(9/23/14) Board Meeting
Draft Drinking Water Systems General Permit
Deadline: 8/19/14 by 12:00 noon

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8-19-14
SWRCB Clerk

August 19, 2014

VIA E-MAIL

Ms. Jeanine Townsend, Clerk to the Board
California State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Statewide NPDES Permit for Drinking Water Discharges to Surface Waters

Dear Ms. Townsend:

We are the attorneys for Bellflower-Somerset Mutual Water Company, which provides domestic water service to 6,938 service connections in the City of Bellflower; Lincoln Avenue Water Company, which provides domestic water service to 4,467 service connections in Altadena, situated north of the City of Pasadena; and Tract 349 Mutual Water Company, which provides domestic water service to approximately 970 service connections in the City of Cudahy, situated southeast of downtown Los Angeles; collectively, the "Companies." Each of the Companies is a Public Water System ("PWS") that would be subject to the Statewide NPDES Permit for Discharges from Drinking Water Systems ("Permit") now being proposed by the State Water Resources Control Board ("State Board"). The Companies appreciate the State Board's outreach efforts thus far regarding the Permit, but still has numerous comments and concerns, as set forth below.

35.1

1. The Permit is Not Needed. The Companies do not believe the Permit is needed in light of the low threat nature of PWS discharges. These discharges have been ongoing for many years and there is no evidence those discharges cause recurring or significant adverse impacts. In fact, the Permit and the accompanying Initial Study/Mitigated Negative Declaration make repeated references to the low threat nature of the discharges that would be covered under the Permit. The Permit appears to be addressing a problem that simply does not exist.

35.2 In the Los Angeles region, such discharges have been successfully regulated for many years under the Los Angeles County MS4 Permit, and in other regions, low threat permits have also been successfully used to address PWS discharges. We believe that is a better approach and can better address California's diverse geography. From our perspective, "if it's not broke, don't fix it!" **RECOMMENDATION:** Do not proceed with adoption of the Permit, and allow the Regional Boards to continue to regulate PWS discharges within their respective jurisdictions.

Although the Permit is not needed, we realize it is likely the State Board disagrees and will continue to proceed with the Permit. We therefore offer the following substantive comments.

35.3 2. Schedule for Adoption. If the State Board elects to proceed with the Permit, the current schedule for adoption of the Permit must be revised. It was evident from the three July stakeholder workshops that there is still much confusion regarding the Permit and that numerous provisions of the Permit require significant changes to help alleviate that confusion. We believe the current schedule of having the final Permit distributed on or about September 13, with the State Board to possibly adopt that final version on September 23 is not workable. If the State Board disregards our first comment and proceeds with the Permit, a revised draft Permit should be distributed, with an additional comment period and at least two more stakeholder workshops. We see no need to rush this Permit and it is more important to take the necessary time to ensure the Permit is workable and cost-effective for PWSs and does not unnecessarily impact small water systems. **RECOMMENDATION:** Issue a revised draft Permit on September 13 to include significant revisions, and therefore allow further comments on that revised version. The proposed September 23 adoption date should be pushed back at least 45 days.

35.4 3. Small Systems Exemption. The Permit will result in an increased regulatory burden and thus increase compliance costs for all PWSs, but especially has the potential to have significant adverse impacts on small water systems throughout the state. Many of those small systems, such as Tract 349 Mutual Water Company, are located in economically disadvantaged areas and struggle to comply with existing regulations and to meet their current operating costs. The Permit will require these small systems to purchase testing equipment, such as electronic chlorine test equipment and field turbidity testing units; incur increased personnel costs in doing required sampling and, if applicable, testing (particularly if the small system happens to

operate in an area where TMDLs are applicable (see Comments 6 and 7, below)); and will likely require small systems to engage consultants to assist with the application and Notice of Intent requirements (see Comment 9, below). These small systems are also far less likely to have potable water discharges of a magnitude that could have any significant effect on a receiving waterbody. While the threshold of 3,000 service connections was not well received at the recent State Board workshop, we believe some threshold for applicability of the Permit needs to be added.

