



PUBLIC WORKS DEPARTMENT

February 6, 2017

Mr. Sam Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 W. Fourth St., Suite 200  
Los Angeles, CA 90013  
Attention: Veronica Cuevas

**Subject: Comments on Tentative NPDES Permit No. CA0055531  
City of Burbank Water Reclamation Plant**

Dear Mr. Unger:

On January 5, 2017, the California Water Quality Control Board for the Los Angeles Region (Regional Board) released the City of Burbank Water Reclamation Plant (Burbank WRP) Tentative Order (NPDES No. CA0055531), Fact Sheet, and Monitoring and Reporting Program (MRP). The City of Burbank (City) appreciates the opportunity to provide the following comments and recommendations to the Regional Board. City staff will also be present to provide oral comments at the Regional Board public hearing to be held on March 2, 2017. While the City appreciates the Regional Board's staff for its efforts in developing the Tentative Order, the City has the following technical and legal comments regarding the permit.

In addition to comments detailed below, this letter incorporates by reference Enclosure A, which provides additional comments and proposed revisions.

***Temperature Effluent Limitation***

The Tentative Order contains a final effluent limitation for temperature of 86°F as a daily maximum. The 2012 Order included this limit with language, which stated "The temperature of wastes discharged shall not exceed 86°F except as a result of external ambient temperature." This language was not included in the Tentative Order. However, the fact sheet contains the following in IV.C.2.xi. (p. F-39):

"The temperature of wastes discharged shall not exceed 86°F except as a result of external ambient temperature."

The City requests that a footnote be added to Table 4 of the Tentative Order and to Table F-13 with language consistent with the Fact Sheet and with the 2012 permit.

### ***Performance Based Effluent Limitations***

The Tentative Order contains final effluent limitations for ammonia and copper, based on plant performance and a margin of safety factor (MOSF). The City has the following concerns with Performance Based Effluent Limitations (PBELs):

- PBELs are not required by the nitrogen and copper Total Maximum Daily Loads (TMDLs) given that antibacksliding and antidegradation requirements are met.
- If PBELs are going to be assigned, they should not be characterized as Water Quality Based Effluent Limits (WQBELs).

These concerns are discussed below.

### **Antibacksliding and antidegradation requirements have been met**

As discussed in the Fact Sheet of the Tentative Order (Page F-35), the Los Angeles River (LAR) Nitrogen Compounds TMDL states (emphasis added):

“Regardless of the SSO [site specific objective] and SSO-derived WLAs [wasteload allocations], for discharges regulated under this TMDL with concentrations below site-specific water quality objectives, effluent limitations shall ensure effluent concentrations do not exceed the level of water quality that can be reliably maintained by the facility’s applicable treatment technologies existing at the time of permit issuance, reissuance, or modification unless antibacksliding requirements in Clean Water Act [CWA] section 402(o) and anti-degradation requirements are met.”

The cited language indicates that if the antibacksliding and antidegradation requirements are met, the TMDL does not require PBELs (i.e., such as those proposed for ammonia and copper). Based on our analysis, as well as previous analysis and permitting action by the Regional Board, antibacksliding and antidegradation requirements have been met.

Establishing effluent limits based on the WLAs when effluent concentrations are below the WLA is consistent with the approach used in five other permits in the Los Angeles region: Whittier Narrows WRP Order No. R4-2014-0213-A01, Los Coyotes WRP Order No. R4-2015-0124; Pomona WRP Order No. R4-2014-0212-A01; Long Beach WRP Order No. R4-2015-0123; San Jose Creek WRP Order No. R4-2015-0070. Each of these permits finds relaxation of effluent limitations consistent with both antibacksliding rules and antidegradation policies. While all five permits are relevant to the BWRP, the Whittier Narrows WRP permit is the most relevant as it regulates discharges in the same watershed, the Los Angeles River. The Whittier Narrows WRP permit found that antidegradation and antibacksliding requirements

were met for the discharges of ammonia from the Whittier Narrows WRP to both the Los Angeles River and San Gabriel River watersheds. Given this finding, PBELs were not prescribed for ammonia (note that the copper WER was not applicable to the Whittier Narrows WRP). The information provided in the Whittier Narrows WRP Permit fact sheet presents an appropriate analysis conducted by Regional Board staff. In applying the same evaluation approach as used by Regional Board staff to the Burbank WRP, application of the SSO and WER based limits similarly meet antidegradation and backsliding requirements. As such, the findings for the Burbank WRP permit should follow the precedent set in the Whittier Narrows WRP and the other four permits. The findings on antidegradation from the Whittier Narrows WRP Permit were as follows:

The effluent limitations for ammonia nitrogen have been relaxed based on revisions to the Los Angeles River Nitrogen Compounds TMDL that were adopted by the Regional Water Board on March 4, 2013. Section 303(d)(4)(A) of the Clean Water Act allows revision of an effluent limitation based on a total maximum daily load or other waste load allocation if the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of the water quality standard. The revised effluent limitations for ammonia nitrogen will assure the attainment of water quality standards in Rio Hondo/Los Angeles River.

*See Order No. R4-2014-0213-A01 at p. F-56.*

The findings on antidegradation from the Whittier Narrows WRP Permit were as follows:

Discharges permitted in this Order are consistent with the antidegradation provisions of 40 CFR part 131.12 and State Water Board Resolution No. 68-16 because the discharge will not degrade any existing high quality water ... The other effluent limitations that were relaxed are for pollutants for which the receiving water is impaired. These revised effluent limitations are consistent with applicable TMDLs and will assure attainment of the water quality standard in the receiving water. No changes to the plant's treatment facilities or processes are planned that would impact the concentrations of these constituents in the discharged effluent. Monitoring for these constituents in the effluent and receiving waters continue to be required under this Order. The Regional Board may modify the terms of this Order to prevent degradation of high quality waters based on any change in the concentration of these constituents in the effluent or receiving water that indicates that a degradation of high quality waters may occur. The treatment required by this Order is the best practicable treatment or control of the discharge necessary to assure that a pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained.

See Order No. R4-2014-0213 at pp. F-56 to F-57. Since the Burbank WRP is similarly using best practicable treatment or control (BPTC), e.g., state of the art tertiary treatment with nitrification/de-nitrification, this will assure that a pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained, thereby meeting the requirements for the State's Antidegradation Policy (Res. No. 68-16).

