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PASADENA WATER AND POWER

August 19, 2014

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

Subject: State Wide Permit for Community Water Systems and Initial Study/Proposed Mitigated Negative Declaration Exception to Surface Water Quality Criteria for Drinking Water System Discharges to Waters of the United States

Dear Ms. Townsend:

Pasadena Water & Power (PWP) and the undersigned potable water utilities are pleased to offer comments on the above described Draft State Wide Permit (SWP). The goal of the Clean Water Act (CWA) and the Porter Cologne Water Quality Control Act (PCA) is to protect the beneficial uses of Waters of the United States (WOTUS). The State Water Resources Control Board (SWRCB) enforces these two statutes in California. As providers of potable water, PWP and the undersigned potable water utilities are supportive of the efforts of the SWRCB to use the CWA and PCA to ensure source waters remain safe and healthful. However, we also believe that these goals must be achieved in a realistic, reasonable, and cost-effective fashion. Regulations and General National Pollutant Discharge Elimination System (NPDES) Permits, such as this one, that do not actually improve water quality and result in significant financial impacts on the drinking water systems, effectively divert public monies away from other efforts that could otherwise be used to provide substantial improvements to public health and the protection of the environment. Accordingly, we are providing the following comments on the proposed SWP.

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Of primary importance is the fact that the current schedule for consideration and adoption of the SWP is not workable. That schedule calls for a revised version of the SWP to be distributed for review on or before September 13, 2014. That would leave

only ten days for stakeholders to review and digest what are likely to be significant revisions to the SWP. We do not believe there is any real urgency to adopt this permit. Thus, we strongly believe it would be much better for the SWRCB to take the time to make sure the SWP, if it actually needs to be adopted, that it be practical and balanced with respect to protection of water quality while minimizing its cost and operational impacts on California's water suppliers.

Background

Community Water Systems (CWSs) provide a safe and reliable supply of potable water to the people of California for the protection of public health and safety. CWSs are regulated under the Safe Drinking Water Act (SDWA) by the Division of Drinking Water (DDW) as well as by the various County Public Health Departments. CWSs are often required by law and by the best professional judgment of the DDW to discharge water from their systems, generally into streets, gutters, storm drains, and other similar conveyances, which are part of Municipal Separate Storm Sewer Systems (MS4s), and such discharges are regulated under the MS4 National Pollutant Discharge Elimination System (NPDES) Permits. When these waters are discharged directly into a WOTUS they are regulated by a number of different General NPDES Permits issued by a Regional Water Quality Control Board (RWQCB) under categories such as "low threat" or "de minimis risk" or "hydrostatic test waters".

41.2 For the last year, the SWRCB has been working on proposed SWP to regulate all CWSs in California. On June 6, 2014 a draft SWP was issued and followed on July 3, 2014 by a revised draft. The latter was drastically different from the former with more than 30 pages of additional text. This provided only a minimal amount of time to review the draft.

1) Regulatory Coverage

41.3 One of the arguments made by Board staff at the Stakeholders' Workshops in support of the proposed permit was that this NPDES Permit would provide CWSs with protection for liability associated with its routine discharges. CWSs already have such protection in more than nine different NPDES Permits already in place in the various Regions. Some of these permits are specific to CWSs (e.g. "Hydrostatic Test Waters" Permit) while others cover a number of discharges including those from CWSs ("Low Threat" or "De Minimis Risk" Permits). Thus, adopting another NPDES Permit would not ameliorate potential CWS liability. Only one Region does not have a permit like this, the San Francisco Bay Region, but it has a completed draft, which is ready for adoption. The only reason that they did not adopt it was because they were awaiting the outcome of the SWRCB's action on this permit. Attachment 1 includes the titles of the eight existing regional NPDES Permits.

41.4 This proposed Permit provides no additional protection for CWSs than already exists in eight of nine Regions and the remaining San Francisco Bay Region has a final draft ready for adoption.

