State of California
California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. R8-2007-0036

Waiver of Waste Discharge Requirements for Specific Types of Discharges

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

1. Section 13263(a) of the California Water Code requires Regional Boards to prescribe requirements for existing and proposed waste discharges in their respective areas of jurisdiction.

2. Section 13269 of the California Water Code authorizes Regional Boards to waive waste discharge requirements for a specific discharge or specific types of discharges where such a waiver is not against the public interest.

3. The waiver of waste discharge requirements for discharges that do not pose a significant threat to water quality, where such waiver is not against the public interest, would enable staff resources to be used effectively and avoid unnecessary expenditures of these limited resources.

4. On October 10, 1999, Senate Bill (SB) 390 amended Water Code Sections 13269 and 13350. SB 390 includes the following:

    a. Requires review and renewal or termination of all waivers every five years;
    b. Requires Regional Boards to conduct a public hearing prior to renewing any waiver for a specific type of discharge in order to determine whether the discharge should be subject to general or individual waste discharge requirements;
    c. Imposes a duty on the Regional Boards and State Boards to enforce the waiver conditions;
    d. Specifically expands the authority of the Regional Boards to take enforcement action for violations of waiver conditions and 401 certifications.

5. On September 6, 2002, the Regional Board adopted Resolution No. R8-2002-0044 for waiver of waste discharge requirements for specific types of discharges.

6. Resolution No. R8-2002-0044 must be reviewed and updated to comply with the requirements of SB 390. Resolution No. R8-2002-0044 expired on September 1, 2007.

7. Attachment "A" to this resolution lists specific types of discharges for which waste discharge requirements are waived and that are expected to have an insignificant effect on the quality of waters of the State, provided the corresponding criteria and conditions are met. Each such discharge would be considered on a case-specific basis to determine whether and what additional conditions are required to protect the quality of waters of the State, or whether coverage under individual or general waste discharge requirements is necessary.

8. The specific types of discharges listed in Attachment "A" to this resolution include groundwater recharge projects using imported water. The Regional Board and certain other agencies have entered into a Cooperative Agreement ("Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin") regarding the conduct and monitoring of projects involving the injection/percolation of imported State Project Water, Colorado River Water and/or imported well water to recharge groundwater management zones within the Santa Ana Region. The purpose of the Cooperative Agreement is to assure proper management of these groundwater recharge projects so that they will not cause or contribute to a violation of applicable Nitrogen and Total Dissolved Solids (TDS) objectives. Agencies who sign the Cooperative Agreement commit to implement the requirements of the Agreement that will assure this water quality protection. Thus, groundwater recharge projects using imported water that are implemented through the Cooperative Agreement should have an insignificant effect on water quality standards in the Region, provided that each signatory fulfills the requirements of the Agreement. Therefore, groundwater recharge projects using imported State Project Water, Colorado River Water and/or imported well water are properly included in the waiver resolution, with the condition that the agency proposing to implement the projects signs and fulfills the requirements of the Cooperative Agreement. Attachment "B" to this Resolution lists the entities who are current signatories to this Cooperative Agreement. Attachment "B" may be revised to include new signatory(ies) to the Cooperative Agreement.

9. Waiving waste discharge requirements for the specific types of discharges listed in Attachment "A" is not against the public interest. These discharges will not have an adverse impact on water quality standards or the environment, provided that the discharger satisfies the criteria and conditions identified in Attachment "A" and any additional conditions specified by the Executive Officer as the result of case-specific consideration of the proposed discharge. Further, the Executive Officer has the authority to deny a request for a waiver where such a waiver would not be in the public interest.

10. The types of activities identified in Attachment "A" will not have a significant effect on the environment provided that they are conducted in conformance with the criteria and conditions specified in Attachment "A" and any additional criteria/conditions specified by the Executive Officer in issuing a waiver of waste discharge requirements. Therefore, this resolution waiving waste discharge requirements for those activities is exempt from the California Environmental Quality Act.

11. On September 7, 2007, the Board held a public hearing and considered all the evidence concerning this matter. Notice of this hearing was given to all interested persons in accordance with the California Code of Regulations, Section 15072.

THEREFORE, BE IT RESOLVED that the California Regional Water Quality Control Board, Santa Ana Region:

1. Waives waste discharge requirements for the specific types of discharges listed in Attachment "A", except those for which individual waste discharge requirements or general waste discharge requirements have already been adopted. Waste discharge requirements are waived for each specific type of discharge listed provided that the corresponding criteria and conditions are met.

2. This waiver of waste discharge requirements expires on September 1, 2012. Any action under this waiver is conditional and may be terminated for any type of discharge or any specific discharge at any time within the term of this waiver.