Because the antibacksliding and antidegradation requirements are both met, the TMDL does not require PBELs. Such a finding is consistent with five previously adopted permits in the region and one specifically for a discharge to the Los Angeles River watershed. Rather than requiring PBELs, the City requests the removal of PBELs and incorporation of SSO-derived WLA-based effluent limitations. If the Regional Board feels it is necessary to include additional provisions to support the maintenance of current effluent quality, the City recommends incorporating an approach that incentivizes water quality improvements consistent with the findings of the 1994 Permit Reform Task Force<sup>1</sup> (Task Force) that addressed the issue of setting effluent limits more stringent than water quality standards. The Task Force found that limits in NPDES permits based on plant's capability rather than water quality criteria creates a disincentive for voluntary water quality improvements and can function as a 'no-growth' limit in the area tributary to the WRP.

The City's proposed alternative approach is similar to the approach already utilized in the Los Angeles region for two ocean outfall permits (City of Los Angeles Hyperion Water Reclamation Plant and the Los Angeles County Sanitation District Joint Water Pollution Control Plant). Such an approach includes establishing performance goals or water quality triggers, which if exceeded would require the submittal of a written report to the Regional Board describing the nature of the exceedance, the results of an investigation into the cause, and corrective actions taken or proposed with a timetable for implementation, if necessary. This region has historically utilized performance goals, and should do so again.

### **PBELs should not be characterized as water quality based effluent limits**

The Clean Water Act regulations prescribe two types of effluent limitations – technology-based and water quality-based. See 40 C.F.R. §122.44(a)(1) and (d)(1). The proposed Burbank WRP permit characterizes the ammonia and copper limits as water quality based effluent limits (WQBELs). However, this is a mischaracterization because the limits are not based on the applicable water quality objectives (e.g., the SSOs adopted by the Regional Board) or the TMDL. Instead, these limits are derived from the maximum effluent concentration (MEC) combined with a Margin of Safety Factor (MOSF), neither of which is connected to water quality objectives. The proposed effluent limits should be retitled as PBELs for

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<sup>1</sup> The Task Force, which had a legal advisor from the State Water Board and two Regional Board advisors, as well as three Regional Board ex-officio members, two legislative ex-officio members, and representatives for agriculture, water, stormwater, POTWs, and non-governmental organizations, is discussed in more detail in the attached matrix.

which there is no legal authority in either federal or state law, except for when imposing interim effluent limitations under a compliance schedule. See *In the Matter of EBMUD and BACWA*, SWRCB Order No. 2002-0012 at p. 6 ("the challenged limits are not WQBELs. Instead, the Regional Board imposed interim limits based on current performance or the previous permit limit, with lengthy time schedules.") Utilization of the term PBELs rather than WQBELs is important in the event future effluent quality is degraded by factors beyond the Burbank WRP's control (e.g., water conservation, impacts associated with climate change, etc.) and to ensure that PBELs can be recalculated consistent with the reopener language in the Tentative Order.

Therefore, if PBELs for ammonia and copper are not removed as requested and modified into performance goals/triggers, then the City requests that these limits be clearly distinguished from WQBELs and retitled as PBELs.

### ***Chronic Toxicity Requirements***

To determine an effluent limit for toxicity and compliance with that limit, the Burbank WRP permit, as currently written, proposes the use of a null hypothesis that effluent is toxic that must be disproved, through the Test of Significant Toxicity (TST) statistical method. The TST is the comparison of 100 percent effluent to a control without the use of a multi-concentration dose response, and without the Percent Minimum Significant Difference (PMSD) being used to determine the effect of toxicity. These all represent unpermitted and unauthorized modifications to the approved regulatory test methods for determining chronic toxicity contained in the 2002 Methods formally adopted by USEPA in 40 C.F.R. Part 136. Because there is no longer an approved Alternate Test Procedure (ATP) in California allowing these modifications, their use is unlawful and should not be included in the Burbank WRP permit. Federal regulations binding on the regional board require that monitoring must be based on Part 136 methods. See 40 C.F.R. §122.41(j)(4); §122.44(i).

While the City understands that several permits have been issued in Region 4 specifying use of the chronic toxicity requirements, including the TST, other regions have chosen to defer using this method until the finalization of the Statewide Toxicity Policy, which is expected prior to the end of 2017. At this time, only Region 4 includes numeric effluent limits for toxicity with no dilution credit while requiring the TST. More importantly, POTWs using the TST have reported unexpectedly high failure rates for toxicity testing using the TST. The Sanitation Districts of Los Angeles County have recently evaluated the reliability of the method based on their experience with high failure rates. Using outside laboratories, they found that half of the non-toxic blank samples were identified as "toxic" using the TST.

Because of issues experienced with the TST, a coalition of wastewater associations including the Southern California Alliance of POTWs (SCAP), the Central Valley Clean Water Association, the Bay Area Clean Water Agencies (BACWA) and the National Association of Clean Water Agencies (NACWA) filed suit against USEPA in

federal court seeking to halt the use of an unapproved toxicity test method for compliance in California discharge permits.

The City requests that the Burbank WRP permit maintain the trigger approach based on chronic toxicity units (TUC) contained in the current permit and mandated by the State Water Resources Control Board in binding, precedential orders. *See* SWRCB Order Nos. WQO 2003-012 and 2003-12.

### ***Summary***

For the above reasons, the City requests that:

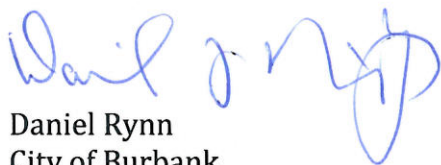
- A footnote be added to the temperature effluent limit to allow exceedances that are due to ambient temperature.
- PBELs for copper and ammonia be replaced by performance goals/triggers with WQBELs based on the adopted SSOs.
- If PBELs are used, they should be clearly identified as such and not as WQBELs.
- The proposed chronic toxicity requirements, including use of the TST, be replaced with the current trigger approach based on chronic toxicity units as is required by the current permit.

In addition to these comments, Enclosure A provides other comments and requested corrections/clarifications to the permit.