2) Request by CWSs

At every Stakeholder Workshop since November 2013, it has been asserted that this draft Permit was initiated by requests from CWSs. This is not the case in regards to a SWP. We acknowledge that a small number of CWSs asked Region 5 to create a new Permit solely for CWSs for that Region. Additionally, Region 2 excluded CWSs from its MS4 Permit so they were forced to seek permit coverage and, consequently, some CWSs in Region 2 requested a permit for CWSs for that Region. However, it is not clear that any CWS requested the SWRCB to adopt a SWP. Nonetheless, even if a few CWSs requested a permit, they are a small minority of more than 3,700 CWSs in California, a great many of whom oppose the SWP. CWSs that desire the regulatory coverage under the proposed SWP can obtain, and in most cases already have obtained, it under existing permits.

41.5 Sound public policy is not served by the SWRCB dedicating significant resources to respond to a very small number of CWSs while placing unneeded burdens on the vast majority of CWSs who do not need or want this permit.

3) Protection to MS4 Permittees

41.6 A second argument made in favor of the proposed permit is that requiring CWSs to enroll in a General NPDES Permit protects local governments that operate both MS4s and CWSs. However, the MS4 NPDES Permits throughout the state, consistent with the CWA and federal CWA regulations (including 40 C.F.R. Section 122.26(d)(2)(iv)(B)(1)), allow potable drinking water supply and water distribution system releases by CWSs into (MS4s) and, ultimately, into receiving waters, so long as appropriate BMPs are utilized. These existing provisions of the various MS4 Permits are already in place, and provide equivalent protection to that which would be obtained by issuance of yet another, new General NPDES Permit specific to such discharges.

A related shortcoming of the SWP is that it does not address the relationship between CWS discharges to MS4s. Thus, while a CWS may be authorized under the SWP to discharge to the MS4, the SWP would not preclude an MS4 operator from prohibiting CWS discharges to that operator's MS4 system.

41.7 No new General NPDES Permit is needed, and if issued the proposed State-Wide Permit would not provide CWSs or MS4 Operators any better protection from liability.

4) Protection of Aquatic Life

41.8 SWRCB staff suggested both at the various Workshops and in some of the written materials in the invitation to some of the Workshops that the principal objective of the proposed permit is to prevent the death of aquatic organisms due to the release of chlorinated water. However, this issue is already addressed in the existing MS4 Permits and other NPDES Permits that cover discharges from CWSs in the various Regions. Also, we are informed that the incident cited that resulted in the fish kill in the

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San Francisco Region was due to a water main break, and such unforeseen instances, including the discharge of chlorinated water, would occur regardless of whether the CWS had a NPDES Permit in place and can only be addressed by emergency post-release implementation of appropriate BMPs to prevent chlorinated water from entering receiving waters. Moreover, there is no evidence that elsewhere in California of any documented events where aquatic organisms have been killed because of discharges of chlorinated water from CWSs, or indeed by any other specific class of dischargers. It is important to note that CWSs are not the largest dischargers of chlorinated water by volume on an annualized basis, although they are the most visible. If the SWRCB truly believe that discharges of chlorinated water are causing or materially contributing to receiving water quality exceedances, it should first gather and present such documented evidence that demonstrates the scope of the purported problem, and then include all dischargers of chlorinated water in a permit, not just CWSs.

This proposed Permit provides no additional protection to aquatic organisms than already exists in regionally issued NPDES Permits.

5) State-Wide Regulatory Uniformity

An additional argument that was made at the Workshops, in circulated documents, and the draft Permit itself, is that this Permit would create a consistent, state-wide environment. In fact, the text of the draft Permit states: *"This Order... will provide consistent regulatory requirements that apply to discharges from drinking water system discharges statewide."* However, this goal is not achieved by this SWP for the following reasons:

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- a. Most discharges from CWSs do not directly enter a WOTUS, but rather are discharged into MS4s first. All MS4 Permits require the Permittee to regulate discharges from CWSs to be consistent with the Federal Stormwater Rule (FSR). The vast majority of discharges from CWSs are currently regulated under local MS4 Permits; approximately 5% of CWSs have their own NPDES Permits. Not all MS4 Permits are consistent with each other, for example some do not allow MS4 operators to accept discharges from CWSs, but most do. However, the inconsistencies in current regulation will not be corrected by this Permit. Contradictory requirements between the various MS4 Permits will continue to exist even if this Permit is adopted since it makes no changes to the numerous MS4 Permits in the State.
- b. The draft SWP itself does not actually provide consistent regulatory requirements State-wide. CWSs that are owned by local governments and that are also MS4 Permittees, mainly cities and counties, are exempt from this draft Permit. CWSs that have agreements with local MS4 Permittees are also exempt. Further, CWSs that have Waste Load Allocations (WLA's) from Total Maximum Daily Loads (TMDLs) assigned to them that are not consistent with this draft Permit are also not required

to enroll and are not provided coverage. Finally, some CWSs will have to comply with WLAs in Attachment E Section K, but most will not.