3. Waste discharge requirements for a specific discharge shall be considered waived only after a Report of Waste Discharge is submitted and the Executive Officer determines that the conditions specified in Attachment "A" for the specific type of discharge will be met.

4. The Executive Officer of the Regional Board is authorized to deny a waiver of waste discharge requirements and to recommend the issuance of individual waste discharge requirements or coverage under general waste discharge requirements for projects that would result in the discharge of waste that may have a significant impact on the water quality standards of the State.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on September 7, 2007.

Gerard J. Thibeault
Executive Officer

Attachment "A" to Resolution No. R8-2007-0036
Specific Types of Discharges for Which
Waste Discharge Requirements are Waived
(Provided Criteria and Conditions are Met)

TYPES OF DISCHARGE	CRITERIA AND CONDITIONS
Inert Waste Disposal Operations	Only inert waste, as defined in Section 20230, Division 2, Title 27, of the California Code of Regulations, will be disposed of. No green waste, woodwaste or gypsum board (or similar construction wastes) are allowed, and 1. Controls sufficient to contain all surface runoff are installed, where necessary, and 2. The site will be adequately secured to prevent unauthorized disposal by the public.
Sand, Gravel, and Quarry Operations	1. All operations and wash waters are contained within the facility, 2. No waste discharge (including storm water runoff from operations areas) to surface waters will occur, and 3. Stockpiles and settling basins will be protected from inundation from 100-year peak storm flows.
Residential Wastewater Disposal Systems (On-Site Septic Tank–Sub Surface Leaching/Percolation Systems) Not Within Prohibition Areas	1. Developments in Orange County comply with the Regional Board's "Guidelines for Sewage Disposal from Land Developments". Developments in Riverside and San Bernardino Counties comply with the individual county guidelines to discharge wastes to septic systems.
Industrial and Commercial Wastewater Disposal Systems (septic tanks) Not Within Prohibition Areas	1. Only sanitary wastes to be discharged into the septic systems, and 2. Developments in Orange County comply with the Regional Board's "Guidelines for Sewage Disposal from Land Developments". Developments in Riverside and San Bernardino Counties comply with the individual county guidelines to discharge wastes to septic systems.

TYPES OF DISCHARGE	CRITERIA AND CONDITIONS
Monitoring Well Purge Water	1. Purge water is discharged to the ground in a manner so that it will percolate back into the aquifer in the same general area from which it came, and 2. Adequate measures will be taken to prevent purge water from reaching surface waters.
Well Drill Cuttings	1. Cuttings determined not to be considered as hazardous waste, and 2. Cuttings disposed of or used in a manner so as to not affect water quality or beneficial uses.
Incidental Discharge of Oily Wastewater During Oil Spill Response Activities	1. Discharges occur during an oil spill response activity, and 2. Discharges are within or proximate to the oil spill response area.
Other Insignificant Discharges of Wastewater to Land (eg: potable water pipeline draining, groundwater dewatering, etc.)	1. All wastewater discharged in a manner so that it will percolate into the ground before reaching surface waters, and 2. All wastewater disposed of or used in a manner so as to not affect water quality or beneficial uses.

TYPES OF DISCHARGE	CRITERIA AND CONDITIONS
Groundwater Recharge Projects Using Imported Water (Projects by any public agency or non-profit mutual water company that imports water to the Region, exports/imports water between basins within the Region, recharges such imported water within the Region, delivers such imported water for potable use within the Region)	1. Any agency that intentionally recharges imported water within the Santa Ana Region agrees voluntarily to collect, compile, and analyze the N/TDS water quality data necessary to determine whether the intentional recharge of imported water in the Region may have a significant adverse impact on compliance with the TDS objectives within the Region. 2. Recharge proponent must be a signatory to the Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin. Signatories as of the date of approval of Resolution No. R8-2007-0036 are listed in Attachment "B" of this Resolution.

The following conditions apply to all of the above types of discharges:

1. Implementation of the project shall not create a nuisance or pollution as defined in the California Water Code Section 13050.
2. The project shall not cause a violation of any applicable water quality standard for receiving waters adopted by the Regional Board or the State Water Resources Control Board, as required by the Clean Water Act.
3. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
4. The waiver of waste discharge requirements may be terminated by the Executive Officer at any time.
5. Discharges subject to discretionary approval by other agencies will be eligible for a waiver only after the completion of any documentation required by the California Environmental Quality Act.
6. Compliance with the criteria and conditions identified for each type of discharge does not guarantee issuance of a waiver. Each waiver request will be considered on a case-specific basis. The Executive Officer, at his/her discretion, may deny the request for a waiver and recommend coverage of the discharge under an individual waiver, or coverage under individual or general waste discharge requirements as appropriate to protect water quality.