The City believes the revisions requested within this letter and Enclosure A are consistent with State and federal regulations. We appreciate your consideration of our comments.

If you have any questions related to our comments, please contact Stephen Walker, Assistant Public Works Director – Wastewater Systems, at (818) 238-3804 or [swalker@burbankca.gov](mailto:swalker@burbankca.gov), or me at (818) 238-3940 or [drynn@burbankca.gov](mailto:drynn@burbankca.gov). We would be happy to meet or talk with your staff prior to the scheduled hearing to discuss these issues further if it would be helpful.

Respectfully submitted,



Daniel Rynn  
City of Burbank  
Acting Public Works Director

Enclosure A – Detailed Comment Matrix

**ENCLOSURE A: DETAILED COMMENT MATRIX FOR BURBANK WRP TENTATIVE PERMIT - JANUARY 2017**

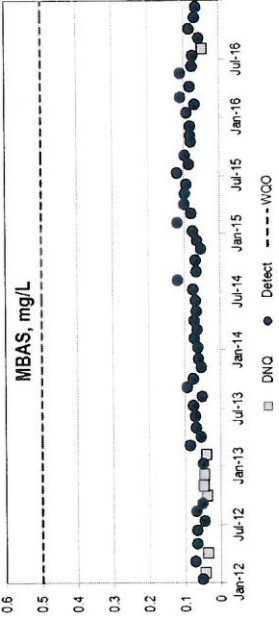
Detailed Comment #	Document Reference : (Doc. #, Section #, Page #)	Issue	Comment
1.	Tentative Order, Section III.A, Page 3 ; Tentative Order, Section VI.A.2.i., Page 10	Duplicate provisions	<p>Duplicate provisions regarding discharge location are found in the Tentative Order, which could result in multiple penalties for the same violation:</p> <p>III. DISCHARGE PROHIBITIONS</p> <p>A. Discharge of treated wastewater at a location different from that described in this Order is prohibited.</p> <p><i>And</i></p> <p>VI.A.2.i. Discharge of wastes to any point other than specifically described in this Order is prohibited.</p> <p>Please remove one of these two duplicative prohibitions.</p>
2.	Tentative Order, Section IV.A.1.a, Table 4 – Final Effluent Limitations, page 4 ; Attachment F, Section IV.D.3., Table F-13 Page F-60	Effluent Limitations without Reasonable Potential	<p>The proposed permit contains effluent limitations without a demonstrated calculation of reasonable potential (RP), including, radioactivity constituents, oil &amp; grease, settleable solids, chloride, sulfate, and MBAS. For constituents not regulated by the SIP, no authority exists for BPJ-based limits where MEC&lt;WQO. As shown in the graphs below, no reasonable potential exists for radioactivity constituents, oil &amp; grease, settleable solids, chloride, sulfate, or MBAS to exceed a water quality objective. Therefore, these limits need to be removed prior to adoption. See SWRCB Order No. WQO-2003-0009 at pgs. 7-9.</p> <p>In addition, gross beta/photons emitters in millirems/year cannot be measured directly in wastewater. The gross beta/photons emitters calculation is based on Strontium (Sr-90) and Tritium parameter data and no data for these parameters was available to submit as part of the 2016 ROWD. The only (gross beta/photons emitters) result available to date is based on August 2016 monitoring data, was only 6.4% of the proposed limit, and would not have triggered RP relative to the limit.</p> <p>The State Water Resources Control Board (SWRCB) has held that "the antibacksliding exception for new information applies where new monitoring data indicate that the discharge of a pollutant does not have reasonable potential to cause or contribute to a water quality standards violation." SWRCB Order No. WQO 2003-0009 at p. 9. In that matter, it was stated that limits should not be maintained where the data did not indicate RP. Here, the Regional Board is using non-data justifications for including effluent limits, which are not required. All effluent limits that do not have data demonstrating RP should be removed.</p> <p>The following charts demonstrate that Burbank's effluent is well below the applicable WQOs represented by the dashed line:</p>

ENCLOSURE A: DETAILED COMMENT MATRIX FOR BURBANK WRP TENTATIVE PERMIT - JANUARY 2017

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ENCLOSURE A: DETAILED COMMENT MATRIX FOR BURBANK WRP TENTATIVE PERMIT - JANUARY 2017

Detailed Comment #	Document Reference : (Doc. #, Section #, Page #)	Issue	Comment												
			 <p>The Los Angeles River Metals TMDL was amended by the Regional Board on April 9, 2015 and approved by USEPA on December 12, 2016. The Tentative Order references the previously effective TMDL. All references, discussions, and effluent limits related to the LA River Metals TMDL should be updated to reflect the 2015 Amendment, which was approved by USEPA in December 2016.</p>												
3.	Tentative Order, Section IV. A.1.a. Table 4, page 6 ; Attachment F, Section III.E.7a., page F-22 – F23 ; Attachment F, Section IV.C.4.b, page F-45 - F-48, F-57	General – LA River Metals TMDL references and corresponding requirements need to be updated													
4.	Tentative Order, Section IV. A.1.a. Table 4, page 6 ; Attachment F, Section IV.C.2.b.ix, page F-30 – F37	Effluent Limits – Incorrect Ammonia MDEL Multiplier	<p>The Tentative Order Fact Sheet contains several equations that list the correct terms and correct answers to the calculations; however, intermediate numbers are incorrect. The following table identifies those instances and presents the appropriate correction:</p> <table border="1" data-bbox="1193 168 1364 1407"> <thead> <tr> <th>Page</th> <th>End Point</th> <th>Current Equations (incorrect # bolded)</th> <th>Requested Revision (correct # bolded)</th> </tr> </thead> <tbody> <tr> <td>F-33</td> <td>LTA<sub>1-hour/99</sub> =</td> <td>ECA<sub>1-hour</sub> X ECAmultiplier<sub>1-hour</sub></td> <td><b>18.43</b> x 0.44 = 8.1 mg/L</td> </tr> <tr> <td>F-33</td> <td>LTA<sub>4-day/99</sub> ELS Absent =</td> <td>ECA<sub>4-day</sub> X ECAmultiplier<sub>4-day/99</sub></td> <td><b>5.664</b> x 0.643 = 5.214854 mg/L <b>8.11</b> x 0.643 = 5.214854 mg/L</td> </tr> </tbody> </table>	Page	End Point	Current Equations (incorrect # bolded)	Requested Revision (correct # bolded)	F-33	LTA <sub>1-hour/99</sub> =	ECA <sub>1-hour</sub> X ECAmultiplier <sub>1-hour</sub>	<b>18.43</b> x 0.44 = 8.1 mg/L	F-33	LTA <sub>4-day/99</sub> ELS Absent =	ECA <sub>4-day</sub> X ECAmultiplier <sub>4-day/99</sub>	<b>5.664</b> x 0.643 = 5.214854 mg/L <b>8.11</b> x 0.643 = 5.214854 mg/L
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ENCLOSURE A: DETAILED COMMENT MATRIX FOR BURBANK WRP TENTATIVE PERMIT - JANUARY 2017

