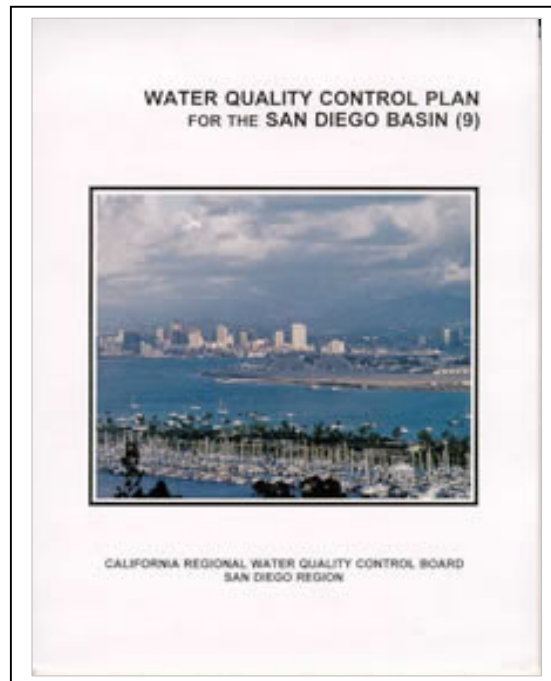


California Regional Water Quality Control Board San Diego Region

Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to Incorporate Authorization for Compliance Time Schedules in National Pollutant Discharge Elimination System Requirements

(Basin Plan Issue No. 6)



Technical Report

November 9, 2005

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Incorporate Authorization for Compliance Time Schedules in National
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Adopted by the
California Regional Water Quality Control Board
San Diego Region
on November 9, 2005

Approved by the
State Water Resources Control Board
on _____
and the
Office of Administrative Law
on _____
and the
United States Environmental Protection Agency
on _____.

Basin Plan Cover Photograph: San Diego Bay Skyline (1989) by Greig Peters

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LIST OF ACRONYMS AND ABBREVIATIONS

Basin Plan	<i>Water Quality Control Plan for the San Diego Basin – Region 9</i>
BIOL	Preservation of Biological Habitats of Special Significance
CCR	California Code of Regulations
CDO	Cease and Desist Order
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
COMM	Commercial and Sport Fishing
CTR	California Toxics Rule
CWA	Clean Water Act
EST	Estuarine Habitat
IND	Industrial Service Supply
MAR	Marine Habitat
MIGR	Migration of Aquatic Organisms
NAV	Navigation
NPDES	National Pollutant Discharge and Elimination System
OAL	Office of Administrative Law
RARE	Rare, Threatened, or Endangered Species
REC1	Water Contact Recreation
REC2	Non-contact Water Recreation
Regional Board	San Diego Regional Water Quality Control Board
San Diego Water Board	San Diego Regional Water Quality Control Board
SHELL	Shellfish Harvesting
SIP	<i>Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California</i>
State Board	State Water Resources Control Board
State Water Board	State Water Resources Control Board
TMDL	Total Maximum Daily Load
USC	United States Code
USEPA	United States Environmental Protection Agency
WDRs	Waste Discharge Requirements
WILD	Wildlife Habitat
WLAs	Waste Load Allocations
WQBELs	Water Quality Based Effluent Limitations
WQC	Water Quality Criteria

EXECUTIVE SUMMARY

The amendment to the *Water Quality Control Plan for the San Diego Basin* (9) (Basin Plan) described in this technical report authorizes compliance time schedules in Waste Discharge Requirements that implement National Pollutant Discharge Elimination System regulations and federal Clean Water Act requirements (NPDES requirements) issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). This Basin Plan amendment (Appendix 1) is needed as a consequence of the 1990 *Star-Kist Caribe* decision in which the United States Environmental Protection Agency (USEPA) stipulated, in part, that compliance time schedules can be included in NPDES permits only if there is explicit authorization in the states' water quality control plans. The San Diego Water Board's Basin Plan does not currently contain an explicit compliance time schedule authorization.

This Basin Plan amendment will expand the regulatory options available to the San Diego Water Board to deal with instances where immediate compliance is not feasible with new or more stringent WQBELs and receiving water limitations under certain circumstances. These circumstances arise when new or more stringent WQBELs and receiving water limitations result from new, revised or newly interpreted water quality objectives, or from new information on the characteristics and effects of the discharge. In these situations, a compliance time schedule could be issued in NPDES requirements if new or modified control measures (e.g., wastewater treatment facilities) must be designed, installed, and put into operation in order for a waste discharge to achieve compliance with the WQBELS or receiving water limitations.

Providing this authorization is a benefit to the San Diego Water Board because issuing a compliance time schedule in NPDES requirements is administratively simpler than issuing an enforcement order. This authorization is a benefit to dischargers because it gives them time to achieve compliance with their NPDES requirements without being in violation of those requirements, and without being subject to mandatory minimum penalties.

Without this amendment, the San Diego Water Board's only option is to issue a compliance time schedule as part of an enforcement order when an existing discharge cannot achieve immediate compliance with WQBELs and/or receiving water limitations. With this Basin Plan amendment, the San Diego Water Board can choose between issuing a compliance time schedule in NPDES requirements or in an enforcement order to compel discharger compliance with new or more stringent WQBELs or receiving water limitations that implement new, revised, or newly interpreted water quality objectives, or that resulted from new information on the characteristics and effects of the discharge.

The amendment authorizes the San Diego Water Board to incorporate compliance time schedules in NPDES requirements to meet new or more stringent WQBELs or receiving water limitations that implement water quality objectives issued, revised, or newly interpreted after November 9, 2005, the planned adoption date of the amendment. The amendment also authorizes compliance time schedules in NPDES requirements to meet new or more stringent WQBELs resulting from new information on the characteristics and effects of a discharge for water quality objectives issued, revised, or newly interpreted after July 1, 1977. The compliance time schedules must be as short as practicable and cannot exceed 5 years in length. The San Diego Water Board may grant an additional extension of up to five years, but only where the

discharger has demonstrated satisfactory progress toward achieving compliance with the applicable WQBELs and receiving water limitations. When a compliance time schedule is proposed to be included in NPDES requirements, the discharger must meet certain conditions. The conditions include achieving compliance with WQBELs and receiving water limitations in the shortest practicable time period, meeting specified interim effluent and receiving water limitations, and not increasing pollutant levels in the discharge (no backsliding).

The San Diego Water Board is the Lead Agency for evaluating the environmental impacts of Basin Plan amendments pursuant to CEQA. The State Water Resources Control Board CEQA implementation regulations require an analysis of the environmental impacts of the reasonably foreseeable methods of compliance with Basin Plan amendments. The only “reasonably foreseeable method of compliance” with a compliance time schedule is for the discharger to achieve compliance with WQBELs and receiving water limitations in accordance with the conditions of the compliance time schedule as described in the preceding paragraph. These conditions are the same whether the compliance time schedule is issued in NPDES requirements, or in an enforcement order.

There are no potentially significant impacts on the environment caused by dischargers achieving compliance with WQBELs or receiving water limitations in accordance with the conditions of compliance time schedule as authorized in this amendment. This is because the provisions of the amendment dictating when a compliance time schedule can be issued in NPDES requirements do not increase the amount of time a discharger will take to meet WQBELs and/or receiving water limitations. Compliance time schedules would only be available when a discharger can demonstrate that immediate compliance is infeasible. The discharger would have to make commitments and show progress toward obtaining compliance with WQBELs and receiving water limitations. In the interim, the discharger will be required to obtain the highest water quality that can reasonably be achieved, while moving towards full compliance. Moreover, no increase in pollutant levels in the discharge associated with the water quality objective would be permitted under a compliance time schedule.

The adoption of this amendment will not result in any additional economic burden for dischargers. Actions taken by the discharger to comply with a compliance time schedule issued in NPDES requirements will be the same actions taken to comply with a time schedule issued in an enforcement order. In fact, the dischargers may realize a net economic benefit if mandatory minimum penalties are avoided because the San Diego Water Board is not required to make a finding of violation as a prerequisite to incorporating compliance time schedules in NPDES requirements.

