Appendix E

Responses
to
Public Comments

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Introduction

This report provides responses to public comments received on the Basin Plan Amendment to Renew and Issue Revised Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region. Draft documents distributed for public review and comment included the Technical Report, Tentative Resolution No. R9-2007-0104, and the Basin Plan Amendment. The draft documents were made available to the public for formal review and comment on July 6, 2007. The comment period continued until the San Diego Water Board adopted this Basin Plan amendment.

The San Diego Water Board received many comments in letters, emails, and in testimony given during the public hearing on August 8, 2007 from interested persons on the proposed Basin Plan amendment. Individual comments were excerpted from the letters, emails, and testimony, and separated according to each conditional waiver. In this document, comments are numbered according to the conditional waiver number the comment pertains to, and in sequence. Comments are present in the chronological order received. For example, comment number 7.5 is the fifth comment received pertaining to Conditional Waiver No. 7. Individual commenters are listed on the following page and identified with each comment.

List of Persons Submitting Comments

- Rewater Systems, Inc.
- George Navadel - Private Citizen
- Foley & Lardner LLP
- San Diego County Farm Bureau
- Site Assessment and Mitigation Technical Work Group (SAMTWG)
- Sierra Club San Diego Chapter
- San Diego Coastkeeper
- Irrigation and Turfgrass Services
- San Diego Golf Course Superintendents Association of America
- Valley Center Municipal Water District
- City of San Diego Water Department
- Synergy Golf Course Management
- California Golf Course Owners Association
- US EPA Region 9 Underground Injection Control Program
- Southern California Golf Association
- American Golf
- The Vineyard at Escondido
- Eastlake Country Club
- Lomas Santa Fe Country Club
- Maderas Country Club
- Lomas Santa Fe Executive Golf Course
- California Alliance for Golf
- San Diego County Water Authority
- Otay Water District
- WateReuse Association, California Section
- WateReuse Association, San Diego Chapter
- Helix Water District
- Hatch & Parent, representing American Golf
- Valley Crest Golf Course Maintenance
- San Vicente Golf Club
- Padre Dam Municipal Water District
- Surfrider Foundation
- City of San Diego
- Public Links Golf Association
- Leighton Consultants
- Ninyo & Moore
- TRC San Diego
- Vista Valley Country Club
- Dudek
- San Diego County Department of Environmental Health (SDCDEH)
  Site Assessment and Mitigation Program
- Carlsbad Municipal Water District
- San Diego County Department of Environmental Health (SDCDEH)
  Land and Water Quality Division
- California Department of Public Health

Comments on Conditional Waiver No. 1 – Discharges from On-site Disposal Systems

The following persons submitted comments pertaining to Conditional Waiver No. 1:

- Rewater Systems, Inc.
- George Navadel
- Sierra Club San Diego Chapter
- San Diego County Department of Environmental Health (SDCDEH)
  Land and Water Quality Division

Comment 1.1.
(ReWater Systems, Inc.)
Is the RWQCB's lack of a new greywater waiver due to the fact that the 1994 state greywater law, Water Code Section 14875 et seq, and Appendix G of the California Plumbing Code gives all greywater permitting authority to the cities and counties because the state law fully occupies the law on the matter, as I'd adamantly pointed out to the RWQCB IN in my previous submittals during this waiver consideration period?

Or, is that omission an indication that the RWQCB considers greywater something other than what state law considers it, such as sewage, or reclaimed water, and thus the RWQCB is placing a greywater system into one of those waiver categories in conflict with state law?

Response: Conditional Waiver No. 1 includes waiver conditions specific to discharges from graywater systems. Please read section 7.1 and section B.1.2 in Appendix B of the Technical Report for details about the development of the waiver conditions for graywater systems.

According to Water Code section 14875, "This chapter [Water Code Chapter 22, Graywater Systems, sections 14875 et seq.] applies to the *construction, installation, or alteration* [emphasis added] of graywater systems for subsurface irrigation and other safe uses." According California Plumbing Code Appendix G section G1(a), "The provisions of this Appendix shall apply to the *construction, installation, alteration and repair* [emphasis added] of graywater systems for subsurface landscape irrigation." Water Code sections 14875 et seq. and California Plumbing Code Appendix G do not apply to the discharge of graywater from graywater systems.

According to Water Code sections 13260, 13263, and 13264, "any person discharging waste, or proposing to discharge waste, within any region that could affect waters of the state" must file a report of waste discharge (RoWD) and be prescribed waste discharge requirements (WDRs) from the Regional Water Quality Control Board (Regional Water Board).

Water Code section 13050(d) defines "waste" as, "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin." Water Code section 13050(e) defines "water of the state" as, "any surface water or groundwater, including saline waters, within the boundaries of the state."

Water Code section 14876 defines graywater as "untreated wastewater." Graywater is not defined as sewage, but is wastewater, or liquid, associated with human habitation and of human origin, and therefore is defined as a waste in accordance with Water Code section 13050(d). Graywater that is discharged from graywater systems contains pollutants that can potentially infiltrate into and affect groundwater, which constitutes waters of the state as defined by Water Code section 13050(e). Therefore, in accordance with the Water Code, any person who installs a graywater system and discharges graywater must file a RoWD and be issued WDRs.

However, according to Water Code section 13269, the requirement to file a RoWD and issue WDRs may be waived if the discharge is consistent with the Basin Plan and in the public interest. Over the last 5 year period of the conditional waivers, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) chose to include graywater systems under the conditional waivers for conventional septic tank/subsurface disposal systems, which delegated the regulatory authority for the discharge of waste from graywater systems to the county environmental health agency. Granting waivers for graywater systems is authorized by the Water Code and does not conflict with state laws.

We recognized that graywater systems are not conventional septic tank/subsurface disposal systems. We also recognized that according to Water Code sections 14875 et seq., a graywater system may be installed if "the *city* [emphasis added] or county having jurisdiction over the *installation* [emphasis added]" determines that the system complies with California Plumbing Code Appendix G.

Therefore, we developed Conditional Waiver No. 1 with waiver conditions specifically applicable to discharges from graywater systems (see Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 1). The discharge of graywater from a graywater system is eligible for Conditional Waiver No. 1 if the discharge is in compliance with the General Waiver Conditions for On-site Disposal Systems (1.I.A), and the Specific Waiver Conditions for On-site Graywater Systems (1.II.B).

If a person would like to construct and install an on-site graywater system, the system must be designed and constructed, at a minimum, in compliance with California Plumbing Code Appendix G, and a permit must be obtained from the appropriate city, county, or other authorized local agency in accordance with California Plumbing Code Appendix G section G3. Additionally, if a graywater system is used and discharges graywater, the system must comply with the applicable conditions of Conditional Waiver No. 1 for the protection of water quality.

Therefore, in order for the discharge from an on-site graywater system to be eligible for a waiver, the system must be approved and permitted by the appropriate authorized local agency.

The waiver conditions for graywater systems may not be specific enough to indicate that cities, not just counties, may issue permits for graywater systems. In the interest of providing some additional clarification, we have revised waiver condition in 1.II.B.1 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 1 in Appendix C as well as the appropriate sections of the Technical Report and Appendices A and B) as follows:

1.II.B. Specific Waiver Conditions for On-site Graywater Systems

1. An on-site graywater system must be permitted by the city, county, or other authorized local agency that has jurisdiction over the installation. The on-site graywater system must be designed and installed, at a minimum, according to the ~~CPC~~ Graywater Standards in Appendix G of the California Plumbing Code. If the city, county, and/or other authorized local ~~authorities~~ agencies have additional requirements, the graywater system must be designed and installed to comply with those requirements.

Comment 1.2.
(George Navadel)
I currently have a little over 4 acres in San Diego County (537 Holly Lane, Vista CA 92084). At the present time, I have 2 adjacent parcels (each 2+ acres). One parcel has an existing 4 bedroom house (with a septic system) where my parents reside -- sewer access is not available unless I spent 70-110 thousand dollars to bring it to the property. After having two percolation tests conducted on the adjacent 2+ acre parcel, although a number of areas had rates ranging from 80-120, it still fails under current regulations to qualify for a traditional septic system -- this parcel is where I want to build the home where I would reside as soon as I retire from the US Department of State. Being that it would cost around 70-110 thousand dollars just to bring sewer to my property, this option is something that is not economically feasible (I'm sure there are numerous other individual San Diego county property owners [developers not included for this comment] that are in the same situation.

Advancements in science have lead to the development of alternate systems that, when attached as secondary units/systems to a standard septic system (in lieu of a leach field), have the ability to almost completely eliminate contaminants; thereby providing a a secure way to use an Alternate OWTS on a parcels that would otherwise not qualify for septic. I believe that the system listed below should be authorized as an approved exception for use in San Diego county for existing parcels (to include new construction by individual owners and the repair of failed systems in areas where both space and poor soil are issues) -- not developers for new residential projects). I would like to formally include the request for my property in Vista be granted an exception for an alternate system in order for me to build my residence.

Response: The San Diego County Department of Environmental Health (SDCDEH) has the regulatory authority to oversee and permit the *construction and installation* of septic systems in Vista. The San Diego Water Board has the authority to regulate the *discharge* from the septic system. However, the San Diego Water Board has delegated that authority to the SDCDEH with Conditional Waiver No. 1.

The discharge of effluent from a septic system is eligible for Conditional Waiver No. 1 if the discharge is in compliance with the General Waiver Conditions for On-site Disposal Systems (1.I.A), and the Specific Waiver Conditions for On-site Septic and Sewerage Systems (1.II.A). New on-site septic and sewerage systems must comply with the conditions set forth in the section entitled *Guidelines for New Community and Individual Sewerage Facilities* in Chapter 4 of the Basin Plan. This section in the Basin Plan defers the authority to regulate the discharge of domestic wastes to the appropriate county health authority, which is the SDCDEH for septic or sewerage systems proposed for installation in Vista.

If you would like to *construct and install* the proposed alternative sewage treatment system, you must obtain a permit from the SDCDEH. Additionally, if you want to use and *discharge* domestic waste from the proposed alternative sewage treatment system, you must also ensure that the system will comply with the applicable conditions of Conditional Waiver No. 1 for the protection of groundwater quality. Therefore, in order for the discharge from the proposed alternative sewage treatment system to be eligible for a waiver, you should provide the information to the SDCDEH for approval.

Comment 1.3.
(Sierra Club San Diego Chapter)
Waiver must comply with the U.S. Environmental Protection Agency (USEPA) Underground Injection Control (UIC) Program. Our review of the conditional waiver for the conventional septic systems in light of the USEPA program strategy and related documents indicates that it requires substantial improvements. The waiver must recognize that USEPA classifies these systems as Class V shallow injection wells and regulates them by authority of the Safe Water Drinking Act in the Underground Injection Control Program[1] (40 CFR 144). The objective is to protect underground sources of drinking water.

There are 32 types of Class V injection wells[2] grouped into eight subclasses of which the conventional septic systems in the waiver are in the subclass of domestic wastewater disposal wells. The UIC Program regulates these systems for multiple residential units or non-residential establishments that service 20 or more persons (also known as large capacity septic systems) unless they receive industrial, commercial or

[1] USEPA Region 9 *Underground Injection Control (UIC) Class V Wells*
http://www.epa.gov/region09/water/groundwater/uic-classv.html
[2] USEPA Region 9, *32 Types of Class V Injection Wells*
http://www.epa.gov/region09/water/groundwater/uic-docs/32types-gwpc.pdf

other chemical waste streams. If the latter is true then they are no longer domestic wastewater treatment wells. The UIC Program does not regulate those systems serving less than 20 persons. The proposed waiver should specify that the septic systems for the commercial/industrial establishments must only receive domestic wastes.

Response: The USEPA has not delegated the authority for regulating Class V injection wells under the Underground Injection Control (UIC) Program to the San Diego Water Board. We recognize that some conventional septic systems may be subject to UIC Program requirements. The owner/operator of a conventional septic system is responsible for complying with all relevant regulations.

We agree with the commenter that the waiver should specify that septic systems (as well as graywater systems) must only receive domestic wastes, not commercial or industrial wastes.

In the interest of providing some additional clarification, we have revised waiver condition 1.I.A.9 and 1.I.A.12 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 1 in Appendix C as well as the appropriate sections of the Technical Report and Appendices A and B) as follows:

1.I.A General Waiver Conditions for On-site Disposal Systems

9. The owner/operator of an on-site disposal system must comply with local, state, and federal ordinances and regulations and obtain any required approvals, permits, certifications, and/or licenses from authorized local agencies. Copies of any approvals, permits, certifications, and/or licenses must be available on site for inspection.
12. On-site disposal systems can only accept domestic wastes and/or wastewater.

Comment 1.4.
(Sierra Club San Diego Chapter)
The State of California does not have primacy in the UIC Program. It shares joint control with USEPA. The minimum requirements UIC Program for these systems are:

1. Obey the non-endangerment performance standard prohibiting injection that allows the movement of fluids containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation or adversely affect public health; and

2. Provide inventory information (including facility name and location, legal contact name and address, ownership information, nature and type of injection wells, and operating status of the injection wells) to the state or USEPA regional UIC Program.
A copy of the inventory information is available on line.[3]

[3] EPA http://www.epa.gov/safewater/uic/classv/pdfs/fs_inventory-of-injection-wells.pdf

We conclude the conditional waiver fails to comply with the UIC Program. The conditional waiver must include operator/owner of the large capacity septic system certification of the minimum requirements.

Response: Please see response to comment 1.3.

Comment 1.5.
(Sierra Club San Diego Chapter)
Information on Alternative Individual Sewerage System is not adequate. The Proposed Waiver No. 1 does not provide adequate information on the acceptable types of Alternative Individual Sewerage Systems. This is a blanket waiver that is not acceptable without additional information to demonstrate that these alternative systems comply with waiver conditions. In response to concerns on onsite wastewater treatment systems, USEPA has published the "Onsite Wastewater Treatment Manual."[4] This manual contains useful guidelines on the selection and design of onsite wastewater systems. We request that Technical Report provide information on the acceptable types of alternative Individual Sewerage Systems and on any such systems in operation today in the Region. Owners of new alternative individual sewerage systems should be required to submit a RoWD and details of the system to the Board for approval in order to be eligible for the conditional waiver.