- c. In Paragraph 14 below, there is discussion based not upon the text of the SWP itself, but upon the presentation by Staff at the July Stakeholder Workshops on how the SWP might be implemented, it could require CWSs to either obtain individual NPDES Permits or require Regional Boards to adopt General NPDES for CWSs in their Region.

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This proposed Permit does not create a consistent state wide regulatory environment for CWSs.

6) Lack of a Water Quality Problem

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The purpose of an NPDES Permit is to prevent or resolve threats to water quality, or degradation of the beneficial uses of the WOTUS. The preceding points raise a broader issue - there is no evidence that the water discharged by CWSs (or even non-CWSs who also discharge chlorinated drinking water) are causing any water quality problems. There is no indication that the discharges from CWSs have put any receiving water on the 303(d) list or caused any Water Quality Based Effluent Limitation (WQBEL) or Receiving Water Limitation (RWL) exceedances. In fact, all findings of the Regional Boards across the state indicate that the discharges of pollutants associated with CWS release are *de minimis* and represent a very low threat to receiving water quality. Indeed, the analyses performed by the staff of the various RWQCBs and the United States Environmental Protection Agency (USEPA) in preparing the scores of TMDL documents adopted to date indicate that in not a single case have discharges from CWSs contributed to the degradation of the beneficial uses of the WOTUS in California. As already noted, there is not a single WLA assigned to CWSs. The following are just two examples of many possible examples articulating of how the text of the draft Permit clearly states this:

- a. *“A review of Regional Water Board TMDLs found that, as of the adoption date of this Order, only the Los Angeles Regional Water Board and the San Diego Regional Water Board have TMDLs that either directly apply WLAs to, or may indirectly imply that WLAs are applicable to, the discharges from drinking water systems regulated under this General Permit. None of these TMDLs established WLAs that apply exclusively to discharges from drinking water systems. Instead, the WLAs apply to general categories of discharges (e.g., “other NPDES dischargers”) that include discharges from drinking water systems.”*
- b. *“Based on the data that is currently available, and due to the high quality and intermittent and short-term nature of the discharges from drinking*

water systems authorized under this Order, it is unlikely that these discharges contribute to the impairment of the TMDL-related water bodies. Therefore, it is consistent with the assumptions and requirements of the WLAs in these TMDLs for this Order to not include any TMDL-specific requirements.”

- c. The entire draft Mitigated Negative Declaration prepared for the SWP is predicated upon the findings by the SWRCB that discharges from CWSs do not pose a significant risk to the beneficial uses of the waters of the state.

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This work speaks more eloquently than we ever could have as to how small the impact the discharges from CWSs are how this permit is not at all necessary.

7) Efficiency

Although not stated in the draft Permit, SWRCB staff has stated repeatedly that this permit achieves levels of staff efficiency that justify its adoption.

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- a. It has been stated that it makes little sense for each Region to independently produce a permit for CWSs when the SWRCB can do all the work. In fact, these permits are already written, and the Regional Boards do not have to rewrite them to renew them. Further, none of these permits are limited to CWSs and cover much more than just discharges from CWSs. These will need to be renewed whether there is a SWP or not. Further, this process has already wasted huge amounts of resources from both the CWSs and the various Boards so there is no “efficiency” to be gained by having a SWP.

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- b. For example, in the Los Angeles Region there is the NPDES General Permit Order No. R4-2009-0068 for Hydrostatic Test Waters. Only about half of the enrollees in that permit are CWSs. Oil companies and natural gas companies are also enrolled. This permit will still have to be renewed by the Los Angeles Regional Board even if CWSs are required to enroll in the SWP. The same situation exists for just about every other General NPDES Permit in which CWSs are already enrolled.