Detailed Comment #	Document Reference : (Doc. #, Section #, Page #)	Issue	Comment												
5.	Tentative Order, Section VI.A.2.z, page 12	Recycled Water Feasibility Study	<table border="1" data-bbox="354 132 532 1428"> <tr> <td data-bbox="354 132 418 247">F-34</td> <td data-bbox="354 247 418 457">LTA<sub>30-day/99</sub> ELS Absent =</td> <td data-bbox="354 457 418 667">ECA<sub>30-day</sub> X ECAMultiplier<sub>30-day/99</sub></td> <td data-bbox="354 667 418 1428">2.27 x 0.846 = 2.744 mg/L</td> </tr> <tr> <td data-bbox="418 132 483 247">F-34</td> <td data-bbox="418 247 483 457">MDEL</td> <td data-bbox="418 457 483 667">LTA<sub>min</sub> X MDELMultiplier<sub>99</sub></td> <td data-bbox="418 667 483 1428">1.917 x 2.27= 6.2 mg/L</td> </tr> <tr> <td data-bbox="483 132 532 247">F-34</td> <td data-bbox="483 247 532 457">AMEL</td> <td data-bbox="483 457 532 667">LTA<sub>min</sub> X AMELMultiplier<sub>99</sub></td> <td data-bbox="483 667 532 1428">1.917 x 1.12 = 3.1 mg/L</td> </tr> </table> <p data-bbox="532 132 844 1428">The City has conducted ongoing recycled water planning as part of their program over the past 10 years. As part of those efforts, the City has evaluated opportunities to maximize recycled water utilization; thereby reducing discharges via the NPDES Order. In 2010, the City completed an update to its 2007 Recycled Water Master Plan (RWMP) identifying new opportunities and is currently implementing projects based on the outcome of that study. As described in the City's recycled water permit (Order No. R4-2016-0144, Section IV.), the City submitted a Title 22 Engineering Report in July 2014 fully describing the City's recycled water uses and updating the City's approved recycled water uses to include the new uses identified in the RWMP. The Engineering Report was subsequently approved by DDW in 2015. The City requests that the Recycled Water Feasibility Study requirement be removed because it is duplicative of efforts already under way as described in the RWMP and the City's 2016 WDRWRR. The City would be happy to provide updated information at the permit hearing or another time regarding its assessment and implementation of expanding recycled water opportunities.</p>	F-34	LTA <sub>30-day/99</sub> ELS Absent =	ECA <sub>30-day</sub> X ECAMultiplier <sub>30-day/99</sub>	2.27 x 0.846 = 2.744 mg/L	F-34	MDEL	LTA <sub>min</sub> X MDELMultiplier <sub>99</sub>	1.917 x 2.27= 6.2 mg/L	F-34	AMEL	LTA <sub>min</sub> X AMELMultiplier <sub>99</sub>	1.917 x 1.12 = 3.1 mg/L
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6.	Tentative Order, Section VI.C.1.n, page 14; Attachment F, Section IV.D.1.b, page F-58	Reopener language related to PBELs	<p data-bbox="844 132 1218 1428">Notwithstanding the City's previous comments on the Performance Based Effluent Limitations (PBELs) contained in the Tentative Order, the City has concerns that if the PBEL's are incorporated the proposed reopener language will not provide the intended level of support for reconsideration of the PBELs. Although historical data indicates the BWRP effluent will currently meet the proposed PBELs, the City is concerned that this will not be the case in the future due to factors outside of the BWRP's control (e.g., water conservation, impacts related to climate change, etc.). While the City appreciates the addition of a reopener, this reopener would not protect the City from mandatory minimum penalties (MMPs) should a PBEL be exceeded for reasons beyond its control. And, ironically, if a data point occurs above the PBEL, that would create an argument why the PBEL was not appropriately performance-based and should be modified. This was the reason why Burbank has continually argued that these should be performance goals, and not effluent limits.</p> <p data-bbox="1218 132 1388 1428">Further, the City wants to make sure that no future backsliding issues arise related to these PBELs should performance differ in the future due to factors outside of the BWRP's control. To address these concerns, the City requests the following minor changes be made to the permit and fact sheet.</p> <p data-bbox="1388 132 1563 1428">a. Tentative Order: This NPDES permit may be reopened for modification to recalculate the final water quality-based performance based effluent limitations for Ammonia as Nitrogen and/or Copper, to incorporate a revised margin of safety factor reflective of plant performance consistent with and up to the maximum limits allowed by the applicable TMDLs and SSOs, if the discharger provides new information to the Regional Board showing the flow conditions or other extenuating circumstances cause a significant change in the water reclamation plant's treatment performance.</p>												