Response: Waiver condition 1.II.A.2.b states that new septic and sewerage systems must comply with the conditions set forth in the section titled *Guidelines for New Community and Individual Sewerage Facilities* in Chapter 4 (Implementation) of the Basin Plan. This section in the Basin Plan includes a subsection titled *Alternative Systems*, which provides conditions for evapotranspiration, evapotranspiration/infiltration, or mound systems that serve a single residential project. The waiver is only available a applicable to discharges from alternative systems permitted by the authorized county health officer. As the counties develop and adopt standards for additional types of alternative systems, discharges from these systems may become eligible for this waiver.

Comment 1.6
(Sierra Club San Diego Chapter)
Revisions in the Guidelines in Basin Plans are required. The Guidelines page 4-26 of the Basin Plan for individual sewerage systems has two classes of projects; those involving five or less family units and those involving more than five family units. The definition of the project classes should be revised to projects serving less than 20 persons and projects serving 20 or more persons to be in keeping with the UIC Program.

Response: A revision of the *Guidelines for New Community and Individual Sewerage Facilities* in the Basin Plan would require a separate Basin Plan

[4] EPA Onsite Wastewater Treatment Systems Manual EPA 625/R-00/008 February 2002
http://www.epa.gov/safewater/uic/classv/pdfs/techguide_2002_onsite_wwt_systemsmanual.pdf

amendment. The San Diego Water Board will be soliciting proposals to amend the Basin Plan in the upcoming Triennial Review. The commenter may submit a Basin Plan amendment proposal at that time.

However, we would like to note that the Guidelines use a design flow of less than or equal to 1,200 gallons per day (gpd) for projects involving five or less family units, and greater than 1,200 gpd for projects involving more than five family units. When determining a design flow, a value of 60 gallons per person is typically used. A design flow of 1,200 gallons at 60 gallons per person is the same as 20 persons. Therefore, the Basin Plan is consistent with the UIC Program.

Comment 1.7
(Sierra Club San Diego Chapter)
The 100 foot rule must be justified. On page 19, 1.I.A General Waiver Conditions for On-site Wastewater Systems, Conditions 1 and 6 can be conflicting. Condition 1 requires that the effluent from on-site disposal systems cannot be discharged directly or indirectly to any surface waters. It is questionable in our view that Condition 6, which requires the effluent must be discharged at least 100 foot from any surface water body, would be adequate to comply with the more restrictive Condition 1 for highly permeable soil/substrate types. 73% of the County of San Diego subsurface is composed of fractured bedrock.[5] It is very difficult to predict the fate and transport of the effluent from an onsite disposal system located in an area composed of fractured rock[6]. Note that the proposed waiver condition for temporary waste pile No. 6.b) v) forbids emergency land fills on fractured bedrock aquifer or highly permeable soil to protect groundwater quality. Data must be provided to support the minimum 100 foot separation. Otherwise we cannot support this 100 foot rule and require that the minimum separation be increased to a safe-proven distance for all soil conditions or determined on a case-by-case basis according to soil type and permeability.

Response: Condition 1.I.A.6 requires that the effluent must be discharged "at least" 100 feet from any surface water body, meaning no less than 100 feet. The distance may be further than 100 feet if that is necessary to comply with Condition 1.I.A.1. Therefore, these conditions do not conflict with each other.

The county health officer must consider the soil, geologic, groundwater, and other site conditions when determining if a site is suitable for the installation of a septic or sewerage system. Counties have specific standards that must be met in order for a septic or sewerage system to be installed at a site. Sites that cannot meet those standards will not be able to obtain an installation permit, and therefore, would not be eligible for this waiver.

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[5] Land Use and Environment Group, Department of Planning and Land Use, Department of Planning and Land Use, Dept of Public Works County, *Guidelines for Determining Significance and Report Format and Content Requirements Agricultural Resources,* March 19, 2007 pp 16-17
http://www.sdcounty.ca.gov/dplu/Resource/docs/3~pdf/AG-Guidelines.pdf
[6] USGS. *Fractured Rock Aquifers: Understanding an Increasingly Important Source of Water*
http://toxics.usgs.gov/pubs/FS-112-02/

Comment 1.8
(Sierra Club San Diego Chapter)
Page 19, 1.I.A. General Waiver Condition for On-site Wastewater System, Condition 9 must be revised to include USEPA UIC Program regulations. We recommend the first sentience be revised to read "*The owner/operator of an on-site disposal system must comply with applicable local, state, and federal ordinances and regulations and obtain any required approvals, permits, certifications, and/or licenses from authorized agencies."*

Response: Please see response to comment 1.3.

Comment 1.9
(Kimura)
Page 20, 1.II.A Specific Waiver Conditions for On-site Septic and Sewerage Systems, Condition 2.b) must be revised in order to comply with the USEPA UIC Program the *Guidelines for New Community and Individual Sewerage Facilities* in Chapter 4 (Implementation) of the Basin Plan. In particular, on page 4-26 under Individual Sewerage Systems revise:

1. Projects Involving Five Family Units or Less - Conventional Septic Tank/Subsurface Disposal
   To: Projects Involving Less Than 20 Persons - Conventional Septic Tank/Subsurface Disposal
2. Projects Involving More Than Five Family Units - Conventional Septic Tank/Subsurface Disposal
   To: Projects Involving 20 or More Persons - Conventional Septic Tank/Subsurface Disposal

Response: Please see response to comments 1.3 and 1.6.

Comment 1.10
(SDCDEH Land and Water Quality Division)
Specific to the General Waiver Conditions for Onsite Wastewater Systems 1.I.A (the number and provision from the RWQCB Tentative Resolution has been included for ease of reference preceding each DEH comment):

a. *1. Effluent from onsite disposal systems cannot be discharged directly or indirectly to any surface waters of the State (including ephemeral streams and vernal pools).*

Comment: The definition of effluent discharged to surface water of the State, was agreed to be seepage or flows that are recognizable as sewage originating from an onsite wastewater system.

Response: Correct. This is how the San Diego Water Board defines direct or indirect discharge to any surface waters of the state.

b. *3. Effluent from on-site disposal systems must not degrade the quality of underlying groundwater.*

Comment: DEH currently has regulations and procedures in place to evaluate onsite wastewater systems with respect to groundwater impacts. We will continue to follow these procedures with guidance from the RWQCB to only allow onsite wastewater systems that are protective of groundwater and will not adversely affect the groundwater basin. It is recommended that this condition be changed to say "All proposed onsite disposal systems shall be evaluated by DEH with guidance from the RWQCB to only allow onsite disposal systems that are protective of groundwater and will not adversely affect the groundwater basin."

Response: We have revised waiver condition 1.I.A.3 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 1 in Appendix C as well as the appropriate sections of the Technical Report and Appendices A and B) as follows:

1.I.A General Waiver Conditions for On-site Disposal Systems

3. Effluent from on-site disposal systems must not ~~degrade~~ adversely affect the quality or beneficial uses of underlying groundwater.

c. *5. Effluent from onsite disposal systems must be discharged at least 5 feet above highest known historical groundwater level.*

Comment: Add "or anticipated" after historical, to facilitate interpretations in areas where historical data on groundwater levels are insufficient to make a reasonable determination.

Response: The Technical Report and appendices and Tentative Resolution No. R9-2007-0104 and draft Basin Plan amendment were revised as recommended.

Comment 1.11
(SDCDEH Land and Water Quality Division)
Specific to the Specific Waiver Conditions for onsite Septic and Sewerage Systems 1.II.A:

a. *1. For existing on-site septic or sewerage systems, the following conditions apply:*

a) Existing onsite septic or sewerage systems serving campgrounds must not allow connections from recreational vehicles.

Comment: Consider striking this condition as it would be onerous to implement at existing campgrounds where discharges from RVs are currently allowed and change to prohibit the expansion of RV connections at existing campgrounds.

Response: We have removed this condition for existing on-site septic or sewerage systems from the Technical Report and appendices and Tentative Resolution No. R9-2007-0104 and draft Basin Plan amendment as recommended.

b. *2. For new onsite septic or sewerage systems, the following conditions apply:*

a) New onsite septic or sewerage systems installed at campgrounds must not allow connections from recreational vehicles.

Comment: Allowance of new campgrounds with RV connections must first obtain a Waste Discharge Permit from the RWQCB.

Response: Correct. New campgrounds where RV connections to an on-site disposal system will be allowed must submit a RoWD to determine if an individual conditional waiver or regulation under individual WDRs is appropriate.

c. *c) New onsite septic or sewerage systems cannot be constructed and effluent from new onsite septic or sewerage systems cannot be discharged in areas where groundwater water quality objectives have been exceeded.*

Comment: In areas where groundwater quality objectives are currently exceeded and septic system discharge may improve water quality, individual projects should be approved if future beneficial uses of the basin are not degraded or adversely impacted. DEH currently has regulations and procedures in place to evaluate onsite wastewater systems with respect to groundwater impacts. We will continue to follow these procedures with guidance from the RWQCB to only allow onsite wastewater systems that are protective of groundwater and will not adversely affect the groundwater basin.

Response: We have revised waiver conditions 1.II.A.2.c) and 1.II.B.2 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 1 in Appendix C as well as the appropriate sections of the Technical Report and Appendices A and B) as follows:

1.II.A Specific Waiver Conditions for On-site Septic and Sewerage Systems

2. For new on-site septic or sewerage systems, the following conditions apply:
   c) New on-site septic or sewerage systems ~~cannot~~ proposed to be constructed ~~and effluent from new on-site septic or sewerage systems cannot be discharged~~ in areas where groundwater water quality objectives have been exceeded must be evaluated for potential adverse effects on groundwater quality and beneficial uses to determine if regulating the system with individual WDRs is more appropriate.

1.II.B Specific Waiver Conditions for On-site Graywater Systems

2. New graywater systems ~~cannot~~ proposed to be constructed ~~and effluent from new on-site septic or sewerage systems cannot be discharged~~ in areas where groundwater water quality objectives have been exceeded must be evaluated for potential adverse effects on groundwater quality and beneficial uses to determine if regulating the system with individual WDRs is more appropriate.

d. *d) New onsite septic or sewerage systems must not be constructed within areas designated as Zone A, as defined by the California Department of Health Services' (DHS's) Drinking Water Source Assessment and Protection Program.*

Comment: Zone A, as defined by the Drinking Water Source Assessment and Protection Program, would impose minimum 600 to 900 foot and in most cases much greater set-backs from water system supply wells. Since Zone A designations only pertain to areas where a current water system exists this would likely result in an onerous restriction in many areas of the County. It is suggested that known water systems be notified when an application for a septic system is evaluated by DEH within a delineated Zone A. However, current State approved set-backs should remain in effect as a minimum and DEH will place a greater emphasis on notification to all existing water suppliers and comments submitted prior to a septic system approval within a designated Zone A area.

Response: We have revised waiver conditions 1.II.A.2.d) and 1.II.B.3 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 1 in Appendix C as well as the appropriate sections of the Technical Report and Appendices A and B) as follows:

1.II.A Specific Waiver Conditions for On-site Septic and Sewerage Systems

2. For new on-site septic or sewerage systems, the following conditions apply:
   d) New on-site septic or sewerage systems ~~cannot~~ proposed to be constructed within areas designated as Zone A, as defined by the California Department of Public Health's ~~Service's~~ Drinking Water Source Assessment and Protection Program, must be constructed with an adequate setback from the drinking water supply source that will be protective of drinking water quality.

1.II.B Specific Waiver Conditions for On-site Graywater Systems

3. New on-site graywater systems proposed to be constructed within areas designated as Zone A, as defined by the California Department of Public Health's Drinking Water Source Assessment and Protection Program, must be constructed with an adequate setback from the drinking water supply source that will be protective of drinking water quality.

Comments on Conditional Waiver No. 2 – "Low Threat" Discharges to Land

The following persons submitted comments pertaining to Conditional Waiver No. 2:

- Sierra Club San Diego Chapter
- San Diego County Water Authority
- Helix Water District

Comment 2.1.
(Sierra Club San Diego Chapter)
2.1.A. General Waiver Conditions for Low Threat Discharges of Water to Land
The UIC Program regulates 32 injection wells as noted above. Drainage Wells is another subclass. It includes five types of drainage, two of which are classified as posing low to moderate risk to water quality; a) storm water drainage wells and b) special drainage wells to dispose water from sources other than direct precipitation such as landslide control, swimming pool drainage. As the Conditional Waiver report makes no mention of these drainage wells, please explain if these are allowed. If so then there should be conditions on their use to comply with the UIC Program regulations.

Response: Waiver conditions 2.II.G apply to discharges from structural best management practices (BMPs) that require infiltration. If a person chooses to install structural BMPs that include drainage wells to control storm water runoff, that person must make sure that the drainage well complies with waiver conditions 2.I.A and 2.II.G. Installation of structural BMPs should comply with any local state, and *federal* (i.e., UIC Program requirements) ordinances and regulations. Therefore, in the interest of providing some additional clarification, we have revised waiver condition 2.II.G.2 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 2 in Appendix C as well as the appropriate sections of the Technical Report and Appendices B) as follows:

2.II.G. Specific Waiver Conditions for Discharges from Structural BMPs that Require Infiltration.

2. Installation of structural BMPs that require infiltration must comply with local, state, and federal ordinances and regulations and obtain any required approvals, permits, certifications, and/or licenses from authorized local agencies.

Other types of "low threat" discharges to land included in Conditional Waiver No. 2 are not intended for discharges to drainage wells, but spread directly on the land surface and allowed to infiltrate into the soil. In order for a person to discharge into a drainage well, the person would have to submit a RoWD to the San Diego Water Board.