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- c. Moreover, the State of California has numerous serious water quality issues in both surface and groundwaters; to wit, nitrates, chromium(VI), perchlorates, invasive species, and so forth. None of these problems are caused by discharges from CWSs.

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The SWP will not reduce the total number of NPDES Permits adopted as all of the existing regional NPDES Permits will still need to exist and be renewed. Given the limited resources of the SWRCB, to say nothing of the thousands of CWSs in California, it is not reasonable to dedicate so much time and effort to propose a solution to a problem that simply does not exist.

8) Lack of Rationale

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It is worth noting that although the above discussion took up a substantial portion of the time and energy of the Stakeholder Workshops as well as numerous informal exchanges, almost none of this is to be found in the proposed permit. The permit offers no explanation of what purpose it serves or what water quality problem it is attempting to solve other than to provide regulatory consistency, which it does not. The SWP appears to be an attempt to solve a problem that does not exist, as CWS discharges are already being adequately addressed in the existing system of regional permits.

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There is every indication that the water being discharged by CWSs is being adequately addressed under the existing system of NPDES Permits, including but not limited to the MS4 Permits, and the SWP is not needed.

9) A Moving Target

The SWRCB has been developing the SWP for about a year. SWRCB staff has conducted Stakeholder Workshops in Glendale, California on November 18, 2013, in Oakland on January 24, 2014, and in San Diego on May 12, 2014, to present the background of that proposed permit and to engage the community of CWSs in discussion of this proposed permit.

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It must be stated that at no point in process before the draft Permit was released on June 6, 2014 did the SWRCB staff ever share a full draft or even outline of the SWP with the participants. Bits and pieces of parts of a permit were presented, but participants were not provided documents indicating the full extent of the proposed language. The parts that were shared changed dramatically from meeting to meeting. For example in some Workshops the permit was called a "Multi-Regional Permit" while at other meetings it was described as a "State-Wide Permit". Initially it was stated that each local RWQCB would be allowed to decide if it wanted to pursue implementation of this proposed permit while at others the opposite was stated and that all local "low threat" NPDES Permits that covered discharges from CWSs would not be continued. In some meetings and in some documents Discharge Prohibitions were discussed, but in others there were none. Discharges to land were proposed to be regulated under this proposed permit in some documents, but not others.

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The most dramatic example is that of the draft Permit itself. The June 6, 2014 draft of the proposed Permit was largely designed around Attachment G. Attachment G was supposed to contain a list of "Water Bodies with Total Maximum Daily Loads (TMDLs) and Wasteload Allocations (WLAs) [Assigned] to Water Purveyors". Monitoring, Best Management Practices (BMPs), and compliance with the SWP was determined by what was supposed to be found in Attachment G. However, Attachment G was empty, it simply said "LISTING PENDING". When questions were raised about the fact that the SWP was highly focused on a document that was empty, the SWRCB announced that "The draft Attachment G proposing implementation of Total Maximum Daily Loads, and other minor clarifications to the draft statewide permit, will be issued within the next week." However, on July 3, much longer than just one week, a new draft was released. However, contrary to what the SWRCB wrote, Attachment G was still empty, but the rest of the Permit was completely re-written. References to Attachment G were struck out 10 times, but added in two places. The term Waste Load Allocation (or WLA) was replaced several times with an entirely new phrase "Applicable TMDL". There is an entirely new block of text which is nearly 30 pages long, Section II K of Attachment F. Section K is filled with: "Summaries of Applicable Total Maximum Daily Loads (TMDLs) with Waste Load Allocations (WLAs) to Water Purveyors". 30 groups of "Applicable TMDLs" from the Los Angeles Region and the San Diego Region are listed in Section K. The exact opposite of what was said would happen is what actually happened, Attachment G was populated and extensive, not minor, revisions were made to the text.

Since November 2013 there have been numerous, significantly different proposed Permit Attachments circulated and since June, two extremely different drafts of the proposed Permit were released. The rapid pace and highly variable nature of the changes have made it unreasonably difficult for CWSs to follow and understand the nature of the Permit and to provide cogent comments. As written, this Permit should not be adopted as it has had too little opportunity for effective stakeholder input.

