CALIFORNIA
Water Boards

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GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

**San Francisco Bay Regional Water Quality Control Board**

**ORDER NO. R2-2014-0048**
**NPDES NO. CA0038466**

# WASTE DISCHARGE REQUIREMENTS FOR THE CITY OF BERKELEY SANITARY SEWER COLLECTION SYSTEM ALAMEDA COUNTY

The following discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

| | |
|---|---|
| **Discharger** | City of Berkeley |
| **Name of Facility** | Sewer Collection System |
| **Facility Address** | 2180 Milvia Street, Berkeley, CA 94704 |
| The U.S. Environmental Protection Agency (U.S. EPA) and the Regional Water Quality Control Board have classified this discharger as a minor discharger. | |

**Table 2. Administrative Information**

| | |
|---|---|
| This Order was adopted by the Regional Water Quality Control Board on: | November 12, 2014 |
| This Order shall become effective on: | December 1, 2014 |
| This Order shall expire on: | November 30, 2019 |
| The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than: | June 3, 2019 |

I, Bruce H. Wolfe, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on the date indicated above.

Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB, ou=Region 2, email=bwolfe@waterboards.ca.gov, c=US
Date: 2014.11.14 15:23:32 -08'00'

Bruce H. Wolfe, Executive Officer

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# I. FACILITY INFORMATION

The following Discharger is subject to waste discharge requirements (WDRs) as set forth in this Order:

**Table 3. Facility Information**

| | |
|---|---|
| **Discharger** | City of Berkeley |
| | |
| **Name of Facility** | Sewer Collection System |
| **Facility Address** | Berkeley City Limits |
| | Berkeley, CA |
| | Alameda County |
| **Facility Contact, Title, and Phone** | Adadu Yemane, Associate Civil Engineer, (510) 981-6413 |
| **Mailing Address** | 1947 Center Street, Berkeley, CA 94704 |
| **Type of Facility** | Sanitary Sewer Collection System |
| **Facility Design Flow** | Not Applicable |

# II. FINDINGS

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Water Board), finds:

**A. Legal Authorities.** This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260). This Order is also an NPDES permit issued pursuant to federal Clean Water Act section 402 and implementing regulations adopted by U.S. EPA, and Water Code chapter 5.5, division 7 (commencing with § 13370).

**B. Background.** The Regional Water Board developed the requirements in this Order based on information the Discharger submitted, information obtained through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F) contains background information and rationale for the requirements in this Order and is hereby incorporated into and constitutes findings for this Order. Attachments B and D are also incorporated into this Order.

**C. Provisions and Requirements Implementing State Law.** No provisions or requirements in this Order are included to implement State law only with the exception of Discharge Prohibition III.B.

**D. Notification of Interested Parties.** The Regional Water Board notified the Discharger and interested agencies and persons of its intent to prescribe these WDRs and provided an opportunity to submit written comments and recommendations. The Fact Sheet provides details regarding the notification.

**E. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharges. The Fact Sheet provides details regarding the public hearing.

THEREFORE, IT IS HEREBY ORDERED, that Order No. R2-2009-0082 is rescinded upon the effective date of this Order except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

## III. DISCHARGE PROHIBITIONS

**A.** The discharge of untreated or partially-treated wastewater to waters of the United States is prohibited.

**B.** The discharge of untreated or partially-treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.

**C.** The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills, to any surface water body is prohibited.

**D.** The Discharger shall not cause or contribute to discharges from the East Bay Municipal Utility District's (EBMUD) Wet Weather Facilities (WWFs) that occur during wet weather or that are associated with wet weather.

## IV. PROVISIONS

### A. Standard Provisions

**1.** The Discharger shall comply with all "Standard Provisions" in Attachment D.

### B. Special Provisions

**1. Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements**

The Discharger shall properly operate and maintain its collection system, including controlling inflow and infiltration, in order to achieve compliance with Prohibitions III.A, III.B, and III.D (See Fact Sheet IV.4) and Attachment D, Standard Provisions – Permit Compliance, subsection I.D; report any noncompliance with the exception noted below; and mitigate any discharge from the collection system in violation of this Order (Attachment D, Standard Provisions – Permit Compliance, subsection I.C).

The General Waste Discharge Requirements for Collection System Agencies (General Collection System WDR) Order No. 2006-0003-DWQ has requirements for operation and maintenance of wastewater collection systems and for reporting and

mitigating sanitary sewer overflows. The Discharger must comply with both the General Collection System WDR and this Order.