**ENCLOSURE A: DETAILED COMMENT MATRIX FOR BURBANK WRP TENTATIVE PERMIT - JANUARY 2017**

Detailed Comment #	Document Reference : (Doc. #, Section #, Page #)	Issue	Comment
			<p>b. Fact Sheet: In addition, this Order includes a reopener that allows for modification of the NPDES Order to recalculate the <del>WQBEL</del> performance based effluent limitations for ammonia as nitrogen and/or copper, to incorporate a revised margin of safety factor reflective of plant performance consistent with and up to the maximum limits allowed by the applicable TMDLs, if the discharger provides new information to the Regional Board that shows the flow conditions or other extenuating circumstances cause a significant change in the water reclamation plant's treatment performance.</p>
7.	Attachment C, C-1	Burbank WRP Flow Schematic - Update Needed	The flow schematic in the Tentative Order is not the most current diagram submitted by the City of Burbank as part of the 2016 Report of Waste Discharge (ROWD). An updated, balanced, flow schematic was submitted to the Regional Board on September 21, 2016. Please use the updated schematic for Attachment C.
8.	Attachment E, Section III Table E-3, page E-7	Influent Monitoring - Pentachlorophenol Sample Type	Table E-3 requires Pentachlorophenol monitoring on a Sample Type "Grab". Pentachlorophenol is in the same class of semi-volatile organic constituents as 7 others listed in Table E-3 (Benzo(a)anthracene, Benzo(a)pyrene, Benzo(b)fluoranthene, Bis(2-Ethylhexyl)phthalate, Chrysene, Indeno(1,2,3-cd)pyrene, and Dibenz(a,h)anthracene). Because all 8 parameters are analyzed by the same analytical method (EPA 625) and there are no monitoring or analytical issues with collecting Pentachlorophenol as a composite sample, the City requests that the Sample Type for Pentachlorophenol be changed to "24-hour composite" consistent with the other constituents analyzed using the same analytical method.
9.	Attachment E, Section III. Table E-2, page E-8 ; Section IV. Table E-3, page E-12 ; Section VIII. Table E-5, page E-21	Influent, Effluent, and Receiving Water Monitoring - New PCBs as Congeners Requirement	The Influent, Effluent, and Receiving Water monitoring contains a new requirement for "PCBs as congeners." The CTR criteria are compared to PCBs as aroclors and appropriate monitoring is included for those aroclors. A footnote associated with the PCBs as congeners does not provide information supporting the need for inclusion of the additional constituents and notes that the data cannot be used to regulate the BWRP as the analytical method proposed by the Regional Board is not an approved method under 40 CFR 136. Furthermore, the footnote requires monitoring for any detected congener in perpetuity. The addition of the unapproved method results in duplicative monitoring requirements and a potential ongoing cost generating data that cannot be used to regulate the BWRP. As such, the City requests that requirement to analyze PCBs as congeners be removed. At a minimum, the collection should be done once per permit term or cease at the end of three years regardless of the results.
10.	Attachment E, Section IV. Table E-3, page E-10	Effluent Monitoring - Total Phosphorus Requirement	In addition, this additional monitoring requirement may not be the best use of the City's resources. SWRCB Resolution 2013-0029 directs actions to reduce the cost of compliance to Dischargers subject to Water Board permitting while maintaining water quality protection. Resolve Item 4 of the Resolution supports identifying approaches to reducing and/or eliminating duplicative or unnecessary monitoring and reporting requirements in existing permits. This monitoring requirement does not appear to be necessary for the protection of water quality. Total phosphorus was newly added to the list of Effluent monitoring requirements, yet the BWRP discharge and receiving water monitoring data have not shown reasonable potential to exceed a Basin Plan water quality objective. As such, the City requests that this monitoring requirement be removed.

**ENCLOSURE A: DETAILED COMMENT MATRIX FOR BURBANK WRP TENTATIVE PERMIT - JANUARY 2017**

Detailed Comment #	Document Reference : (Doc. #, Section #, Page #)	Issue	Comment
11.	Attachment E, Section VIII, Table E-5, E-19	Receiving Water Monitoring Requirements - Organic Nitrogen & Total Nitrogen Sample Type	This additional monitoring requirement may not be the best use of the City's resources. As stated above, SWRCB Resolution 2013-0029 directs actions to reduce the cost of compliance to Dischargers subject to Water Board permitting while maintaining water quality protection. Resolve Item 4 of the resolution supports identifying approaches to reducing and/or eliminating duplicative or unnecessary monitoring and reporting requirements in existing permits. This monitoring requirement does not appear to be necessary for the protection of water quality. Table E-5 references Sample Type "grab" for the parameters organic nitrogen and total nitrogen. Both are calculated parameters and the City requests that the Sample Type be revised to "calculation," consistent with Chromium III, another calculated parameter.
12.	Attachment E, Section VIII.C, page E-22	Receiving Water Monitoring - Selenium Monitoring Frequency	Table E-5 contains selenium (Se) monitoring on two separate rows creating duplicative and conflicting requirements as one requires monitoring Monthly and the other Quarterly. The City requests that the monthly monitoring requirement be removed.
13.	Attachment E, Section VIII.C, page E-22	Bioassessment Monitoring Program	The MRP in the Tentative Order contains language requiring the City to conduct bioassessment monitoring on an annual basis. In an Regional Board letter, dated August 11, 2009, to the City of Burbank regarding "Monitoring Offsets for the Burbank Water Reclamation Plant", bioassessment monitoring and other permit-mandated compliance monitoring were waived "in 2009 and future years" in exchange for the City providing annual funding to the Council for Watershed Health (formerly Los Angeles San Gabriel River Watershed Council (LASGRWC)) for use as part of the Los Angeles River Watershed Monitoring Program (LARWMP), which performs watershed wide monitoring (including bioassessment), special studies, and production of annual and five-year interpretive reports.  The Monitoring and Reporting Program in the current BWRP Permit (R4-2012-0059) integrates the bioassessment and LARWMP requirements. The requirement to conduct bioassessment monitoring should continue to be coordinated as part of LARWMP. As such, the City requests the separate bioassessment section be removed and requirements integrated into the LARWMP section consistent with the current BWRP Permit. Please replace 'Bonnie Teaford' with 'Daniel Rynn'.
14.	Attachment F, Section I, Table F-1, Facility Information	Authorized Person to Sign and Submit Reports	Please replace 'Suez (formerly known as United Water Services)' with 'SUEZ Environmental Services'.
15.	Attachment F, Section I.A,	Operator name correction	