This Basin Plan amendment meets the “necessity standard” of Government Code section 11353(b). The amendment is necessary because the USEPA has stipulated that compliance time schedules can be included in NPDES permits only if there is explicit authorization in the states’ water quality control plans. The San Diego Water Board’s Basin Plan does not currently contain an explicit compliance time schedule authorization.

I. INTRODUCTION

The amendment to the *Water Quality Control Plan for the San Diego Basin* (9)(Basin Plan) described in this technical report authorizes compliance time schedules¹ in Waste Discharge Requirements that implement National Pollutant Discharge Elimination System regulations and federal Clean Water Act requirements (NPDES requirements)² issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). The Basin Plan amendment language is included in Attachment A to Tentative Resolution No. R9-2005-0238 (Appendix 1). Authorization for compliance time schedules in NPDES requirements was identified as Issue No. 6 on the San Diego Water Board's *2004 Triennial Review Prioritized List of Basin Plan Issues for Investigation from September 2004 to September 2007* (Attachment 1 to Resolution No. R9-2004-0156).

The purpose of this amendment is to provide authorization in the Basin Plan allowing the San Diego Water Board to incorporate compliance time schedules in NPDES requirements in certain instances where immediate compliance with water-quality based effluent limitations (WQBELS)³ or receiving water limitations⁴ is not feasible. Providing this authorization is a benefit to the San Diego Water Board because issuing a compliance time schedule in NPDES requirements is administratively simpler than issuing an enforcement order. This authorization is a benefit to dischargers because it gives them time to achieve compliance with their NPDES requirements without being in violation of those requirements, and without being subject to mandatory minimum penalties.

This Basin Plan amendment is needed as a consequence of the 1990 *Star-Kist Caribe*⁵ decision in which the United States Environmental Protection Agency (USEPA) stipulated, in part, that compliance time schedules can be included in NPDES permits only if there is explicit authorization in the states' water quality control plans. The San Diego Water Board's Basin Plan does not currently contain an explicit compliance time schedule authorization. Of the nine California Regional Water Quality Control Boards, only the San Francisco Bay (Region 2),

¹ The term "schedule of compliance," as defined in the Clean Water Act section 502 means "*a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.*" The term "schedule of compliance" is used interchangeably with the term "compliance time schedule" in this document.

² Pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Act, to avoid the issuance by the United States Environmental Protection Agency of separate and duplicative NPDES permits for discharges in California that would be subject to the Clean Water Act, the State's WDRs for such discharges implement the NPDES regulations and entail enforcement provisions that reflect the penalties imposed by the Clean Water Act for violation of NPDES permits issued by the USEPA. Thus, the State's WDRs that implement federal NPDES regulations (NPDES requirements) serve in *lieu* of NPDES permits.

³ See Clean Water Act section 502(11). Effluent limitation means, "*any restriction established by a state or the (USEPA) Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.*" Water-quality based effluent limitations (WQBELS) are derived from applicable water quality standards (see footnote 6). WQBELS are effluent limitations needed to achieve water quality standards in the receiving water.

⁴ Receiving water limitations are water quality objectives adopted as enforceable limits in both NPDES and non-NPDES requirements.

⁵ The *Star-Kist Caribe* decision is an administrative decision issued by the USEPA Administrator (*In the Matter of Star-Kist Caribe, Inc.*, NPDES APPEAL No. 88-5).

Los Angeles (Region 4), Central Valley (Region 5), and Santa Ana (Region 8) Water Boards have amended their Basin Plans to authorize incorporation of compliance time schedules in NPDES requirements.

Authorization for compliance time schedules in NPDES requirements can be provided in a number of ways, including: a) specific compliance time schedule authorization language in the Basin Plan, as proposed here, b) compliance dates incorporated as part of the water quality standards, and c) compliance dates incorporated in the implementation chapters of the Basin Plan (e.g., in Total Maximum Daily Load (TMDL) implementation plans or statewide plans such as the “*Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*”). In the absence of such explicit authorization, compliance time schedules can only be specified in non-NPDES requirements or enforcement orders.

Both the federal Clean Water Act and the Porter-Cologne Water Quality Control Act recognize compliance time schedules as an integral tool for bringing dischargers into compliance with water quality objectives. Essentially, incorporating compliance time schedules in NPDES requirements (or non-NPDES requirements) is a strategy that can be used to bring dischargers into compliance with new or revised WQBELS or receiving water limitations in a manner calculated to shift the focus from enforcement to achieving compliance, where immediate compliance is otherwise infeasible.

II. NEED FOR COMPLIANCE TIME SCHEDULES

The San Diego Water Board cannot incorporate compliance time schedules in NPDES requirements because there is no explicit authorization to do so in the Basin Plan. This Basin Plan amendment is needed to expand the regulatory options available to the San Diego Water Board to deal with instances where immediate compliance is not feasible with new or more stringent WQBELS and receiving water limitations under certain circumstances as described in this section. Without this amendment, the San Diego Water Board’s only option is to issue a compliance time schedule as part of an enforcement order when an existing discharge cannot achieve immediate compliance with WQBELS and/or receiving water limitations in NPDES requirements. Once this Basin Plan amendment is adopted, the San Diego Water Board can choose between issuing a compliance time schedule in NPDES requirements or in an enforcement order to compel discharger compliance with new or more stringent WQBELS or receiving water limitations that implement revised, or newly interpreted water quality objectives, or that resulted from new information on the characteristics and effects of the discharge.

NPDES requirements are issued for discharges of pollutants from point sources to navigable waters of the United States pursuant to section 13370, of the Porter-Cologne Water Quality Control Act, (codified in Division 7 of the Water Code at section 13000, *et seq.*) in lieu of direct regulation of such discharges under NPDES permits issued by the USEPA. NPDES requirements specify WQBELS and receiving water limitations and other provisions that must be achieved to assure attainment of water quality objectives applicable to the affected receiving waters.

In some cases, the San Diego Water Board may find that immediate compliance with WQBELS or receiving water limitations in NPDES requirements may be infeasible for one of the following reasons:

1. New or modified control measures (e.g., wastewater treatment facilities) must be designed, installed, and put into operation in order for a waste discharge to achieve compliance with WQBELS or receiving water limitations made more stringent because of new, revised or newly interpreted water quality objectives, or because of new information about the characteristics and effects of the discharge.
2. New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures must be designed, installed and put into operation in order for a waste discharge to achieve compliance with WQBELS or receiving water limitations implementing new, revised or newly interpreted water quality objectives.
3. Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge; the changes in the composition of the waste discharge are the cause of the inability to comply with compliance with WQBELS, or receiving water limitations, implementing new, revised or newly interpreted water quality objectives; no alternative water supply is reasonably available to the discharger; and new or modified measures to control the composition of the waste discharge must be designed, installed, and put into operation.

In such situations, consideration of a compliance time schedule is reasonable. In fact, the Clean Water Act recognizes that compliance time schedules are an appropriate tool to be used by regulatory agencies when enabled to do so by authorizing language in water quality control plans [40 CFR 122.47 (Schedules of Compliance) and 131.38 (California Toxics Rule)].

In the past, the San Diego Water Board has issued enforcement orders (e.g. cease and desist orders (CDO) or cleanup and abatement orders) with compliance time schedules specifying the actions that the discharger was required to take to achieve compliance with a specific WQBEL or a receiving water limitation where immediate compliance was infeasible. The enforcement orders were necessarily based on a finding that the discharger was in violation of NPDES requirements. Such a finding may engender a negative perception of the discharger, which may be unwarranted based on the circumstances.

In addition, and likely of more significance to dischargers, the issuance of an enforcement order with a compliance time schedule does not stay NPDES requirements. Water Code section 13385 provides that mandatory minimum penalties be assessed for violations of specified NPDES requirements. Furthermore, the issuance of an enforcement order and time schedule may not bar third party citizen suits for such violations, as authorized by section 505 of the Clean Water Act.

