

**California Regional Water Quality Control Board
Santa Ana Region**

March 14, 2014

Item: 13

Subject: Issuance of Order No. R8-2014-0025, Amending Time Schedule Order No. R8-2009-0069, as amended by Order No. R8-2013-0060 on December 6, 2013, for Dischargers Enrolled in Order No. R8-2007-0041, NPDES No.CAG918002, General Discharge Permit for Discharges to Surface Waters of Groundwater Resulting from Groundwater Dewatering Operations and/or Groundwater Cleanup Activities at Sites within the San Diego Creek/Newport Bay Watershed Polluted by Petroleum Hydrocarbons, Solvents, Metals and/or Salts.

Discussion:

On December 6, 2013, the Regional Board adopted Order No. R8-2013-0060, amending Time Schedule Order (TSO) No. R8-2009-0069, for dewatering and groundwater cleanup discharges to surface waters in the Newport Bay watershed. Order No. R8-2013-0060 extended the expiration date of the TSO for a maximum of two years, i.e., no later than December 10, 2016. The effect of Order No. R8-2013-0060 was to extend the schedule for compliance with selenium effluent limitations applicable to the dewatering and groundwater cleanup discharges for a maximum of two years.

The staff report prepared for consideration of Order No. R8-2013-0060 provides a detailed review of the salient points concerning the rationale for issuance of the TSO on December 10, 2009, and the basis for Board staff's recommendation to amend the TSO to extend its expiration date.

At the January 31, 2014 Regional Board meeting, regulated dischargers in the Newport Bay watershed, including a representative of the County of Orange (County), requested the opportunity to provide to the Board additional, more detailed information concerning the time expected to be needed to complete selenium-related tasks and to come into compliance with selenium limitations, which will likely be affected by those tasks. These tasks include the development and multi-agency approval process for selenium TMDLs (and site-specific objectives), implementation of selenium reduction projects by watershed stakeholders pursuant to an approved BMP Strategic Plan, and Regional Board issuance of revised permits necessary to implement the selenium TMDLs, once they are approved. Given the complexity of these tasks and the multiple levels of approval necessary to make TMDLs (and SSOs) effective for regulatory purposes, these parties expressed concern that the two year compliance extension provided by Order No. R8-2013-0060 would not suffice. The failure to comply with the selenium effluent limitations would subject regulated dischargers to enforcement remedies, including the imposition of mandatory minimum penalties.

Based on the request by regulated dischargers at the January 31 meeting, this item has been scheduled to allow them to present additional information and to give the Board the opportunity to reconsider the duration of the extension. In draft Order No. R8-2013-0060, Regional Board staff recommended an extension of the TSO of a maximum of five years, or no later than December 10, 2019. The maximum five year period proposed reflected Board staff's judgment of the time likely to be needed to complete and obtain requisite approvals of the selenium TMDLs, and to revise waste discharge permits accordingly. Board staff has prepared draft Order No. R8-2014-0025, which does not specify a termination end-date, in anticipation that the Regional Board will determine the appropriate extension, if any, based on the evidence to be presented by the County of Orange and other watershed dischargers.

RECOMMENDATION

If the Board determines that a further extension of the TSO is appropriate, staff recommends adoption of Order No. R8-2014-0025, amending Time Schedule Order No. R8-2009-0069, as amended by Order No. R8-2013-0060, to extend the duration of the TSO from no later than December 10, 2016 to an appropriate revised date.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

ORDER NO. R8-2014-0025
AMENDING TIME SCHEDULE ORDER NO. R8-2009-0069
(As Amended by Order No. R8-2013-0060 on December 6, 2013)

For

DISCHARGERS ENROLLED IN ORDER NO. R8-2007-0041, NPDES NO. CAG918002, GENERAL DISCHARGE PERMIT FOR DISCHARGES TO SURFACE WATERS OF GROUNDWATER RESULTING FROM GROUNDWATER DEWATERING OPERATIONS AND/OR GROUNDWATER CLEANUP ACTIVITIES AT SITES WITHIN THE SAN DIEGO CREEK/NEWPORT BAY WATERSHED POLLUTED BY PETROLEUM HYDROCARBONS, SOLVENTS, METALS AND/OR SALTS

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board) finds that:

1. On December 10, 2009, the Board adopted Time Schedule Order (TSO) No. R8-2009-0069 for dischargers enrolled in Order No. R8-2007-0041, NPDES No. CAG918002, General Discharge Permit for Discharges to Surface Waters of Groundwater Resulting from Groundwater Dewatering Operations and/or Groundwater Cleanup Activities at Sites within the San Diego Creek/Newport Bay Watershed Polluted by Petroleum Hydrocarbons, Solvents, Metals and/or Salts. Order No. R8-2007-0041 expired on November 1, 2012 but was administratively extended.
2. TSO No. R8-2009-0069 (the TSO) was amended on December 6, 2013 by Order No. R8-2013-0060. Order No. R8-2013-0060 extended the expiration date of the TSO by a maximum of two years, or no later than December 10, 2016. The effect of Order No. R8-2013-0060 was to extend the schedule for compliance with selenium effluent limitations for a maximum of two years, or no later than December 10, 2016.
3. The staff report prepared for Order No. R8-2013-0060 and the findings in Order No. R8-2013-0060 identify and describe relevant facts concerning the issuance of the TSO and the rationale for the extension of the expiration date of the TSO. The findings included in Order No. R8-2013-0060 are hereby incorporated by reference in this Order.
4. By letter dated January 22, 2014, and at the Regional Board meeting on January 31, 2014, the County of Orange (County), representing the regulated dischargers (dischargers), requested reconsideration of the duration of the extension of the expiration of the TSO. The County requested this reconsideration based on

additional, more detailed information to be presented to the Board concerning the time expected to be necessary to complete selenium-related tasks and to come into compliance with selenium effluent limitations.

5. The County presented this additional information concerning the needed duration of the extension of the expiration date of the TSO at the March 14, 2014 Board hearing.
6. California Water Code (CWC) Section 13385(j)(3)(C)(ii)(II) provides that following a public hearing, and upon a showing that the discharger is making diligent progress towards bringing the waste discharge into compliance with the effluent limitation, the regional board may extend the time schedule specified in a time schedule order issued to that discharger for an additional period not exceeding five years, if the discharger demonstrates that the additional time is necessary to comply with the effluent limitation.
7. As described in detail in the staff report accompanying Order No. R8-2013-0060 and the findings in that Order, and as further described at the March 14, 2014 Board hearing, the regulated dischargers are making diligent progress toward bringing waste discharges into compliance with selenium effluent limitations and have demonstrated that additional time beyond December 10, 2016 is necessary to achieve that compliance. Per CWC section 13385(j)(3)(C)(ii)(II), it is appropriate to extend the TSO by no more than three (3) years, i.e., to no later than December 10, 2019. The extension will allow the completion of work necessary to complete revised selenium TMDLs and to re-issue Order No. R8-2007-0041 to incorporate revised effluent limitations and other requirements necessary to implement the new TMDLs. No other changes to the TSO are necessary.
8. Issuance of this amendment to the TSO is exempt from the provision of the California Environmental Quality Act (Public Resources Code, Section 21000, *et seq.*), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.
9. Any person adversely affected by this action of the Regional Water Board may petition the State Water Board to review the action. The petition must be received by the State Water Board Office of the Chief Counsel, P.O. Box 100, Sacramento, CA, 95812-0100, within 30 days of the date on which the action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request. Copies of the law and regulations applicable to filing petitions will be provided on request. Information regarding the petition process may also be found at the State Water Board website:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml.

IT IS HEREBY ORDERED THAT:

1. Time Schedule Order No. R8-2009-0069 shall be extended for up to an additional three (3) years, as set forth in Attachment 1, which includes the following amendment:

“7. This Order, as amended by Order No. R8-2013-0060 on December 6, 2013 and by Order No. R8-2014-0025 on March 14, 2014, shall remain in effect for a maximum of three years from its current expiration date, or until December 10, 2019, or until such time as Order No. R8-2007-0041 is re-issued to incorporate revised selenium effluent limitations and other requirements necessary to implement Board approved selenium TMDLs. “

2. All other terms and conditions of Time Schedule Order No. R8-2009-0069, as amended, remain in full force and effect.

This Order is effective upon the date of signature.



Kurt V. Berchtold, Executive Officer

March 14, 2014

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

TIME SCHEDULE ORDER NO. R8-2009-0069

For

DISCHARGERS ENROLLED UNDER ORDER NO. R8-2007-0041, NPDES NO. CAG918002,
GENERAL DISCHARGE PERMIT FOR DISCHARGES TO SURFACE WATERS OF
GROUNDWATER RESULTING FROM GROUNDWATER DEWATERING OPERATIONS
AND/OR GROUNDWATER CLEANUP ACTIVITIES AT SITES WITHIN THE SAN DIEGO
CREEK/NEWPORT BAY WATERSHED POLLUTED BY PETROLEUM HYDROCARBONS,
SOLVENTS, METALS AND/OR SALTS

(As amended by Order No. R8-2013-0060 on December 6, 2013 and as further amended by
Order No. R8-2014-0025 on March 14, 2014)

The California Regional Water Quality Control Board, Santa Ana Region (Regional Water Board), finds that:

1. In May 2000, the United States Environmental Protection Agency (USEPA) promulgated what is known as the California Toxics Rule (CTR), which consists of numeric water quality criteria for priority toxic pollutants and other water quality standards provisions to be applied to waters in the State of California (State). (See 40 C.F.R. 131.38.) USEPA promulgated the CTR based on a determination that the numeric criteria are necessary to protect human health and the environment. The CTR contains a numeric chronic aquatic life criterion for selenium in freshwater of 5 micrograms per liter (5 µg/L), as total recoverable selenium, and in saltwater of 71 µg/L, as total dissolved selenium. (40 C.F.R. 131.38(b)(1).)
2. The CTR provides the State with discretion in how to implement the relevant criteria. Accordingly, in March 2000, the State Water Resources Control Board ("State Water Board") adopted the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). The State Water Board amended the SIP in February 2005 with Resolution No. 2005-0019. USEPA has approved the SIP for use as the State's implementation plan for CTR constituents.
3. On June 14, 2002, USEPA promulgated Total Maximum Daily Loads (TMDLs) for Toxic Pollutants in San Diego Creek and Newport Bay. TMDLs were established for organochlorine compounds, organophosphate pesticides, metals (chromium, cadmium, mercury, copper, lead and zinc) and selenium.
4. The USEPA TMDLs established waste load allocations (WLAs) for discharges of groundwater to surface water for selenium based on the CTR chronic criteria for selenium in freshwater and saltwater. However, USEPA's TMDLs are not self-executing, contain no implementation plan, and have not been incorporated into the Basin Plan for the Santa Ana Region. Neither the State nor Regional Water Board has developed an implementation plan for the USEPA TMDLs.

5. On December 20, 2004, the Regional Water Board adopted General Waste Discharge Requirements for Short-Term Groundwater-Related Discharges and De Minimus Wastewater Discharges to Surface Waters within the San Diego Creek/Newport Bay Watershed, Order No. R8-2004-0021, NPDES No. CAG998002. Pursuant to the SIP, the Regional Water Board incorporated numeric selenium effluent limits based on the CTR chronic freshwater and saltwater aquatic life criteria into Order No. R8-2004-0021, with a compliance schedule requiring compliance with the final effluent limits to be achieved no later than December 20, 2009. As interim compliance measures, Order No. R8-2004-0021 allowed for compliance with the selenium effluent limitations through either an approved offset program or participation in the Nitrogen and Selenium Management Program [NSMP] prior to the December 20, 2009 date.
6. On October 13, 2006, the Regional Water Board adopted Order No. R8-2006-0065, which amended the type and nature of discharges authorized under Order No. R8-2004-0021.
7. On November 30, 2007, the Regional Water Board adopted Order No. R8-2007-0041, NPDES No. CAG918002. Order No. R8-2007-0041 is a general permit that regulates discharges of treated wastewater from groundwater dewatering and/or groundwater remediation activities at sites polluted by petroleum hydrocarbons, solvents, metals and/or salts within the San Diego Creek/Newport Bay watershed. Consistent with Order No. R8-2004-0021, Order No. R8-2007-0041 required compliance with final effluent limits based on the CTR chronic criteria for selenium by no later than December 20, 2009. Order No. R8-2007-0041 has replaced Order No. R8-2004-0021, and Order No. R8-2004-0021 has been rescinded.
8. Order No. R8-2007-0041 was later amended by Order No. R8-2009-0045, which was adopted by the Regional Water Board on July 20, 2009. Order No. R8-2009-0045 amended Order No. R8-2007-0041 by expanding and clarifying the nature of the discharges allowed under Order No. R8-2007-0041.
9. As of the date of this Order, the following entities are enrollees under Order No. R8-2007-0041 ("Existing Dischargers"):

| <u>Enrollees</u> | <u>Facility</u> | <u>Effective Date</u> |
|---------------------------------------|----------------------------------|-----------------------|
| Ca Dept of Transportation District 12 | Dewatering-Irvine-Variou-Newport | 6/14/2005 |
| Irvine Company | Dewatering, General | 12/20/2004 |
| Newport Beach City | Dewatering, General | 9/24/1998 |
| FOOTHILL ENG & DEWATERING, INC | Dewatering, Various, Newport Bay | 11/8/2002 |
| Irvine Ranch Water District | Dewatering, Irvine | 4/20/2005 |
| Golden State Water Company - Anaheim | Dewatering, Various | 4/7/2005 |
| Orange Cnty Flood Control Dist | Dewatering, Irvine-Newport Bay | 2/24/2005 |
| Costa Mesa City | Dewatering, C.M.-Newport Bay | 3/28/2005 |

| | | |
|------------------------------|---|------------|
| Tustin City | Dewatering, Newport Bay | 3/28/2005 |
| Laguna Hills City | Dewatering, Laguna Hills, Newport | 3/28/2005 |
| Lake Forest City | Dewatering, Lake Forest, Newport | 3/28/2005 |
| Santa Ana City PWD | Dewatering, Santa Ana City Potable Water System | 2/24/2006 |
| Mariners Mile Gateway LLC | GW Cleanup-Newport Beach, Orange | 10/26/2006 |
| Integral Communities I Inc | GW Cleanup, Sandpoint, Santa Ana | 2/27/2008 |
| Irvine City | Lane Channel -Irvine | 1/11/2008 |
| G & M Oil Company Inc | GW Cleanup-C.M., Bristol #21 Newport Marina/Bridgeport | 2/5/2008 |
| ETCO Investment | Project | 9/11/2008 |