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16.	Attachment F, Section II.D Table F-3, page F-12	TDS Effluent Limit violation incorrectly listed	Table F-3 lists a permit violation for TDS based on an effluent limit of 900 (sample result was 910), but the effluent limit was 950. The City has no record of an effluent limit violation for TDS during the permit term. Please remove the incorrectly stated violation from Table F-3.
17.	Attachment F, Section IV.C.2.b.ix, Page F-35	Inconsistency in data limitation	The Tentative Order Fact Sheet (Page F-35) states the following: "...in order to be consistent with the findings and assumptions of the TMDL, only the most recent three years of data was used in the calculation of ammonia nitrogen effluent limitations." However, the TMDL only references limiting the dataset used to the most recent three years of monitoring data when referring to pH and temperature data. As such, the Fact Sheet should be revised to be explicit that only the most recent three years of pH and temperature data were used in the calculation of ammonia nitrogen effluent limitations. Data used to consider performance, which is not limited in the TMDL, should consider performance of the BWRP since the last treatment process change that would affect effluent concentrations (i.e., 2010 when the equalization basin came on line), or at a minimum, the Permit term dataset (i.e., last 5 years).
18.		Antibacksliding and antidegradation requirements have been met for ammonia and copper and, therefore, PBELs are not required by the TMDLs.	<p>The cited language indicates that if the antibacksliding and anti-degradation requirements are met, the TMDL does not require PBELs (i.e., such as those established for ammonia and copper). Antibacksliding and antidegradation requirements have been met for ammonia and copper and, therefore, PBELs are not required by the TMDLs. Specifically:</p> <ul style="list-style-type: none"> <li>Given that the calculated average monthly effluent limitations based on the SSO-derived VLAs are greater than the effluent limitations established in the current permit, antibacksliding requirements in CWA section 402(o) would be met because the effluent limitations would be revised based on revisions to the applicable TMDL that were adopted by the Regional Board. Section 303(d)(4)(A) of the CWA allows revision of an effluent limitation based on a TMDL or other WLA if the cumulative effect of all such revised effluent limitations based on such TMDL or WLA will assure the attainment of the water quality standard. Other exceptions to the rule against backsliding may also apply; including, but not limited to, material and substantial alteration to the permitted facility, and new information. 33 U.S.C. §1342(o)(2)(A) and (B)(i).<sup>1</sup></li> <li>Anti-degradation requirements would also be met because existing high quality would be maintained. In</li> </ul>

<sup>1</sup> EPA guidance states that sections 402(o)(2) and 303(d)(4) of the CWA "constitute independent exceptions to the prohibition against relaxation of permit limits. If either is met, relaxation is permissible." *U.S. EPA, Technical Support Document for Water Quality-Based Toxics Control* 113 (1991) (emphasis added). Thus, according to EPA, dischargers must only meet the requirements of one of these statutory provisions in order to relax their permit limits. See U.S. EPA Region IX Memorandum, Antibacksliding—Effect on Water Quality-Based Effluent Limitations 1 (Aug. 8, 1994); see also *American Iron & Steel Inst. v. EPA*, 115 F.3d 979, 993 n.6, 27 ELR 21241, 21246, n.6 (D.C. Cir.1997) (citing 58 Fed. Reg. 20802, 20837 (Apr. 16, 1993) (“§402(o) allows relaxation of water quality-based limits if the requirements of either §402(o)(2) or §303(d)(4) are met.”)).

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			<p>addition, any change in the applicable effluent limitations "will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water, and will not result in water quality less than that prescribed in the policies." (SWRCB Res. No. 68-16; 40 C.F.R. §131.12(a)).</p> <ul style="list-style-type: none"> <li>The ammonia SSOs and copper water effect ratios (WERS) were set at a level of water quality necessary to protect and maintain the existing uses. (See 40 C.F.R. §131.12(a)(1)). The ammonia SSOs have been found to "be consistent with the State Anti-degradation Policy (State Water Board Resolution No. 68-16) and federal anti-degradation requirements" as well as being "part of a comprehensive strategy for addressing nitrogen impairments in the Santa Clara and Los Angeles River watersheds, which includes development and implementation of a Total Maximum Daily Load and corresponding effluent and receiving water limitations in National Pollutant Discharge Elimination System permits." (SWRCB Resolution No. 2008-0004 at pg. 1, para. 3, and at pg. 2, para. 6.) Further, USEPA determined in its March 30, 2009 approval letter that the ammonia SSOs were "subject to USEPA's approval authority under Section 303(c) [including] those addressing antidegradation" and approved the SSO Basin Plan Amendment "[p]ursuant to CWA section 303(c) and the implementing federal regulations at 40 CFR 131." Thus, the State Water Board has found that the SSOs meet the State's Antidegradation Policy requirements, and EPA has found that the SSOs meet the federal anti-degradation requirements at 40 C.F.R. §131.12. Therefore, there is no reason to impose PBELs substantially below the SSOs for antidegradation reasons.</li> </ul>
19.		The CWA provides an antidegradation exception that is applicable.	Clean Water Act (CWA) section 303(d)(4)(A) provides an antidegradation exception under CWA section 402(o)(1) that effluent limitations may be relaxed if the cumulative effect of all revised effluent limitations based on the TMDLs or WLAs will assure the attainment of the applicable water quality standard. Here, the applicable water quality standards are still deemed "impaired" since the Los Angeles River continues to be subject to TMDLs for metals and ammonia. Even if the waters are no longer deemed impaired for these constituents, backsliding would still be allowed under CWA section 303(d)(4)(B) because the revised effluent limits would be consistent with the State's Antidegradation Policy. <sup>2</sup>

<sup>2</sup> Several other statutory antidegradation exceptions would also apply in this instance. For example, under section 402(o)(2)(A), backsliding would be allowed since "material and substantial alterations or additions to the permitted facility" occurred after permit issuance that justify the application of a less stringent effluent limitation. Under section 402(o)(2)(B)(i), backsliding would also be allowed since "information is available which was not available at the time of permit issuance ... which would have justified the application of a less stringent effluent limitation at the time of permit issuance." As acknowledged by the TMDL Draft Staff Report at pg. 14, Section 5, "the WER based SSOs provide new information and therefore the POTWs may meet the antidegradation exception under CWA section 402(o)(2)." (See also SWRCB Order No. WQO 2003-0012 at pgs. 15-17.) Under section 402(o)(2)(C), limits can be relaxed where a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy. In this case, water conservation and lower inflows have increased concentrations, thereby requiring relaxation of limits. Such relaxation is authorized under the CWA because external forces are causing these changes and the cities have no control, particularly where water conservation