In contrast, the inclusion of a compliance time schedule in NPDES requirements issued to dischargers, where such a schedule is necessary and justified, should eliminate the potential for adverse public perception. In addition, provided that the discharger acts in conformance with the compliance time schedule in the NPDES requirements, violations of NPDES requirements and

therefore, mandatory minimum penalties and citizen suits would be avoided. The San Diego Water Board would still have the discretion to issue an enforcement order with a time schedule, to compel compliance when the discharger has not acted responsibly to achieve compliance.

Issuance of compliance time schedules in NPDES requirements would not limit public participation and comment on proposals to allow a compliance time schedule in NPDES requirements rather than take an enforcement action to achieve compliance with water quality objectives. Consideration of the terms and conditions of NPDES requirements, including any proposed compliance time schedules, must occur at a public hearing. The public would be able to comment not only on the propriety of granting a compliance time schedule, but also on the interim limits, the duration of the compliance period, and whether the discharger made the appropriate showing that the compliance time schedule was as short as practicable taking into account the relevant factors. Further, the administrative and judicial remedies afforded under the Water Code remain fully available to those who object to the San Diego Water Board's issuance of a time schedule in NPDES requirements. In addition, this Basin Plan amendment would not limit the San Diego Water Board's ability to take any enforcement action authorized by law for violations of the terms and conditions of NPDES requirements. Moreover, because a compliance time schedule is part of NPDES requirements, citizens may still bring an enforcement action pursuant to section 505 of the Clean Water Act if the discharger is not in compliance with the compliance time schedule.

III. LIMITATIONS ON THE USE OF COMPLIANCE TIME SCHEDULES

The *Star-Kist Caribe* decision established limits on the use of compliance time schedules in NPDES requirements through its interpretation of Clean Water Act section 301(b)(1)(C). This section provides that NPDES permits must require compliance with WQBELS by July 1, 1977. The *Star-Kist Caribe* decision provides that immediate compliance must be achieved for any applicable state water quality standards (referred to as water quality objectives under California law⁶) adopted before July 1, 1977 and that have not been substantively revised after that date. Accordingly, WQBELS and receiving water limitations that implement water quality standards adopted before July 1, 1977, would be ineligible for compliance time schedules in NPDES permits. The *Star-Kist Caribe* decision also addressed water quality standards adopted or revised after July 1, 1977. A compliance time schedule may be included in NPDES permits for state water quality standards adopted or revised after July 1, 1977, only if the state has specifically authorized the establishment of compliance time schedules in the state water quality standards, or in its regulations that implement the standards.

⁶ Clean Water Act section 303 requires states to adopt surface water quality standards which are subject to the approval of USEPA. Water quality standards include the designated uses for a water body, as well as criteria to protect those uses and an antidegradation policy. (See 40 CFR 131.6). The State Water Resources Control Board and Regional Water Boards comply with section 303 of the Clean Water Act through the State of California's basin planning process. (See Water Code sections 13050(j), 13170, and 13240 *et seq.*). The Basin Plans identify beneficial uses, establish water quality objectives, and identify a State antidegradation policy which taken together serve as water quality standards for purposes of compliance with Clean Water Act section 303. In this document the term "water quality objective" is used interchangeably with the term "water quality standard."

Consistent with *Star-Kist Caribe*, the San Diego Water Board's Basin Plan may not authorize compliance time schedules in NPDES requirements for water quality objectives adopted before July 1, 1977, unless such objectives are thereafter revised. For water quality objectives adopted or revised after July 1, 1977, NPDES compliance time schedules may be authorized in NPDES requirements by the Basin Plan. The limits on the use of compliance time schedules in *Star-Kist Caribe* apply only to compliance with water quality standards through NPDES requirements. Compliance time schedules are permissible in waste discharge requirements (WDRs) which do not implement federal NPDES regulations (non-NPDES requirements).⁷

This amendment also is intended to supplement the conditions otherwise required by the State "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," (SIP) and authorizing federal regulations [40 CFR section 131.38], and therefore, does not supercede the SIP. Compliance time schedules to meet WQBELs and receiving water limitations that implement California Toxics Rule (CTR) criteria will be limited by the provisions of the SIP.

The SIP also includes specific authorization language needed to allow Regional Water Boards to include compliance time schedules in NPDES requirements for effluent limitations and applicable receiving water limitations established to meet CTR criteria. Specifically, the policy allows up to five years from the date of permit issuance, reissuance, or modification to comply with effluent limitations based on CTR criteria with or without a TMDL, and up to fifteen years from the effective date of the policy to develop and adopt a TMDL. The policy further specifies that in no case shall a compliance time schedule exceed, from the effective date of this policy: a) ten years to establish and comply with effluent limitations and applicable receiving water limitations based on CTR criteria or b) twenty years to develop and adopt a TMDL and establish and comply with wasteload allocations (WLAs)⁸ derived from a TMDL for a CTR criterion.⁹ Except for the TMDL provision, the SIP provision authorizing compliance time schedules for CTR criteria was approved by the USEPA. However, because the TMDL provision was submitted to USEPA prior to May 30, 2000, by law [40 CFR 131.21(c)(table)] it went into effect on May 18, 2005, when the more restrictive CTR compliance time schedule provision expired.¹⁰ This Basin Plan amendment incorporates most of the requirements of the SIP non-TMDL compliance time schedule provisions.

In this Basin Plan amendment, compliance time schedules are limited to existing dischargers as defined in the SIP. According to the SIP, an "existing discharger" means any discharger that is not a new discharger. An existing discharger includes an 'increasing discharger' (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing waste discharge after the effective date of this amendment). Limiting compliance time schedules to existing dischargers ensures that water quality is not

⁷ See Title 23, California Code of Regulations (CCR), section 2231.

⁸ A wasteload allocation (WLA) is the amount of pollutant load that is allocated to a specific point source as part of the TMDL. The WLA is implemented by establishing water quality based effluent limitations in the point source discharger's NPDES requirements that are consistent with the assumptions and requirements of the WLA.

⁹ That is, a compliance time schedule could allow up to 15 years to complete the TMDL and up to 5 years to comply with the TMDL-derived effluent limitation.

¹⁰ The USEPA promulgated the CTR with a provision which sunset the authorizing compliance time schedule provision on May 18, 2005.

allowed to degrade further in violation of the State and federal antidegradation policies. Moreover, these antidegradation policies require that a new discharger attain water quality objectives upon initiating a discharge.

This Basin Plan amendment does not address incorporation of compliance time schedules in NPDES requirements for technology-based effluent limitations.¹¹ The USEPA is responsible for developing regulations implementing Clean Water Act requirements for technology-based effluent limitations which specify the maximum allowable levels of pollutants that may be discharged by facilities within an industrial category or subcategory and the schedule for implementation. The compliance date for meeting existing technology-based effluent limitations has long since past. If the USEPA revises its technology-based effluent limitations in the future the San Diego Water Board would implement the technology-based effluent limitations in accordance with the revised regulations.

IV. SCOPE OF COMPLIANCE TIME SCHEDULES

A compliance time schedule is not warranted in every situation where WQBELS and receiving water limitations are issued in NPDES requirements. This Basin Plan amendment authorizes the San Diego Water Board to issue compliance time schedules in NPDES requirements in the following circumstances:

- A. Existing discharges are subject to new or more stringent WQBELS or applicable receiving water limitations because they implement new, revised, or newly interpreted¹² water quality objectives, adopted after November 9, 2005, the planned date of adoption of this Basin Plan amendment.

The Basin Plan amendment requires that compliance time schedules be as short as practicable, but in no case exceed the following:

- Five years from the date of issuance, reissuance, or modification of NPDES requirements that establish WQBELS or receiving water limitations to implement new, revised, or newly interpreted water quality objectives adopted after November 9, 2005. The San Diego Water Board may grant an additional extension of up to five years, but only where the discharger has demonstrated satisfactory progress toward achieving compliance with the applicable WQBELS and receiving water limitations and the San Diego Water Board concurs with the demonstration.

¹¹ Water quality-based effluent limitations are required when technology-based effluent limitations are not sufficient to ensure that water quality objectives will be attained and maintained in the receiving waters). Technology-based effluent limitations represent the degree of control that can be achieved by point sources using various levels of pollution control technology that are defined by USEPA for various categories of discharges and implemented on a nation-wide basis).