Entities that enroll under Order No. R8-2007-0041 after the effective date of this Order are referred to as "Future Dischargers." Any entity that enrolls under Order No. R8-2007-0041 is a "Discharger." Although listed above as an Existing Discharger, the City of Irvine, and potentially others, is not presently discharging under Order No. R8-2007-0041 and the City of Irvine has no present intention of discharging thereunder for the foreseeable future.

10. Section V.A.1.a of Order No. R8-2007-0041 contains final effluent limitations based on CTR criteria for total recoverable selenium for discharges to San Diego Creek and its tributaries at the following levels: (1) the maximum daily concentration limit ($\mu\text{g/L}$) is 8.2; and (2) the average monthly concentration limit ($\mu\text{g/L}$) is 4.1.
11. Section V.A.1.a of Order No. R8-2007-0041 contains final effluent limitations based on CTR criteria for total recoverable selenium for discharges to Upper and Lower Newport Bay at the following levels: (1) the maximum daily concentration limit ($\mu\text{g/L}$) is 116; and (2) the average monthly concentration limit ($\mu\text{g/L}$) is 58.
12. Section V.A.1.b of Order No. R8-2007-0041 provides that compliance with the selenium effluent limitations specified in Section V.A.1.a shall be achieved as soon as possible but no later than December 20, 2009.
13. In response to Order No. R8-2004-0021, many of the San Diego Creek/Newport Bay watershed stakeholders/dischargers established a Nitrogen and Selenium Management Program (NSMP) Working Group. The NSMP Working Group includes representatives from local governments and agencies, developers and other private entities, water districts, State agencies including the Regional Water Board, and environmental groups.
14. Order No. R8-2004-0021 required the NSMP Working Group to develop a work plan to assist in identifying a comprehensive management plan for selenium and nitrogen and, in particular, to identify an approach to address rising groundwater, the largest source of selenium in the watershed. The NSMP Work Plan and

Compliance Strategy (Work Plan) was approved by the Executive Officer of the Regional Water Board in July 2005. The Working Group has been implementing the approved Work Plan since July 2005.

15. The NSMP Work Plan included a number of selenium-related tasks, including the development of a conceptual model for selenium, an evaluation of selenium sources and loads, an assessment of the bioavailability and impacts of selenium on beneficial uses in the watershed, an evaluation of selenium speciation analytical methods, an evaluation and selection of potentially viable Best Management Practices (BMPs) and treatment technologies for selenium, pilot testing of the most promising BMPs/treatment technologies, and, if necessary and/or appropriate, the development of site-specific objectives (SSOs) for selenium.
16. Controlling sources of selenium in the Newport Bay watershed poses extraordinary challenges given the watershed-wide scale of the selenium problem, its diffuse origin (largely rising groundwater) and the limited land available for placement of treatment facilities and BMPs because of the high degree of urbanization in the watershed. In addition, there is currently no readily available, conventional treatment technology that can be implemented in a reasonably practicable manner for point source discharges. In the Newport Bay watershed, approximately 85% of the existing selenium loads in surface waters originates from groundwater, and much of this load (about 78%) results from diffuse rising groundwater, which enters surface waters via springs and seeps in the unlined portions of the channels, and cracks and weepholes in storm drains and the concrete-lined portions of the channels. Discrete, groundwater-related discharges (e.g., groundwater dewatering and cleanup) and other regulated discharges (e.g., urban runoff) account for a relatively small part of the selenium load to surface waters. Therefore, selenium reductions needed to protect beneficial uses are best achieved on a regional, watershed-wide scale, addressing both non-point and point sources.
17. At this time, Regional Water Board staff, in collaboration with the NSMP Working Group, is developing TMDLs and SSOs for selenium in the Newport Bay watershed¹ to be presented for consideration by the Regional Water Board in early 2010 (the "Board TMDLs/SSOs"). Once approved, the SSOs will replace the CTR criteria for the relevant water bodies. As currently designed, implementation of the

¹ The Newport Bay watershed encompasses both upper and lower Newport Bay and its tributaries, San Diego Creek, Santa Ana Delhi, and Big Canyon subwatersheds, and the Costa Mesa and Santa Isabel channels. To date, NPDES permits, TMDLs and amendments to the Basin Plan for the Santa Ana Region have referred to the watershed as the "San Diego Creek/Newport Bay" watershed. However, the County of Orange recently performed a comprehensive evaluation of all the watersheds located within their boundaries with the intent of verifying watershed divisions and nomenclature. The County decided that the San Diego Creek/Newport Bay watershed would simply be referred to as the Newport Bay watershed. All of the County programs, including the NPDES program, and all County documents now refer to the Newport Bay watershed. For consistency with the new nomenclature, these TMDLs/SSOs will also refer to the watershed as the Newport Bay watershed. Similarly, future NPDES permits will employ this nomenclature.