Attachment "B" to Resolution No. R8-2007-0036
Agencies Signatory(ies) to the Cooperative Agreement

City of Corona

City of Riverside

Eastern Municipal Water District

Elsinore Valley Municipal Water District

Orange County Water District

San Bernardino Valley Municipal Water District

San Gorgonio Pass Water Agency

Western Municipal Water District

In addition, Inland Empire Utilities Agency has chosen not to sign the agreement due to a preexisting agreement with the RWQCB under their Maximum Benefit Demonstration for TIN and TDS.

State of California
California Regional Water Quality Control Board
Santa Ana Region

September 7, 2007

ITEM: *6

SUBJECT: Renewal/Update of Waiver of waste discharge requirements for specific types of discharges, Resolution No. R8-2007-0036

DISCUSSION:

The Regional Board prescribes Waste Discharge Requirements for waste discharges in accordance with Section 13263 of the California Water Code. Many types of discharges, however, do not contain a significant amount of pollutants, and have no significant effect on the quality and beneficial uses of the waters of the State. It is in the best interest of the public and the Board not to expend the resources necessary to regulate discharges that have an insignificant potential to affect water quality standards.

Section 13269 of the California Water Code empowers the Regional Board to waive waste discharge requirements for specific types of discharges where such a waiver is not against the public interest. Such waivers are conditional and may be terminated by the Board at any time.

It is important to emphasize also that each request for such a waiver would be considered on a case-specific basis by Regional Board staff. The Regional Board retains its authority to issue waste discharge requirements, or to take other requisite regulatory action, where site-specific conditions warrant it. This is true even when the conditions specified in the waiver resolution are met. It is recognized that the waiver conditions may not anticipate all relevant factors (e.g., proximity to groundwater contamination plumes or to Clean Water Act Section 303(d) listed impaired waters) that may necessitate an independent regulatory response.

Legislation (Senate Bill 390) amended Section 13269. As amended, Section 13269 stipulates that all existing waivers must be reviewed at 5-year intervals and either renewed or terminated.

On September 6, 2002, the Regional Board adopted Resolution No. R8-2002-0044, which waived waste discharge requirements for specific types of discharges, provided that certain conditions stipulated in the Resolution were met. Resolution No. R8-2002-0044 expired on September 1, 2007.

In accordance with Senate Bill 390, the 2002 list of specific types of discharges has been reviewed and revised. The proposed Resolution No. R8-2007-0036 updates the list of specific types of discharges and adds Groundwater Recharge Projects as a type of discharge for which waste discharge requirements can be waived provided that certain criteria and conditions are met. The updated list of specific type of discharges that can be conditionally waived includes the following:

a. Inert Waste Disposal Operations,

b. Sand, Gravel, and Quarry Operations,

c. Residential Wastewater Disposal Systems (On-Site Septic Tank–Sub Surface Leaching/Percolation Systems) Not Within Prohibition Areas,

d. Industrial and Commercial Wastewater Disposal Systems (septic tanks) Not Within Prohibition Areas,

e. Monitoring Well Purge water,

f. Well Drill Cuttings,

g. Incidental Discharge of Oily Wastewater During Oil Spill Response Activities, and

h. Other Insignificant Discharges of Wastewater to Land (eg: potable water pipeline draining, groundwater dewatering, etc.).

i. Groundwater Recharge Projects using imported State Project Water, Colorado River Water or Imported Well Water

This list differs from that identified in the prior waiver resolution (Resolution No. R8-2002-0044) only in the addition of groundwater recharge projects using imported water. These projects are being included in the updated waiver resolution to address an agreement among the Regional Board and agencies in the Santa Ana River watershed to address nitrogen and Total Dissolved Solids (TDS) concerns potentially associated with these projects. This agreement ("Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin") has been signed by certain agencies, and other agencies are considering like action. Signature of the Cooperative Agreement commits the signatory agency to manage imported water recharge projects under the agency's purview so as to assure conformance with applicable nitrogen and TDS objectives. Provided that an agency signs the Cooperative Agreement and conforms to its terms, then waste discharge requirements

for the recharge project could be waived, pursuant to the proposed waiver resolution.[1] Water imported to the Santa Ana Region from State Water Project, the Colorado River and other sources, and from groundwater management zones to other groundwater management zones within the Region, is vital to meet present and future demands for water within the Region. Such water is directly used, injected or percolated within groundwater management zones; stored in groundwater management zones for later use; may be combined with or used in addition to the native groundwater supplies in a management zone; may be exported/imported from one management zone to another and after consumptive use may form a portion of the wastewater that is treated, recharged and reused within the Region. Such conjunctive uses of surface water and groundwater within the Region have been contemplated by the State of California at least since the issuance of the original California Water Plan in 1957 and the adoption by the State Water Resources Control Board of Resolution No. 64-1.

