWD’s advocacy efforts related legislative and regulatory efforts, as well as issues of concern to IRWD services and the cleanup of PFAS compounds that have been found in the Basin, staff has prepared this policy position paper.

#### Background on PFAS Contaminants:

In 2012, the United States Environmental Protection Agency (EPA) issued rules which required monitoring for 30 added contaminants by public water systems across the United States. Perfluorooctanic acid (PFOA) and perfluorooctane sulfonate (PFOS) were included on the list for monitoring. These compounds are organic chemicals that are part of a larger group of man-made chemicals referred to as per- and polyfluoroalkyl substances (PFAS). These substances, sometimes referred to as “forever chemicals,” are persistent in the environment while being generally resistant to heat, water, and oil. They have been widely used in consumer products such as carpet, clothing, fabrics for furniture, paper packaging for food, fire-fighting foams, and other materials (e.g., cookware) designed to be water proof, stain-resistant, or non-stick.

Between 2013 and 2015, OCWD tested water from the Basin consistent with EPA requirements. The results of the tests were submitted to the EPA and the State Water Resources Control Board Division of Drinking Water (DDW). In July 2018, DDW established precautionary advisory levels for PFOA and PFOS.

#### *Precautionary Advisory Levels:*

Notification Levels are precautionary health-based advisory levels established by DDW for chemicals in drinking water that are not regulated by Maximum Contaminant Levels (MCLs). State law requires timely notification to local jurisdictional authorities by a retail water system whenever a Notification Level is exceeded in drinking water. DDW recommends that public water systems take a source of water out of service if a contaminant is present at concentrations considerably higher than the Notification Levels. The level prompting such recommendations is called the “Response Level”.

Notification and Response Levels have no binding effect on a public water system’s ability to serve water to customers. Because of public perception issues associated with continuing to serve water that contains PFOA and PFOS at concentrations above the Response Levels, the thresholds can be interpreted by some entities as “de facto MCLs.”

#### *Maximum Contaminant Levels:*

MCLs are standards that are set by the EPA and some states for drinking water quality. MCLs serve as legal threshold limits on the amount of a substance that is allowed in a potable water supply. The EPA is moving forward with developing MCLs for PFOA and PFOS. The State of California is expected to soon initiate a parallel process to establish its own enforceable limits.

Until either federal or state MCLs are set for PFOA and PFOS, there are no legal requirements for a public water system to blend, treat or take an affected water source out of production.

Contaminants Could Become a Widespread Problem:

In April 2019, monitoring orders were sent by DDW to public water systems across California including IRWD and 11 other Orange County Groundwater Producers (Producers). In response to the orders, OCWD implemented a sampling and analysis program that identified that PFOA and PFOS contaminants exist in a substantial portion of the Basin.

In August 2019, DDW released new lower Notification Levels and is expected to release lower Response Levels by the end of 2019. These lower Response Levels are expected to influence the decisions of numerous Producers to operate (or to not operate) approximately 71 wells. Additional Producers are at risk that if the contaminants continue to migrate through the Basin. A migration would likely reduce many other Producers' ability to rely on groundwater.

OCWD and Groundwater Basin Considerations:

OCWD has recently initiated pilot studies to evaluate various treatment processes that might be effective at removing PFOA and PFOS from groundwater recovered from the Basin. In addition, OCWD has initiated efforts to study how treatment facilities could be integrated into Producer potable water production distribution systems that are affected by the contaminants. As part of these ongoing efforts, OCWD is expected to develop and implement a policy on how the costs of the design, construction, operation and maintenance (O&M) of treatment facilities might be allocated to OCWD and the affected Producers. In developing its policy, OCWD will need to consider equity issues associated with other contaminants that exist in the Basin that have either been avoided or that are currently being cleaned up from the Basin.