¹² Examples of newly interpreted water quality objectives include TMDL and water quality objective implementation program Basin Plan amendments and new San Diego Water Board interpretations of narrative water quality objectives which result in more stringent water quality based effluent limitations or receiving water limitations.

- In no case, shall a compliance time schedule for these discharges exceed ten years from the effective date of the initial NPDES requirements that established WQBELS or receiving water limitations to implement new, revised, or newly interpreted water quality objectives adopted after November 9, 2005.¹³

The five-year limitation/extension is consistent with the Clean Water Act's five-year life span for NPDES permits, and also consistent with the now expired compliance time schedule provisions of the California Toxics Rule [40 CFR 131.38].

B. Existing discharges are subject to new or more stringent WQBELS resulting from new knowledge about the characteristics and impacts of the discharge. A compliance time schedule could be authorized in NPDES requirements in this case for any pollutant for which a water quality objective was issued, revised, or newly interpreted after July 1, 1977. New knowledge about the characteristics and impacts of the discharge that can result in new or more stringent WQBELS or receiving water limitations include, but are not limited to, the following situations:

- Pollutants previously unregulated in an existing discharge are newly regulated because the new information indicates a reasonable potential for the discharge to exceed an applicable water quality objective in the receiving water;
- Pollutants are newly detected in an existing discharge due to improved analytical techniques;
- The point of compliance for a receiving water limitation is changed; and
- The dilution allowance for an existing discharge is changed.

Compliance time schedules in the NPDES requirements shall be as short as practicable, but in no case exceed the following:

- Up to five years from the date of issuance, reissuance, or modification of the NPDES requirements that establish new or revised WQBELS to implement water quality objectives. The San Diego Water Board may grant an additional extension of up to five years, but only where the discharger has demonstrated satisfactory progress toward achieving compliance with the applicable WQBEL and the San Diego Water Board concurs with the demonstration.
- In no case, shall a compliance time schedule for these discharges exceed ten years from the effective date of the initial NPDES requirements that established new or revised WQBELS to implement water quality objectives.

¹³ In adopting a new or revised water quality objective, the San Diego Water Board or State Water Board may elect to incorporate a specific compliance time schedule that is shorter or longer than that proposed in this Basin Plan amendment. In this case, the compliance time schedule established as part of the implementation program for the water quality objective would determine the maximum length of a compliance time schedule that could be included in NPDES requirements.

V. INFORMATION REQUIRED FOR INCLUSION OF COMPLIANCE TIME SCHEDULES IN NPDES REQUIREMENTS

Under the terms of the Basin Plan amendment, when a compliance time schedule is proposed to be included in NPDES requirements, the discharger must submit certain information to the San Diego Water Board to justify the need for the compliance time schedule. This information must include, but is not limited to:

- A written request, and demonstration, with supporting data and analysis, that achieving immediate compliance with new or more stringent WQBELs or receiving water limitations implementing water quality objectives issued, revised, or newly interpreted after November 9, 2005, or that resulted from new information on the characteristics and effect of the discharge is infeasible because new control measures need to be designed, installed, and put into operation;
- Quantification of existing pollutant levels in the discharge;
- Identification of the sources of the pollutant in the waste stream, documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established, and a proposed schedule for additional source control measures or waste treatment needed to meet the WQBELs and/or receiving water limitations;
- Evidence that the discharge quality is the highest that that can reasonably be achieved until final compliance is attained;
- A demonstration that the proposed schedule is as short as practicable, taking into account economic, technical and other relevant factors; and
- Additional information and analyses, to be determined by the San Diego Water Board on a case-by-case basis.

These criteria are consistent with criteria for enforcement order time schedules, established by the State Water Board, for compliance time schedules under the SIP (SIP, section 2.1, Compliance Schedules), and the compliance time schedules provisions of the CTR [40 CFR 131.38(e)]. The San Diego Water Board will determine on a case-by-case basis the scope and level of information and/or analyses needed.

VI. COMPLIANCE SCHEDULES IN TOTAL MAXIMUM DAILY LOAD IMPLEMENTATION PLANS

The San Diego Water Board has adopted and will be considering for adoption a number of Total Maximum Daily Loads (TMDL) to address water quality impairments identified on the “*Clean Water Act Section 303(d) List of Water Quality Limited Segments*.” Each TMDL allocates the total allowable load of the problem pollutant to the affected receiving water among the various sources of the pollutant, including point and nonpoint source discharges. TMDLs typically are incorporated into the Basin Plan through the Basin Plan amendment process.

TMDL Basin Plan amendments include an implementation plan for achieving load and wasteload reductions of pollutant mass. Implementation of the TMDL may be achieved, in part, by establishing and enforcing WQBELs in NPDES requirements that are consistent with the assumptions and requirements of the TMDL wasteload allocations. The TMDL implementation plan commonly specifies a compliance time schedule for meeting pollutant mass reductions to achieve wasteload allocations.

Interim and final WQBELs that implement a TMDL must be consistent with the TMDL compliance schedule for wasteload reductions, but need not conform to the provisions of this Basin Plan amendment. However, if a discharger cannot meet interim or final WQBELs that implement a TMDL, a compliance time schedule could be granted pursuant to this Basin Plan amendment to allow time for the discharger to achieve compliance with the interim and/or final WQBELs.

VII. ENVIRONMENTAL REVIEW

This section presents the San Diego Water Board's environmental review and analysis of the Basin Plan amendment. The San Diego Water Board must comply with the California Environmental Quality Act (CEQA) when the San Diego Water Board amends the Basin Plan.¹⁴ The CEQA process requires the San Diego Water Board to analyze and disclose the potential adverse environmental impacts of a Basin Plan amendment it is initiating or approving. The San Diego Water Board process must consider alternatives to lessen or mitigate environmental impacts, develop proposals to mitigate or avoid impacts to the extent feasible, and involve the public and other public agencies in the evaluation process.

The San Diego Water Board is the Lead Agency for evaluating the environmental impacts of Basin Plan amendments pursuant to CEQA. Although subject to CEQA, the San Diego Water Board's basin planning process is certified by the Secretary for Resources as "functionally equivalent to" and therefore exempt from CEQA's requirement for preparation of an environmental impact report or negative declaration and initial study.¹⁵ The State Water Board's CEQA implementation regulations¹⁶ describe the environmental documents required for Regional Water Board basin planning actions. These documents include a written report, an initial draft of the Basin Plan amendment, and an Environmental Checklist Form.¹⁷ Pursuant to these regulations the Regional Water Boards must:

- Describe the proposed Basin Plan amendment. The proposed amendment is described in Appendix 1 of this report;
- Identify reasonable alternatives to the proposed Basin Plan amendment to lessen or mitigate potentially significant environmental impacts of the amendment;

¹⁴ See Public Resources Code section 21080

¹⁵ See 14 CCR 15251 (g).

¹⁶ 23 CCR 3720 *et seq.*

¹⁷ 23 CCR 3776

- Identify the environmental impacts of the reasonably foreseeable methods of compliance with the Basin Plan amendment in the Environmental Checklist Form (Appendix 2); and
- Identify mitigation measures to minimize any significant adverse environmental impacts of the proposed Basin Plan amendment.¹⁸

CEQA has specific provisions governing the Regional Water Board's adoption of regulations such as the regulatory provisions of Basin Plans that establish pollution control equipment, performance standards, or treatment requirements.¹⁹ However this Basin Plan amendment does not establish a rule or regulation requiring the installation of pollution control equipment, a performance standard, or a treatment requirement. This Basin Plan amendment authorizes the San Diego Water Board to include the same compliance time schedule in NPDES requirements that it is already authorized to include in enforcement orders issued or adopted under Chapter 5, Enforcement and Implementation commencing with section 13300 of the Water Code.

The State Water Board CEQA implementation regulations require an analysis of the environmental impacts of the reasonably foreseeable methods of compliance with Basin Plan amendments. The only "reasonably foreseeable method of compliance" with a compliance time schedule is for the discharger to achieve compliance with WQBELs and receiving water limitations in accordance with the conditions of the compliance time schedule. The conditions include achieving compliance with WQBELs and receiving water limitations in the shortest practicable time period, meeting specified interim effluent and receiving water limitations, and not increasing pollutant levels in the discharge (no backsliding). These conditions are the same whether the compliance time schedule is issued in NPDES requirements, or in a Cease and Desist Order.