Comment 2.2.
(Sierra Club San Diego Chapter)
2. II.G. Specific Waiver Conditions for Discharges from Structural BMPs that Require Infiltration on page 25 for storm water are of particular interest. USEPA Region 9 has guidelines addressing storm water infiltration wells in California.[7] It states that if the storm water infiltration wells include subsurface fluid distribution systems, it would be considered as a Class V injection well. MS4 permit should be consulted to resolve this issue.

Response: Please see response to comment 2.1.

Comment 2.3.
(San Diego County Water Authority, Helix Water District)
The proposed addition of a waiver for "low threat" discharges to land should be clarified to remove any implication that the Regional Board is seeking to regulate reasonable and beneficial use of potable water, and that ordinary use of potable water is not, in and of itself, a discharge of waste. The proposal should clarify that the Regional Board's jurisdiction and concern extends solely to application of water in a manner or under such conditions that after beneficial use and where pollutants are added to the potable water, the water has the potential to reach a defined groundwater basin.

Response: We agree that Conditional Waiver No. 2 should apply solely to discharges of water that after beneficial use and where pollutants are added to the potable water, the water has the potential to reach and potentially have an adverse effect on groundwater. In the interest of providing some additional clarification, we have revised the introduction to Conditional Waiver No. 2 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 2 in Appendix C as well as the appropriate sections of the Technical Report and Appendix B) as follows:

CONDITIONAL WAIVER NO. 2 – "LOW THREAT" DISCHARGES TO LAND

Conditional Waiver No. 2 ~~regulates the~~ is for "low threat" discharges to land, which can percolate to groundwater. "Low threat" discharges ~~that can be regulated by Conditional Waiver No. 2~~ include~~s~~ liquid wastes containing pollutant concentrations that will not impact the quality of waters of the state under ambient conditions. "Low threat" discharges may include potable water or uncontaminated groundwater. Potable water and uncontaminated groundwater are not considered waste when initially discharged. However, when this water comes into contact with pollutants and transports those pollutants in surface runoff or leaches those pollutants into the soil and groundwater, it becomes a waste. "Low threat" discharges to land are not expected to contain significant concentrations of pollutants that can adversely affect the quality of underlying groundwater.

[7] EPA Region 9 Ground water Office, *Municipal Storm Water and Ground Water Discharge Regulations in California*, http://epa.gov/region09/water/groundwater/uic-docs/calif5d-muniguide.pdf

Comments on Conditional Waiver No. 3 – Discharges from Animal Operations

The following persons submitted comments pertaining to Conditional Waiver No. 3:

- San Diego County Farm Bureau

Comment 3.1.
(San Diego County Farm Bureau)
Page 28, 3.I.A.3
This item discusses the need to protect surface waters from direct contact with domestic animals. Our concern stems from the comment that '…*fencing should be installed to eliminate direct exposure of animals to surface water bodies*." While this may be appropriate for Animal Feeding Operations, the section applies to grazing lands as well. The requirement to build fences separating cattle from all surface water bodies would necessitate the construction of literally hundreds of miles of fencing throughout San Diego County's back country, disrupt the management of rangeland, and create a hazard for migrating wildlife.

It is our suggestion that this section be rewritten to exclude grazing lands from a fencing requirement. The disbursement of cattle over rangeland reduces impacts and a requirement to provide watering troughs or basins will eliminate the need for cattle to approach water bodies. Preferably, reliance on Section 3.II.C. 1, which states, "*Grazing operations must prevent the direct or indirect discharge of animal wastes (i.e., manure, urine) to any surface waters of the state*" gives sufficient regulatory authority without dictating the management practices for specific grazing sites.

Response: We did not intend for the waiver condition to require the installation of fencing. The use of fencing was a recommendation. In the interest of providing some additional clarification, have revised waiver condition 3.I.A.3 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 3 in Appendix C as well as the appropriate sections of the Technical Report and Appendices A and B) as follows:

3.I.A General Facility Design and Management Waiver Conditions

3. Animal operations must prevent direct contact of animals with surface water bodies. Animals should not be allowed to graze directly adjacent to or within stream banks. Animal operations should maintain a buffer zone or riparian filter strip ~~(at least 100 feet is recommended)~~ between the animals and any surface waters of the state. The buffer zone must adequately minimize the discharge of pollutants from animal operations. There should be no direct exposure of a surface water body to an animal. ~~Above-ground watering troughs or basins and fencing should be installed to eliminate direct exposure of animals to surface water bodies.~~

Comment 3.2.
(San Diego County Farm Bureau)
Page 30, 3.1.D.1
In this condition the term "fresh" manure lacks definition. If fresh is deemed to also mean dried but uncomposted, then it will create a significant problem for manure generating sites as well as the off-site farms that depend on dried or processed manures. Not all manure generating sites have the capacity or authority for composting and rely on drying or processing as the means to create safely transportable manure.

It is our suggestion that this condition be rewritten as: *"Only dried, processed, or composted manure may be applied as a fertilizer, amendment, or mulch to soil on sites other than the same property where the manure was generated."*

Response: We agree that the definition of "fresh" lacks definition. Therefore, we have revised waiver conditions 3.I.D (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 3 in Appendix C as well as the appropriate sections of the Technical Report and Appendices A and B) as follows:

3.I.D. General Waiver Conditions for Application of Manure from Animal Operations as a Fertilizer, Amendment, or Mulch to Soil

1. If fresh and/or uncomposted manure is applied as a fertilizer, amendment, or mulch to soil, manure must be applied to the same property where the manure was generated.
2. Dried, processed, or composted manure may be applied as a fertilizer, amendment, or mulch to soil on sites other than the property where the manure was generated. Dried, processed, or composted manure may also be applied as a fertilizer, amendment, or mulch to soil on the same property where the manure was generated.

~~2~~3. A buffer zone of at least 100 feet should be maintained between the ~~fresh and/or uncomposted~~ manure applied to soil and any surface waters of the state, unless sufficient information is provided to demonstrate that a proposed alternative is protective of water quality.

Comments on Conditional Waiver No. 4 – Discharges from Agricultural and Nursery Operations

The following persons submitted comments pertaining to Conditional Waiver No. 4:

- San Diego County Farm Bureau
- Sierra Club San Diego Chapter
- San Diego Coastkeeper
- Surfrider Foundation
- City of San Diego

Comment 4.1.
(San Diego County Farm Bureau)
Page 38, 4.I.B. 5(c)
Agricultural and farm operators create green wastes and trash constantly throughout the workday. The prescribed recordkeeping requirement would be an onerous daily task and add nothing to the effort to prevent discharges.

It is our suggestion that (c) be eliminated. The application of Best Management Practices clearly covers this issue and 4.I.B. 5(h) will ensure a means of record keeping.

> **Response**: Green waste and trash, if not properly managed, could affect the quality of waters of the state. Pollutants from green wastes and trash can be indirectly discharged to waters of the state via storm water runoff and infiltration if not properly managed.
>
> The waiver condition does not specify that records must be kept on a daily basis. The purpose of this recordkeeping requirement is to encourage the agricultural or nursery operator to know where and when sources of waste that could affect the quality of waters of state are generated. If the discharger generates and/or composts and reuses green wastes on the site, the discharger should know where and when this occurs. When the discharger generates and disposes of green wastes and/or trash at an off site facility, the discharger should know where and when this occurs. This should not be an onerous task to keep track of where and when green wastes and trash are reused and/or disposed.

Comment 4.2.
(San Diego County Farm Bureau)
Page 38, 4.I.B. 5(d)
The requirement to maintain pesticide use reports and records is already regulated by the California Department of Pesticide Regulation and the San Diego County Department of Agriculture, Weights and Measures. There is no need for a duplicative regulatory requirement.

It is our suggestion that (d) be eliminated or replaced by a statement requiring compliance with applicable state law for pesticide use record keeping.

Response: The purpose of this recordkeeping requirement is not intended to duplicate the reporting and recordkeeping requirements of the California Department of Pesticide and San Diego County Department of Agriculture, Weights and Measures regulation. Those same reports and records would fulfill this recordkeeping requirement. If the discharger already maintains copies of these reports and records, the discharger is in compliance with waiver condition 4.I.B. 5(d).

Comment 4.3.
(San Diego County Farm Bureau)
Page 38, 4.I.B. 5(e)
The application of fertilizers, the additions of soil amendments, and the use of mulches occurs on farms regularly. A record keeping requirement would be an onerous daily task and add nothing to the effort to prevent discharges.

It is our suggestion that (e) be eliminated. The application of Best Management Practices clearly covers this issue and 4.I.B. 5(h) will ensure a means of record keeping.

Response: The application of fertilizers, soil amendments, and mulches to soil, if not properly managed, could affect the quality of waters of the state. Pollutants from fertilizers, soil amendments, and mulches can be indirectly discharged to waters of the state via storm water runoff and infiltration if not properly managed.

The waiver condition does not specify that records must be kept on a daily basis. The purpose of this recordkeeping requirement is to encourage the agricultural or nursery operator to know where and when sources of waste that could affect the quality of waters of state are generated. If the discharger purchases and/or generates and applies fertilizers, soil amendments, or mulches on the site, the discharger should know where and when this occurs. This should not be an onerous task to keep track of where and when fertilizers, soil amendments, and mulches are used.

Comment 4.4.
(San Diego County Farm Bureau)
Page 38, 4.I.B. 5(f)
Irrigation is a daily management issue on all farms and changes dramatically with the weather, seasons, and cropping patterns. Keeping records of water use and irrigation schedules would be an onerous daily task and add nothing to the effort to prevent discharges.

It is our suggestion that (f) be eliminated. The application of Best Management Practices clearly covers this issue and 4.I.B. 5(h) will ensure a means of record keeping.

Response: Irrigation, if not properly managed, could affect the quality of waters of the state. Pollutants in runoff and infiltration of irrigation return waters can be directly or indirectly discharged to waters of the state if not properly managed.

The waiver condition does not specify that records must be kept on a daily basis. The purpose of this recordkeeping requirement is to encourage the agricultural or nursery operator to know where and when sources of waste that could affect the quality of waters of state are generated. If the discharger makes changes to their irrigation system, irrigation schedule, or amount of water use, the discharger should know where and when this occurs. This should not be an onerous task to keep track of where and when irrigation practices change.

Comment 4.5.
(San Diego County Farm Bureau)
Page 38, 4.I.B. 5(g)
In and of themselves, equipment and maintenance records will not afford any improvement in water quality.

It is our suggestion that (g) be eliminated. The application of Best Management Practices clearly covers this issue and 4.I.B. 5(h) will ensure a means of record keeping.

Response: Equipment, if not properly managed, could affect the quality of waters of the state. Fuels, lubricants, and other fluids can be indirectly discharged to waters of the state via storm water runoff and infiltration if equipment is not properly maintained.

The purpose of this recordkeeping requirement is to encourage the agricultural or nursery operator to know where and when sources of waste that could affect the quality of waters of state are generated. If the discharger periodically maintains and/or repairs their equipment, the records should be maintained by the discharger.

Comment 4.6.
(San Diego County Farm Bureau)
Page 39, 4.I.B. 6, 7, and 8
This section initiates the proposal of creating coalitions for agricultural and nursery operators. While we accept that course of action, we feel it is important to point out that the success of this idea will hinge entirely on the Regional Board's willingness to create sufficient incentives for entering the coalition. If there is no clearly understood benefit in joining a coalition, then coalition organizers will be hard-pressed to organize and meet the prescribed deadlines.

Response: Based on comments from members of the public and the San Diego Water Board during the public hearing on August 8, 2007, Conditional Waiver No. 4 has been revised. The waiver conditions were revised to require enrollment at the end of the third year of the 2008-2013 waiver period. The revisions also include a requirement to prepare a Monitoring and Reporting Program Plan (MRPP) and a Quality Assurance Project Plan (QAPP) by the end of the fourth year, and a Monitoring Program Report (MPR) at the end of the fifth year. Monitoring during the fourth year will be required to produce an MRP.

The waiver conditions require agricultural and nursery operators to enroll for Conditional Waiver No. 4 as part of a monitoring group or as an individual operation. One MRPP/QAPP and MPR is required from each monitoring group and each individual operation that has enrolled. Section D.7.4 of Appendix D has been revised to provide an estimate of the costs associated with preparing the MRPP/QAPP and MPR, as well as an estimate of monitoring and analytical costs. The estimated cost for each MRPP is $7,200, each QAPP is $7,200, each sample collection and monitoring event is $1,440, each sample analysis is $635, and each MPR is $3,600. Monitoring groups will be allowed to divide the costs of the MRPP/QAPP and MPR and the monitoring and analytical requirements among its members. The costs of the MRPP/QAPP and MPR and the monitoring and analytical requirements are the sole responsibility of individual operations that do not join and monitoring group.

The majority of the costs are associated with the preparation of the MRPP/QAPP and MPR. The costs of the MRPP/QAPP and MPR for agricultural and nursery operations that enroll as part of a monitoring group will be significantly lower than for an operation that enrolls an individual operation. Additionally, the number of monitoring locations for a monitoring group will likely be fewer, on a per operation basis, that for an individual operation that has not joined a monitoring group. Therefore, there is now a large financial incentive for agricultural and nursery operations to form and/or join a monitoring group with as many members as possible.

Please see the response to comment 4.10 for the revisions to the waiver conditions for enrollment, monitoring, and reporting.

Comment 4.7.
(San Diego County Farm Bureau)
Page 42, 4.II.B. 1
Nursery operators throughout the region are making great strides in eliminating the discharge of irrigation return water. In addition to the application of Best Management Practices to manage the application of irrigation water and reduce the use of chemicals, one popular strategy is to construct containment basins to capture and then reuse irrigation water. These basins can be constructed to handle rainfall inflows from normal and occasional heavy storm events. However, the total prohibition for discharges is a standard that cannot be met when extreme rainfall events occur. Sizing containment to handle 100-year events when irrigation return water and rainfall are commingled would be prohibitive.