*BEA Exemptions Should Be Considered:*

OCWD District Act gives OCWD the power to enter into a contract with a Groundwater Producer to encourage the Producer to increase production of groundwater in lieu of using imported water for the purpose of removing contaminants from the Basin. The corresponding treatment facilities are commonly referred to as Basin Equity Assessment (BEA) exempt projects. In practice, a Producer that operates such facilities is annually credited pro-rated capital and actual O&M costs associated with the treatment facilities. The credits are used to offset BEA payments owed by the Producer for pumping above the OCWD Basin Production Percentage (BPP). Providing BEA exemptions to PFOA and PFOS treatment projects would not be applicable to Producers that would use such a project to treat groundwater extracted under the BPP. Where Producer agencies have enough well capacity to pump unimpaired water up to the BPP, the implementation of BEA exempt project might be useful for removing PFOA and PFOS from the Basin.

*Raising BPP Should Be Avoided:*

If, in response to DDW Response Levels or future MCLs, the Producers affected by the PFOA and PFOS contaminants choose to take their wells out of service, then OCWD could financially be affected through reduced Replenishment Assessment (RA) revenue. If OCWD were to

increase the BPP in response to these financial impacts, then the Producers that operate BEA-exempt projects would be financially impacted. This is an important issue and OCWD should avoid raising the BPP in response to wells being shut down due to the presence of PFOA and PFOS contaminants.

IRWD Policy Principles:

To help guide IRWD's advocacy efforts related to PFAS contaminants, the following policy position principles have been assembled. These principles provide guidance on issues related to legislative and regulatory action, IRWD services, and the Orange County Groundwater Basin.

*State and Federal Legislative and Regulatory Issues:*

1. Public health and environmental standards should be developed that are based on science and a comprehensive understanding of the risk that PFAS contaminants pose to public health and the environment;
2. State and federal agencies should hold PFAS producers ultimately liable for cleanup costs. Additionally, regulators should ban the importation of PFAS containing products that can result in further environmental contamination;
3. Regulations should focus on the most persistent PFAS compounds that pose the greatest human health risk and sources that produce the highest levels of exposure;
4. Federal MCLs for PFOA and PFOS should be established in a timely manner in accordance with the established regulatory processes under the Safe Drinking Water Act;
5. If PFAS is designated as hazardous substance under CERCLA, then wastewater and water utilities must be exempted from liability because water and wastewater utilities do not produce or create PFAS – they only receive PFAS in the water and wastewater they treat; and
6. Federal financial assistance should be provided through the EPA's Drinking Water State Revolving Fund and other programs to communities that are forced to address contaminated water supplies.
7. The federal government shall take responsibility for PFAS contamination associated with the many active and closed military bases under its jurisdiction.

*IRWD Service Issues:*

1. IRWD elects not to produce water from any source for its potable water system that contains unacceptable levels of PFOA and PFOS unless an effective water treatment system is in place to remove these contaminants;
2. IRWD will look for opportunities to collaborate with other Producer agencies to develop mutually beneficial joint PFOA and PFOS removal facilities; and

3. IRWD will establish a policy position on the impacts of PFAS in recycled water or residual biosolids materials once the regulations for these products are promulgated.

*Orange County Groundwater Basin Issues:*

1. OCWD should establish a policy for the removal of PFOA and PFOS contaminants in the Basin that takes into consideration regulatory recommendations and requirements, equity issues associated with other contaminants in the Basin, protection of the use of BEA-exempt projects to clean up other contaminants, and the need to stop the migration of the contaminants before they impact additional Producers' wells;
2. IRWD supports OCWD treatment pilot studies to evaluate various treatment processes that might be effective at removing PFOA and PFOS from groundwater recovered from the Basin. Viable treatment systems must consider the ultimate fate of these contaminants rather than shifting them to another environmental media;
3. Until the MCLs are established or the RLs are significantly reduced for PFOA and PFOS, IRWD does not support the final design, construction and operation of treatment facilities that would result in costs being assessed through the RA to the Producers;
4. Once MCLs are established or RLs are significantly reduced for PFOA and PFOS, OCWD should work with Producers to implement BEA-exempt projects where possible to remove the contaminants;
5. Where use of BEA-exempt projects is not possible, OCWD should develop and fund the design, construction and operation of treatment facilities that can be integrated into a Producer's retail water system;
6. Producers affected by the PFOA and PFOS contaminants should pay for a portion if not all the O&M costs associated with the treatment of groundwater delivered through their potable water system. Producers should remain responsible for cost to convey and pump treated groundwater into their distribution systems;
7. OCWD should pursue avenues to obtain reimbursement for the design, construction, and operation of treatment facilities to remove PFAS contaminants from the Basin from the companies that produced PFOA and PFOS;
8. OCWD should not pay for a Producer's alternative source of imported water. In addition, OCWD should not pay for temporary PFAS treatment and conveyance facilities if a Producer elects to incur these costs, unless the temporary facilities are incorporated into the permanent solution that is acceptable to OCWD; and
9. OCWD should not impair the use of existing BEA-exempt projects that clean up other contaminants from the Basin by raising the BPP.