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20.	Performance based effluent limitations (PBELs) are not required by the total maximum daily load (TMDL) given that antibacksliding and anti-degradation requirements are met.	The Regional Board has not provided any justification or regulatory authority for the use of performance-based effluent limits ("PBELs"). Both the TMDL-based Wasteload Allocations ("WLA") and the SSO contain embedded margins of safety. The Regional Board did not conduct a complete antibacksliding and antidegradation analysis as prescribed in the TMDLs before imposing PBELs. Nevertheless, the Fact Sheet demonstrates that less stringent effluent limits can be imposed based on the antidegradation approach to backsliding. The fact sheet says: "For non-attainment waters, CWA section 303(d)(4)(A) allows the establishment of a less stringent effluent limitation when the receiving water has been identified as not meeting applicable water quality standards and the following conditions are met: i. The existing effluent limitation must have been based on a TMDL or other WLA established under CWA section 303. ii. Relaxation of the effluent limitation is only allowed if attainment of water quality standards will be ensured or the designated use not being attained is removed in accordance with the water quality standards regulations. Regional Water Board permitting staff evaluated the ammonia as nitrogen concentrations in the effluent and in the receiving water and determined that the Los Angeles River, in the vicinity of the WRP discharge, is a non-attainment water because the water quality does not meet the levels necessary to protect the designated beneficial use and the water body is included on the 303(d) list. While the facility has not exceeded the TMDL-based MDEL contained in the 2011 NPDES Order, it exceeded the AMEL and the TSO limit [sic] of 2.2 mg/L. The compliance approach for the effluent AMEL will ensure that the water quality standard will be attained in the receiving water. Thus, a less stringent AMEL for ammonia as nitrogen may be established." The PBELs included within the Tentative Order do not include any indication that the WRP capacity or its existing and projected facility flows were considered in the development of the proposed PBELs, despite the following language included in the Los Angeles River Nitrogen TMDL (emphasis added): "When developing effluent limitations in these circumstances, consideration <u>shall</u> include, but is not limited to, existing and projected facility flows for the permit term and the corresponding effect on the facility's capability to reduce ammonia concentrations..." During the workgroup meetings, the City provided information to the Regional Board showing that the WRP is currently operating below its permitted capacity. The City also showed that, due to several factors and variables of wastewater treatment, the magnitude of historical daily and monthly averages of plant flow and influent ammonia concentrations (i.e., the two components that constitute ammonia plant loading) are not sufficient to provide a basis for accurate projections of the level of water quality that can be reliably maintained by the WRP's treatment technologies in the future, as is required for setting PBELs.	
21.	Consideration of existing and projected facility flows for the permit term and the corresponding effect on the facility's capability to reduce ammonia concentrations is absent.	The Regional Board has not provided any justification or regulatory authority for the use of performance-based effluent limits ("PBELs"). Both the TMDL-based Wasteload Allocations ("WLA") and the SSO contain embedded margins of safety. The Regional Board did not conduct a complete antibacksliding and antidegradation analysis as prescribed in the TMDLs before imposing PBELs. Nevertheless, the Fact Sheet demonstrates that less stringent effluent limits can be imposed based on the antidegradation approach to backsliding. The fact sheet says: "For non-attainment waters, CWA section 303(d)(4)(A) allows the establishment of a less stringent effluent limitation when the receiving water has been identified as not meeting applicable water quality standards and the following conditions are met: i. The existing effluent limitation must have been based on a TMDL or other WLA established under CWA section 303. ii. Relaxation of the effluent limitation is only allowed if attainment of water quality standards will be ensured or the designated use not being attained is removed in accordance with the water quality standards regulations. Regional Water Board permitting staff evaluated the ammonia as nitrogen concentrations in the effluent and in the receiving water and determined that the Los Angeles River, in the vicinity of the WRP discharge, is a non-attainment water because the water quality does not meet the levels necessary to protect the designated beneficial use and the water body is included on the 303(d) list. While the facility has not exceeded the TMDL-based MDEL contained in the 2011 NPDES Order, it exceeded the AMEL and the TSO limit [sic] of 2.2 mg/L. The compliance approach for the effluent AMEL will ensure that the water quality standard will be attained in the receiving water. Thus, a less stringent AMEL for ammonia as nitrogen may be established." The PBELs included within the Tentative Order do not include any indication that the WRP capacity or its existing and projected facility flows were considered in the development of the proposed PBELs, despite the following language included in the Los Angeles River Nitrogen TMDL (emphasis added): "When developing effluent limitations in these circumstances, consideration <u>shall</u> include, but is not limited to, existing and projected facility flows for the permit term and the corresponding effect on the facility's capability to reduce ammonia concentrations..." During the workgroup meetings, the City provided information to the Regional Board showing that the WRP is currently operating below its permitted capacity. The City also showed that, due to several factors and variables of wastewater treatment, the magnitude of historical daily and monthly averages of plant flow and influent ammonia concentrations (i.e., the two components that constitute ammonia plant loading) are not sufficient to provide a basis for accurate projections of the level of water quality that can be reliably maintained by the WRP's treatment technologies in the future, as is required for setting PBELs.	

requirements exist. Thus, the antibacksliding rules authorize less stringent limits, up to the applicable water quality standard (e.g., the WER/SSO). (33 U.S.C. §1342(o)(3), CWA §402(o)(3).)