Board TMDLs/SSOs will involve a collaborative watershed-based approach coordinated by and through the NSMP Working Group.

18. Through development of the Board TMDLs/SSOs and the NSMP, considerable new information has been, and continues to be, developed, including scientific and technical information related to the sources of selenium and its potential adverse impacts on beneficial uses in the Newport Bay watershed. This information was not available at the time Order No. R8-2004-0021 was issued, and much of it has been developed since Order No. R8-2007-0041 was issued. This new information indicates that the final CTR-based effluent limitations may not adequately protect beneficial uses within the Newport Bay watershed. Upon final approval of the Board TMDLs/SSOs, Order No. R8-2007-0041 will be revised to incorporate revised selenium effluent limitations and/or receiving water limitations consistent with the assumptions and requirements of the WLAs contained in the Board TMDLs/SSOs, and this Order will be rescinded. These revised limitations will be (and the interim limitations in this Order are) consistent with anti-backsliding requirements of the Clean Water Act.
19. Given the complexity of the selenium problem and the limited practicable treatment technologies, a collaborative watershed-based approach to reducing selenium provides the best opportunity to achieve water quality objectives for selenium and to assure the protection of beneficial uses. Accordingly, to the extent they seek coverage, this Order requires participation in the NSMP by Dischargers to ensure that waste discharges containing selenium are brought into compliance with the CTR-based selenium effluent limitations in as short of a time period as possible. The NSMP has been structured to allow participation by all dischargers (short- and long-term, current and future) enrolled under Order No. R8-2007-0041.
20. Dischargers who do not seek coverage under this Order shall comply with the final CTR-based effluent limitations for selenium no later than December 20, 2009, as provided in Order No. 2007-0041.
21. The following is a schedule of tasks submitted by the NSMP Working Group that will be completed within the next five years.

| Task No. | Description of Activity | Compliance Date |
|----------|--|--|
| 1. | Discharger to elect to participate in the Nitrogen and Selenium Management Program (NSMP). (The Discharger's participation in the NSMP will be deemed to fulfill the general requirements outlined below that are not particular discharger tasks, so long as the discharger remains in material compliance with the terms of an executed NSMP Cooperative Watershed Program Funding Agreement.) | By the later of December 20, 2009 or the commencement of any discharge under Order No. R8-2007-0041. |
| 2. | <p>NSMP Working Group to develop and submit a Funding Agreement, including funding for offset, mitigation or trading provisions, to provide a consistent source of funding to address point source and nonpoint source discharges of selenium and nitrogen within the watershed.</p> <p>a. Submit Funding Agreement and then current list of Dischargers participating therein to Regional Water Board</p> <p>b. Execute Funding Agreement</p> | <p>a. July 1, 2010</p> <p>b. Participating dischargers seeking coverage under this TSO to execute Funding Agreement within 180 days of the participating Discharger's approval of the terms of the submitted Funding Agreement</p> |
| 3. | All dischargers are required to submit documentation with their notice of intent (NOI) to discharge that the feasibility of eliminating or reducing the volume of the discharge has been evaluated. The feasibility evaluation options will consist of (1) discharge to land; (2) discharge to sewer; and (3) offsite transport and disposal. Specifications and limitations of the three methods were listed in the NSMP report <i>Volume Reducing Best Management Practices for Short-Term Groundwater Related Discharges within Orange County – August 2005</i> | Ongoing |
| 4. | NSMP Working Group to develop Method of Compliance Workplan/Schedule (BMP Strategic Plan) | |