As reflected in the Environmental Checklist (Appendix 2), there are no potentially significant impacts on the environment caused by dischargers achieving compliance with WQBELs or receiving water limitations in accordance with the conditions of compliance time schedule as authorized in this amendment. This is because the provisions of this amendment that dictate when a compliance time schedule can be issued in NPDES requirements do not increase the amount of time a discharger will take to meet WQBELs and/or receiving water limitations. Compliance time schedules would only be available when a discharger can demonstrate that immediate compliance is infeasible. The discharger would have to make commitments and show progress toward obtaining compliance with WQBELs and receiving water limitations. In the interim, the discharger will be required to obtain the highest water quality that can reasonably be achieved, while moving towards full compliance. Moreover, no increase in pollutant levels in the discharge associated with the water quality objective would be permitted under a compliance time schedule.

CEQA analysis is a requisite part of the consideration and adoption of new, or revised water quality objectives. If future water quality objective Basin Plan amendments are adopted, then future CEQA analysis of new or revised water quality objectives must take into account the

¹⁸ See 23 CCR 3777(a)

¹⁹ See Public Resources Code sections 21159 and 21159.4

practicable environmental effects of allowing a compliance time schedule for meeting the water quality objectives.

Because there are no potentially significant environmental impacts to lessen or mitigate as a result of implementing this Basin Plan amendment, an analysis of alternatives is not required

Finally, the adoption of this amendment will not result in any additional economic burden for dischargers. Actions taken by the discharger to comply with a compliance time schedule issued in NPDES requirements will be the same actions taken to comply with a time schedule issued in a cease and desist order or cleanup and abatement order. Thus, there will be no increased compliance costs for the discharger through implementing a compliance time schedule in NPDES requirements because the actions required of the discharger will be the same. Therefore, this Basin Plan amendment will not impose any additional economic burden for dischargers. In fact, the dischargers may realize a net economic benefit if mandatory minimum penalties are avoided because the San Diego Water Board is not required to make a finding of violation as a prerequisite to incorporating compliance time schedules in NPDES requirements.

VIII. NECESSITY OF REGULATORY PROVISIONS

The Office of Administrative Law (OAL) is responsible for reviewing administrative regulations proposed by State agencies for compliance with standards set forth in California's Administrative Procedure Act, Government Code section 11340 *et seq.*, for transmitting these regulations to the Secretary of State, and for publishing regulations in the California Code of Regulations. Following State Water Board approval of this Basin Plan amendment, any regulatory portions of the amendment must be approved by OAL [Government Code section 11352]. The State Water Board must include in its submittal to OAL a summary of the necessity²⁰ for the regulatory provision.

This Basin Plan amendment meets the “necessity standard” of Government Code section 11353(b). The amendment is necessary because the USEPA has stipulated that compliance time schedules can be included in NPDES permits only if there is explicit authorization in the states’ water quality control plans.²¹ The San Diego Water Board’s Basin Plan does not currently contain an explicit compliance time schedule authorization. This Basin Plan amendment is necessary to authorize the San Diego Water Board to incorporate compliance time schedules in NPDES requirements in instances where immediate compliance with WQBELs and/or receiving water limitations is not feasible.

²⁰ “Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, provision of law that the regulation implements, interprets, or makes, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion [Government Code section 11349(a)].

²¹ *In the Matter of Star-Kist Caribe, Inc.*, NPDES APPEAL No. 88-5.

Appendix 1

Tentative Resolution No. R9-2005-0238 and Attachment A, Basin Plan Amendment

TENTATIVE

California Regional Water Quality Control Board
San Diego Region

RESOLUTION NO. R9-2005-0238

**RESOLUTION AMENDING THE *WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO BASIN (9)* TO INCORPORATE AUTHORIZATION FOR COMPLIANCE TIME SCHEDULES IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REQUIREMENTS
(BASIN PLAN ISSUE NO. 6)**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

1. The proposed amendment of the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) described in the recitals below was developed in accordance with Water Code section 13240, *et seq.*
2. This Basin Plan amendment is the result of an investigation of Issue No. 6 on the *Prioritized List of Basin Plan Issues for Investigation from September 2004 to September 2007* (Attachment 1 to Resolution No. R9-2004-0156) adopted by the San Diego Water Board as part of the 2004 Triennial Review of the Basin Plan.
3. The U.S. Environmental Protection Agency (USEPA) allows the inclusion of compliance time schedules in National Pollutant Discharge Elimination System (NPDES) permits for those effluent limitations that implement new (adopted after July 1, 1977), revised, or newly-interpreted water quality objectives, only if explicit authorization for such schedules is included in the Basin Plan (*In the Matter of StarKist Caribe, Inc.*; NPDES Appeal No. 88-5).
4. With certain exceptions, the Basin Plan does not include explicit authorization for compliance time schedules in Waste Discharge Requirements (WDRs) that implement NPDES regulations and the federal Clean Water Act requirements (NPDES requirements).²²
5. NPDES requirements specify water quality based effluent limitations (WQBELs) and other provisions that must be achieved to assure attainment of the water quality objectives (i.e., State water quality standards) applicable to the affected receiving waters. In some cases, immediate compliance with the WQBELs in NPDES requirements may be infeasible.

²² Pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Act, to avoid the issuance by the USEPA of separate and duplicative NPDES permits for discharges in California that would be subject to the Clean Water Act, the State's WDRs for such discharges implement the NPDES regulations and entail enforcement provisions that reflect the penalties imposed by the Clean Water Act for violation of NPDES permits issued by the USEPA. Thus, the State's WDRs that implement federal NPDES regulations and Clean Water Act requirements serve in lieu of NPDES permits.

6. Dischargers may be unable to comply immediately with new or more stringent WQBELs based on new, revised, or newly interpreted water quality objectives adopted by the San Diego Water Board or State Water Resources Control Board (State Water Board), or that resulted from new information on the characteristics and effects of the discharge. Allowing dischargers time to achieve compliance according to a prescribed time schedule is reasonable under these circumstances.
7. Providing authorization for compliance time schedules in NPDES requirements would provide the San Diego Water Board with an additional means to promote discharger compliance with new or more stringent WQBELs that implement new, revised, or newly interpreted water quality objectives, or that resulted from new information on the characteristics and effects of the discharge, without enforcement proceedings against existing dischargers who are unable to attain immediate compliance.
8. The Basin Plan should be amended to incorporate language authorizing the inclusion of compliance time schedules in NPDES requirements in order to provide the San Diego Water Board with discretion to provide reasonable time for existing dischargers to attain compliance with new or more stringent WQBELs and receiving water limitations in circumstances as described above without subjecting them to enforcement proceedings.
9. The San Diego Water Board has notified all known interested persons and the public of its intent to consider adoption of the proposed Basin Plan amendment in accordance with Water Code section 13244. Interested persons and the public have had reasonable opportunity to participate in review of the proposed Basin Plan amendment. Efforts to solicit public review and comment have included a CEQA scoping meeting and a public workshop held in February 2005 and September 2005 respectively; a public review and comment period of 45-days preceding the public hearing; and a public hearing held on October 12, 2005.
10. The San Diego Water Board has considered all comments pertaining to this Basin Plan amendment submitted to the San Diego Water Board in writing, or by oral presentations at the public hearing held on October 12, 2005. Detailed responses to relevant comments have been incorporated into a Response to Comments document (Appendix 3 to the Technical Report).
11. The San Diego Water Board's basin planning process is certified as "functionally equivalent" to the process of interdisciplinary environmental review prescribed by the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA's requirements to prepare an Environmental Impact Report, Negative Declaration, or Initial Study. The proposed Basin Plan amendment, the supporting technical report, and the environmental checklist form prepared by the San Diego Water Board satisfy the environmental documentation requirements for basin planning activities. A public CEQA scoping meeting was held in February 2005.