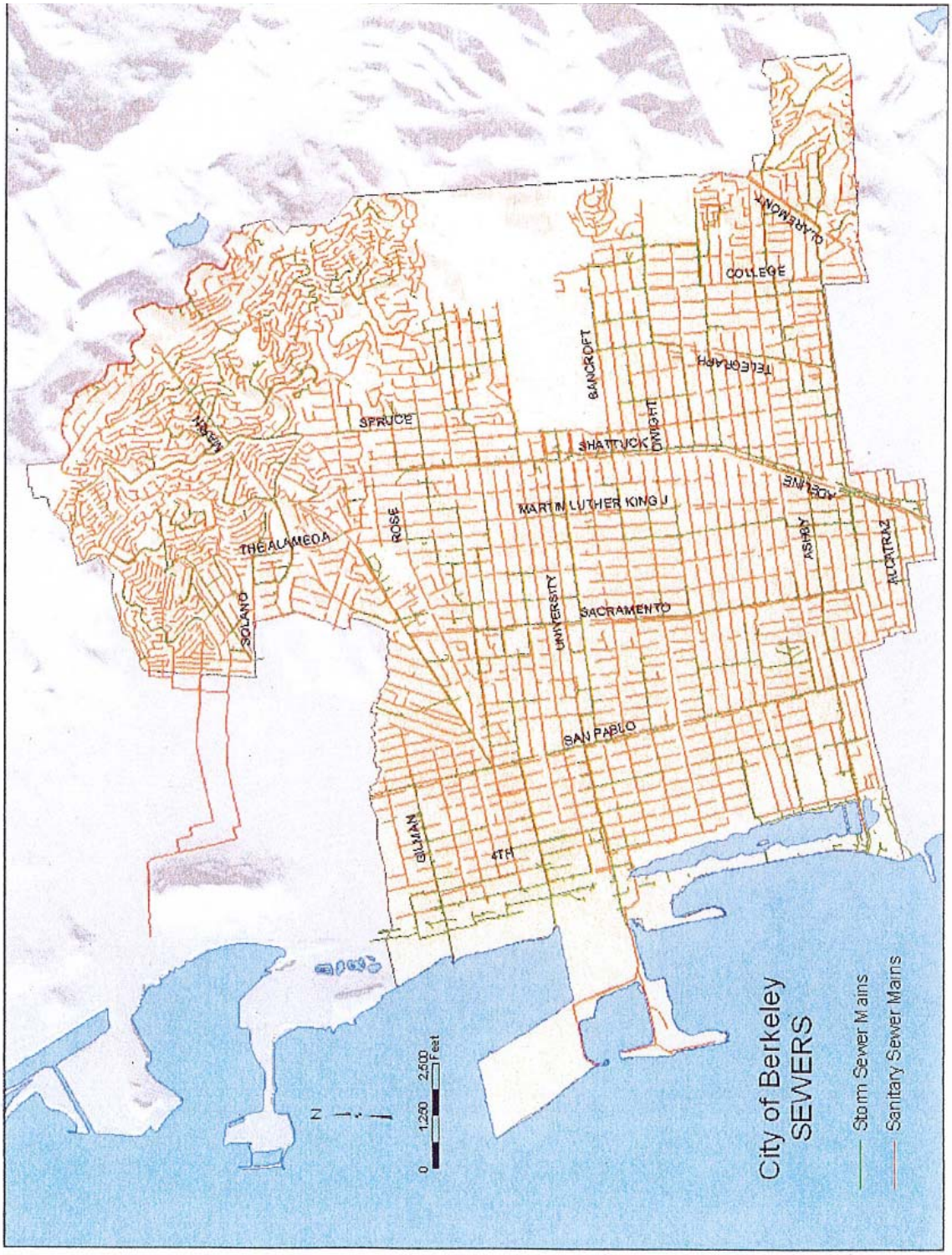
The State Water Resources Control Board (State Water Board) amended the Monitoring and Reporting Program for the General Collection System WDR on September 9, 2013, through Order No. WQ R2-2013-0058-EXEC. Following notification and reporting requirements in the General Collection System WDR will satisfy NPDES notification and reporting requirements for discharges of untreated or partially-treated wastewater from the Discharger's wastewater collection system. The Discharger shall comply with the notification and reporting requirements included in Order No. WQ R2-2013-0058-EXEC for discharges of untreated or partially-treated wastewater.

*Exception to noncompliance reporting.* This Order does not require that the Discharger report noncompliance with Prohibition III.D. The Discharger's reporting on the WWFs is not necessary because EBMUD is responsible for such reporting pursuant to the Consent Decree (*United States of America, People of the State of California ex rel. State Water Resources Control Board and Regional Water Quality Control Board, San Francisco Bay Region (Plaintiffs), San Francisco Baykeeper and Our Children's Earth (Intervenor-Plaintiffs) v. East Bay Municipal Utility District*, and *United States of America, People of the State of California ex rel. State Water Resources Control Board and Regional Water Quality Control Board, San Francisco Bay Region, San Francisco Baykeeper and Our Children's Earth v. Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont and Stege Sanitary District*, U.S. District Court, Northern District of California [Consolidated Case Nos. C 09-00186-RS and C 09-05684-RS]).

**ATTACHMENT A – NOT USED**

## ATTACHMENT B – COLLECTION SYSTEM SERVICE AREA

Service Area



# ATTACHMENT C – NOT USED

# ATTACHMENT D – STANDARD PROVISIONS (FEDERAL)

## I. STANDARD PROVISIONS – PERMIT COMPLIANCE

### A. Duty to Comply

1. The Discharger must comply with all of the terms, requirements, and conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; denial of a permit renewal application; or a combination thereof. (40 C.F.R. § 122.41(a); Wat. Code, §§ 13261, 13263, 13265, 13268, 13000, 13001, 13304, 13350, 13385.)

2. The Discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement. (40 C.F.R. § 122.41(a)(1).)

### B. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order. (40 C.F.R. § 122.41(c).)

### C. Duty to Mitigate

The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)

### D. Proper Operation and Maintenance

The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order. (40 C.F.R. § 122.41(e).)

### E. Property Rights

1. This Order does not convey any property rights of any sort or any exclusive privileges. (40 C.F.R. § 122.41(g).)

2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (40 C.F.R. § 122.5(c).)

### F. Inspection and Entry

The Discharger shall allow the Regional Water Board, State Water Board, U.S. EPA, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be

required by law, to (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i); Wat. Code, §§ 13267, 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(i); 40 C.F.R. § 122.41(i)(1); Wat. Code, §§ 13267, 13383);
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(2); Wat. Code, §§ 13267, 13383);
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (33 U.S.C. § 1318(a)(4)(B)(ii); 40 C.F.R. § 122.41(i)(3); Wat. Code, §§ 13267, 13383); and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the Water Code, any substances or parameters at any location. (33 U.S.C. § 1318(a)(4)(B); 40 C.F.R. § 122.41(i)(4); Wat. Code, §§ 13267, 13383.)