In that regard, we offer the following language to be added to page 1 of the draft permit in Section I - Scope of Statewide General Permit and Requirement for Regulatory Coverage, after the language that was added to exempt non-community water systems and non-transient water systems:

> "This Order also does not apply to any community water system with less than 500 service connections. This Order does not apply to any community water system with between 500 and 1,000 service connections unless the operator of such a system conducts the following discharges: (1) a planned discharge directly into inland surface waters, enclosed bays and estuaries, or within 300 feet of an inland surface water, enclosed bay or estuary; (2) a planned discharge into an impaired water body that is impaired for a constituent that exists in the discharge at a concentration greater than the criteria used to establish the impairment of the water body (the community water system shall be entitled to rely on its water quality testing data in determining the likely presence of such a constituent); or (3) a direct discharges into areas designated by the State Water Board as Areas of Special Biological Significance."

RECOMMENDATION: Add the foregoing exemptions for small water systems with service connections below the specified thresholds.

35.5 4. MS4 Permits. A major shortcoming of the Permit is that it fails to address the need for coordination between PWS discharges and MS4 permits throughout the state. This lack of coordination does not address PWSs' concerns that they remain subject to the discretion of MS4 operators as to whether a particular MS4 operator may continue to allow a PWS's potable water discharges despite that PWS's enrollment under the Permit. This lack of coordination effectively defeats the purpose of the

uniformity the State Board is seeking with the Permit. We believe that including a regulatory relief/liability protection provision in the Permit, similar to what was included in the Los Angeles Regional Water Quality Control Board's Los Angeles County MS4 Permit adopted in November 2012, is very important in order to allow PWSs' legally mandated discharges, as well as unplanned discharges, to MS4s to continue without threat by any MS4 operator to discontinue allowing such discharges. **RECOMMENDATION:** Include regulatory relief/liability protection provisions in the Permit to address possible issues of PWS discharges to an MS4.

35.6 5. Threshold for Toxicity. State Board staff mentioned at the July 23 stakeholder workshop in Los Angeles that it was likely that a threshold for application of the toxicity limitations would be added to the Permit. **RECOMMENDATION:** We concur with that addition and believe a 100,000 gallon per discharge threshold would be appropriate.

35.7 6. TMDLs – Compliance with Permit (Section II, H (pages 13 & 14); Attachment F, Section K). There is much confusion regarding the relationship between coverage under the Permit and the Permit's TMDL's provisions. It was stated by staff at the July 23 stakeholder workshop that if a PWS is complying with the Permit, then it is complying with the applicable TMDLs. If that is the case, that needs to be more clearly stated in the Permit, because that is not clear under the existing Permit provisions. **RECOMMENDATION:** If the TMDL provisions are not removed from the Permit (see Comment 7, below), then add provisions to the Permit to clarify that compliance with the Permit constitutes compliance with any applicable TMDLs.

35.8 7. TMDLs – Compliance with TMDLs (Section II, H (pages 13 & 14); Notice of Intent (page B-3); Attachment F, Section K). The Permit basically establishes a system of enrollment and compliance based on TMDLs. However, Attachment G to the Permit does not specify any TMDLs or Waste Load Allocations applicable to the covered PWS discharges, as it states: "*As of the adoption date of this Order, no TMDLs have established WLAs that apply exclusively to discharges from drinking water systems regulated under this Order. Due to the nature of the discharges authorized under this Order, it is unlikely that these discharges contribute to the impairment of the TMDL-related water bodies; therefore existing TMDL-related requirements that include WLAs to general categories of discharges are not applicable.*" Thus, the Permit appears to set up a process based on TMDLs that do not exist.

Also, many TMDLs have different compliance levels based on dry weather and wet weather. However, the Permit does not differentiate as to which standard is applicable for enrollment purposes in the Notice of Intent. Also, inclusion of TMDL provisions in this Permit may have unintended consequences on existing Basin Plans throughout the state, and is open to the interpretation that the Permit is effectuating amendments to existing Basin Plans in the Los Angeles and San Diego regions by adding requirements that presently do not exist. We believe that in light of the acknowledged minimal likelihood that PWS discharges may contribute to impairment of TMDL-related water bodies, the Permit's TMDL provisions are essentially superfluous and should be deleted from the Permit. **RECOMMENDATION:** Remove the TMDL provisions from the Permit.