10) Undue Haste

The tremendous speed with which SWRCB has advanced this permit is of no benefit to either the SWRCB or the CWSs. While the SWRCB staff has been working on this permit for over a year, there was no public acknowledgement of this process until November of 2013. The SWRCB did not create a dedicated webpage until very late in the process. Further, a full draft was only made available on Friday June 6, 2014, and that initial draft lacked the most important part of the Permit, Attachment G. On Thursday July 3, 2014 a revised draft Permit was released that had been changed extensively with more than 30 new pages of text added while Attachment G was still empty. The July 3, 2014 SWP is a very different Permit than the June 6, 2014 SWP, and based on the discussions at the recent Stakeholders' Workshops, we are concerned that the September version of the SWP will be very different from the July 3, 2014 version. .

In fact, in June of 2013 the SWRCB had already developed a Work Plan targeting the summer of 2014 as the period for adoption. This is too terribly short amount of time to

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fully digest and provide constructive input on a very large, complex permit that the State Board is proposing, one that will impact thousands of CWSs.

It is unreasonable and unproductive for the SWRCB to promulgate such a wide-reaching permit in such a short amount of time.

11) Jurisdictional Problems

At some Workshops SWRCB staff asserted that streets and gutters are not WOTUS. We certainly agree with assessment for the following reasons:

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- a. The Supreme Court of the United States ruled quite clearly on this issue in 2006 in *Rapanos et ux., et al., vs. United States*. This raises an important jurisdictional issue, since the streets, gutters, and similar MS4 related conveyances are not WOTUS, and discharges into streets and gutters are not subject to NPDES permitting requirements. If effluent monitoring must occur where the discharge enters a WOTUS, and if that point is not in a city street or gutter, but at the outfall to a WOTUS, then CWSs are not discharging into a WOTUS and an NPDES Permit is not needed.
- b. When this issue has been raised at various Workshops, the response from SWRCB staff has been that while streets and gutters are not WOTUS since they drain to a WOTUS they can be regulated as “tributaries” to a WOTUS and thus subject to the CWA. However, this is counter to *Rapanos* where the court held that a WOTUS is a “...*relatively permanent, standing, or continuously flowing body of water*” such as “*streams, oceans, rivers, and lakes...*” that are connected to navigable waters. Storm sewers, drain tiles, culverts, and man-made drainage ditches, are specifically rejected. If every impermeable surface that ultimately drained to a WOTUS were a WOTUS, then the entire surface of the State of California would be a WOTUS.

This permit regulates discharges that are not subject to the CWA and NPDES Permits.

12) Incomplete Draft - Attachment G and BMPs

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TMDLs and Waste Load Allocations WLA's appear to play a very important role in this permit. Indeed, the terms “waste load allocation” or “WLA” occur dozens of times in this permit as does the term “TMDL”. In the numerous instances that WLAs and TMDLs are mentioned in the text, frequent references are also made to Attachment G, “*Water Bodies with Total Maximum Daily Loads (TMDLs) and Wasteload Allocations (WLAs) to Water Purveyors*”.

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- a. Compliance with the proposed Permit is largely driven by TMDL Specific BMPs and monitoring is established to assess the effectiveness of BMPs. The Notice of Intent (NOI) requires a list of TMDL specific BMPs and a one-time analysis for analytes listed in Attachment G. The Permit states potential enrollees must submit *"Description and implementation requirements of site-specific best management practices that properly treat and/or control corresponding TMDL constituents in the discharge to a concentration or level less than the water applicable TMDL-specific permit requirement (s) as set forth in Attachment G, if any"*.
- b. It also states: *"Dischargers that have a waste load allocation in accordance with a Total Maximum Daily Load, as listed in Attachment G, shall submit in its application package, a list of TMDL-specific BMPs that will be implemented to directly address compliance with its waste load allocations."*
- c. TMDL Specific BMPs derived from Attachment G also play an important role in compliance. The permit states *"If monitoring results or other available information demonstrates that the discharge is not in compliance with the requirements of this Order, the Discharger shall determine the source of non-compliance, and develop and implement new or revised BMPs as necessary."* There is an open ended iterative process for BMPs tied to compliance with TMDLs and WLAs.
- d. The problem is that no TMDLs or WLAs are listed in Attachment G. Attachment G 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."*
- e. Consequently, the draft Permit creates a very elaborate system of enrollment and compliance based on TMDLs that do not exist. No enrollee would ever have to generate a list TMDL-Specific BMPs, put them into operation, or determine if they were effective. Indeed, as the Permit itself states, there is no reason to suppose that a TMDL would ever be developed with a WLA since *"...it is unlikely that these discharges contribute to the impairment of the TMDL-related water bodies"*.
- f. What then is the point of having Attachment G to create an enrollment and compliance system to remediate non-existent TMDLs? All of the text and

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space devoted to Attachment G and BMPs does not appear to accomplish anything and is completely superfluous and should be eliminated.