**G. Bypass**

1. Definitions
   a. “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)
   b. “Severe property damage” means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 C.F.R. § 122.41(m)(1)(ii).)
2. Bypass not exceeding limitations. The Discharger may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5 below. (40 C.F.R. § 122.41(m)(2).)
3. Prohibition of bypass. Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):
   a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));
   b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance (40 C.F.R. § 122.41(m)(4)(i)(B)); and
   c. The Discharger submitted notice to the Regional Water Board as required under Standard Provisions – Permit Compliance I.G.5 below. (40 C.F.R. § 122.41(m)(4)(i)(C).)

4. The Regional Water Board may approve an anticipated bypass, after considering its adverse effects, if the Regional Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)

5. Notice

   a. Anticipated bypass. If the Discharger knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass. (40 C.F.R. § 122.41(m)(3)(i).)

   b. Unanticipated bypass. The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). (40 C.F.R. § 122.41(m)(3)(ii).)

**H. Upset**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (40 C.F.R. § 122.41(n)(1).)

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. (40 C.F.R. § 122.41(n)(2).)

2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 C.F.R. § 122.41(n)(3)):

   a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));

   b. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));

   c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and

   d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 C.F.R. § 122.41(n)(3)(iv).)

3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 C.F.R. § 122.41(n)(4).)

## II. STANDARD PROVISIONS – PERMIT ACTION

### A. General

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)

### B. Duty to Reapply

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

### C. Transfers

This Order is not transferable to any person except after notice to the Regional Water Board. The Regional Water Board may require modification or revocation and reissuance of the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the CWA and the Water Code. (40 C.F.R. §§ 122.41(l)(3), 122.61.)

## III. STANDARD PROVISIONS – MONITORING

**A.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)

**B.** Monitoring results must be conducted according to test procedures approved under 40 C.F.R. part 136 for the analyses of pollutants unless another method is required under 40 C.F.R. subchapters N or O. In the case of pollutants for which there are no approved methods under 40 C.F.R. part 136 or otherwise required under 40 C.F.R. subchapters N or O, monitoring must be conducted according to a test procedure specified in this Order for such pollutants. (40 C.F.R. §§ 122.41(j)(4), 122.44(i)(1)(iv).)

## IV. STANDARD PROVISIONS – RECORDS

**A.** Except for records of monitoring information required by this Order related to the Discharger's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 C.F.R. part 503), the Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Water Board Executive Officer at any time. (40 C.F.R. § 122.41(j)(2).)

**B.** Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));
2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));
3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));
4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));
5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and

6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)

**C.** Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):

1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and

2. Permit applications and attachments, permits and effluent data. (40 C.F.R. § 122.7(b)(2).)

## V. STANDARD PROVISIONS – REPORTING

### A. Duty to Provide Information

The Discharger shall furnish to the Regional Water Board, State Water Board, or U.S. EPA within a reasonable time, any information which the Regional Water Board, State Water Board, or U.S. EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Regional Water Board, State Water Board, or U.S. EPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, §§ 13267, 13383.)

### B. Signatory and Certification Requirements

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or U.S. EPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below. (40 C.F.R. § 122.41(k).)

2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA). (40 C.F.R. § 122.22(a)(3).).

3. All reports required by this Order and other information requested by the Regional Water Board, State Water Board, or U.S. EPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (40 C.F.R. § 122.22(b)(1));

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) (40 C.F.R. § 122.22(b)(2)); and

   c. The written authorization is submitted to the Regional Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)

4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard Provisions – Reporting V.B.3 above must be submitted to the Regional Water Board and

State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)

5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make the following certification:

   "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (40 C.F.R. § 122.22(d).)

**C. Monitoring Reports**

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.41(l)(4).)
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Regional Water Board or State Water Board for reporting results of monitoring of sludge use or disposal practices. (40 C.F.R. § 122.41(l)(4)(i).)
3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under 40 C.F.R. part 136, or another method required for an industry-specific waste stream under 40 C.F.R. subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)
4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

**D. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date. (40 C.F.R. § 122.41(l)(5).)

**E. Twenty-Four Hour Reporting**

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (40 C.F.R. § 122.41(l)(6)(i).)
2. The following shall be included as information that must be reported within 24 hours under this paragraph (40 C.F.R. § 122.41(l)(6)(ii)):

a. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)

b. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)

3. The Regional Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours. (40 C.F.R. § 122.41(l)(6)(iii).)

**F. Planned Changes**

The Discharger shall give notice to the Regional Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when (40 C.F.R. § 122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order. (40 C.F.R. § 122.41(l)(1)(ii).)

3. The alteration or addition results in a significant change in the Discharger's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan. (40 C.F.R.§ 122.41(l)(1)(iii).)

**G. Anticipated Noncompliance**

The Discharger shall give advance notice to the Regional Water Board or State Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with this Order’s requirements. (40 C.F.R. § 122.41(l)(2).)

**H. Other Noncompliance**

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above. (40 C.F.R. § 122.41(l)(7).)