The analysis contained in the supporting technical report, the environmental checklist form, and the responses to comments comply with the requirements of the State Water Board's

certified regulatory CEQA process, as set forth in the California Code of Regulations, Title 23, section 3375, *et seq.* and fulfills the San Diego Water Board's obligations for the adoption of regulations "requiring the installation of pollution control equipment, or a performance standard treatment or requirement," as set forth in section 21159 of the Public Resources Code.

12. 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.
13. Considering the record as a whole, the proposed Basin Plan amendment will involve no potential for adverse effect, either individually or cumulatively, on wildlife.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The San Diego Water Board hereby adopts the 'Amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to incorporate authorization for Compliance Time Schedules in National Pollutant Discharge Elimination System Requirements (Basin Plan Issue No. 6)' as set forth in Attachment A to this Resolution.
2. The Executive Officer is authorized to sign a Certificate of Fee Exemption for a "*de minimis*" impact finding and shall submit this Certificate in *lieu* of payment of the California Department of Fish and Game (DFG) filing fee.
3. The Executive Officer is directed to submit this amendment to the State Water Board in accordance with Water Code section 13245. The San Diego Water Board requests that the State Water Board approve the Basin Plan amendment and forward it to the Office of Administrative Law and the USEPA for approval.
4. If, during its approval process for this amendment, the State Water Board or Office of Administrative Law determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the San Diego Water Board of any such changes.

I, John H. Robertus, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on November 9, 2005.

JOHN H. ROBERTUS
Executive Officer

**ATTACHMENT A
TO RESOLUTION NO. R9-2005-0238**

**AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE
SAN DIEGO BASIN (9) TO INCORPORATE AUTHORIZATION FOR
COMPLIANCE TIME SCHEDULES IN NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM REQUIREMENTS
(BASIN PLAN ISSUE NO. 6)**

This Basin Plan amendment incorporates authorization for compliance time schedules in Waste Discharge Requirements that implement National Pollutant Discharge Elimination System regulations and federal Clean Water Act requirements issued by the California Regional Water Quality Control Board, San Diego Region. Chapter 4 of the Basin Plan is amended as follows:

Chapter 4, Implementation

Revise the first sentence of the section titled “National Pollutant Discharge Elimination System (NPDES)” as follows:

Waste Discharge Requirements that implement federal National Pollutant Discharge Elimination System (NPDES) regulations (“NPDES requirements” or “NPDES permits”) are issued to regulate discharges of “pollutants” from point sources to “waters of the United States” to ensure that the quality and quantity of such discharges does not adversely affect surface water quality or beneficial uses.

Add the following section after the section titled “National Pollutant Discharge Elimination System (NPDES).”

COMPLIANCE TIME SCHEDULES

The Regional Board may establish compliance time schedules in NPDES requirements where the Regional Board determines that, for an existing discharger,²³ achieving immediate compliance in a discharge with new or more stringent water quality based effluent limitations or receiving water limitations that implement new, revised, or newly interpreted water quality objectives,²⁴ and/or that resulted from new knowledge on

²³ “Existing discharger” means any discharger that is not a new discharger. An existing discharger includes an increasing discharger (i.e., an existing facility with treatment systems in place for its current discharge that is or will be expanding, upgrading, or modifying its existing permitted discharge after a new, revised, or newly interpreted water quality objective becomes applicable). A “new discharger” is defined as any building, structure, facility, or installation from which there is or may be a “discharge of pollutants” (as defined in 40 CFR section 122.2) to surface waters of the San Diego Region, the construction of which commences after a new, revised, or newly interpreted water quality objective becomes applicable.

²⁴ “New, revised, or newly interpreted water quality objectives means” objectives as defined in section 13050(h) of Porter-Cologne, issued, revised or newly interpreted after November 9, 2005. Objectives may be narrative or numeric.

the characteristics and impacts of the discharge is infeasible.²⁵ New knowledge about the characteristics and impacts of the discharge that can result in new or more stringent WQBELs or receiving water limitations include, but are not limited to, the following situations:

- *Pollutants previously unregulated in an existing discharge are newly regulated because the new information indicates a reasonable potential for the discharge to exceed an applicable water quality objective in the receiving water;*
- *Pollutants are newly detected in an existing discharge due to improved analytical techniques;*
- *The point of compliance for a receiving water limitation is changed; and*
- *The dilution allowance for an existing discharge is changed.*

Compliance time schedules are authorized by this provision only for new or more stringent effluent and/or receiving water limitations that implement water quality objectives issued, revised, or newly interpreted after November 9, 2005, or that resulted from new knowledge on the characteristics and impacts of the discharge for any pollutant for which a water quality objective was issued, revised, or newly interpreted after July 1, 1977.

The compliance time schedule shall include a time schedule for completing or achieving specific actions (including interim effluent limitations) that demonstrate reasonable progress toward compliance with water quality based effluent limitations or receiving water limitations and, thereby, attainment of water quality objectives. The compliance time schedule shall contain a final compliance date, based on the shortest practicable time (determined by the Regional Board at a public hearing after considering the factors identified below) required to achieve compliance. In addition, in all cases, the findings of the NPDES requirements shall specify the final effluent limitations.

NPDES requirements may not include a compliance time schedule that extends beyond five years from the date of order issuance, reissuance or modification. The Regional Board may grant an additional extension of up to five years, but only where the discharger has demonstrated satisfactory progress toward achieving compliance with applicable water quality based effluent limitations and receiving water limitations and the Regional Board concurs with the demonstration. In no case, shall a compliance time schedule for these discharges exceed ten years from the date of adoption, revision, or interpretation of the applicable water quality objective, whichever is the shorter period of time.

Nothing in this provision limits the Regional Board's authority (1) to develop alternate implementation provisions for water quality objectives adopted or revised in the future, or (2) to rely on alternate implementation provisions authorized pursuant to State Board policies for water quality control, State regulations, or federal regulations. Compliance time schedules to meet WQBELs and receiving water limitations that implement

²⁵ "Infeasible" means that discharger compliance cannot be accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.

California Toxics Rule criteria will be limited by the provisions of the State Board “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California.”

To document the need for and justify the duration of any such compliance time schedule, a discharger must submit the following information, at a minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2) Identification of the sources of the pollutant in the waste stream, documentation of source control efforts currently underway or completed, including compliance with any pollution prevention programs that have been established, and a proposed schedule for additional source control measures or waste treatment needed to meet the WQBELs and/or receiving water limitations; (3) evidence that the discharge quality is the highest that can reasonably be achieved until final compliance is attained; and (4) a demonstration that the proposed schedule is as short as practicable, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis. The need for and justification of the duration of any such compliance time schedule will be subject to Regional Board review and approval.

Appendix 2

California Regional Water Quality Control Board, San Diego Region Environmental Checklist Form

I. BACKGROUND

1. Name of Project Proponent: California Regional Water Quality Control Board,
San Diego Region

2. Address and Phone Number of Project Proponent: 9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
(858) 627-3932

Date Checklist Prepared: November 9, 2005

3. Name of Project: **AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO BASIN (9) TO INCORPORATE AUTHORIZATION FOR COMPLIANCE TIME SCHEDULES IN NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REQUIREMENTS (BASIN PLAN ISSUE NO. 6)**

II. ENVIRONMENTAL IMPACTS

(Explanations of all “yes” and “maybe” answers, and “*”notes, are on attached sheets.)

ENVIRONMENTAL CHECKLIST QUESTION		YES	MAYBE	NO
1.	<u>Earth</u> . Will the proposal result in:			
	a. Unstable earth conditions or in changes in geologic substructures?			X
	b. Disruptions, displacements, compaction or over covering of the soil?			X
	c. Changes in topography or ground surface relief features?			X
	d. The destruction, covering or modification of any unique geologic or physical features?			X
	e. Any increase in wind or water erosion of soils, either on or off the site?			X
	f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?			X
	g. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?			X
2.	<u>Air</u> . Will the proposal result in:			
	a. Substantial air emissions or deterioration of ambient air quality?			X
	b. The creation of objectionable odors?			X
	c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?			X

(Explanations of all “yes” and “maybe” answers, and “*”notes, are on attached sheets.)