It is our suggestion that this condition be rewritten to recognize the inevitability of extreme storm events as they would affect irrigation water containment basins and their limited capacity.

Response: Waiver condition 4.II.B.1 is essentially the same condition that was included in the conditional waiver for nursery irrigation return water issued with Resolution R9-2002-0186. The San Diego Water Board does not have the authority to waive the discharge of nursery irrigation return water to a surface water body.

Violation of this waiver condition can be grounds for terminating the conditional waiver for the nursery operator. However, if there is an extreme rainfall event that results in the discharge of nursery irrigation return water to waters of the U.S., the San Diego Water Board will have to determine whether termination of the conditional waiver for the facility and issuing WDRs, or if some other action (e.g., issuing a Notice of Violation), would be in the public interest and best use of San Diego Water Board resources.

Comment 4.8.
(Sierra Club San Diego Chapter)
The Technical Report describes the current discharges from agricultural and nursery operations are not adequately managed to protect the San Diego Region water quality. One major issue is that there are more than 60% of the farms in the Region are small agricultural operations on 10 acres or less. There is also concern that these small farms are unlikely to be implementing water quality control management measures and best management practices. From the standpoint of watershed management and TMDL compliance, this situation needs to be significantly improved. Given the Regional Board resource constraints we support the proposed tiered approach that is patterned after the State Non-Point Source Control Program to implement conditional waivers for the discharges from the agricultural and nursery operations. We are mindful of the proposed Bacteria TMDL for beaches and creeks in the San Diego Region. Implementation of the conditional waiver schedules/planning should be coordinated with the Bacteria TMDL.

Response: The Bacteria TMDL implementation plan assumes that agricultural dischargers are complying with the waiver conditions, but also calls for active enforcement of the waivers. If the water bodies addressed by the Bacteria TMDL for beaches and creeks continue to exceed water quality objectives, and evidence shows that agricultural dischargers are contributing to the exceedances and not complying with the waiver conditions, the San Diego Water Board can enforce the conditions of the waiver, or issue individual WDRs if necessary.

Comment 4.9.
(Sierra Club San Diego Chapter)
Agricultural drainage wells. We consulted the USEPA Class V Underground Injection Control Study Volume 2 Agricultural Drainage Wells[8]. It estimates that there is no agricultural injection well in California. USEPA considers these wells pose high risk to groundwater so these should not be given a waiver.

[8] EPA *The Class V Underground Injection Control Study, Vol. 2 Agricultural Drainage Wells*, EPA/816-R-99-014b Sept 1999 http://www.epa.gov/safewater/uic/classv/pdfs/volume2.pdf

Response: There is no waiver proposed for agricultural drainage or injection wells. Discharges from agricultural drainage or injection wells to groundwater would require individual WDRs.

Comment 4.10.
(San Diego Coastkeeper, Surfrider Foundation, City of San Diego)
At the public hearing, several members of the public commented orally that allowing agricultural and nursery operators a 5 year period to prepare for enrollment and monitoring was too long. Enrollment should be required sooner than 5 years, and monitoring should be required within the next 5 years. San Diego Water Board members (Chair Ritchell and Vice-Chair Wright) also suggested that they would like to see the waiver conditions revised to require enrollment sooner, and monitoring required.

Response: The conditions for Conditional Waiver No. 4 were revised to require enrollment, monitoring, and reporting within the next 5-year waiver period. We have revised the waiver conditions in 4.I.B and 4.I.F (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 4 in Appendix C as well as the appropriate sections of the Technical Report) as follows:

4.I.B. General Enrollment and Education Waiver Conditions

6. **No later than ~~June 30, 2011~~December 31, 2010**, agricultural and nursery operations must form or join a monitoring group. The function of the monitoring group~~/coalition~~ is to perform water quality monitoring and report the results to the San Diego Water Board. Monitoring groups will be allowed to divide the costs associated with the water quality monitoring and reporting requirements in 4.I.F among its members. Individual operations not in a monitoring group will be solely responsible for the costs associated with the water quality monitoring and reporting requirements in 4.I.F.~~The monitoring group/coalition will also report on the implementation and effectiveness of MMs/BMPs on behalf of its members. Agricultural and nursery operations that have implemented MMs/BMPs and joined a monitoring group/coalition will be designated as "preferred" conditional waiver participants. ""Preferred" conditional waiver participants will be given special status during Phase II of the conditional waivers. For "preferred" conditional waiver participants, waiver conditions may include reduced monitoring and/or reporting requirements, annual fee (payable to the State Water Board) reductions, and/or other incentives.~~
7. **No later than ~~December 31, 2011~~January 1, 2011**, owners/operators if agricultural and nursery operations must file a Notice of Intent, as either an individual operation or as part of a monitoring group, with the San Diego Water Board.
8. A Notice of Intent submitted by a monitoring group on behalf of its members ~~monitoring groups and/or coalitions~~ must ~~file a Notice of Intent with the San Diego Water Board~~ contain~~ing~~ the following information ~~to be granted "preferred" conditional waiver participant status~~:

a) Identify the representative(s) authorized to sign reports submitted on behalf of the group~~/coalition~~.
b) An electronic list of landowners and/or operators participating in the monitoring group~~/coalition~~ including: (a) assessor parcel number(s), (b) parcel size, (c) parcel owner or operator name, (d) types of crops grown on each parcel, (e) number of irrigated acres, and (f) parcel owner or operator mailing address.
c) A detailed map of the area included within the monitoring group~~/coalition~~, preferably in GIS format, identifying individual parcels and/or districts that are participating in the monitoring group~~/coalition~~.
d) A detailed description of irrigation, storm water runoff, nutrient, pesticide, erosion control, composting, and other site-specific MMs/BMPs that have been implemented by each participant in the monitoring group~~/coalition~~, which must be provided as a written description, on a map, and/or using pictures.

Monitoring group members are not eligible for this waiver until a complete Notice of Intent is filed. The monitoring group must inform the San Diego Water Board when any member ceases to participate in the monitoring group within 30 days of the cessation of participation. Any member who ceases to participate in a monitoring group must file a Notice of Intent as an individual agricultural or nursery operation, in accordance with waiver condition 4.I.B.9, within 30 days of ceasing to participate in the monitoring group.

~~8~~9. ~~**By December 31,** , owners/operators of agricultural and nursery operations that do not file a Notice of Intent as part of a monitoring group and/or coalition must file a~~ A Notice of Intent filed by an individual agricultural or nursery operation must ~~as an individual person~~ contain~~ing~~ the following information:

a) Information about the agricultural or nursery operation including: (a) assessor parcel number(s), (b) parcel size, (c) parcel owner and operator name(s), (d) types of crops grown on each parcel, (e) number of irrigated acres, and (f) parcel owner and operator mailing address(es).
b) A detailed map of the operation, preferably in GIS format, with locations of operation boundaries, nearby surface waters and water wells.
c) A detailed description of irrigation, storm water runoff, nutrient, pesticide, erosion control, composting, and other site-specific MMs/BMPs that have been implemented by the operation, which must be provided as a written description, on a map, and/or using pictures.

An individual agricultural or nursery operation is not eligible for this waiver until a complete Notice of Intent is filed.~~Sufficient information must be submitted in order for the discharger to be eligible for regulation by this conditional waiver. Individual persons filing a Notice of Intent will be granted "common" conditional waiver participant status.~~

4.I.F. General Inspection and Reporting Waiver Conditions

1. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.
2. Owners/operators must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.
3. **By March 31, 2011**, each monitoring group and each individual operation not participating in a monitoring group must contact the San Diego Water Board to begin developing a Monitoring and Reporting Program Plan (MRPP) and a Quality Assurance Project Plan (QAPP).
4. **By January 1, 2012**, each monitoring group and each individual operation not in a monitoring group must submit one MRPP/QAPP to the San Diego Water Board. The MRPP/QAPP must include the monitoring locations, frequency of monitoring, constituents of concern to be monitored, documentation of monitoring protocols, and sufficient information about the agricultural and/or nursery operations to demonstrate that the proposed MRPP will adequately document water quality and pollutant loadings, and demonstrate compliance with waiver conditions.
5. **By December 31, 2012**, each monitoring group and each individual operation not participating in a monitoring group must submit one Monitoring Program Report (MRP) to the San Diego Water Board consistent with the MRPP/QAPP.

Comments on Conditional Waiver No. 7 – Discharges of Recycled Water to Land

The following persons submitted comments pertaining to Conditional Waiver No. 7:

- Foley & Lardner LLP
- Irrigation and Turfgrass Services
- San Diego Golf Course Superintendents Association
- California Golf Course Owners Association
- Valley Crest Golf Course Maintenance
- California Alliance for Golf
- Synergy Golf Course Management
- Southern California Golf Association
- American Golf
- Hatch & Parent, representing American Golf
- The Vineyard at Escondido
- Eastlake Country Club
- Lomas Santa Fe Country Club
- Maderas Country Club
- Lomas Santa Fe Executive Golf Course
- San Vicente Golf Club
- City of San Diego Water Department
- San Diego County Water Authority
- Otay Water District
- WateReuse Association, San Diego Chapter
- Padre Dam Municipal Water District
- Helix Water District
- WateReuse Association, California Section
- Public Links Golf Association
- Vista Valley Country Club
- Carlsbad Municipal Water District
- California Department of Public Health
- San Diego County Department of Environmental Health (SDCDEH)
  Land and Water Quality Division

Comment 7.1.
(Foley & Lardner, All)
Most of the comments submitted pertaining to Conditional Waiver No. 7 were summarized in an article in the *Legal News Alert: Golf & Resort Industry Team* newsletter published by Foley & Lardner LLP. The principle concern was that the waiver conditions were actually discharge requirements or discharge prohibitions. As such, the commenters were concerned that compliance with the waiver conditions would be very difficult and costly and would likely discourage the use of recycled water in the San Diego Region. Excerpts from the article, treated as comments, are given below with responses.

a. *The Tentative Resolution creates a set of* <u>*discharge requirements*</u> [emphasis added] *for reclaimed water, which are noted on pages D-28 through D-29 of Attachment A to the Tentative Resolution.*

Response: The author erroneously labels the waiver conditions in Conditional Waiver No. 7 as discharge requirements. Discharge requirements are issued as part of waste discharge requirements (WDRs), which are required as part of a Master Reclamation Permit issued to recycled water agencies for permanent recycled water projects. Conditional Waiver No. 7 provides conditions under which a discharge of recycled water would not be considered a potential threat to the quality of waters of the state (including surface waters and groundwater) and could be temporarily waived of the requirement to obtain and operate under WDRs.

However, if the recycled water discharger is not able to comply with all the conditions of Conditional Waiver No. 7, the discharger must obtain water reclamation requirements and/or a master reclamation permit, pursuant to Water Code chapter 7, article 4 (commencing with section 13520), and WDRs pursuant to Water Code chapter 4, article 4 (commencing with section 13260). The author characterized the waiver conditions of Conditional Waiver No. 7 as equivalent to discharge requirements that would be issued with WDRs, which is simply incorrect.

b. *The Tentative Resolution contains an* <u>*absolute prohibition*</u> [emphasis added] *against the discharge of recycled water either directly or indirectly to 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 water of the state. Irrigation ponds will need to be covered or redesigned to avoid overtopping in rainstorms.*

Response: The author erroneously labels the waiver conditions as prohibitions. Tentative Resolution No. R9-2007-0104 contains conditions under which a specific type of discharge is not expected to pose a potential threat to the quality of waters of the state. In addition to the waiver condition given by the author, most of the commenters also expressed concern about the waiver condition that states recycled water "*must not degrade the quality of underlying groundwater*."

The San Diego Water Board is not required to issue waivers. Any discharge that could affect the quality of waters of the state should be regulated with WDRs. However, there are specific types of discharge that the San Diego Water Board has determined would be a low enough threat to water quality when discharged in accordance with certain conditions, which could be allowed without regulation under WDRs. This can only occur if a waiver is issued. A waiver must be conditional and consistent with the Basin Plan to be protective of water quality. Therefore, in order for a discharge to be eligible for a waiver, the discharge must comply with certain conditions that will be protective of water quality.

If the discharger can comply with the waiver conditions and is allowed to discharge under a waiver, they would be discharging with little or no oversight from the San Diego Water Board. If a discharger complies with these two waiver conditions, the San Diego Water Board would allow discharges of recycled water to land without regulation under WDRs. If the San Diego Water Board allows a discharge to occur under a waiver, we assume that the discharge, under the given conditions, will not adversely impact and degrade the quality of waters of the state.

We recognize that incidental runoff and overspray can be difficult to control at all times, and degradation of groundwater by recycled water is possible. However, with proper management and application of recycled water, incidental runoff and overspray outside the recycled water use area should not occur, and percolation of recycled water to groundwater can be minimized or eliminated. Additionally, a waiver for recycled water projects is not expected to be utilized for periods longer than 365 days. Again, for a discharge to occur under a waiver, the San Diego Water Board must assume that the discharge will be managed in such as way as to prevent discharges that may adversely impact the quality of waters of the state.

If incidental runoff or overspray, or degradation of groundwater were to occur from the recycled water discharged pursuant to the waiver, the San Diego Water Board would have to investigate the violation to determine if it warranted any enforcement action. The discharger most likely would be given the opportunity to correct the situation or provide evidence that the discharge was not a threat to water quality. However, waiver conditions cannot expressly provide exceptions when incidental runoff or overspray to a surface water body, or degradation of groundwater is allowed to occur.