**I. Other Information**

When the Discharger becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Water Board, State Water Board, or U.S. EPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

## VI. STANDARD PROVISIONS – ENFORCEMENT

**A.** The Regional Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13268, 13385, 13386, and 13387.

## VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS

### A. Publicly-Owned Treatment Works (POTWs)

All POTWs shall provide adequate notice to the Regional Water Board of the following (40 C.F.R. § 122.42(b)):

1. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to sections 301 or 306 of the CWA if it were directly discharging those pollutants (40 C.F.R. § 122.42(b)(1)); and
2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of adoption of the Order. (40 C.F.R. § 122.42(b)(2).)
3. Adequate notice shall include information on the quality and quantity of effluent introduced into the POTW as well as any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (40 C.F.R. § 122.42(b)(3).)

# ATTACHMENT E – NOT USED

# ATTACHMENT F – FACT SHEET

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## ATTACHMENT F– FACT SHEET

As described in section II of this Order, this Fact Sheet includes the legal requirements and technical rationale that serve as the basis for the requirements of this Order.

This Order has been prepared under a standardized format to accommodate a broad range of discharge requirements for dischargers in California. Only those sections or subsections of this Order that are specifically identified as “not applicable” have been determined not to apply to this Discharger. Sections or subsections of this Order not specifically identified as “not applicable” are fully applicable to this Discharger.

## I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility.

### Table F-1. Facility Information

| | |
|---|---|
| **WDID** | 2 019069001 |
| **Discharger** | City of Berkeley |
| | |
| **Name of Facility** | Sewer Collection System |
| **Facility Address** | Berkeley city limits |
| | Berkeley, CA |
| | Alameda County |
| **Facility Contact, Title, and Phone** | Adadu Yemane, Associate Civil Engineer, (510) 981-6413 |
| **Authorized Person to Sign and Submit Reports** | Andrew Clough, Public Works Director, (510) 981-6303 |
| **Mailing Address** | 1947 Center Street, Berkeley, CA 94704 |
| **Billing Address** | Same |
| **Type of Facility** | Sewer Collection System |
| **Major or Minor Facility** | Minor |
| **Threat to Water Quality** | 2 |
| **Complexity** | B |
| **Pretreatment Program** | N |
| **Reclamation Requirements** | Not Applicable |
| **Facility Permitted Flow** | 0 gallons per day |
| **Facility Design Flow** | Not Applicable |
| **Watershed** | San Francisco Bay |
| **Receiving Water** | Various |
| **Receiving Water Type** | enclosed bay |

**A.** The City of Berkeley (hereinafter Discharger) owns and maintains approximately 254 miles of gravity sewer mains, less than one mile of force mains, and seven pump stations that serve a population of about 113,000 people in the City of Berkeley.

The Discharger is one of seven East Bay Communities or "Satellite Agencies" that operates wastewater collection systems in the East Bay that route sewage to EBMUD's wastewater treatment facilities. The other six Satellite Agencies include Stege Sanitary District and the cities of Alameda, Albany, Emeryville, Oakland, and Piedmont. Wastewaters collected from the East Bay Communities' collection systems flow to interceptors owned and operated by EBMUD. EBMUD treats the wastewater at its treatment facilities and discharges the treated wastewater to San Francisco Bay, under a separate NPDES permit (CA0037702).

**B.** The Discharger's sewer collection system is regulated by Order No. R2-2009-0082, which was adopted on November 18, 2009, and expires on November 17, 2014, unless administratively extended. The Discharger is also regulated by the State Water Board General Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ).

## II. FACILITY DESCRIPTION

### A. Description of Sewer Collection System

The Discharger owns and operates about 254 miles of gravity sanitary sewers in the City of Berkeley in Alameda County. Additionally, the Discharger's wastewater collection system carries wastewater flows originating from sewer mains owned and operated by UC Berkeley, the Lawrence Berkeley National Laboratory, the Stege Sanitary District, and the cities of Albany and Oakland. The wastewater collection system transports wastewater from industrial, commercial, and residential sources to EBMUD's main wastewater treatment plant where EBMUD treats the wastewater and discharges it to San Francisco Bay. During wet weather, because of increased flows caused by excessive inflow and infiltration (I&I) from the Discharger's and other collection systems tributary to EBMUD facilities, the wastewater also flows to EBMUD's WWFs where EBMUD stores the wastewater or partially treats it prior to discharge to San Francisco Bay in violation of NPDES Permit CA0038440, which prohibits discharges from EBMUD's WWFs.

### B. Discharge Points and Receiving Waters

This Order prohibits discharges from the Discharger's sewer collection system, so there are no authorized discharge points.

## C. Summary of Existing Prohibitions

The 2009 permit (Order No. R2-2009-0082) ) included the following prohibitions:

**A.** The discharge of untreated or partially-treated wastewater to waters of the United States, is prohibited

**B.** The discharge of untreated or partially-treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.

**C.** The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills, to any surface water body is prohibited.

**D.** The Discharger shall not cause or contribute to discharges from EBMUD's WWFs that occur during wet weather or that are associated with wet weather.

## D. Compliance Summary

The Discharger has violated the 2009 permit's prohibition III.A. For 2012 and 2013, Table F-2 below summarizes sewer system discharges from the Discharger's collection system and the primary causes of these discharges. This information is not necessarily indicative of ongoing causes, in part because there are often multiple causes for any one particular sewer system discharge.

**Table F-2. Sewer System Discharges and Primary Causes**

| | **2012** | **2013** |
|---|---|---|
| Number of Discharges | 11 | 13 |
| % Caused by Pipe Failure | 36.4 | 38.5 |
| % Caused by Grease | 9.1 | 7.7 |
| % Caused by Debris | 9.1 | 7.7 |
| % Caused by Roots | 18.2 | 15.4 |

These sewer system discharges were enforced by the Consent Decree described below. Additionally, the Discharger caused or contributed to discharges from the EBMUD WWFs in violation of the 2009 permit's prohibition III.D (and EBMUD's NPDES Permit CA0038440). WWFs' discharges occurred and will continue to occur during wet weather from excessive I&I into the Discharger's wastewater collection system increasing peak wastewater flows to EBMUD's system that the WWFs cannot fully store. This in turn causes discharges from the WWFs.

