

Huff, Gwen

From: Milman, Anita [amilman@nrdc.org]
Sent: Monday, August 09, 2010 11:19 AM
To: Frame, Kent; Water Use Efficiency
Subject: Comments regarding the Process Water Ruling, U5 Technical Workgroup
Attachments: Comment on U5 Process Water Draft August 10.pdf

Dear Kent and DWR,

Attached is a memo detailing NRDC's comments on the U5 technical workgroup discussion of the process water ruling.

Thank you for considering our ideas, concerns, and suggestions.

--Anita

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NATURAL RESOURCES DEFENSE COUNCIL

August 10, 2010

To: Manucher Alemi, Chief, Water Use Efficiency Branch, DWR and
Kent Frame, Senior Land & Water Use Scientist, DWR

From: Anita Milman, Policy Analyst

Re: Comments on Process Water Rulemaking - U5 Technical Workgroup

I am writing on behalf of the Natural Resources Defense Council (“NRDC”) and its approximately 250,000 members and activists in California. Below are comments NRDC would like to submit to you regarding the process water ruling that was discussed during the August 3, 2010 U5 subcommittee meeting.

Substantial and Disproportionate Burden

We understand concerns voiced during the U5 meeting on August 3 that ‘burden’ differs by circumstance. The proposed conditional structure, whereby DWR sets a threshold value for a supplier’s industrial water use above which process water can be excluded from gross water use calculations, and, for a certain band below which, a water supplier can demonstrate it may be an exception, addresses this concern. However, DWR’s proposed threshold which considers substantial to be when industrial water use constitutes 10% or more of total water use is too low.

The intent of the law is to achieve a statewide 20% reduction in per capital urban water use by 2020. Thus DWR should exercise care to ensure that ‘substantial’ is defined at a level that allows process water use to be excluded only by those water suppliers for which industrial water use is clearly significant relative to non-industrial water use, rather than allowing for widespread deductions of process water.

The requirement that industrial water use must be 20% or greater of total water use OR the contribution of industrial water use to gpcd must be greater than 20 gpcd would be appropriate. Those suppliers for whom industrial water use is between 10% and 20% of total use could still demonstrate a disproportionate burden using the exception criteria developed.

NRDC recommends this higher threshold because when industrial water use is only 10% of total, retention of process water in gross water use calculations does not create a ‘disproportionate burden on another customer sector.’ DWR’s analysis using CUWCC data indicated only approximately 6% of water suppliers provide more than 10% of their water to industrial water users, and for those that do, that water use contributes on average only 15 gallons to gpcd. For those water suppliers to achieve an overall 20% reduction, water users from other sectors (non-industrial water users) would at most have to conserve an extra 3 gpcd (20% of 15 gallons) to achieve an overall 20% reduction. “At most” because this assumes no reductions occur in industrial water use, yet studies by the Pacific Institute and others have demonstrated there exist a multitude of opportunities for cost-effective water efficiency improvements in the industrial sector, and thus it is unlikely the entire

burden of savings stemming from the contribution of industrial water use to gpcd would fall on other customer sectors. In any event, an additional 3 gpcd is not much of a burden.

A higher threshold is also justified by Figure 3 on the handout provided by DWR, which shows that the transition point in the curve occurs when industrial water use contributes 20 gallons to the total gpcd. Water suppliers that fall to the right of this line might be considered the true ‘outliers’, i.e., those who would be disproportionately burdened.

With respect to the criteria local agencies whose industrial water use is below the threshold can use to claim industrial water use will create a disproportionate burden, many of the exception criteria recommended during the U5 meeting will undermine the goal of a 20% statewide reduction.

- Whether the inclusion of process water use in gross water use calculations is truly burdensome or not, the exclusion of process water will have the effect of lowering a supplier’s baseline water use, which thereby reduces the amount of savings required for compliance purposes, as 20% of a smaller number will always be less than 20% of a larger number. The smaller the target, the smaller the risk that the target will not be achieved. This dynamic will readily become apparent in any informed discussion of the issue that takes place in a local public process. All suppliers share the incentive to exclude process water, as it will reduce the total water savings required and the risk of potential State sanctions. Thus, the conduct of a local public process is unlikely to yield results that distinguish suppliers facing a significant burden from those that do not. For this reason, NRDC strongly urges DWR not to extend eligibility for exclusion of process water based upon the conduct of a local public process.
- Nor should whether or not exclusion of process water will allow a water supplier to be in compliance with 2020 be among the criteria by which substantial is defined. Such an allowance would create a disincentive for conservation by leaving targets open until the 2020 deadline. A water supplier’s target should be well defined at an earlier date to assist the water supplier in planning and encourage it to commit to undertaking savings measures in time to achieve the 2020 target.
- However, the degree of conservation already in place is a reasonable factor to include when determining if inclusion of process water use would create a disproportionate burden. NRDC agrees with DWR’s proposal that inclusion of process water use will likely create more of a burden on water utilities already at or below 100 GPCD and support this as criteria for exclusion of process water for suppliers with industrial water use of between 10% and 20% of total use.

Definition of Cooling Process Water

SB X7 section 10608.12 defines an industrial water user as “one that is *primarily* a manufacturer or processor of materials as defined by the North American Industry Classification System (NAICS) code sectors 31 to 33, inclusive, or an entity that is a water user *primarily* engaged in research and development.”(emphasis added) Data centers/servers do not fall within those NAICS codes.¹ Moreover, unless a specific data center can demonstrate that by ownership or contract it is *primarily* engaged in research and development, it must be viewed as a service provided to aid those using computing, whether those activities are used for R&D or other purposes. Furthermore, the

¹ See page 2 http://www1.eere.energy.gov/industry/datacenters/pdfs/chp_data_centers.pdf and <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> facilities. Section 33 refers only to entities that are manufacturing computer parts; data processing, storage and facilities fall under code 54.

definition of process water specifically excludes water used for air conditioning. As such, the definition of cooling water in the methodology should clearly explain that water used for cooling/climate control in data centers and servers is not considered process water and therefore cannot be deducted from gross water use.

Conclusion

To best achieve the water efficiency targets intended by the legislation, we encourage DWR to make exclusion of process water from gross water use calculations a narrow exception rather than the norm and to ensure process water refers strictly to water that is essential for manufacturing and research and development.