35.9 8. Definitions of Types of Discharges; MCLs – Section I, B (pages 5 & 6). All of the waters ordinarily discharged by PWSs are low threat waters, which is why the EPA included such discharges as conditionally exempt under the Federal Stormwater Rule. However, the Permit attempts to distinguish among various types of discharged water by including definitions of the terms "treated drinking water," "potable water" and "raw water." First, we question why those definitions are necessary, as those terms are seldom used throughout the Permit, and all of those types of waters are low threat waters. In addition, those definitions are not consistent with how those terms are used in the water industry, which causes confusion regarding the scope of coverage under the Permit. An example of that is the limitation of the term "potable water" to groundwater produced by a well, when the common use of that term is to refer to any type of water that is safe for human consumption. Also, the Permit includes compliance with primary and secondary Maximum Contaminant Levels as a requirement for water to be categorized as "treated drinking water" and "potable water" and therefore be subject to coverage under the Permit. However, secondary MCLs are aesthetic standards, not health based standards, and water that does not meet secondary MCLs can be, and oftentimes is, served to the public. Application of secondary MCLs in the Permit will result in significant portions of PWS discharges not being covered by the Permit despite their acknowledged low threat status. That may then require PWSs to seek coverage under an individual NPDES permit (which can be a costly and potentially complicated endeavor) and/or would subject PWSs to third party lawsuits. **RECOMMENDATIONS:** Either revise the definitions of the types of discharges to conform to their common usage in the water industry (e.g., "potable water" would be defined as any water that is safe for human consumption), or simply delete the definitional provisions and instead use more specific language when referring to types

of water where used in the Permit. Also, references to secondary MCLs should be deleted.

35.10 9. Notice of Intent (Section II, B (pages 8 & 9); Attachment B-1).

A. In Section G of the Notice of Intent that is set forth in Attachment B-1, PWSs are required to list the receiving waterbody(ies) for their contemplated discharges. PWSs are then required to identify whether or not those waterbody(ies) is/are listed on the current 303d list for a constituent expected to be in the discharges, along with any adopted TMDL, if applicable. Determining whether a particular waterbody is on the 303d list can be a challenging process involving information that is not readily available or easily accessible. Most PWSs lack the resources necessary for this type of research. Moreover, we question the necessity of that information. **RECOMMENDATION:** Section G of the NOI should either be deleted in its entirety or limited to the PWS's best knowledge.

35.11 B. Section E of the NOI requires a "site schematic" to be submitted with the NOI application package. That schematic includes a requirement of the "alignment of storm water collection system." However, it is unlikely a PWS has any knowledge of the storm drain system into which its discharges may flow, other than the surface storm drains into which its discharges may enter. **RECOMMENDATION:** The requirement for the alignment of the storm water collection system needs to be revised to reference only the storm drains into which PWS discharges are likely to flow, or that requirement could be deleted in its entirety.

C. Section II, B, on page 8 of the Permit, requires the "site schematic" include various components, including the distribution system, any receiving waters in the area, and a 300' radius around the receiving waters. The map is also supposed to include "representative monitoring locations." These requirements can be extremely labor intensive and costly. Many systems are too large to create a single map with a 300 foot resolution and to include all of the required features. For small systems, creation of a map that includes the required components would require the assistance of a consultant and could cost several thousand dollars. There are also security issues associated with releasing a map showing PWS features. **RECOMMENDATION:** The "site schematic" requirement should be carefully reviewed and be limited to contain only such information that is absolutely necessary.

35.12 D. The need to identify "representative monitoring" sites, as mentioned in the preceding paragraph, is not clear from the Permit. Although Attachment E, Section II.B on page E-3 contains a general description, the "representative monitoring" concept is central to the Permit and the site selection should be explained in greater detail, including giving examples of how a PWS would comply with that requirement among its various facilities (e.g., hydrants and blowoffs used for flushing, wells and reservoirs) from which discharges may occur. **RECOMMENDATION:** The Permit should include in multiple locations, including on the NOI, a clear explanation of exactly what is required with respect to any "representative monitoring" sites.