To enjoin these discharges from the WWFs (that violated Prohibition III.D of the 2009 permit), the Regional Water Board, along with U.S. EPA and the State Water Board, sued the Discharger, the other Satellite Agencies, and EBMUD in 2009 for violations of their permits, and a Consent Decree was lodged and entered by the court on September 22, 2014 (*United States of America, People of the State of California ex rel. State Water Resources Control Board and Regional Water Quality Control Board, San Francisco Bay Region (Plaintiffs), San Francisco Baykeeper and Our Children's Earth (Intervenor-Plaintiffs) v. East Bay Municipal Utility District*, and *United States of America, People of the State of California ex rel. State Water Resources Control Board and Regional Water Quality Control Board, San Francisco Bay Region, San Francisco Baykeeper and Our Children's Earth v. Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont and Stege Sanitary District*, U.S. District Court, Northern District of California [Consolidated Case Nos. C 09-00186-RS and C 09-05684-RS]). The Consent Decree requires the Discharger to undertake specified sewer cleaning rates, rehabilitate its sewer mains and manholes, eliminate sources of I&I, and assist in implementation of a regional private sewer lateral rehabilitation program, among other requirements. It also requires the end of any discharges from the WWFs by the end of 2035 and describes parameters to be met during the time period of the Consent Decree.

The following provides more background and regulatory history for the East Bay Communities and past efforts to address collection system issues associated with wet weather.

***Background and Regulatory History***

a. *History.* The wastewater collection systems in the East Bay Communities were originally constructed in the early twentieth century. These systems originally included cross-connections to storm drain systems, and, while not uncommon at the time of construction, some of the sewers were later characterized as having inferior materials, poor joints, and inadequate beddings for sewer pipes. The poor construction coupled with landscaping, particularly trees, have damaged sewers and caused leaks. Poor construction techniques and aging sewer pipes has resulted in excessive I&I during the wet weather season. In the early 1980s, it was noted that during storms, the collection systems might receive up to 20 times more flow than in dry weather. As a result, the East Bay Communities' collection systems might overflow to streets, local watercourses, and the Bay, creating a risk to public health and impairing water quality.

b. *I&I Effect on EBMUD's Interceptor System*. The East Bay Communities' collection systems are connected to EBMUD's interceptors. In the early 1980s, excessive I&I from the East Bay Communities' collection systems could force EBMUD's interceptors to overflow untreated wastewater at seven designed overflow structures in EBMUD's interceptors along the shoreline of central San Francisco Bay.

c. *EBMUD wet weather permits*. The Regional Water Board first issued an NPDES permit to EBMUD in 1976 for the wet weather discharges from EBMUD's interceptors. This permit required EBMUD to eliminate the discharge of untreated overflows from its interceptors and to protect water quality in San Francisco Bay. This permit was reissued in 1984, 1987, 1992, 1998, 2005, and 2009. Additional requirements were incorporated into the reissued permits following construction of the WWFs.

d. *Collection system permits to East Bay Communities.* Following issuance of the wet weather permit to EBMUD in 1976, the Regional Water Board issued similar permits in 1976 to all members of the East Bay Communities except the City of Emeryville. The Regional Water Board reissued these permits in 1984, 1989, 1994, 2004, and 2009. Emeryville was not originally issued a permit because it was believed that no wet weather overflows occurred in Emeryville's service area. However, wet weather overflows were identified in the City of Emeryville after completion of the East Bay I&I Study and issuance of the cease and desist order in 1986.

e. *East Bay I&I Study and I/ICP*. In response to the requirements in the Regional Water Board permits and cease and desist order regarding the control of untreated overflows from EBMUD's interceptors and the East Bay Communities' collection systems, EBMUD and the East Bay Communities coordinated their efforts to develop a comprehensive program to comply with these permit requirements. In 1980, the East Bay Communities, including the Discharger, and EBMUD initiated a six-year East Bay I&I Study. The I&I Study outlined recommendations for a long-range sewer improvement program called the East Bay Infiltration/Inflow Correction Program (I/ICP). The I&I Study also specified schedules, which were called Compliance Plans, for each member of the East Bay Communities to complete various sewer rehabilitation projects specified in the I/ICP. These Compliance Plans were later incorporated into the cease and desist order for the East Bay Communities as compliance schedules.

   The $16.5 million I&I Study was funded under the Clean Water Grant Program with State and federal support paying about 87.5% of the costs. The original Compliance Plans, dated October 8, 1985, proposed a 20-year plan to implement the I/ICP to eliminate wet weather overflows from the East Bay Communities' collection systems up to the five-year storm event. The total program cost was estimated at $304 million in 1985 dollars.

f. *Joint Powers Agreement (JPA).* In order to address I&I problems in the East Bay Communities' wastewater collection systems, on February 13, 1979, the East Bay Communities and EBMUD entered into a JPA under which EBMUD serves as administrative lead agency to conduct the East Bay I&I Study. The JPA was amended on January 17, 1986, to designate EBMUD as the lead agency during the initial five-year implementation phase of the East Bay I&I Study recommendations. The amended JPA also delegated authority to EBMUD to apply for and administer grant funds, to award contracts for mutually agreed upon wet weather programs, and to perform other related tasks. Programs developed under the JPA are directed by a