According to Water Code section 13550(a)(4),[9] recycled water use "will not adversely affect downstream water rights, will not *degrade water quality* [emphasis added], and is determined not to be injurious to plantlife, fish and wildlife." The waiver conditions are consistent with this requirement. However, in the interest of providing some clarification, we have revised waiver conditions 7.I.A.1 and 7.I.A.2 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 7 in Appendix C as well as the appropriate sections of the Technical Report and Appendix A) as follows:

7.I.A. General Waiver Conditions for Recycled ~~Wastew~~Water Projects

1. Prevent all windblown spray and surface runoff of ~~R~~recycled ~~waste~~water ~~cannot be discharged directly or indirectly to any surface waters of the state (including ephemeral streams and vernal pools)~~ on to property not owned or controlled by the discharger or recycled water user by implementation of management measures (MMs) and/or best management practices (BMPs).
2. Recycled ~~waste~~water discharged to land must not ~~degrade~~ adversely affect the quality or beneficial uses of underlying groundwater.

[9] Chapter 7 (Water Reclamation), Article 7 (Water Reuse), section 13550 (Legislative findings)

c. *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.*

Response: The author did not make clear that this waiver condition is only applicable to permanent recycled water projects. Proponents of permanent recycled water projects are required to submit a RoWD and obtain a Master Reclamation Permit and/or WDRs. A Master Reclamation Permit must include WDRs. The intended application of this waiver is for recycled water agencies with permanent recycled water projects requiring the installation of permanent facilities or structures to allow the discharge of recycled water between the time that a completed RoWD is submitted and the Master Reclamation Permit and/or WDRs are issued by the San Diego Water Board.

Master Reclamation Permits and/or WDRs for permanent recycled water projects have only been issued to water districts which act as Recycled Water Agencies that distribute recycled water to end users through "purple pipe" systems. The Recycled Water Agency must submit a RoWD and obtain a Master Reclamation Permit. The end users are regulated under the WDRs of the Master Reclamation Permit. The Recycled Water Agencies are responsible for ensuring the end users comply with the WDRs of the Master Reclamation Permit.

At this time, golf courses that use recycled water in the San Diego Region must obtain it from a Recycled Water Agency with a Master Reclamation Permit and/or WDRs. As an end user, there is no requirement for golf course owners or operators to prepare RoWDs. Golf course owners or operators that receive recycled water from a Recycled Water Agency with a Master Reclamation Permit and/or WDRs are not eligible for or subject to the conditions of the waiver.

In the interest of providing some clarification, we have revised the introduction of Conditional Waiver No. 7 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 7 in Appendix C as well as the appropriate sections of the Technical Report and Appendix A) as follows:

CONDITIONAL WAIVER NO. 7 – DISCHARGES OF RECYCLED WATER TO LAND

Conditional Waiver No. 7 is for ~~regulates~~ discharges of recycled ~~waste~~water to land. Discharges of recycled water may contain pollutants that can adversely affect the quality of waters of the state. The application of recycled water to land may result in

pollutants being concentrated in soils, which may adversely impact the quality of the waters of the state when those concentrated pollutants are leached out during rainfall events and/or overuse of irrigation water. This waiver is not available or applicable to recycled water projects and users subject to rules and regulations established by master reclamation permits (MRPs), issued pursuant to Water Code section 13523.1, or otherwise regulated under waste discharge requirements (WDRs) or water reclamation requirements (WRRs), issued pursuant to Water Code sections 13260 and 13523, respectively.

~~Conditional Waiver No. 7 can be utilized by the San Diego Water Board to regulate t~~The following types of discharge may be eligible for Conditional Waiver No. 7:

- Discharges to land from short-term recycled ~~waste~~water projects (without permanent recycled water delivery and/or distribution systems, not to exceed 365 days)
- Discharges to land from permanent recycled ~~waste~~water projects (with permanent recycled water delivery and/or distribution systems, limited to the period prior to the discharge being authorized and regulated under WDRs, WRRs, and/or MRP, not to exceed 365 days)

d. *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 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.*

Response: The monitoring and reporting conditions in the waiver for discharges from permanent recycled water projects have been revised as a result of our consultation with the California Department of Public Health (CDPH), formerly known as the California Department of Health Services, pursuant to the Memorandum of Agreement between our two agencies.[10] The CDPH believes that monitoring and reporting should be a condition of this waiver, since such monitoring and reporting would be part of any WDRs issued for permanent recycled water projects. We agreed with the CDPH and added a condition that allows the CDPH to specify monitoring and reporting requirements in its approval letter for the project, and a condition that the RoWD propose a monitoring and reporting program that the recycled water agency will implement. Please see the response to comment 7.14 for revisions.

Comment 7.2.
(City of San Diego Water Department, WateReuse Association - San Diego Chapter)
The term “recycled wastewater” should be changed to “recycled water” and “waste discharge” should be changed to “recycled water discharge.” The terminology currently

[10] Memorandum of Agreement between the Department of Health Services and the State Water Resources Control Board on Use of Reclaimed Water, dated January 1996.

used in the Resolution encourages a negative public perception that the WateRuse Association has long been trying to correct. People typically associate water quality with where the water comes from. It is more appropriate to establish in the public mind that water quality is associated with the utility and its treatment processes. The process, not the source, determines the water quality. In addition, it is misleading to call recycled water a waste discharge when it provides a water supply to our region.

Response: We agree that the use of recycled water should be encouraged and that the terminology can affect public perception. Therefore, the term "recycled wastewater" was revised to "recycled water" wherever it appears in the Technical Report and appendices, as well as in Tentative Resolution No. R9-2007-0104 and the Basin Plan amendment. However, the pollutants remaining in the recycled water, and recycled water that comes into contact with pollutants and transports those pollutants in surface runoff or leaches those pollutants into the soil and groundwater, can potentially have an adverse effect on the quality of waters of the state. If the pollutants remaining in the recycled water exceed water quality objectives in the Basin Plan, or the discharge of recycled water is excessive and transports pollutants to surface waters and groundwater, it is a discharge of waste.

Comment 7.3.
(WateReuse Association - San Diego Chapter)
Another specific terminology issue is related to the word "Operator" in sections 7.II.A 1 and 7.II.B 1. This term is not defined in the Basin Plan glossary and can be interpreted as either the operator of the treatment facility or the operator of the recycled water use site. It is our belief that the intent of this resolution is to provide the utility purveyor of the recycled water an opportunity to obtain a waiver under appropriate conditions, for either a short term project or long term project. Therefore, Operator needs to be defined as the treatment plant agency – not the user, unless of course they are one in the same.

Response: The term "operator" in the waiver conditions in 7.II.A, which are conditions specific to discharges of recycled water from short-term recycled water projects, refers to the end user. The term "operator" in the waiver conditions in 7.II.B, which are conditions specific to discharges of recycled water from permanent recycled water projects, refers to the recycled water agency that may utilize the waiver until WDRs are issued.

We have clarified the term "operator" in the waiver conditions in 7.II.A and 7.II.B. Please see responses to comments 7.11.a and 7.14 for revisions.

Comment 7.4.
(City of San Diego Water Department)
It should be noted that among the findings that the Board would make in adopting the Waiver Program (Resolution No. R9-2007-0104) is the following

The San Diego Water Board has considered the costs of implementing the proposed Basin Plan amendment and finds the proposed amendment will not result in any additional economic burden for dischargers.

The Waiver Program as currently proposed perpetuates the need for permanent water recycled projects to submit Reports of Waster Discharges (RoWDs) and adds a requirement for permanent water recycling water operators to submit technical and/or monitoring program reports as directed by the San Diego Regional Water Board until Waste Discharge Requirements (WDRs) are issued. The documentation provided by Regional Board staff in relation to the proposed amendments does not include any information or analysis to support the finding that the proposed regulations do not result in additional economic burdens for operators.

Given the role of recycled water in ensuring the development of a diversified water supply portfolio for our region, we respectfully request that the Board directs staff to fully consider the role that regulatory programs may play in affecting the desirability of this valuable resource. The Regional Board should ensure that there are no unnecessary regulatory barriers to increase the use of recycled water.

> **Response**: Conditional Waiver No. 7 does not create unnecessary regulatory barriers to increase the use of recycled water. In fact, the waivers remove the barrier of obtaining WDRs for certain discharges of recycled water. Water Code section 13522.5(a) requires "any person recycling or proposing to recycle water, or using or proposing to use recycled water…shall file with the appropriate regional board a report containing information required by the regional board." The San Diego Water Board requires agencies proposing to supply or distribute recycled water to submit a RoWD to comply with Water Code section 13522.5(a). Since recycled water agencies must file RoWDs for discharges from permanent recycled water projects to obtain WDRs, requiring a RoWD for the waiver for discharges from permanent recycled water projects, compliance with this requirement *does not add an additional economic burden* to the dischargers.
>
> When a recycled water agency is issued a Master Reclamation Permit and/or WDRs, a monitoring and reporting program is required. The waiver condition requiring a monitoring and reporting program is no different than what would be required under a Master Reclamation Permit and/or WDRs, therefore it *does not add an additional economic burden* to the discharger.

Comment 7.5.
(City of San Diego Water Department)
It is our understanding of the San Diego Water Department that users that receive recycled water that is regulated under a Master Recycled Water permit, are regulated under said permit and are not subject to any of the provisions of the proposed Waiver Program. The Water Department respectfully requests that language to this effect is explicitly incorporated into the Tentative Resolution and other pertinent documentation.

Response: Correct. Please see response to comment 7.1.c.

Comment 7.6.
(City of San Diego Water Department)
We would also note that while the staff report recognizes the differences between recycled water that has been treated to secondary versus tertiary water treatment standards, the proposed Waiver Program regulates both secondary and tertiary treated water users in identical fashion.

The Water Department urges the Board to direct staff to consider the inherent differences between recycled water that has been treated to secondary versus tertiary water treatment standards and develop its regulatory programs accordingly.

Response: The comment does not appear to refer to secondary and tertiary recycled water criteria, but secondary and tertiary wastewater treatment standards. Secondary and tertiary wastewater treatment standards, as they apply to wastewater treatment plants, are different than the California Department of Public Health's (CDPH) secondary and tertiary recycled water criteria standards. We understand there is a significant difference in the quality of secondary versus tertiary wastewater treatment standards. However, these standards are not specified or required in the CDPH recycled water criteria, which are established in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10.

The secondary and tertiary recycled water criteria established in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10 only include standards for total coliform bacteria and filtration, established primarily for the protection of human health, not water quality. The CDPH did not establish standards for other pollutants that are typically present in domestic wastewater which can potentially have an adverse effect on receiving water quality, such as suspended and dissolved solids, nutrients, and heavy metals, among others. Therefore, recycled water only treated to secondary and tertiary recycled water criteria may contain several pollutants that can adversely affect the quality of waters of the state.

The standards in California Code of Regulations Title 22 sections 60310(a) through (j) specify the conditions and areas that secondary and tertiary recycled water may be used. Waiver condition 7.I.A.4 requires that discharges from recycled water projects comply with the conditions of California Code of Regulations Title 22 sections 60310(a) through (j). Therefore, Conditional Waiver No. 7 requires discharges of secondary and tertiary recycled water to be consistent with California Code of Regulations Title 22 sections 60310(a) through (j), which do not treat tertiary and secondary recycled water discharges and users identically.

Comment 7.7.
(WateReuse Association - California Section)
It would be premature to adopt a waiver for recycled water projects at this time. The State Water Board is set to release a statewide policy later this month that is also designed to facilitate the permitting of recycled water projects.

Response: The State Water Board's statewide policy will be for the *permitting* of recycled water projects. Conditional Waiver No. 7 would be a temporary waiver that would allow a recycled water agency to supply and distribute and allow end users to discharge recycled water until a permanent Master Reclamation Permit and/or WDRs are issued.

When the State Water Board's statewide policy is adopted, the *permitting* of permanent recycled water projects will be consistent with the policy.

Comment 7.8.
(Irrigation and Turfgrass Services, Synergy Golf Course Management, Lomas Santa Fe Country Club, City of San Diego Water Department)
The proposed Waiver Program should be consistent with the recommendations of the State Water Resources Board in relation to the regulatory management of incidental runoff of recycled water as described in the memorandum addressed to Regional Board Executive Officers and dated February 24, 2004.

Response: We are aware of the memorandum regarding incidental runoff of recycled water issued by the State Water Board. The State Water Board memorandum, dated February 24, 2004, was issued as *guidance* for the regulatory *management* of incidental runoff from *intended use areas* that are regulated under water reclamation requirements.

The memorandum recognizes that incidental runoff cannot be completely prevented and provides recommendations on the appropriate responses or actions that a Regional Water Board may take.

The memorandum also provides suggested language to include in water reclamation requirements (WRRs) issued to recycled water users. There are no WDRs, WRRs, or Master Reclamation Permits in the San Diego Region that currently include such language. Until the State Water Board releases their final statewide policy for permitting recycled water projects, there are no plans to include such language in the WDRs, WRRs, or Master Reclamation Permits.

However, the San Diego Water Board generally follows the recommendations of the memorandum when determining the appropriate response to discharges of incidental runoff of recycled water. So, the San Diego Water Board is consistent with the recommendations in the memorandum issued by the State Water Board.

Comment 7.9.
(San Diego County Water Authority, Padre Dam Municipal Water District, Helix Water District)
California is currently experiencing the driest year on record. In addition, there are substantial threats in the operation of the State Water Project because of conditions in the Bay-Delta. The San Diego County Water Authority has adopted a Drought Management Plan, and may be required to implement extraordinary measures to ensure adequate water supplies for the region. Similarly, the Water Authority's member agencies may be required to implement local water development programs within their respective territories. Therefore, we Water Authority staff recommends that the Basin Plan Amendment include a provision that would allow the Regional Board to grant, in an expedited manner, discretionary waivers related to development of local supplies in response to drought conditions.

> **Response**: Development of a waiver for discharges of recycled water during drought conditions is not within the current scope of this Basin Plan amendment. However, a separate general waiver may be developed by the San Diego Water Board for consideration and adoption subsequent to this Basin Plan amendment. The San Diego Water Board staff will continue to work with you to further investigate your proposed waiver

Comment 7.10
(Maderas Country Club)
I appreciate that clarifying language will be added to the resolution.