| Task No. | Description of Activity | Compliance Date |
|-----------|---|--|
| | <p>a. A proposed BMP Strategic Plan and BMP Effectiveness Monitoring Plan will be developed by the NSMP Working Group for submittal to the Regional Water Board.</p> <p>The BMP Strategic Plan is to include the following elements:</p> <ol style="list-style-type: none"> 1. A description of an approach to implement pollution prevention, source control and treatment control BMPs to meet TMDL targets for selenium; 2. Identification of BMP implementation priority areas that consider the level of biological significance and selenium concerns; 3. Identification of candidate source and/or treatment controls believed important to meet operative TMDL targets, including: <ol style="list-style-type: none"> a. type and approximate locations of controls; b. timing for implementation; c. treatment capacity; d. cost of implementation; and e. anticipated removal rates and/or load reductions 4. Early Action Tasks anticipated to be completed within 5 years from the date of this Order may include: <ol style="list-style-type: none"> a. type and approximate locations of controls; b. timing for implementation; c. treatment capacity; d. anticipated removal rates and/or load reductions; and e. study goals and relevance to future projects 5. A BMP Effectiveness Monitoring Program; 6. Milestones for Plan review, progress assessment and final selection of source and/or technology controls; 7. Final Control Technology Implementation Outline (Phase II) | <p>a. January 1, 2011</p> |
| | <p>b. NSMP Working Group to commence implementation of BMP Strategic Plan</p> | <p>b. Within 90 days of Regional Water Board approval.</p> |
| | <p>c. NSMP Working Group to submit Annual BMP Strategic Plan implementation progress reports with corresponding decision tree schedule dependent on implementation success and subsequent development of selenium reduction technologies with the goal of implementing BMPs which are reasonably feasible to implement and which have been proven to be effective.</p> | <p>c. Annually after Regional Water Board Approval of BMP Strategic Plan</p> |
| <p>5.</p> | <p>Irrigation Reduction and Control Program Municipal dischargers seeking coverage under this TSO shall adopt an updated Model Water Efficient Landscape Ordinance (A.B. 1881) or one that is "at least as effective as" that Ordinance.</p> | <p>By the later of January 1, 2010 or as required by A.B 1881.</p> |
| <p>6.</p> | <p>NSMP Working Group to submit and implement Regional Monitoring Program as follows:</p> | |

| Task No. | Description of Activity | Compliance Date |
|----------|--|---|
| | a. Regional monitoring program (RMP) for selenium to be submitted to Regional Water Board for approval | a. January 1, 2011 |
| | b. Commence implementation of monitoring program | b. Within 90 days of Regional Water Board approval of RMP |
| | c. Submit annual monitoring reports | c. Annually after Regional Water Board Approval of RMP |

The NSMP Working Group will submit to the Regional Water Board on or before each compliance date, the specified document or, if appropriate, a written report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is being reported, the reasons for such noncompliance will be stated, and will include an estimate of the date when the NSMP will be in compliance. The NSMP will notify the Regional Water Board by letter when it returns to compliance with the time schedule.

22. Enrollment and participation in the NSMP Working Group has been established for Existing Dischargers pursuant to their execution of the NSMP Memorandum of Procedure, or pursuant to their execution and Working Group approval of the First Amendment to Memorandum of Procedure. Future Dischargers wishing to enroll and participate in the NSMP Working Group shall establish their enrollment and participation by execution of a duly approved future amendment to the Memorandum of Procedure as amended by the First Amendment of Procedure.
23. This Order provides interim selenium effluent limitations in lieu of the effluent limitations set forth in Order No. R8-2007-0041. Without these interim limitations, Dischargers' waste discharges after December 20, 2009 threaten to exceed the effluent limitations set forth in Findings 10 and 11 of this Order and, thus, threaten to violate Order No. R8-2007-0041.
24. California Water Code (CWC) section 13300 states: "Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to

correct or prevent a violation of requirements.”

25. This Order is issued in accordance with CWC section 13300 and establishes a time schedule for compliance.
26. In accordance with CWC section 13385(j)(3), the Regional Water Board finds that each Discharger may not be able to consistently comply with the final effluent limitations for selenium set forth in Order No. R8-2007-0041. These limitations are new requirements that became applicable to Order No. R8-2007-0041 after the effective date of adoption of the waste discharge requirements, and after July 1, 2000, for which new or modified control measures are necessary in order to comply with the limitations, and the new or modified control measures cannot be designed, tested, installed, and put into operation within 30 calendar days.
27. This Order also applies to Future Dischargers (to the extent they seek coverage hereunder) because in many, if not all cases, they contemplated their discharges at a time when the final effluent limitations for selenium as set forth in Order No. R8-2007-0041 were not yet effective.
28. CWC section 13385(h) and (i) require the Regional Water Board to impose mandatory minimum penalties upon dischargers that violate certain effluent limitations. However, CWC section 13385(j) exempts certain violations from the mandatory minimum penalties. CWC section 13385(j)(3) exempts a discharge from mandatory minimum penalties “where the waste discharge is in compliance with either a cease and desist order issued pursuant to CWC section 13301 or a time schedule order issued pursuant to CWC section 13300, if all the [specified] requirements are met.”
29. Compliance with this Order exempts the Dischargers from mandatory penalties for violations of the effluent limitation for Total Recoverable Selenium, as set forth in section V.A.1.a of Order No. R8-2007-0041 in accordance with CWC section 13385(j)(3).
30. CWC section 13385(j)(3)(A) requires this Order to specify the actions that the Discharger is required to take in order to correct the potential violations that would otherwise be subject to mandatory minimum penalties. This Order requires the Dischargers to develop and implement new or modified control measures designed to achieve compliance with the effluent limitations as set forth in Findings 10 and 11 of this Order.
31. CWC section 13385(j)(3)(D) requires the preparation and implementation of a pollution prevention plan pursuant to CWC section 13263.3. In order to obtain authorization under Order No. 2007-0041, Dischargers are required to demonstrate that they have documented and made all practicable attempts to avoid, reduce or eliminate the discharge of selenium. The reduction/elimination of