Technical Advisory Board (TAB) composed of one voting representative from each of the East Bay Communities and EBMUD. In addition, one non-voting staff member of the Regional Water Board, the State Water Board, and U.S. EPA may participate in the TAB.

g. *Cease and Desist Order.* In 1986, the Regional Water Board issued a cease and desist order (CDO) to the East Bay Communities including the City of Emeryville (Order No. 86-17, reissued with Order No. 93-134). This CDO requires the East Bay Communities to cease and desist discharging from their wastewater collection systems. In No. 86-17, the Regional Water Board accepted the proposed approach in the I/ICP and directed the I/ICP to focus on conducting activities that reduce impacts to public health. In 2009, the Regional Water Board amended the CDO for Oakland (Order No. R2-2009-0087) to require rehabilitation of sewer mains instead of construction of relief sewers. This was because relief sewers would not reduce I/I, and a long-term solution that significantly reduced excessive I/I was needed because EBMUD was no longer allowed to discharge from its WWFs. In 2011, the Regional Water Board rescinded the CDO for Stege Sanitary District, and the cities of Alameda, Albany, Berkeley, Emeryville, and Piedmont because these East Bay Communities had completed all work required by the CDO.

h. *EBMUD's Wet Weather Program.* From 1975 to 1987, EBMUD underwent its own wet weather program planning, and developed a comprehensive Wet Weather Program. The objective of the Wet Weather Program was that EBMUD's WWFs would have the capacity to convey peak flows to EBMUD's system by the East Bay Communities' trunk sewers at the end of the I/ICP implementing period. EBMUD started implementing its Wet Weather Program in 1987. This involved the construction of three WWFs, two wet weather interceptors, new storage basins and pumping facilities, expansion of the main wastewater treatment plant, and elimination of two out of the seven designed wet weather overflow structures.

i. *Updates to original I/ICP.* After receiving a notice from the Regional Water Board for issuing a new CDO in 1993, the East Bay Communities requested the opportunity to revise their Compliance Plans. The impetus of this revision stemmed from increased costs for implementing the original Compliance Plans. New technological developments and the inadequacy of other methods previously thought viable for sewer rehabilitation and relief line installation had increased the cost of the I/ICP from original cost estimates. The revised Compliance Plans incorporated the experience gained from the implementation of the I/ICP for the six years from 1987 to 1993 in order to better address the remaining I/ICP projects.

j. *Extension to Original Compliance Plans*. The increase in project costs necessitated extensions of the schedules in the original Compliance Plans in order to minimize the impact on rate-payers. As a result, all members of the East Bay Communities except the Stege Sanitary District and the City of Emeryville submitted a revised Compliance Plan and Schedule in October 1993. In light of the increased costs, the Regional Water Board granted the Discharger and the cities of Albany, Alameda,

Oakland, and Piedmont a five (5) to ten (10) year extension to the original compliance schedules in the CDO's reissuance in October 1993.

k. *2009 Permit and Lawsuits*. In November 2009, the Regional Water Board reissued the Discharger's permit, which included a new prohibition against the Discharger operating its collection system in a manner that causes or contributes to discharges from EBMUD's WWFs. The change was in response to State Water Board Order WQ 2007-0004, which held that the EBMUD's WWFs are subject to secondary treatment requirements. Thereafter, after consultation with EBMUD that secondary treatment is not possible at the WWFs, the Regional Water Board prohibited the discharges from the WWFs in Order No. R2-2009-0004. Shortly afterwards, U.S. EPA and the Regional and State Water Boards filed a lawsuit in January 2009 against EBMUD for discharges in violation of this prohibition based on EBMUD's immediate inability to comply. U.S. EPA also filed a separate lawsuit in December 2009 against the East Bay Communities for violations of their permits for sewer overflows and failure to properly operate and maintain their sewer systems in a manner that does not cause or contribute to discharges from the WWFs. The Regional and State Water Boards joined as plaintiffs in this lawsuit. San Francisco Baykeeper and Our Children's Earth intervened in the lawsuits, which resulted in partial remedies in the form of Stipulated Orders for Preliminary Relief.

   The EBMUD Stipulated Order required EBMUD to, among other things, conduct flow monitoring on the satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems. EBMUD had a number of studies conducted to provide the basis for developing many of the technical provisions of the EBMUD Stipulated Order. One conclusion of these studies was that, while the East Bay Communities had made significant progress in reducing I&I through the I/ICP and subsequent sewer pipe rehabilitation, it is unlikely that these projects would be sufficient to reduce flows from the East Bay Communities to the extent that discharges from the WWFs would be eliminated or significantly reduced. The cooperation of each community in the development and implementation of the programs specified above, along with repairing and rehabilitating their own wastewater collection systems, is critical to achieving the wet weather flow reductions within each system that is necessary to eliminate discharges from the WWFs.

   The East Bay Communities Stipulated Order in 2011 required the communities to take certain interim steps to, in part, address excessive I/I from their collection systems that contribute to discharges from the WWFs. EBMUD and the East Bay Communities have been performing work required under the Stipulated Orders.

l. *2014 Consent Decree*. The EBMUD and East Bay Communities lawsuits were consolidated and on September 22, 2014, the court entered the Consent Decree, which includes the final remedy to achieve elimination of discharges at the WWFs. The requirements of the Consent Decree are described above.

### E. Planned Changes

Under the Consent Decree, the Discharger will rehabilitate sewer main pipes and manholes, remove sources of I&I, conduct sewer CCTV inspections, clean its sewers, and continue to implement a private sewer lateral program. These actions are expected to reduce sanitary sewer overflows and I&I into the collection system, which will, in turn, reduce and ultimately eliminate discharges from EBMUD's WWFs.