I am not sure however, that doing so will remove the resolution provisions that will discourage, if not make it impossible, to introduce recycled water into a golf club that currently does not use recycled water. For example, no recycled water and/or treatment plant currently services the north county/Poway area, so if I understand it correctly, no master reclamation permit would be issued. That said, if I want to use recycled water in the future I will have to either build my own plant and/or create/build a reclamation system of some sort. As this point, the provisions of the TR would make it nearly impossible to comply with the costs to separate water types and report the readings.

Is my thinking correct relative to how the TR applies to new recycled water opportunities versus current recycled water managed under a master reclamation permit issued by a recycle agency?

> **Response**: Recycled water may only include sources that contain domestic waste, whole or in part. If you plan to reclaim domestic wastewater for use as recycled water at your facility, you will have to submit a RoWD to the San Diego Water Board for a Master Reclamation Permit and/or WDRs. The proposed conditional waiver was intended to allow discharges of recycled water from permanent recycled water projects to begin before the Master Reclamation Permit and/or WDRs were issued.

If you only plan on reclaiming irrigation water for reuse at your facility, this conditional waiver would not be applicable or available for such a project, because that would not be a discharge of recycled water as defined above. This type of discharge may be eligible for one of the other conditional waivers included in this Basin Plan amendment, or would likely require the submission of a RoWD to the San Diego Water Board to determine if an individual conditional waiver or regulation under WDRs is more appropriate.

Comment 7.11.
(Carlsbad Municipal Water District)
Waiver Condition 7.II.A – Specific Waiver Conditions for Short-term Recycled Water Projects would cover construction use of recycled water almost exclusively. We have concerns about the specifics of the filing of the Notice of Intent.

a. *What would the time line be to complete all aspects and receive approval to use recycled water?*

Response: Before responding to your question, please review the revisions to the waiver conditions in 7.II.A below:

7.II.A. Specific Waiver Conditions for Short-term Recycled Water Projects

1. The ~~O~~operator of a short-term project proposing to discharge recycled water must file a Notice of Intent containing information about the operator, location of the project, source of the recycled water, planned period of and frequency of discharge of recycled water, and the management measures (MMs) and/or best management practices (BMPs) or other measures that will be taken to eliminate or minimize the discharge of pollutants that might affect surface water and groundwater quality.
2. The Notice of Intent must include ~~written notification from the local health department and/or DHS~~ a letter from the permitted recycled water agency supplying the recycled water stating that the project will comply with recycled water regulations in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10. The letter shall also specify any monitoring and/or reporting required by the recycled water agency to demonstrate compliance with California Code of Regulations Title 22, Division 4, Chapter 3, Reclamation Criteria, Articles 2, 3, 4, 5, and 5.1.

~~2~~3. Sufficient information demonstrating that the operator will comply ~~compliance~~ with waiver conditions and applicable recycled water regulations must be submitted before the discharge may begin. ~~The Notice of Intent is valid for 365 days, or 1 year.~~

~~3~~4. The Notice of Intent is valid for 365 days after the submittal of a complete Notice of Intent. A new Notice of Intent must be filed with the San Diego Water Board if the short-term project will exceed~~s 1 year~~ 365 days. A new Notice of Intent must be received by the San Diego Water Board at least 60 days prior to the expiration of the previous Notice of Intent. If no new Notice of Intent is received 60 days prior to the expiration of the previous Notice of

Intent, the short-term recycled ~~waste~~water project must cease operation 365 days after a complete Notice of Intent has been submitted~~, or 1 year, after the beginning of the operation~~.

Assuming that operator (end user) of the short-term recycled water project includes a letter from the permitted recycled water agency supplying the recycled water stating that the project will comply with recycled water regulations in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10, and submits sufficient information that the discharge will comply with the waiver conditions in Conditional Waiver No. 7 in their Notice of Intent, the discharge could begin immediately. The amount of time to complete the Notice of Intent and receive the letter from the permitted recycled water agency supplying the recycled water will depend on the operator of the short-term project and the recycled water agency.

b. *Are there costs involved to either the user or the recycled agency?*

Response: There are no fees associated with Conditional Waiver No. 7.

c. *The construction company has a SWPP in place to address run-off concerns. Could this be considered adequate to address the issue?*

Response: We assume SWPP refers to a Storm Water Pollution Prevention Plan. If the measures in the SWPPP can adequately control the discharges of recycled water to land and comply with the waiver conditions in Conditional Waiver No. 7, the SWPPP may be adequate. A copy of the SWPPP should be submitted with the Notice of Intent.

Comment 7.12
(Hatch & Parent/American Golf)
The various golf industry members and the recycled water suppliers have discussed language we would both be comfortable with in regards to Section 7 of the General Waivers - Recycled Water to Land.

We strongly urge you review our proposal and consider that the language change we are offering will permit others not subject to a Master Reclamation Permit, a WDR or Water Reclamation Requirements to employ the General Waiver as necessary and will certainly accomplish the Board's overall purpose of protecting water resources. Acceptance of our compromise language will certainly prevent delay in the adoption of the General Waivers, will avoid time consuming and costly challenges and will meet the expectations of the Board as expressed by them in the last hearing.

a. *Add to the introduction of Conditional Waiver No. 7, "This waiver applies only to waiver applicants and does not apply to projects and users subject to rules and regulations established by master water reclamation permit holders, as required by Water Code §13523.1, or otherwise regulated under waste discharge requirements*

or water reclamation requirements per Water Code Section 13260 et. seq. and 13520 et. seq. respectively."

Response: We have clarified that Conditional Waiver No. 7 is available and applicable only to recycled water projects that are not subject to the rules and regulations established by master reclamation permits and/or WDRs. Please see the response to comment 7.1.c for revisions to the introduction for Conditional Waiver No. 7.

b. *Revise waiver condition 7.I.A.1 to "Recycled water cannot be discharged directly to any surface waters of the state. Best management practices shall be followed to minimize indirect discharges to waters of the state."*

Response: Please see the response to comment 7.1.b for revisions to waiver conditions 7.I.A.1.

c. *Revise waiver condition 7.I.A.2 to "Recycled water discharged to land must not significantly degrade the quality of underlying groundwater. Beneficial use of recycled water for irrigation at no more than 100 percent of reference evapotranspiration will not degrade the groundwater.* [11]"

Response: We disagree with the statement that "beneficial use of recycled water for irrigation at no more than 100 percent of reference evapotranspiration *will not degrade* [emphasis added] groundwater." Recycled water contains dissolved solids (i.e., salts) that can accumulate in the soil. Recycled water that is used for irrigation in areas where pesticides and fertilizers are applied to the soil can leach these pollutants into the soil, where they may accumulate. Precipitation from a storm event will flush those accumulated pollutants into groundwater and/or surface waters, which may adversely affect and degrade the quality of waters of the state. Therefore, we did not make this revision.

Please see responses to comments 7.1.b and 7.1.c for revisions to the introduction to Conditional Waiver No. 7 and waiver condition 7.I.A.2.

Comment 7.13.
(SDCDEH Land and Water Quality Division)
Specific to the Waiver Conditions for Short-term Recycled Water Projects 7.II.A:

1. Operator must file a Notice of Intent containing information about the operator, location, planned period of and frequency of discharge, and measures that will be taken to eliminate or minimize the discharge of pollutants that might affect surface water and groundwater quality. The Notice of Intent must include written notification from the local health department and/or DHS that the project will

[11] At 100 percent of the reference evapotranspiration, the plants will take up all of the water and none of it will reach the groundwater.

comply with recycled water regulations in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10.

Comment: DEH requests that DEH not be the provider of letters of compliance to the RWQCB for short-term Recycled Water Projects. DEH will continue to provide outreach and education on the approved uses and procedures for short-term recycled water uses as outlined in the County of San Diego's current Recycled Water Plan Check and Inspection Manual.

Response: We have revised this waiver condition to require the operator of a short-term recycled water project to obtain a letter from the permitted recycled water agency supplying the recycled water, not the local health department or CDPH. Please see the response to comment 7.11.a for revisions.

Comment 7.14.
(California Department of Public Health)
According to the Memorandum of Agreement with the California Department of Health Services, now the California Department of Public Health (CDPH), the State Water Board will not waive reclamation requirements nor propose a waiver of reclamation requirements for any proposed use of reclaimed water without consultation with the CDPH.[12]

The consultation with the CDPH brought up several concerns about granting waivers to permanent recycled water projects. The primary concern raised was the enforceability of a waiver compared to WDRs. Other concerns brought up by the CDPH included whether the waiver conditions would require CDPH approval, monitoring and reporting, and time frame limitations.

Response: According to Water Code section 13350(a)(2), any person, in violation of any waste discharge requirement, *waiver condition*, certification, or other order or prohibition issued, reissued, or amended by a Regional Water Board or State Water Board, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state shall be liable civilly. Therefore, the Water Code provides the legal authority for the conditions in a waiver to be enforced to the same extent as the requirements in WDRs.

Based on the concerns raised by the CDPH, the waiver conditions in 7.II.B have been revised as follows:

7.II.B. Specific Waiver Conditions for Permanent Recycled Water Projects

1. ~~Operator~~ A recycled water agency proposing to supply and/or distribute recycled water through permanently installed facilities or structures before

[12] Memorandum of Agreement between the Department of Health Services and the State Water Resources Control Board on Use of Reclaimed Water, dated January 1996.

receiving WDRs must file a Report of Waste Discharge (RoWD) pursuant to Water Code sections 13260 and 13522.5 containing ~~enough~~ the following:

a) Sufficient information for the San Diego Water Board to determine that the project will ~~comply~~ be consistent with the Water Quality Control Plan for the San Diego Basin and any State Water Resources Control Board recycled water policies, and will comply with all applicable recycled ~~waste~~water regulations.

b) A letter from the California Department of Public Health (CDPH) stating ~~The RoWD must include written notification from the local health department and/or DHS~~ that the project will comply with recycled water regulations in California Code of Regulations Title 22, Division 4, Chapter 3, Articles 1 through 10. The letter shall also specify any provisions, monitoring, and/or reporting required by the CDPH to demonstrate compliance with California Code of Regulations Title 22, Division 4, Chapter 3, Reclamation Criteria, Articles 2, 3, 4, 5, and 5.1.

c) A list of recycled water end users that will be regulated by the recycled water agency, and the proposed monitoring and reporting program the recycled water agency will implement to demonstrate that the end users are complying with the waiver conditions and applicable recycled water regulations.

2. The recycled water agency must submit ~~S~~sufficient information demonstrating ~~compliance~~ that the recycled water agency and its end users will comply with waiver conditions and applicable recycled water regulations ~~must be submitted~~ before the discharge may begin.
3. The conditional waiver issued to the recycled water agency is valid for 365 days after the submittal of a complete RoWD, or until WDRs are adopted for the project, whichever occurs first. ~~The conditional waiver of WDRs for the permanent recycled water project will remain in effect until the San Diego Water Board can adopt permanent WDRs for the project.~~ The San Diego Water Board will adopt WDRs at the earliest possible opportunity~~, and in accordance with San Diego Water Board priorities~~. If the WDRs cannot be adopted within 365 days after the completed RoWD has been submitted, the recycled water agency must request an extension of the conditional waiver at least 60 days prior to the expiration of the previous conditional waiver. If no request for an extension is received 60 days prior to the expiration of the previous conditional waiver, the permanent recycled water project must cease the discharge of recycled water 365 days after the completed RoWD was submitted.
4. If a recycled water agency that obtains a waiver in accordance with the waiver conditions in 7.II.B proposes to significantly add to or modify the treatment process (e.g., change the disinfection or filtration processes), then the discharger shall submit a new RoWD containing the information listed in 7.II.B.1 above.

~~4. The operator must submit technical and/or monitoring program reports as directed by the San Diego Water Board, until permanent WDRs are issued.~~

Revised waiver condition 7.II.B.1.b allows the CDPH to determine if a proposed discharge of recycled water from a permanent recycled water project would be protective of public health. Waiver condition 7.II.B.1.b also allows the CDPH to included provisions, monitoring, and/or reporting requirements in their letter, which should be included as part of the recycled water agency's proposed monitoring and reporting program required in waiver condition 7.II.B.1.c.

For any project that discharges recycled water that is not in compliance with Conditional Waiver No. 7, and is not authorized under WDRs, the discharge is in violation of the Basin Plan and Water Code. Any discharge that is in violation of the Basin Plan and Water Code is subject to enforcement action by the San Diego Water Board. Therefore, the revisions to the waiver conditions in 7.II.B make the waiver consistent with the requirements of CDPH if the San Diego Water Board issues a waiver for discharges from a permanent recycled water project.

Comments on Conditional Waiver No. 8 – Discharges of Solid Wastes to Land

The following persons submitted comments pertaining to Conditional Waiver No. 8:

- Site Assessment and Mitigation Technical Work Group (SAMTWG)
- San Diego County Department of Environmental Health (SDCDEH)
  Site Assessment and Mitigation Program

Comment 8.1.
(SAMTWG)
The Waiver is designed to allow the off-site export and reuse of inert soils from known contaminated sites. This Waiver is not designed to establish clean up levels for soil remaining on-site. However, the Technical Work Group is concerned that this issue is not clarified in either the Waiver itself or Appendix B providing background information about the Waiver.

The Technical Work Group proposes that a footnote "f" be added below Table I, and a footnote "g" be added below Table II of the Waiver, which states, "These values are not intended to provide clean up levels for soil remaining on-site. Such values should be established based on the contaminants of concern, the site use, and in conjunction with the regulatory agency providing oversight for the remediation effort." We recommend that these footnotes also be added beneath the tables in Appendix B.