selenium discharges may be accomplished through volume reduction, including sewerage. Potential volume reduction measures were evaluated by the NSMP Working Group and three volume reduction BMPs, including sewerage, were deemed feasible. Selenium occurs in the groundwater-related discharges regulated under Order No. 2007-0041 as the result of additions from natural processes not subject to the control of the Dischargers. Therefore, with respect to the selenium discharges addressed by Order No. 2007-0041, the evaluation and implementation of reasonably feasible discharge volume reduction measures, and the evaluation of and adherence to project design features or other practices that result in discharge avoidance fulfill the requirements of a Pollution Prevention Plan.

32. The interim effluent limitations established by this Order for Existing Dischargers shall be performance-based and set at lowest reasonably feasible historical discharge levels, taking into account precipitation-driven and other sources of variation in selenium concentrations; the interim effluent limitations for Future Dischargers shall also be performance-based and set at the lowest reasonably feasible levels based on consideration of requisite pre-discharge selenium quality characterization and historical selenium discharge levels for similar discharges, taking into account precipitation-driven and other sources of variation in selenium concentrations.
32. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, *et seq.*), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.
33. Any person adversely affected by this action of the Regional Water Board may petition the State Water Board to review the action. The petition must be received by the State Water Board Office of the Chief Counsel, P.O. Box 100, Sacramento, CA, 95812-0100, within 30 days of the date on which the action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request.

IT IS HEREBY ORDERED THAT pursuant to CWC Section 13300 and 13385, the Existing Dischargers listed in this Order and Future Dischargers under Order No. R8-2007-0041 shall comply with the following time schedule to ensure compliance with the final effluent limitations for selenium contained in Order No. R8-2007-0041, and as set forth in Findings 10 and 11 herein.

1. Dischargers seeking coverage under this Order shall elect to participate in the Nitrogen and Selenium Management Program (NSMP) and shall provide to the Executive Officer of the Regional Water Board a copy of the Memorandum of Procedure, as amended, showing Discharger's membership in the Working Group.
2. Dischargers seeking coverage under this Order shall re-certify, as required by their Notice of Intent, that they have documented and made all practicable attempts to avoid, reduce or eliminate the discharge of selenium as required by Section II.A.3

of Order No. R8-2007-0041, within 60 days from the date of this Order, or prior to any discharge under Order No. R8-2007-0041, whichever date is later.

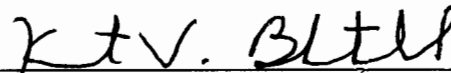
3. Dischargers seeking coverage under this Order shall comply with the following interim effluent limitations for Total Recoverable Selenium during the pendency of this Order; provided the NSMP Working Group is complying with the tasks and process described in Finding 21 during the period of discharge (as established by the Discharger to the satisfaction of the Executive Officer), such Dischargers shall be deemed in compliance with this Order:
 - a. Existing Dischargers shall submit to the Executive Officer for approval, no later than 60 days following the adoption of this Order, a performance-based selenium effluent limitation that is based on historical selenium discharge levels (e.g., the lowest reasonably feasible concentration based on their historical selenium discharges). Upon approval by the Executive Officer, such Discharger must not exceed this interim effluent limitation during the pendency of this Order.
 - b. Future Dischargers shall submit to the Executive Officer for approval, prior to any discharge authorized under Order No. R8-2007-0041, a performance-based effluent limitation for selenium that is based on the requisite pre-discharge characterization of selenium quality and consideration of historical selenium discharge concentrations for similar discharges (e.g., the lowest reasonably feasible concentration based on prior selenium discharges and historical practices, if any, and those of other similarly-situated dischargers). Upon approval by the Executive Officer, such Discharger must not exceed this interim effluent limitation during the pendency of this Order.
4. Dischargers who enroll under Order No. R8-2007-0041 but who do not seek coverage under this Order shall comply with final effluent limitations for selenium by no later than December 20, 2009, as set forth in Order No. R8-2007-0041.
5. If, in the opinion of the Regional Water Board Executive Officer, any Discharger seeking coverage under this Order fails to comply with the provisions of this Order, the Executive Officer may apply to the State Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability. If compliance with this Order is not achieved, the Discharger would not be exempt from the mandatory minimum penalties for violation of certain effluent limitations, and may be subject to issuance of a Cease and Desist Order in accordance with CWC section 13301.

6. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

7. This Order, as amended by Order No. R8-2013-0060 on December 6, 2013 and as further amended by Order No. R8-2014-0025 on March 14, 2014, shall remain in effect for a maximum of three (3) years from its current expiration date, or until December 10, 2019, or until such time as Order No. R8-2007-0041 is re-issued to incorporate revised selenium effluent limitations and other requirements necessary to implement Board approved selenium TMDLs.