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22.		Regional Board actions should be consistent with the findings of previous recommendations presented by multi-stakeholder Task Forces established by the Regional Board and Cal-EPA.	<p>PBEs incorporated into the Tentative Order without consideration of the WRP capacity or its existing and projected facility flows are inconsistent with a stated requirement in the TMDL language. Further, consideration should also be given to the effects of increased water conservation on plant performance. Because the average flows to the WRP have decreased in recent years, influent ammonia concentrations, which comes primarily from human sources, have been increasing. However, resulting higher effluent concentrations should still be below the SSO.</p> <p>PBEs are not explicitly required by the TMDL, are not necessary for the protection of beneficial uses, and are not otherwise required by law. The PBEs included within the Tentative Order are also contrary to the Los Angeles Regional Board's 1993 Final Report of the Water Quality Advisory Task Force, "Working Together for an Affordable Clean Water Environment." That advisory group recommended: "In cases where it is appropriate to regulate a pollutant based on performance, the Regional Board should do so by the use of numeric goals instead of <u>permit limits</u>." The text goes into further detail, stating: "The Task Force believes that use of numeric goals based on performance, along with numeric limits based on the Statewide Water Quality Plans, would still accomplish the primary objectives of minimizing pollutant loadings, yet would also do the following:</p> <ul style="list-style-type: none"> <li>• Maintain the incentive for future voluntary improvement of water quality wherever feasible without fear of being punished with more stringent numeric limits based on the improved performance.</li> <li>• Avoid noncompliance with provisions of the Clean Water Act regarding antibacksliding [Section 402(o)].... A numeric goal is distinguished from a numeric permit limit in that exceedance of the goal triggers a serious of actions by the discharger but does not result in fines or penalties, while a violation of a numeric limit leads to enforcement action by the regulatory agency."</li> </ul> <p>Subsequent to the Los Angeles Regional Board's 1993 Final Report, consistent recommendations were provided in 1994, by an external program review initiated at the request of the head of Cal-EPA. As part of this review, a Permit Reform Task Force<sup>3</sup> (Task Force) was set up to address the issue of setting effluent limits more stringent than water quality standards. Under the topic of "Elimination of Unnecessary Regulation", the Task Force made recommendations regarding "Effluent Standards Inconsistent with Water Quality Plans." The Task Force used the following language to characterize this issue:</p> <p>"Some Regional Water Boards place limits in discharge permits for the discharge of treated wastewater (effluent) that are, in some cases, more stringent than required by water quality plans. These limits are based on a plant's capability. This creates a disincentive for voluntary water quality improvements and can function as a 'no-growth' limit in the area tributary the plant."</p>

<sup>3</sup> Representatives of the regulated and environmental communities from the Los Angeles Region participated in the Task Force.



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23.		The Regional Board should implement an approach which incentivizes voluntary improvement of water quality.	<p>The Task Force's recommendation to address this issue was the following: "Limits in discharge permits should not be more stringent than statewide and regional water quality standards unless justified by a site-specific, scientifically-based rationale."</p> <p>The Tentative Order should incorporate effluent limitations based on the SSO-derived WLAs and, if the Regional Board feels it is necessary, include additional provisions to support the maintenance of current effluent quality. The City recommends utilizing an approach that incentivizes water quality improvements consistent with the recommendations made by the Task Force.</p> <p>To accomplish the purpose of ensuring that effluent concentrations do not exceed what can be reliably maintained by existing technologies, and in lieu of PBELs, the City recommends the following approach to establishing metrics to minimize pollutant loading, while maintaining the incentive for future voluntary improvement of water quality, whenever feasible, without the imposition of more stringent limits based on improved performance:</p> <ol style="list-style-type: none"> <li>1. A receiving water trigger derived similarly to the approach used for the San Francisco Bay copper SSO based limits would be established. The receiving water trigger used for the San Francisco Bay copper SSO represents a statistically significant change in receiving water concentrations determined using a power analysis (one-sided t-test of means with an alpha value of 0.05).</li> <li>2. This receiving water trigger could be applied by using a power analysis on the mean receiving water concentration for the Los Angeles River watershed (or appropriate reaches and/or tributaries).</li> </ol>
24.		The implementation of the TMDL through PBELs is not required by federal law; thus, the State must comply with Water Code sections 13263 and 13241.	<p>The draft permit does not discuss why the proposed PBEL approach is legally required by federal or state law, or whether the proposed approach is beyond the requirements of federal law. The implementation of the TMDLs through PBELs appears to be a new requirement being established by the Regional Board, not authorized or required by federal statute or regulation. Thus, the requirement to meet PBELs is one of state law only, and is more stringent than required by federal law. As such, the Regional Board must comply with Water Code sections 13263 and 13241. <i>City of Burbank v. State Water Resources Control Board, et al</i>, 35 Cal. 4th 613 (Cal. 2005). The Tentative Order Fact Sheets (Pages F-69 and F-70) do not present any information indicating that Water Code sections 13263 and 13241 were seriously considered with respect to the incorporation of PBELs into the Tentative Order.</p> <p>In addition, the Regional Board should not rely on the TMDLs for authorization to use PBELs since the CEQA document associated with the TMDL failed to consider the environmental and economic impacts of imposing PBELs, which include, but are not limited to, derating of the plant or placing the City in compliance jeopardy when water quality objectives are being met.</p> <p>For the waters and discharge at issue, regulatory relief mechanisms were implemented that were specifically authorized in the State Water Board's <i>Policy for Implementation of Toxics Standards for Inland Surface Waters</i>,</p>
25.		Implementation of PBELs also	

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		negates the existence of scientifically derived and properly approved SSOs and WERs.	<p><i>Enclosed Bays, and Estuaries of California</i> (SIP), such as an SSO for ammonia and a WER for copper. The SIP recognized that a pollutant objective might be inappropriate for a particular water body, and that based on site-specific conditions, a water quality objective that differs from the applicable criterion or objective may be developed. (SIP at 31, Section 5.2.) SSOs are required to be adopted to provide reasonable protection of the beneficial uses, must consider the factors under Water Code section 13241, must be in compliance with federal law and regulations, and must be based on sound scientific rationale. (<i>Id.</i> at 33.) In addition, the SIP allows the Regional Boards to adjust water quality objectives for metals with discharger-specific WERs,<sup>4</sup> or may use a WER to develop a site-specific metal objective. (SIP at 5, Section 1.2.) By ignoring these approved mechanisms, the Regional Board is making the effluent limits for these constituents more stringent than necessary to reasonably protect beneficial uses.</p> <p>PBELs unnecessarily place the City in enforcement jeopardy for setting limits below the scientifically derived objectives necessary for protection of beneficial uses. Thus, the City would be subject to enforcement actions or Mandatory Minimum Penalties (MMPs) that they would not be otherwise subjected to if the limits were based on the applicable water quality objectives/SSOs and WERs, all because the current performance is better than the scientifically derived and protective applicable objectives.</p>

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<sup>4</sup> A discharger-specific WER is one applied to individual pollutant limits in an NPDES permit issued to a particular permit holder that only applies to the specific limits in that discharger's permit. This is different from a WER used to develop a site-specific objective based on the WER. (SIP at Appendix 1-2.)