ENVIRONMENTAL CHECKLIST QUESTION		YES	MAYBE	NO
3. <u>Water</u> . Will the proposal result in:				
a.	Changes in currents, or the course or direction of water movements, in either marine or fresh waters?			X
b.	Change in absorption rates, drainage pattern, or the rate and amount of surface water runoff?			X
c.	Alterations to the course or flow of flood waters?			X
d.	Change in the amount of surface water in any water body?			X
e.	Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?			X
f.	Alteration of the direction or rate of flow of ground waters?			X
g.	Changes in quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?			X
h.	Alteration of ground water quality?			X
i.	Substantial reduction in the amount of water otherwise available for public water supplies?			X
j.	Exposure of people or property to water related hazards such as flooding or tidal waves?			X
4. <u>Plant Life</u> . Will the proposal result in:				
a.	Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, microflora and aquatic plants)?			X
b.	Reduction of the numbers of any unique, rare or endangered species of plants?			X
c.	Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?			X
d.	Reduction in acreage of any agricultural crop?			X
5. <u>Animal Life</u> . Will the proposal result in:				
a.	Change in the diversity of species, or number of any species of animals (birds, land animals, including reptiles, fish and shellfish, benthic organisms, insects or microfauna)?			X
b.	Reduction of the numbers of any unique, rare or endangered species of animals?			X
c.	Introduction of new species of animals into an area, or result in a barrier to the normal migration or movement of existing species?			X
d.	Deterioration to existing fish or wildlife habitat?			X
6. <u>Noise</u> . Will the proposal result in:				
a.	Increase in existing noise levels?			X
b.	Exposure of people to severe noise levels?			X
7. <u>Light and Glare</u> .				
	Will the proposal produce new light or glare?			X

(Explanations of all “yes” and “maybe” answers, and “*”notes, are on attached sheets.)

ENVIRONMENTAL CHECKLIST QUESTION		YES	MAYBE	NO
8.	<u>Land Use.</u>			
	Will the proposal result in a substantial alteration of the present or planned land use of the area?			X
9.	<u>Natural Resources.</u> Will the proposal result in:			
	a. Increase in the rate of use of any natural resources?			X
	b. Substantial depletion of any nonrenewable resource?			X
10.	<u>Risk of Upset.</u>			
	Does the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to, oil pesticides, chemicals, or radiation) in the event of an accident or upset condition?			X
11.	<u>Population.</u>			
	Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?			X
12.	<u>Housing.</u>			
	Will the proposal affect existing housing, or create a demand for additional housing?			X
13.	<u>Transportation/Circulation.</u> Will the proposal result in:			
	a. Generation of substantial additional vehicular movement?			X
	b. Effects on existing parking facilities, or demand for new parking?			X
	c. Substantial impact upon existing transportation systems?			X
	d. Alterations to present patterns of circulation or movement of people and/or goods?			X
	e. Alterations to waterborne, rail or air traffic?			X
	f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?			X
14.	<u>Public Services.</u> Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:			
	a. Fire protection?			X
	b. Police protection?			X
	c. Schools?			X
	d. Parks or other recreational facilities?			X
	e. Maintenance of public facilities, including roads?			X
	f. Other governmental services?			X
15.	<u>Energy.</u> Will the proposal result in:			
	a. Use of substantial amounts of fuel or energy?			X
	b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?			X

(Explanations of all “yes” and “maybe” answers, and “*”notes, are on attached sheets.)

ENVIRONMENTAL CHECKLIST QUESTION		YES	MAYBE	NO
16. <u>Utilities</u> . Will the proposal result in a need for new systems, or substantial alterations to the following utilities:				
	Power or natural gas?			X
	Communications?			X
	Water?			X
	Sewer or septic tanks?			X
	Storm water drainage?			X
	Solid waste disposal?			X
17. <u>Human Health</u> . Will the proposal result in:				
a.	Creation of any health hazard or potential health hazard (excluding mental health)?			X
b.	Exposure of people to potential health hazards?			X
18. <u>Aesthetics</u> .				
	Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view?			X
19. <u>Recreation</u> .				
	Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?			X
20. <u>Archeological/Historical</u>				
	Will the proposal result in an alteration of a significant archeological or historical site, structure, object, or building?			X
21. <u>Mandatory Findings of Significance</u> .				
a.	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major period of California history or prehistory?			X
b.	Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)			X
c.	Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)			X

(Explanations of all “yes” and “maybe” answers, and “*”notes, are on attached sheets.)

ENVIRONMENTAL CHECKLIST QUESTION		YES	MAYBE	NO
d.	Does the projects have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			X

III. DISCUSSION OF ENVIRONMENTAL EVALUATION
 (On attached sheets.)

IV. DETERMINATION

On the basis of this initial evaluation:

I find the proposed project COULD NOT have a significant effect on the environment.

I find that the proposed project MAY have a significant adverse impact on the environment. However, there are feasible alternatives and/or feasible mitigation measures available which would substantially lessen any significant adverse impact. These alternatives and mitigation measures are discussed in the attached written report.

I find that the proposed project MAY have a significant effect on the environment. There are no feasible alternatives and/or feasible mitigation measures available which would substantially lessen any significant adverse impacts. See the attached report for a discussion of this determination.

DATE: November 9, 2005

 John H. Robertus
 Executive Officer

Appendix 3
Response to Comments

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INTRODUCTION

This report provides responses to public comments timely received on the draft Technical Report dated August 29, 2005 entitled, '*Proposed Amendment to the Water Quality Control Plan for the San Diego Basin (9) to Incorporate Authorization for Compliance Time Schedules in National Pollutant Discharge Elimination System Requirements (Basin Plan Issue No.6).*' The draft documents were available to the public for formal review and comment on August 29, 2005, through the website of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) and at the San Diego Water Board office. The public comment period closed on October 12, 2005, and consisted of a 45-day comment period.

The San Diego Water Board received seventeen comments on the draft Technical Report and Basin Plan amendment in letters, emails, and orally from the City of San Diego and the U.S. Environmental Protection Agency (USEPA). The letters and emails were not reproduced in this document. Individual comments were excerpted from email, letters, and oral comments and are organized in the following sections by the commenting agency. The comments are numbered sequentially in this report.

Changes and additional information added to the Basin Plan amendment and Technical Report resulting from comments received are summarized in section 3 of this report. In the Technical Report, the changes are shown in strikeout and underline format.

Comments from the City of San Diego

Comment No. 1: How can the public participate in the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and USEPA approval processes?

Response: Interested persons can submit written comments to the State Water Board or provide public testimony during the State Water Board's public hearing on this Basin Plan amendment. The State Water Board is required to act upon the Basin Plan amendment within 60 calendar days of receiving the complete administrative record from the San Diego Water Board. The State Water Board will publish a public notice and hold a public hearing concerning the Basin Plan amendment. Interested persons on the San Diego Water Board's email and regular mail lists will receive notice of the State Water Board's hearing.

Once the State Water Board approves the amendment, the record of approval is added to the Administrative Record. The State Water Board then sends the basin plan amendment and the full administrative record to the Office of Administrative Law (OAL) for review and approval. OAL reviews the new regulatory language of the amendment for compliance with standards set forth in California's Administrative Procedures Act. OAL also reviews the responses to comments to determine compliance with federal public participation requirements. There is no opportunity for public participation in OAL's review of the amendment.

The OAL has 30 working days after receiving the Basin Plan amendment to either approve or disapprove the action. If OAL fails to act within this time period, the action is deemed approved. If OAL approves an action, it transmits the "clear and concise summary of regulatory provisions" to the Secretary of State for filing. If OAL disapproves the action, OAL must return the submittal to the State Board within 30 working days with a notice specifying the reasons for

disapproval. Within 7 calendar days of issuance of the notice, OAL is required to provide a written decision detailing the reasons for disapproval. Following this written decision, the State Water Board may seek review by the Governor's office, or return the amendment to the San Diego Water Board, or State Water Board for correction. Such correction could necessitate the repetition of parts of the amendment adoption procedures.