This Order is effective upon the date of signature.



KURT V. BERCHTOLD, Executive Officer

Originally issued on December 10, 2009
Amended on December 6, 2013 (Order No. R8-2013-0060)
Amended on March 14, 2014 (Order No. R8-2014-0025)



February 28, 2014

Mr. William Ruh
Chair
Regional Water Quality Control Board, Santa Ana
3737 Main Street, Suite 500
Riverside, CA 92501-3339

SUBJECT: Time Schedule Orders for Compliance with Selenium in the Newport Bay Watershed

Dear Mr. Ruh:

On January 31, 2013, the Santa Ana Regional Water Quality Control Board (Board) agreed to hear additional information regarding Order No. RB-2013-0060 and Order No. RB-2013-0061 amending Time Schedule Orders for groundwater dewatering operations in the San Diego Creek-Newport Bay Watershed. At issue is the appropriate compliance timeframe for the design, permitting, construction and evaluation of the \$8.7 million Peters Canyon Wash Channel Capture and Reuse project (Project) proposed by the City of Tustin, County of Orange, Orange County Flood Control District, the Irvine Water District, and Caltrans (Project Partners). We appreciate the opportunity to present more detailed and current information to the Board on this important project to improve water quality in the San Diego Creek Watershed.

The Project Partners have been working diligently on the conceptual development and funding of the Project throughout 2012 and 2013, culminating in a fully funded project in late 2013 when two grants and a funding agreement between the Project Partners was executed. With financing secured, contracts for project design and environmental evaluation were issued in early January 2014. The City of Irvine sent a letter to the Board in late January outlining the estimated Project schedule based on information from a Concept Feasibility Study completed by the Project Partners in 2013 and used as the basis to secure funding commitments for the Project. Since then, the Project Partners held their first meeting with the Project design team, at which a detailed overview of the pipeline alignment and updated design and construction schedule was presented. Based on this more detailed schedule, the City of Irvine requests the Board reconsider the original Regional Board staff recommendation to extend Order No. RB-2013-0060 and Order No. RB-2013-0061 to December 10, 2019.

The extension until 2016 that the Board granted in December may not be sufficient to ensure the successful completion and operation of the Project. Below is a comparison of the schedule from our January 28 letter and the recent information from the design team.

| Project Element | 1/28/14 Letter Estimated Timeframe | 2/6/14 Design Team Meeting Estimated Timeframe | 1/28/14 Cumulative Timeframe | Revised Cumulative Timeframe |
|---|---|---|---|---|
| Project Design and Environmental Review | 11 months | 10 Months | | |
| Construction Bidding and Contract Award | 3 months | 6 months | 14 months | 16 months |
| Project Construction | 6-9 months | 20 months | 20-23 months | 36 months |
| Start-up and Testing | 1 month | 1 month | 21-24 months | 37 months |
| Environmental Assessment | 36-60 months | 36-60 months | 57-84 months | 78-102 months |

The updated construction schedule reflects the anticipated challenges and complexities of the construction of the Project. The pipeline will require five channel crossings, five roadway crossings and one railway crossing. Three diversion structures and accompanying wet wells will be built in close proximity to residential homes requiring easements from private property owners. The majority of work will be done alongside a flood control channel where access may be limited by storm events, as well as requiring coordination with the planned construction of a new bridge crossing and widening of the channel by other parties. Based these factors, the design team anticipates a realistic construction period from February 2015 through October 2016.

As reflected in the chart, the construction and start-up of the Project, assuming no unforeseen delays in permitting, right-of-way finalization or construction, is anticipated to closely approach the current expiration date for Order No. RB-2013-0060 and Order No. RB-2013-0061 of December 10, 2016. As such, the current expiration date does not allow for any data collection to assess the impact of selenium reductions in receiving waters on bird egg and fish tissue samples to measure the beneficial use improvement from the Project.

More importantly, once the current Orders expire, we will not have permit authority to operate the Project. This lack of regulatory certainty regarding the operation of the Project is extremely problematic and weakens the compliance justification for this large capital improvement investment by the Project Partners.

Mr. William Ruh
February 28, 2014
Page 3 of 3

We appreciate this opportunity to share the most up-to-date Project information with the Board. The Project Partners are committed to completing this crucial water quality improvement project as soon as possible, but are realistic in assessing the construction challenges we face as we move from conceptual project plans to final project design and eventual construction. Extension of the expiration date for Order No. RB-2013-0060 and Order No. RB-2013-0061 of December 10, 2019 would provide necessary regulatory certainty for the Project Partners as we undertake this significant investment of public funds.

Sincerely,



Eric M. Tolles
Director of Community Development

cc: Kurt Berchtold, SARWQCB Executive Officer
Joanne Schneider, SARWQCB
Selenium Program Partners