> **Response**: The Technical Report and appendices and Tentative Resolution No. R9-2007-0104 and draft Basin Plan amendment were revised as recommended. This will make explicit the fact that the Tier 1 and Tier 2 soil screening level concentrations do not constitute "clean up levels for soil".

Comment 8.2.
(SAMTWG)
Section 1.a) of the Waiver states that for all waste soils characterized as inert (Tier 1 or Tier 2), the following conditions apply: Inert waste soils from known contaminated sites cannot be transported off site and discharged/disposed/reused directly or indirectly to any surface waters of the state (including ephemeral streams and vernal pools). (See Waiver, p. 61; Appendix B-16.)

The Technical Work Group believes that this restriction applies to all soil exported from a site and imported to another site, whether or not the export site was a site that contained some contamination. Given that this restriction, as well as others not included in the Waiver, applies regardless of the contamination, we believe it should be removed and that it is best for all restrictions that apply to soil generally remain the responsibility of the individual placing the soil.

> **Response**: Although the above is a true statement, for the same reason given in response to comment 8.1 (explicitly stating that the soil values are not soil clean up

levels), the waiver conditions should explicitly state that soil reused off-site cannot be placed in such a manner as to be discharged into surface waters.

Comment 8.3.
(SAMTWG)
Section 1.i) iv)(B) states that samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents: Total petroleum hydrocarbons (by USEPA Method 8015) (full range if export site includes oil or fuel spill or release investigation or remediation.) (See Waiver, p. 63; see also Appendix B-17.)

The Technical Work Group recommends that this language be changed to the following: Total petroleum hydrocarbons (by USEPA Method 8015) (full range if export site includes oil or fuel as a contaminant of concern.) Additionally, on Appendix age B-17, please remove the word "recoverable" from this sentence.

Response: We have revised waiver condition 8.II.F.1.i) iv) (B) (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 8 in Appendix C as well as the appropriate sections of the Technical Report and Appendix B) as follows:

8.II.F. Specific Waiver Conditions for the Discharge/Reuse of Inert Soils and Materials from Contaminated Sites

1. For ***all waste soils characterized as inert (Tier 1 or Tier 2)***, the following conditions apply:
   i) Waste soils from a site with a known or discovered release must be characterized and certified as inert in order for the soil to be reused off site. Characterization and certification must include the following minimum requirements:
      iv) Samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents:
         (B) Total petroleum hydrocarbons (by USEPA Method 8015 – full scan if export site includes oil or fuel as potential or actual contaminants of concern ~~spill or release investigation or remediation~~)

The word "recoverable" was also removed as recommended from the sentence on page B-17 of Appendix B.

Comment 8.4.
(SAMTWG)
Section 1.i) iv)(C) states that samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents: Polychlorinated biphenyls (if export site includes PCB spill or release investigation or remediation). (See Waiver, p. 63; see also Appendix B-17.)

The Technical Work Group recommends that this language be changed to the following: Polychlorinated biphenyls (if export site includes PCB as a contaminant of concern).

Response: We have revised waiver condition 8.II.F.1.i) iv) (C) (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 8 in Appendix C as well as the appropriate sections of the Technical Report and Appendix B) as follows:

8.II.F. Specific Waiver Conditions for the Discharge/Reuse of Inert Soils and Materials from Contaminated Sites

1. For ***all waste soils characterized as inert (Tier 1 or Tier 2)***, the following conditions apply:
   i) Waste soils from a site with a known or discovered release must be characterized and certified as inert in order for the soil to be reused off site. Characterization and certification must include the following minimum requirements:
      iv) Samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents:
         (C) Polychlorinated biphenyls (if export site includes PCBs as potential or actual contaminants of concern ~~spill or release investigation or remediation~~)

Comment 8.5.
(SAMTWG)
Section 1.i) iv)(D) states that that samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents: Volatile and semi-volatile organic compounds (if export site includes organic solvent spill or release investigation or remediation). (See Waiver, p. 63; see also Appendix B-17.)

The Technical Work Group recommends that this language be changed to the following: Volatile and semi-volatile organic compounds (if export site includes volatile and semi-volatile organic compounds as a contaminant of concern).

Response: We have revised waiver condition 8.II.F.1.i) iv) (D) (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 8 in Appendix C as well as the appropriate sections of the Technical Report and Appendix B) as follows:

8.II.F. Specific Waiver Conditions for the Discharge/Reuse of Inert Soils and Materials from Contaminated Sites

1. For ***all waste soils characterized as inert (Tier 1 or Tier 2)***, the following conditions apply:
   i) Waste soils from a site with a known or discovered release must be characterized and certified as inert in order for the soil to be reused off site. Characterization and certification must include the following minimum requirements:

iv) Samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents:
(D) Volatile and semi-volatile organic compounds (if export site includes volatile and semi-volatile organic compounds as potential or actual contaminants of concern ~~solvent spill or release investigation or remediation~~)

Comment 8.6.
(SAMTWG)
Section 1.i) iv)(E) states that samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents: Pesticides (if export site includes a known agricultural area, or pesticide spill or release investigation). (See Waiver, p. 63; see also Appendix B-17.)

The Technical Work Group recommends that this language be changed to the following: Pesticides (if export site includes a known agricultural area or pesticides are a contaminant of concern.

Response: We have revised waiver condition 8.II.F.1.i) iv) (D) (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 8 in Appendix C as well as the appropriate sections of the Technical Report and Appendix B) as follows:

8.II.F. Specific Waiver Conditions for the Discharge/Reuse of Inert Soils and Materials from Contaminated Sites

1. For ***all waste soils characterized as inert (Tier 1 or Tier 2)***, the following conditions apply:
   i) Waste soils from a site with a known or discovered release must be characterized and certified as inert in order for the soil to be reused off site. Characterization and certification must include the following minimum requirements:
      iv) Samples must be analyzed by a state-certified analytical laboratory using USEPA approved analytical methods for the following constituents:
      (E) Pesticides (if export site includes a known agricultural area, or pesticides as potential or actual contaminants of concern ~~solvent spill or release investigation or remediation~~)

Comment 8.7.
(SAMTWG)
The last sentence of footnote 28 on page 63 of the Waiver reads, “The appropriate number of samples is the least number of samples required to generate a sufficiently precise estimate of the true mean concentration of a chemical contaminant of a waste.”

The Technical Work Group recommends that the phrase “a sufficiently precise estimate” be changed to “a sufficiently representative estimate.” Precision refers to how closely

individual measurements agree with each other. In general, the more precision, the greater the number of significant figures. Accuracy refers to how closely a measured value agrees with the correct value. Accuracy is significant in this instance. Additionally, these data will be used to determine the 90% UCL, not just the mean.

Response: The Technical Report and appendices and Tentative Resolution No. R9-2007-0104 and draft Basin Plan amendment were revised as recommended.

Comment 8.8.
(SAMTWG)
Section 2.c) of the Waiver states, "An Inert Waste Certification must be filed with the San Diego Water Board by the owner/operator of the export site within 30 days following export and placement of the soil. (See Waiver, p. 65; Appendix B-19.)

The Technical Work Group recommends that this language be changed to read as, "An Inert Waste Certification must be filed with the San Diego Water Board by the owner/operator of the export site within 30 days following completion of export activities." For soils reused under Tier I of the Waiver, which provides for unrestricted reuse of the inert waste soil within the terms of the Waiver, it is unlikely that the owner/operator will know where and when the soil is finally placed.

Response: The Technical Report and appendices and Tentative Resolution No. R9-2007-0104 and draft Basin Plan amendment were revised as recommended.

Comment 8.9.
(SAMTWG)
Sections 2.c) vi) and 3.c) v) of the Waiver state that "The Inert Waste Certification must include the following information: Laboratory analytical data, including number of samples collected, USEPA approved analytical methods used, maximum reported concentrations of Title 22 metals for the contaminants of concern, number of samples exceeding Tier 1 Soil Screening Levels, and name of certified environmental analytical laboratory that performed the analysis. (See Waiver, p. 65, 67; Appendix B-19, B-21.)

The Technical Work Group recommends that this language be changed to read as follows: Laboratory analytical data, including number of samples collected, EPA approved analytical methods used, the 90% UCL of the data for the contaminants of concern, and name of certified environmental analytical laboratory that performed the analysis.

Response: We have revised waiver conditions 8.II.F.2.c) vi) and 8.II.F.3.c) v) as follows:

Laboratory analytical data, including number of samples collected, USEPA approved analytical methods used, ~~maximum reported concentrations of Title 22 metals for the contaminants of concern~~90 percent upper confidence limit (UCL) of the data,

~~number of samples exceeding Tier 2 Soil Screening Levels~~, and name of certified analytical laboratory performing analysis.

In addition, the columns labeled "Maximum Detected Concentration," "Number of Samples Exceeding Tier 1 SSL," and "Number of Samples Exceeding Tier 2 SSL" have been removed from section V of the Inert Waste Certification form. Additionally, the notes at the bottom of section V of the Inert Waste Certification form were revised as follows:

Use additional pages if there are additional contaminants of concern. Attach copy of laboratory analytical report ~~if required~~.
* If molybdenum, silver, and/or zinc exceed the Tier 2 SSLs, then the waiver does not apply and a Report of Waste Discharge (RoWD) must be submitted to the San Diego Water Board.

Comment 8.10.
(SAMTWG)
The first paragraph of Appendix page B-14 states, in part, that "However, background concentrations in areas that have been impacted by anthropogenic activities typically have higher background concentrations. Therefore, for reuse of inert waste soils for anthropogenic development purposes, a higher background concentration could be considered representative. A value of one half of the maximum background concentration from the Kearny Report could be considered representative of background soil concentrations in anthropogenic developed areas."

The Technical Work Group recommends that this language be changed to read as follows: However, for reuse of inert waste soils for commercial/industrial development purposes, a higher background concentration could be considered representative. Hence, a value of one half of the maximum background concentration from the Kearny Report is used in the Tier 2 table.

Response: We have revised the language in Appendix B as follows:

However, background concentrations in areas that have been impacted by anthropogenic activities typically have higher background concentrations. ~~Therefore, for reuse of inert waste soils for anthropogenic development purposes, a higher background concentration could be considered representative. A~~ Hence, a value of one-half of the maximum background concentration from the Kearny Report was used in selecting the Tier 2 Soil Screening Levels ~~could be considered representative of background soil concentrations in anthropogenic developed areas~~.

Comment 8.11.
(SDCDEH Site Assessment and Mitigation Program)
Throughout the document it refers to contamination associated with "unauthorized releases". Since the term "unauthorized releases" in statute is a release from an Underground Storage Tank this term may not be applicable to the types of releases or

impacts that the policy was originally designed for. We recommend using the term "release" instead.

Response: Although it is a correct statement that the term "unauthorized releases" in statute is a release from an Underground Storage Tank (UST), the term is not exclusive to UST regulations. Both State Water Board Resolution No. 92-49, "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304" and the Water Code, refer to both "unauthorized releases" and "unauthorized discharges". Therefore, this revision will not be made.

Comment 8.12.
(SDCDEH Site Assessment and Mitigation Program)
The document does not go into enforcement of the Conditional Waivers of Waste Discharge Requirements when they are not followed. On a site that DEH has directed the RP to follow the process and they do not, it is our assumption that the RWQCB will be the agency that will do the follow-up enforcement.

Response: Correct. However, we are relying upon the dischargers to comply with the waiver conditions, and the SDCDEH and/or members of the public to inform us if a discharger is violating any waiver conditions.

Conditional Waiver No. 8 allows for the discharge of certain wastes under certain conditions without regulation under WDRs. If a responsible party chooses not to comply with the conditions of Conditional Waiver No. 8, then they would be in violation of the Porter-Cologne Water Quality Control Act (Water Code) for an unauthorized discharge of waste and the San Diego Water Board could enforce as we would any other violation of the Water Code.

Therefore, the SDCDEH or a member of the public must inform the San Diego Water Board that a discharger has violated one or more waiver conditions before action may be taken. Once the San Diego Water Board is made aware of a violation of waiver conditions, we will be able to investigate the violation and take enforcement action as needed.

Comment 8.13.
(SDCDEH Site Assessment and Mitigation Program)
It is unclear, within the Document, if the Waiver of Waste Discharge using Tier 1 values and/or Tier 2 values will require each application to be re-evaluated every 5 years. Or if it is only the Conditional Waivers of Waste Discharge Requirement that are re-evaluated every 5 years.

Based on the presentation we believe the 5-year re-evaluated would only be for the Conditional Waivers of Waste Discharge Requirement.

Response: Water Code section 13269 requires that the waivers and waiver conditions be reviewed and re-evaluated every five years. If the conditions of a waiver are revised after 5 years, any discharge with a waiver would have to comply with the revised conditions to continue being eligible for a waiver for another 5 years.

If the discharge cannot comply with the revised conditions, the discharger must submit a RoWD and apply for individual WDRs or an individual waiver. If a waiver for a specific type of discharge is allowed to expire or terminated, a discharger would be required to submit a RoWD and apply for WDRs or an individual waiver.

Discharges that have been completed and no longer occurring would not be subject to the waiver conditions that are revised in subsequent iterations of the conditional waivers.

Comments on Conditional Waiver No. 10 – Discharges of Emergency/Disaster Related Wastes

The following persons submitted comments pertaining to Conditional Waiver No. 10:

- Sierra Club San Diego Chapter

Comment 10.1.
(Sierra Club San Diego Chapter)
7.10 Proposed Conditional Waiver No. 10 – Discharges of Emergency/Disaster Related Wastes
We recommend that the Board inform the agencies involved in emergency response planning be informed of the waiver conditions. We also recommend that waiver conditions address the disposal of medical wastes and unused pharmaceuticals from field emergency medical operations and disposal of wastes from field emergency shelters.

