

Legal News Alert: Golf & Resort Industry Team is part of our ongoing commitment to providing up-to-the-minute information about pressing concerns or industry issues affecting our clients and our colleagues.

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## **Regional Water Quality Control Board, San Diego Region, Proposes Strict Limitations on the Use of Reclaimed Water at Golf Courses**

The Regional Water Quality Control Board, San Diego Region, has proposed Tentative Resolution R9-2007-0104 (Tentative Resolution). As written, the order will have significant impact on the owners and operators of golf courses located in San Diego County, southern Orange County, and southern Riverside County.

The Tentative Resolution creates a new set of discharge requirements for reclaimed water, which are noted on pages D-28 through D-29 of the Tentative Resolution. While recycled water has always been regulated under 22 CCR Section 60310, this new Tentative Resolution imposes three additional requirements:

1. The Tentative Resolution contains an absolute prohibition against the discharge of recycled water either directly or indirectly to any surface water of the state, including ephemeral streams and vernal pools. Compliance with this requirement could be very costly and potentially impossible for existing courses. Course managers will need to control irrigation overspray to assure that no irrigation runoff enters the storm drain system or a water of the state. Irrigation ponds will need to be covered or redesigned to avoid overtopping in rainstorms.
2. Golf courses will be required to prepare a Report of Waste Discharge (RoWD) pursuant to California Water Code Section 13260. This is a detailed and costly analysis of the pollutant loads contained in the reclaimed water, their potential transport into surface water or ground water, and the potential impact on beneficial uses resulting from the transport of those pollutants prior to the commencement of any discharge. It is likely that an analysis also will be required for other chemicals added to, or transported by, the recycled water such as fertilizers and pesticides. There does not appear to be any grace period for golf courses currently using recycled water.

## ABOUT FOLEY'S GOLF & RESORT INDUSTRY TEAM

The Golf & Resort Industry Team of Foley & Lardner LLP includes attorneys from across the country with specific experience in the golf and resort industry. With backgrounds that encompass real estate, business, environmental, construction, intellectual property, public finance, and litigation, our attorneys combine skill and hands-on experience to guide developers and lenders in projects involving golf amenities, timeshare, and other recreational components.

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3. Golf courses will be required to submit technical and/or monitoring reports as directed by the Regional Water Board. The content of these reports has not yet been established. However, recent attempts to add similar open-ended monitoring requirements to projects have resulted in increased costs in excess of \$100,000 per year.

These Tentative Resolution provisions put golf course owners in a very awkward position. State water rights law mandates the use of recycled water on golf courses whenever it is available. These Tentative Resolution provisions may make compliance with those water rights laws very costly, if not impossible, to comply.

The public comment period for this Tentative Resolution will close on August 8, 2007 and, if unchallenged, the Tentative Resolution will be adopted in September 2007. The Tentative Resolution will then go into effect in January 2008. Unless golf course owners and operators participate in the public comment process and develop a record concerning the infeasibility of these new provisions, they will lose their standing to appeal. Moreover, if left unchallenged, this will become a precedent for other regulatory agencies to follow across the country.