## III. APPLICABLE PLANS, POLICIES, AND REGULATIONS

The requirements in the Order are based on the requirements and authorities described below.

### A. Legal Authorities

This Order serves as WDRs pursuant to California Water Code article 4, chapter 4, division 7 (commencing with § 13260). This Order is also issued pursuant to federal Clean Water Act (CWA) section 402 and implementing regulations adopted by U.S. EPA and Water Code chapter 5.5, division 7 (commencing with § 13370). It shall serve as an NPDES permit for point source discharges from the named facilities to surface waters.

### B. California Environmental Quality Act

Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act, Public Resources Code division 13, chapter 3 (commencing with § 21100).

### C. State and Federal Regulations, Policies, and Plans

1. **Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Francisco Bay (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. In addition, the Basin Plan implements State Water Board Resolution No. 88-63, which established State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply.

   Common beneficial uses for central and lower San Francisco Bay, as identified in the Basin Plan, are:

**Basin Plan Beneficial Uses**

| Receiving Water | Beneficial Uses |
|---|---|
| Central and Lower San Francisco Bay and its Tributaries | Ocean, Commercial, and Sport Fishing (COMM)<br>Estuarine habitat (EST)<br>Industrial Service Supply (IND)<br>Marine Habitat (MAR), Fish Migration (MIGR)<br>Navigation (NAV)<br>Preservation of Rare and Endangered Species (RARE)<br>Water Contact Recreation (REC1)<br>Noncontact Water Recreation (REC2)<br>Shellfish Harvesting (SHELL)<br>Fish Spawning (SPWN)<br>Wildlife Habitat (WILD) |

2. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** U.S. EPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995, and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, U.S. EPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the State. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants. Requirements of this Order are consistent with the NTR and CTR because discharges from the sewer collection system are prohibited.

3. **State Implementation Policy.** On March 2, 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP became effective on April 28, 2000, with respect to the priority pollutant criteria promulgated for California by the U.S. EPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000, with respect to the priority pollutant criteria promulgated by the U.S. EPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005, that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Requirements of this Order are consistent with the SIP because discharges from the sewer collection system are prohibited.

4. **Antidegradation Policy.** Section 131.12 requires that the state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law.

Resolution No. 68-16 requires that existing water quality be maintained unless degradation is justified based on specific findings. The Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. The permitted discharge must be consistent with the antidegradation provisions of section 131.12 and State Water Board Resolution No. 68-16. Because this Order does not allow any discharges, it is consistent with the antidegradation provisions of section 131.12 and State Water Board Resolution No. 68-16.

5. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations[1] section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require that effluent limitations in a reissued permit must be as stringent as those in the previous permit, with some exceptions in which limitations may be relaxed. This Order is as stringent as the previous permit and there is no backsliding.

6. **Endangered Species Act Requirements.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). The Discharger is responsible for meeting all applicable Endangered Species Act requirements.

### D. Impaired Water Bodies on CWA 303(d) List

In October 2011, U.S. EPA approved a revised list of impaired waters prepared pursuant to CWA section 303(d), which requires identification of specific water bodies where it is expected that water quality standards will not be met after implementation of technology-based effluent limitations on point sources. Where it has not done so already, the Regional Water Board plans to adopt Total Maximum Daily Loads (TMDLs) for pollutants on the 303(d) list. TMDLs establish wasteload allocations for point sources and load allocations for non-point sources and are established to achieve the water quality standards for the impaired waters. Because this Order prohibits discharge, a detailed discussion of the Regional Water Board's process of developing TMDLs, WLAs and resulting effluent limitations is, therefore, unnecessary.

### E. Other Plans, Polices and Regulations

This Order is not based on any other plans, polices or regulations.

## IV. RATIONALE FOR DISCHARGE PROHIBITIONS

**1. Discharge Prohibition III.A (no sewer system discharges to Waters of the United States):** This prohibition is based on the CWA, which prohibits discharges of wastewater that does not meet secondary treatment standards as specified in 40 C.F.R. Part 133. Additionally, the Basin Plan prohibits discharge of raw sewage or any waste failing to meet WDRs to any waters of the basin.

[1] All further regulatory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

**2. Discharge Prohibition III.B (no sewer system discharges shall create a nuisance as defined in California Water Code Section 13050(m)):** This prohibition is based on California Water Code Section 13263, which requires the Regional Water Board to prescribe WDRs that prevent nuisance conditions from developing.

**3**. **Discharge Prohibition III.C** (**no discharge of chlorine, or any other toxic substance used for disinfection and cleanup of sewage spill to any surface water body):** The Basin Plan contains a toxicity objective stating, "All waters shall be maintained free of toxic substances in concentrations that are lethal to or produce other detrimental responses to aquatic organisms." Chlorine is lethal to aquatic life.

**4**. **Discharge Prohibition III.D (shall not cause or contribute to discharges from EBMUD's three WWFs)**: Because excessive I&I has contributed to discharges of partially-treated wastewater at EBMUD's WWFs, in violation of NPDES permit CA0038440 and the CWA, this prohibition is necessary to ensure that the Discharger properly operates and maintains its wastewater collection system (40 C.F.R. Part 122.41(e)) so as to not cause or contribute to discharges from the WWFs and violations of the CWA.