Following OAL approval, the amendment is sent to the USEPA, which reviews the amendment for consistency with the federal Clean Water Act. Current federal regulations specify that Basin Plan amendments must be submitted to the USEPA within 30 days of final State approval and certification. The USEPA must then notify the State within 60 days if the amendment is approved, and within 90 days if disapproved. The disapproval must provide an explanation of why the amendment was disapproved and what changes are needed to make the action approvable. There is no opportunity for public participation during the USEPA approval process.

When basin plan amendments are approved by the USEPA, the San Diego Water Board must, within 30 days of the approval, file a CEQA Notice of Decision with the Secretary for Resources, and the filing fee or a Certificate of Fee Exemption. Basin plan amendments are considered to be in effect when the filing fee or the certificate has been submitted.

Comment No. 2: What due process is afforded interested persons after the San Diego Water Board adopts a Basin Plan amendment?

Response: See response to Comment No. 1.

Comment No. 3: What due process is afforded interested persons after the State Water Board, or OAL, or USEPA approves the amendment?

Response: See response to Comment No. 1.

Comment No. 4: When is the CEQA Notice of Decision filed?

Response: The CEQA Notice of Decision must be filed by the San Diego Water Board within 30 days of approval of the amendment by the USEPA.

Comments from the United States Environmental Protection Agency

Comment No. 10: Thank you for the opportunity to submit comments on the proposed amendment to the *Water Quality Control Plan for the San Diego Basin (9)* to incorporate authorization for compliance time schedules in National Pollutant Discharge Elimination System requirements. As we discussed previously, USEPA has several comments and suggestions regarding this amendment.

Response: Comment noted.

Comment No. 11: The provision authorizing compliance schedules where dischargers cannot comply immediately with new or more stringent water quality based effluent limitations (WQBELs) that resulted from new information on the characteristics and effects of the discharge should be limited to water quality objectives issued, revised, or newly interpreted after July 1, 1977. This date should be referenced in the Basin Plan amendment, and the Technical Report should be edited to reflect this change. This change is necessary because the

Clean Water Act section 301(b)(1)(C) requires all then-existing water quality standards be complied with by July 1, 1977.

Response: The Basin Plan amendment and Technical Report have been amended to incorporate the suggested changes. See Basin Plan amendment, page 2, paragraph 1; and Technical Report, 'Executive Summary,' page 1, paragraph 5; and page 9, section IV, 'Scope of Compliance Time Schedules,' part B, paragraph 1.

Comment No. 12: The Technical Report indicates that in addition to the original compliance schedule that cannot exceed 5 years, the San Diego Water Board may grant an extension of up to five years in certain circumstances. However, the Basin Plan amendment itself does not include authorization for extension. The USEPA recommends that this be clarified.

Response: The Basin Plan amendment has been revised to clarify that the San Diego Water Board may grant an extension of up to five years, but only where the discharger has demonstrated satisfactory progress toward achieving compliance with applicable water quality based effluent limitations and receiving water limitations and the San Diego Water Board concurs with the demonstration. In no case, shall a compliance time schedule for these discharges exceed ten years from the date of adoption, revision, or interpretation of the applicable water quality objective, whichever is the shorter period of time. See Attachment A to Resolution No. R9-2005-0238, page 2, section entitled, 'Compliance Time Schedules,' paragraph 4.

Comment No. 13: USEPA appreciates the inclusion in the Technical Report, section IV, B, of the four situations in which new knowledge about the characteristics and impacts of the discharge can result in new or more stringent WQBELs or receiving water limitations. However, it is unclear whether this is considered to be an exclusive list. The USEPA recommends that this be clarified, and that the Basin Plan amendment itself include this list in order to clarify what is meant by "new knowledge about the characteristics and impacts of the discharge."

Response: The Basin Plan amendment has been modified as suggested to clarify what is meant by this phrase. See page 9, Technical Report, 'IV. Scope of Compliance Time Schedules,' part B, paragraph 1 including bullets; and Attachment A to Resolution No. R9-2005-0238, section entitled, 'Compliance Time Schedules,' paragraph 1, page 2.

Comment No. 14: USEPA recommends that the Technical Report be edited to give a clear description of the reasons for the adoption of the amendment in the executive summary, and that these reasons be referred to consistently throughout the document. As written, it is difficult to easily understand what specific benefits are to be gained by the adoption of this amendment.

Response: The Technical Report was modified to clarify the reasons for the amendment. See page 1, 'Executive Summary,' paragraph 1, 3 and 5; page 3, 'Introduction,' paragraph 2 and 3; and page 4, 'II. Need for Compliance Time Schedules,' paragraph 1.

Comment No. 15: The Technical Report in section I indicates that authorization for compliance schedules can be provided in a number of ways, including compliance dates incorporated in implementation plans for total maximum daily loads (TMDLs). Please bear in mind that if a total maximum daily load (TMDL) implementation plan includes a compliance schedule provision that is not consistent with the general Basin Plan compliance schedule provision approved by USEPA [or approved elsewhere by USEPA, e.g. the State Implementation Policy

(SIP)], it would require approval by USEPA under the Clean Water Act, section 303(c). Such a compliance schedule provision should be submitted separately from the TMDL to USEPA for approval, as USEPA does not review implementation plans for TMDLs as part of its TMDL review under Clean Water Act, section 303(d).

Response: Comment noted.

Comment No. 16: Section III of the Technical Report states that this amendment is intended to supplement the conditions otherwise required by the SIP and does not supersede the SIP. This suggests that compliance schedules to implement California Toxics Rule (CTR) criteria will be limited by the provisions of the SIP. Please confirm that this is the correct interpretation. USEPA also recommends that this be clarified in the Basin Plan amendment itself.

Response: The suggested clarification was made to the Technical Report, section III entitled, ‘Limitations on the Use of Compliance Time Schedules,’ paragraph 3 and 4, and footnote 10, page 7; and to the Basin Plan amendment, Attachment A to Resolution No. R9-2005-0238, Chapter 4, Implementation, section entitled ‘Compliance Time Schedules,’ paragraph 6.

Comment No. 17: USEPA recommends changes in the Technical Report, section III, paragraph 4, regarding the SIP and CTR. Except for the TMDL provision, the SIP provision authorizing compliance schedules for CTR criteria was approved by USEPA on May 1, 2001. The TMDL provision was not approved by USEPA; however, it was submitted to USEPA prior to May 30, 2000, and therefore, under 40 CFR 131.21(c) (table), it went into effect on May 18, 2005, when the more restrictive CTR compliance schedule provision sunsetted.

Response: The Technical Report, section III entitled, ‘Limitations on the use of Compliance Time Schedules,’ paragraph 3 and 4, and footnote 10 was modified to incorporate suggested changes, page 7.

Summary of Changes

Changes and additional information added to the Technical Report and Basin Plan amendment as a result of comments received are summarized in the table below.

Page number(s) affected	Change made	Reason for the change
Technical Report		
Page 1	Executive Summary, paragraphs 1, 3 and 5.	USEPA comment no.14.
Page 1	Executive Summary, paragraph 5.	USEPA comment no.11.
Page 3	I. Introduction, paragraph 2 and 3.	USEPA comment no.14.
Page 4	II. Need for Compliance Time Schedules, paragraph 1.	USEPA comment no.14
Page 7	III. Limitations on the use of Compliance Time Schedules, paragraph 3 and 4, and footnote 10.	USEPA comment no.16 and 17.

Page number(s) affected	Change made	Reason for the change
Page 9	IV. Scope of Compliance Time Schedules, part B, paragraph 1 including bullets.	USEPA comment no.11 and 13.
Attachment A to Resolution No. R9-2005-0238		
Page 2	Chapter 4, Implementation; Compliance Time Schedules, added paragraph 1.	USEPA comment no.13.
Page 2	Chapter 4, Implementation; Compliance Time Schedules, added paragraph 1, 2; deleted paragraph 5.	USEPA comment no.11 and 13.
Page 2	Chapter 4, Implementation; Compliance Time Schedules, added paragraph 4.	USEPA comment no.12.
Page 3	Chapter 4, Implementation; Compliance Time Schedules, paragraph 6.	USEPA comment no.16.