December 20, 2021

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Alex Padilla  
United States Senate  
112 Hart Senate Office Building  
Washington, D.C. 20510

**RE: PFAS Liability Exemption & Use of the Existing Drinking Water Standards  
Methodology**

Dear Senator Feinstein and Senator Padilla:

On behalf of the Irvine Ranch Water District (IRWD), I am writing to request your support for an expressed exemption from liability for water and wastewater agencies that properly clean up PFAS contamination, if PFAS compounds are designated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

As you are aware, the U.S. EPA is developing a Notice of Proposed Rulemaking to designate PFOA and PFOS, two of many PFAS chemicals, as hazardous substances under CERCLA. When this designation occurs, the likely result will be that water and wastewater agencies who responsibly and properly clean up PFAS contamination will have liability for PFAS when they are simply working to address the nation's PFAS contamination.

PFAS are a group of man-made chemicals created by chemical manufacturers. These chemicals have been found in some water supplies and are found in wastewater due to human consumption and industrial uses of PFAS. For example, PFAS has been detected in the Orange County Groundwater Basin and in one of IRWD's groundwater wells. Once detected, the well was put out of service and IRWD is working to clean up the PFAS contamination. Additionally, the District is working with OCWD and the United States Department of the Navy to clean a plume of contaminants, including PFAS, that was created from activities on a now-closed Marine Corps Air Station, El Toro.

As you can see, IRWD is among the water and wastewater suppliers in California and around the country that are diligently working to clean up PFAS contamination that we did not create. Manufacturers and users of PFAS, not water and wastewater agencies working to remove these chemicals, should be responsible under CERCLA for PFAS. A water supplier that complies with applicable and appropriate federal management and treatment standards should not be liable. Water suppliers have no responsibility for the presence of PFAS and subjecting us to CERCLA liability would be unjustified and unfair to our ratepayers who would bear the costs in their rates.

The Honorable Dianne Feinstein and Honorable Alex Padilla

December 20, 2021

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Additionally, I ask for your support for the U.S. EPA applying the long-standing cost-benefit methodology currently required by the Safe Drinking Water Act when the agency sets drinking water standards for PFOA and PFOS. The existing cost-benefit methodology ensures that public health benefits of new drinking water standards are balanced with the compliance costs, and it has worked to ensure public health and safety are protected.

Thank you for considering our requests related to PFAS. Should you have any questions or if we can be of assistance to you or your office, please feel free to contact me at (949) 453-5590 or our federal advocate, Mark Kadash, at (202) 547-8800.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul A. Cook".

Paul A. Cook, P.E.  
General Manager





December 20, 2021

The Honorable Lou Correa  
U.S. House of Representatives  
2301 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Young Kim  
U.S. House of Representatives  
1306 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Alan Lowenthal  
U.S. House of Representatives  
108 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Katie Porter  
U.S. House of Representatives  
1117 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Michelle Steel  
U.S. House of Representatives  
1113 Longworth House Office Building  
Washington, D.C. 20515

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The Honorable Lou Correa, Honorable Young Kim, Honorable Alan Lowenthal, Honorable  
Katie Porter, and Honorable Michelle Steel  
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