This prohibition is based on 40 C.F.R. 122.41(e), which requires permittees to at all times properly operate and maintain all facilities, and the need for this specific prohibition results from a change in 2009 to the permit requirements for EBMUD's WWFs. The change involved prohibiting discharges from the WWFs because the discharge of partially-treated wastewater violates the CWA. A general requirement for proper operation and maintenance is specified in Attachment D of this permit; however, this prohibition is also necessary to specifically address the Discharger's excessive I/I into its collection system leading to discharges that violate the CWA. During wet weather, excessive I/I into the Discharger's wastewater collection system causes peak wastewater flows to EBMUD's system that EBMUD cannot fully store or treat. This in turn results in Discharger's and other Satellite Agencies' partially-treated wastewater to be discharged from the WWFs in violation of the CWA. Therefore, this specific prohibition is necessary to ensure that the Discharger properly operates and maintains its facilities to reduce I&I, and by doing so not cause or contribute to violations of the CWA. The Consent Decree sets forth a time schedule and work obligations for the Discharger so that it may come into compliance with this prohibition and also contains stipulated penalties for failure to conduct the required work.

## V. RATIONALE FOR RECEIVING WATER LIMITATIONS

Because this Order prohibits discharge, it does not allow for any impact on receiving waters. As such, the Order does not include receiving water limitations.

## VI. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS

40 C.F.R. 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results relating to compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system, there are no effluent limitations. Consistent with General Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ), as amended by Monitoring and Reporting Program

Order No. WQ 2013-0058-EXEC, the Discharger must still notify the Regional Water Board and submit a written report if discharges occur in violation of Prohibitions III.A-C.

## VII. RATIONALE FOR PROVISIONS

### A. Standard Provisions

Attachment D contains standard provisions that apply to all NPDES permits in accordance with 40 C.F.R. 122.41 and additional conditions applicable to specific categories of permits in accordance with 40 C.F.R. 122.42. The Discharger must comply with these provisions. The conditions set forth in 40 C.F.R. 122.41(a)(1) and (b) through (n) apply to all state-issued NPDES permits and must be incorporated into the permits either expressly or by reference.

### B. Special Provisions

#### 1. Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements

This provision is to explain the Order's requirements as they relate to the Discharger's collection system and to promote consistency with the State Water Board's General Waste Discharge Requirements for Sanitary Sewer Systems (Order No. 2006-0003-DWQ), as amended by Monitoring and Reporting Program Order No. WQ 2013-0058-EXEC.

The General Order requires public agencies that own or operate sanitary sewer systems with greater than one mile of pipes or sewer lines to enroll for coverage under the General Order. The General Order requires agencies to develop sanitary sewer management plans and report all sanitary sewer system discharges, among other requirements and prohibitions. Furthermore, the General Order contains requirements for operation and maintenance of collection systems and for reporting and mitigating sewer system discharges. The Discharger must comply with both the General Order and this Order.

### C. PUBLIC PARTICIPATION

The Regional Water Board is considering the issuance of WDRs that will serve as an NPDES permit for the Discharger's wastewater collection system. As a step in the WDR adoption process, the Regional Water Board staff has developed tentative WDRs. The Regional Water Board encourages public participation in the WDR adoption process.

### A. Notification of Interested Parties

The Regional Water Board notified the Discharger and interested agencies and persons of its intent to prescribe WDRs for the discharge and provided an opportunity to submit written comments and recommendations. Notification was provided through the Oakland Tribune. The public had access to the agenda and any changes in dates and

locations through the Regional Water Board's website at http://www.waterboards.ca.gov/sanfranciscobay.

## B. Written Comments

Interested persons are invited to submit written comments concerning the tentative WDRs as explained through the notification process. Comments are due either in person or by mail at the Regional Water Board office at 1515 Clay Street, Suite 1400, Oakland, California 94612, to the attention of Robert Schlipf.

To be fully responded to by staff and considered by the Regional Water Board, written comments must be received at the Regional Water Board offices by 5:00 p.m. on **October 1, 2014**.

## C. Public Hearing

The Regional Water Board will hold a public hearing on the tentative WDRs during its regular Board meeting on the following date and time and at the following location:

| | |
|---|---|
| Date: | November 12, 2014 |
| Time: | 9:00 a.m. |
| Location: | Elihu Harris Office Building<br>1515 Clay Street, 1st Floor Auditorium<br>Oakland |

Interested persons are invited to attend. At the public hearing, the Regional Water Board will hear testimony, if any, pertinent to the discharge, WDRs, and permit. Oral testimony will be heard; however, for accuracy of the record, important testimony should be in writing.

Please be aware that dates and venues may change. Our Web address is www.waterboards.ca.gov/sanfranciscobay/ where you can access the current agenda for changes in dates and locations.

## D. Waste Discharge Requirements Petitions

Any aggrieved person may petition the State Water Board to review the Regional Water Board decision regarding the final WDRs. The State Water Board must receive the petition at the following address within 30 calendar days of the Regional Water Board action:

State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100, 1001 I Street
Sacramento, CA 95812-0100

For instructions on how to file a petition for review, see http://www.waterboards.ca.gov/public_notices/petitions/water_quality.

## E. Information and Copying

The Report of Waste Discharge, related supporting documents, and comments received are on file and may be inspected at the address above at any time between 9:00 a.m. and 5:00 p.m., Monday through Friday. Copying of documents may be arranged by calling (510) 622-2300.

## F. Register of Interested Persons

Any person interested in being placed on the mailing list for information regarding the WDRs and NPDES permit should contact the Regional Water Board, reference the Facility, and provide a name, address, and phone number.

## G. Additional Information

Requests for additional information or questions regarding this order should be directed to Robert Schlipf at (510) 622-2478 or Robert.Schlipf@waterboards.ca.gov.