Board staff considered the merits of the development of general waste discharge requirements for one or more of the types of discharges identified in the proposed waiver resolution. The advantage of such an approach would be that general waste discharge requirements would not need to be revisited more than once every ten years, as opposed to the requirement to review the waiver resolution at least once every five years. However, considerable staff time would be required to develop general waste discharge requirements applicable to all of the listed types of discharges. Given that these discharges are not expected to have significant impacts on water quality standards, Board staff believes that it is a better use of the Board's resources to adopt and implement the proposed waiver resolution. Efficient use of the Board's resources is in the public interest.

The types of waste discharges listed in Attachment "A" to Resolution No. R8-2007-0036 were identified on the basis that they should not result in significant adverse environmental effects, provided that the criteria and conditions also listed in Attachment "A" are satisfied. Again, where site-specific conditions warrant it, the Executive Officer may specify additional criteria and conditions. The proposed Resolution No. R8-2007-0036, if approved, would expire on September 1, 2012.

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[1] *As explicitly acknowledged in the Cooperative Agreement, there is a disagreement between the Regional Board and certain of the agencies regarding the Board's legal authority to regulate imported water recharge in the Region. These parties contend that nitrogen and TDS in the imported water do not constitute "waste" that is subject to Water Code regulation. The Regional Board and certain other parties believe that the Board has authority to regulate these discharges pursuant to Waste Discharge Requirements. The inclusion of these imported water groundwater recharge projects in the proposed waiver resolution is not to be construed as a definitive resolution of this matter. Rather, the projects are included in the proposed resolution in the interest of facilitating implementation of the projects in a manner defensible to and by the Regional Board, without need for litigation over the underlying legal concern. Any disputes arising from the application of this waiver resolution to imported water recharge projects could and should be addressed on a case-specific basis.*

Again, the waiver of waste discharge requirements for the specific types of discharges identified in Attachment "A" will not affect the Regional Board's authority to regulate discharges where water quality or beneficial uses could be impacted. The Resolution explicitly grants the Executive Officer of the Regional Board the authority to deny projects and to recommend to the Regional Board issuance of individual waste discharge requirements, or coverage under applicable general waste discharge requirements, for projects determined to have the potential for significant impacts on the water quality standards of the State.

Adoption of the proposed resolution would waive, conditionally, waste discharge requirements for the activities listed in the resolution. Each of the activities covered will not have a significant effect on the environment provided that the criteria and conditions specified in the waiver issued by the Executive Officer are satisfied. Therefore, the waiver resolution is exempt from the California Environmental Quality Act (CEQA).

RECOMMENDATION:

Adopt Resolution No. R8-2007-0036 as presented.

Comments were solicited from the following agencies:

California Department of Fish and Game, Inland Desert Region – Curt Taucher
California Department of Fish and Game, South Coast Region – Kevin Hunting
California Department of Public Health, San Bernardino – Sean McCarthy
California Department of Public Health, San Diego – Steven Williams
California Department of Public Health, Santa Ana – Anthony Nhan
Chino Basin Watermaster
City of Beaumont – Alan Kapanicas
Elsinore Valley Municipal Water District
Inland Empire Utilities Agency – Patrick O. Sheilds
Inland Empire Waterkeeper - Lee Reeder
Lawyers for Clean Water C/c San Francisco Baykeeper
Orange County Coastkeeper – Garry Brown
Orange County Health Care Agency - Seth Daugherty
Orange County Resources and Development Management Department - Chris Crompton
Orange County Water District - Nira Yamachika/Greg Woodside
Riverside County Department of Environmental Health Services – John Watkins
Riverside County Environmental Health Department - Sandy Bonchek
Riverside County Flood Control and Water Conservation District – Jason Uhley
San Bernardino County Department of Environmental Health Services – Daniel Avera
San Bernardino County Department of Public Works, Environmental Management Division –Naresh Varma

San Timoteo Watershed Management Authority
Santa Ana River Dischargers Association
Santa Ana Watershed Project Authority – Celeste Cantu
South Coast Air Quality Management District - Barry Wallerstein
State Department of Water Resources - Glendale
State Water Resources Control Board, Division of Water Quality – Valerie Connor
State Water Resources Control Board, Office of the Chief Counsel – Erik Spiess
U.S. Army District, Los Angeles, Corps of Engineers, Regulatory Branch
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