35.13 10. Turbidity (Section V, C(1) (page 16); Attachment C – Section 1, D (page C-1); and Table E-2 (page E-4). The turbidity provisions found at the referenced pages create particular problems for PWSs that often discharge their wells to storm drains. First, many wells are automated and "go to waste" automatically when they begin operations, which may be at times when PWS personnel are not on site (e.g., late at night or early in the morning). Secondly, Section V, C(1) sets a limit for turbidity at 10 NTUs for the defined groundwater production well discharges. That limitation is far too low and will render many PWS wells unable to comply with that standard. Thirdly, the Best Management Practice for turbidity that is set forth in Attachment C is not feasible at many well sites due to space constraints and also may be cost prohibitive for small and even medium size systems. Lastly, Table E-2 appears to require the use of a field
35.14 mobile turbidity meter. Those units cost approximately $1,000 each, which may be cost prohibitive to smaller systems, and those units are also somewhat fragile.
RECOMMENDATIONS: Increase the turbidity limit to 100 NTUs and remove the
35.15 required Best Management Practice to allow PWSs discretion in applying a practical and cost effective BMP that better fits the conditions a particular PWS may face.

35.16 11. Best Management Practices (Attachment C – page C-1 through C-3). Attachment C of the Permit includes various BMPs that are not practical or do not exist. For example, there is no BMP for salt. **RECOMMENDATION:** State Board staff should consult with a qualified technical panel of water system operators (such as one that can be organized by Cal-Nevada AWWA) and staff of the Division of Drinking Water to revise Attachment C and other BMPs referenced in the Permit to ensure that any requirements actually exist, are practical and are economically feasible.

35.17 12. pH Control (Attachment C – Section C (page C-1). In Attachment C, Section C on page C-1, the Permit states: *"All discharges from distribution system*

draining for cleaning and maintenance shall be dechlorinated, pH adjusted as appropriate, and filtered to remove sediment, prior to discharging to surface waters or storm drains." However, PWS typically lack personnel with the technical training and certification to monitor pH, and pH adjustment in the field is therefore not a commonly practiced BMP. Also, many PWSs do not have the necessary equipment and supplies readily available. **RECOMMENDATION:** pH monitoring under the Permit should be handled through a PWS's existing water quality data, thereby obviating the need for further monitoring under the Permit.

35.18 13. Notification Requirements (Attachment E – Sections V and VI (pages E-5 & E-6).

A. Section V requires notification of the Office of Emergency Services ("OES") for discharges that may adversely affect or impact beneficial uses of receiving waters. We think that is too broad of a standard in which OES is to be notified. **RECOMMENDATION:** Notification to OES required under Section V of Attachment E should be required only where the discharge is likely, in the Discharger's discretion, to jeopardize public safety or threaten severe property damage.

35.19 B. Section VI requires post-notification of large planned discharges be given to the applicable Regional Board. We believe it better to require notice of such discharges to instead be given to the applicable MS4 operator(s).

35.20 14. Chlorine Measuring Devices. Hand held field equipment for the determination of chlorine concentrations is allowed but only electronic colorimeters may be used. Color wheels, dip sticks, and other similar techniques are not allowed. This will create a financial burden for many very small CWSs, who may also lack the technical skills to properly maintain and operate this equipment. **RECOMMENDATION:** Allow the use of color wheels, dip stick and other similar industry-accepted techniques. Alternatively, such techniques may be allowed for smaller quantity discharges (say, less than 100,000 gallons), but an electronic colorimeter must be used for discharges above that threshold.

35.21 15. Deputy Director of Water Quality Discretion (Attachment E – Section II.E (page E-4)). The referenced section authorizes the State Board's Deputy Director of Water Quality or a Regional Board Executive Officer to increase monitoring frequency at any time to ensure the protection of the beneficial uses of the receiving water. However, there is no specified trigger to that power. We believe that power should be

restricted in some manner. **RECOMMENDATION:** The stated power should be limited by adding the following to the end of the existing provision: "where circumstances have occurred as a result of a Discharger's discharge that lead to, contribute to or threaten an exceedance of an applicable water quality standard."

CONCLUSION: Thank you for your consideration of these comments. As stated above, the Companies do not believe the Permit is needed in light of the low threat nature of PWS discharges, and the fact that these discharges have been ongoing for many years without evidence that they cause recurring or significant adverse impacts. However, if the State Board determines to move forward with the Permit, we believe the changes discussed above are necessary to allow Public Water Systems to be able to continue to operate in compliance with applicable statutes and regulations in an efficient and cost effective manner.

Very truly yours,

James D. Ciampa

JDC/cc

cc: Mr. Tom Coleman, Executive Director, Bellflower-Somerset Mutual Water Company
Mr. Robert Hayward, General Manager, Lincoln Avenue Water Company
Mr. Martin Susnir, General Manager, Tract 349 Mutual Water Company