> **Response**: After the Basin Plan amendment is adopted, information about the waiver and waiver conditions for emergency/disaster related wastes will be posted on the San Diego Water Board website available for emergency response agencies to review.
>
> Development of a waiver for disposal of medical wastes and unused pharmaceuticals from field emergency medical operations and disposal of wastes from field emergency shelters is not within the current scope of this Basin Plan amendment. We do not intend to develop a waiver for the disposal of medical wastes and unused pharmaceuticals from field emergency medical operations and disposal of wastes from field emergency shelters in this Basin Plan amendment. A separate general waiver may be developed for consideration and adoption subsequent to this Basin Plan amendment. Or, we may consider it during the next period of review for the waivers.

Comments on Conditional Waiver No. 11 – Aerially Discharged Wastes Over Land

The following persons submitted comments pertaining to Conditional Waiver No. 11:

- Surfrider Foundation

Comment 11.1.
(Surfrider Foundation)
The waiver for fireworks should clearly state that it only applies to discharges of fireworks over land and not over water.

> **Response**: Conditional Waiver No. 11 (in Attachment A to Tentative Resolution No. R9-2007-0104, Conditional Waiver No. 11 in Appendix C as well as the appropriate sections of the Technical Report) was revised to clearly state that the waiver is only for aerial discharges of wastes over land.

General Comments on the Draft Technical Report, and Tentative Resolution No. R9-2007-0104 and Draft Basin Plan Amendment

The following persons submitted general comments pertaining to the draft Technical Report, and Tentative Resolution No. R9-2007-0104 and the draft Basin Plan amendment:

- Sierra Club San Diego Chapter
- San Diego Coastkeeper
- San Diego County Water Authority
- City of San Diego

Comment 12.1.
(Sierra Club San Diego Chapter)
Need for acronyms and glossary. The Technical Report should include a table of acronyms and glossary. The amendment to the Basin Plan should include updates to its Glossary and Acronyms. These additions are important in providing user friendly regulations not only for education element in the agricultural enrollment process but also for the interested members of the public at large.

Response: We have added a list of acronyms to the Technical Report.

Comment 12.2.
(Sierra Club San Diego Chapter)
Page 18, correct typographical error in 1st paragraph, last sentence; change “treat” to “threat”.

Response: The Technical Report was revised as necessary to correct typographical errors.

Comment 12.3.
(Sierra Club San Diego Chapter)
Additional UIC Program Injection Wells. In addition to the subclass of Domestic Wastewater Disposal Wells, Drainage Wells is a subclass which includes five types:

- Agricultural
- Storm water
- Improved sinkholes to receive storm water runoff in karst topographic area
- Industrial drainage wells – wells that are located in industrial areas built to receive storm water but susceptible to leaks, spills or other chemical discharges
- Special drainage wells to dispose water from sources other than direct precipitation such as swimming pools, landslide control, portable water tank overflow/drainage

With the exception of improved sinkhole drainage wells, the rest could be used for wastewater disposal in this Region. These drainage wells have not been addressed in

the Technical Report. Is it correct to assume that these would require the discharger to submit RoWD and comply with the WDR?

Response: Correct. Dischargers that propose to dispose wastewater in these types of drainage wells must submit a RoWD and obtain WDRs. There is no waiver available or proposed for these types of discharge.

Comment 12.4.
(Sierra Club San Diego Chapter)
Appendix D
Environmental Check List
Page D-7. In Section D.3 revise the last sentence in Proper Waste Management to read: *Proper waste management includes complying with local ordinances, local, state, and federal regulations and obtaining any required approvals, permits, certifications, and/or licenses from authorized agencies*. The prior comment explained that the EPA UIC Control Program regulates the Class V Injection Wells which includes large scale septic systems.

Response: Appendix D was revised as recommended.

Comment 12.5.
(San Diego Coastkeeper)
While the proposed WDR waiver policy is a vast improvement over the one currently in place, Coastkeeper would like to voice a few brief concerns with the program. The first pertains to the waiver of WDRs for types of discharges that are listed as source of impairment of 303(d) listed water bodies. While increasing the conditional requirements for the waiver is an improvement over the existing policy, Coastkeeper does not feel that this is adequate or permissible under the Porter-Cologne Act. Since the Regional Board has identified that these waterways are impaired or threatened discharges subject to a waiver, it is a manifest failure of the Regional Board's duties under the Porter Cologne Act not to regulate these discharges by WDRs and to have instead issued WDR waivers for these discharges. Based on Water Code section 13269(a)(1), WDR waivers, which do not contain the necessary enforcement tools found for WDRs, are inconsistent with the Basin Plan for such discharges. In addition, waivers for discharges causing or contributing to waters being listed as impaired are not in the public interest, thus also precluded by Water Code section 13269(a)(1).

Response: If discharges comply with waiver conditions, then the discharges are unlikely to contribute to a water quality impairment. The weakness in the existing conditional waivers that we have corrected in this Basin Plan amendment was the lack of enrollment requirements, and the lack of specificity in the waiver conditions, making the waivers difficult to enforce.

With our limited resources, we must focus our efforts on discharges that are significant threats to water quality. Because of the time and resource requirements on the part of the San Diego Water Board, these low threat discharges that are

eligible for conditional waivers would further dilute our ability to regulate discharges that pose significant threats to water quality.

Therefore, issuing waivers for the types of discharge proposed in the Basin Plan amendment is not inconsistent with the Basin Plan or Water Code section 13269(a)(1).

Comment 12.6.
(San Diego Coastkeeper)
Second, Coastkeeper requests that the Regional Board gather and analyze information about the extent of the adverse surface and/or groundwater quality impacts caused or exacerbated by the discharges. To the best of Coastkeeper's knowledge, the Regional Board has failed to gather, analyze and make publicly available information about the extent of the adverse surface and/or groundwater quality impacts caused or exacerbated by the discharges covered under conditional waivers, despite having a duty to ensure monitoring of state water quality, including polluted runoff discharges to the extent they are being addressed by WDRs or waivers, and make monitoring results publicly available. See CWA section 305(b), Cal. Water Code section 13269(a)(2).

Response: Water Code section 13269(a)(3) provides that the San Diego Water Board may waive the monitoring requirements of section 13269(a)(2) for discharges it determines do not pose a significant threat to water quality. With the exception of Conditional Waiver No. 4, none of the other types of discharge included in the other conditional waivers require monitoring because they are not expected to pose a threat to water quality if they comply with the waiver conditions.

The types of discharge that have been issued waivers are believed to be intrinsically benign and should not pose a significant threat to water quality under specific conditions. With regard to groundwater, the state's Groundwater Ambient Monitoring and Assessment Program identified pollutants in excess of maximum contaminant levels in only 2 of 58 public water supply wells sampled.[13] The detected pollutants were trichloroethylene (TCE), tetrachloroethylene (PCE), and methyl tertiary butyl alcohol (MTBE). These contaminants most likely orginiated from chemical spills rather than from discharges made pursuant to conditional waivers of WDRs Therefore, if the discharges are in compliance with waiver conditions, there should be no adverse effects on water quality.

In the event the San Diego Water Board suspects or is informed that a specific discharge covered under a waiver may pose a threat to water quality, the San Diego Water Board can require the discharger to submit technical and/or monitoring reports to show that the discharge is in compliance with the waiver conditions and is not a threat to water quality. If the data from these technical and/or monitoring reports indicate compliance with waiver conditions is not sufficiently protective of

[13] California Groundwater Ambient Monitoring and Assessment Program: Groundwater quality Data in the San diego Drainage Hydrogeologic Province, 2004. Data Series 129. 91p. (USGS, 2005)

water quality, the waiver can be terminated and we could begin regulating those types of discharge with WDRs.

Comment 12.7.
(San Diego Coastkeeper)
Coastkeeper requests that monitoring be included as a condition of any WDR waiver, and not made optional. If the Regional Board's analysis concludes that these discharges could affect the quality of the waters of the state, (see Cal. Water Code section 13260(a)(1)) within the Regional Board's jurisdiction, Coastkeeper further requests that the Regional Board issue tentative WDRs that appropriately regulate such discharges. Should the Regional Board find there are adverse impacts associated with these discharge, Coastkeeper again requests the Regional Board consider whether amendments to the Basin Plan to include prohibitions or further conditions on polluted runoff discharges are needed.

Response: Please see responses to comments 12.5 and 12.6.

Comment 12.8.
(San Diego Coastkeeper)
Lastly, we would like to call attention to the Regional Board's failure to regulate marinas under either a WDR or WDR waiver. Marinas are listed as a source of impairment in Region 9, specifically impacting Dana Point Harbor and likely other areas. Marinas continue to cause and contribute to significant and lasting degradation to the waters in this Region, and must by law be regulated under the Porter-Cologne Act. Coastkeeper therefore requests that the Regional Board take immediate action in regulating marinas through WDRs.

Response: The San Diego Water Board is currently in the process of developing a regulatory approach for discharges from marinas. A stakeholder meeting was held on August 13, 2007 for the implementation of the Shelter Island Yacht Basin TMDL. We do not intend to develop a waiver for discharges from marinas in this Basin Plan amendment.

Comment 12.9.
(San Diego County Water Authority)
The proposed Waiver Program is complex and its documentation extensive (over 400 pages). The public review period should be extended to provide all stakeholders a reasonable time frame to accommodate a meaningful review of the proposed regulations.

Response: The public review period began July 6, 2007, and will continue until at least October 10, 2007. The public has been given approximately 3 months to provide comments. This time frame provides the public more than sufficient time to conduct a meaningful review of the proposed conditional waivers.

The draft Tentative Resolution No. R9-2007-0104, draft Basin Plan amendment, and supporting draft Technical Report and appendices were released for public review at least 30 days before the public hearing. The public is allowed to comment on the proposed Basin Plan amendment up until the adoption hearing. Written comments received up to 15 days before the adoption hearing will be provided written responses in a formal response to comments document that will be included with the Technical Report. Written comments received 15 days before the adoption hearing, and comments presented during the adoption hearing will be responded to orally at the adoption hearing.

Comment 12.10.
(City of San Diego)
The Regional Board is poised to adopt a bacteria TMDL that covers most watershed in the region where these conditional waivers will also be granted. Discharges from the facilities with conditional waivers have the potential to create breeding habitat for bacteria in the storm drain system. These facilities could also cause or contribute to other water body segments beneficial use impairments for other pollutants on the 303(d) list.

In the TMDLs for Dissolved Metals in Chollas Creek and Bacti-1 (Beaches and Bays) for the majority of the City, the Regional Board has approved or is about to approve a 20-year timeline for compliance with 10-year interim milestones. Final and interim load reduction required by both TMDLs are extremely rigorous. It is unclear why the Regional Board would require so much more aggressive action by the City than it is requiring for the dischargers subjected to the proposed [Waivers of] Waste Discharge Requirements. All dischargers, public and private, should be held to the same standards by the Regional Board.

At a minimum, the City recommends that the conditional waiver have mandatory monitoring requirements for bacteria and any other 303(d) listed pollutants(s) within the watershed of the activitiy.

Response: Discharges from Municipal Separate Storm Sewer Systems (MS4s) are subject to NPDES regulations and are known to be significant sources of pollutants. Discharges that are eligible for a conditional waiver are not expected to pose a significant threat or have an adverse effect on water quality. The types of discharge that are eligible for a conditional waiver include those that are not subject to federal NPDES regulations, which includes discharges to land and/or groundwater, nonpoint source discharges from agricultural (including crop, orchard, range, and pasture lands) and silvicultural activities, discharges subject to Clean Water Act section 404 permitting requirements, and agricultural irrigation return waters.

The waivers include conditions that a discharge must comply with in order to be eligible for a waiver. In order to be eligible for a conditional waiver, the discharge must not have an adverse effect on the quality of waters of the state. Discharges that have an adverse effect on the quality or beneficial uses of waters of the state

would be out of compliance with the waiver conditions, and thus not consistent with the Basin Plan and the Water Code. The consistency requirement means that a waiver cannot permit dischargers to violate water quality objectives or Basin Plan prohibitions. If a discharge complies with the conditions of a waiver, the discharge of pollutants should be minimized or eliminated.

Under the WDRs for MS4s (NPDES Storm Water Permits), the municipalities are responsible for developing and enforcing ordinances to eliminate discharges of pollutants into their storm drain systems. If a discharge that is supposedly covered under a waiver is discharging pollutants to a storm drain system, the discharge is probably out of compliance with waiver conditions, and the San Diego Water Board may take action in parallel with the municipalities.

The municipalities have the primary responsibility for identifying discharges of pollutants into their storm drain systems. If those discharges are out of compliance with the condition of a waiver and reported to the San Diego Water Board, the San Diego Water Board will take appropriate action. Actions may include deferring enforcement to the municipalities, requiring the discharger to submit a Notice of Intent and comply with the waiver conditions, issuing an enforcement action (e.g., Administrative Civil Liability, Cease and Desist Order, or Cleanup and Abatement Order), or terminating the waiver for the specific discharge and regulating the discharge under individual WDRs.

However, in general, the types of discharge that have been issued waivers are believed to be intrinsically benign and should not pose a significant threat to water quality under specific conditions. Water Code section 13269(a)(3) states that the San Diego Water Board may waive the monitoring requirements of section 13269(a)(2) for discharges it determines do not pose a significant threat to water quality. With the exception of Conditional Waiver No. 4, none of the other types of discharge included in the other conditional waivers require monitoring because they are not expected to pose a threat to water quality if they comply with the waiver conditions. However, most of the waivers include conditions that require dischargers to submit technical and/or monitoring reports when requested by the San Diego Water Board. This condition will allow the San Diego Water Board to collect information about a discharge if it is suspected to be out of compliance with waiver conditions, or a potential threat to water quality.

Conditional Waiver No. 4, as discussed in the response to comment 4.10, was revised to include monitoring and reporting requirements within the next 5-year waiver period. Data collected may be used to identify potential sources of pollutants from agricultural and nursery operations, and will be consistent with the implementation plan in the bacteria TMDL for beaches and creeks.