This draft SWP contains extensive text relating to TMDL-related BMPs that do not exist to reduce non-existent WLAs from TMDLs that are not applicable to CWSs and which the Permit states should never occur.

13) Incomplete Draft –Section K and Monitoring

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In the June 6, 2014 draft Permit there was no Section K of Attachment F. It was developed and inserted into the draft Permit later and included in the July 3, 2014 revised draft Permit. Section K is nearly **30 pages** of text listing: “*Summaries of Applicable Total Maximum Daily Loads (TMDLs) with Waste Load Allocations (WLAs) to Water Purveyors*”. There appears to be a significant amount of text missing.

- a. CWSs, as part of the application for enrollment in this Permit will be required to conduct monitoring based on Section K. Representative monitoring must be conducted by collecting a minimum of two samples representative of each type of drinking water system discharge (raw, potable, and/or treated) and have them analyzed for the Applicable TMDLs.
- b. There is no clear objective to be achieved by this monitoring as stated in the text of the Permit. In the June 3 draft Permit, monitoring had been based on WLAs listed in Attachment G that CWSs were expected then to develop BMPs to reduce the mass of the regulated components discharged through an iterative process. Analysis of constituents to be treated through BMPs made sense in that draft Permit. However, in the revised July 3, 2014 draft Permit this monitoring makes no sense. Since there are no BMPs to be applied or monitoring to determine compliance there is no reason to conduct this monitoring. Indeed the text provides no explanation of what either the SWRCB, the Regional Board, or the CWS is supposed to do with this data or how it is to be interpreted or applied.
- c. The legal basis for this requirement is also unclear. Existing WLAs are set by actions of the SWRCB that are amendments to Basin Plans. The proposed SWP appears to effectively amend the Basin Plans of both the Los Angeles and San Diego Regions without any action by the relevant Regional Board.

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This draft SWP contains extensive text relating to sampling that does not serve any stated purpose.

14) Unstated Provisions – Section K and TMDLs

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While the July 3, 2014 draft Permit provides no stated purpose for the proposed monitoring required in Section K of Attachment F, the Stakeholder Workshops held in July of 2014 a rationale was provided.

- a. SWRCB staff have indicated during their presentations at the Los Angeles Workshop that they will review the results of the laboratory testing and then place additional requirements in the Letter of Enrollment that each CWS that enrolls in the SWP will receive. These could be for additional or more frequent monitoring or being disallowed to enroll in the Permit and being required to either obtain an individual NPDES Permit or enroll in an as yet non-existent Regional NPDES Permit for CWSs (see Paragraph 5 above on how this contradicts the stated goal of state wide regulatory uniformity).
- b. In addition to the multiplication of permits for CWSs, the fundamental problem with this approach is that it is not described in the text of the proposed SWP. The inclusion of all these requirements will require a great deal more text, none of which will be available for review when the final draft SWP is released no later than September 13, 2014 in preparation for the adoption of the SWP on September 23, 2014.
- c. This unwritten process of permit application and assessment only applies to two Regions, Los Angeles and San Diego (see below). The majority of CWSs will not have to conduct any monitoring and analysis.
- d. Additionally, and also unstated, there will be an annual monitoring requirement where on-going evaluation of CWSs compliance with the draft SWP.
- e. Based on SWRCB staff presentations, the July 3, 2014 version of the draft SWP creates a misleading understanding of how the SWP would be implemented.

This draft SWP is missing explanation relating to sampling and the permit application process that has a great impact upon CWSs, although verbal reference was made to that text by SWRCB staff at the Workshops.

15) Arbitrary and Capricious Provisions – Section K and TMDLs

While the July 3, 2014 draft Permit provides no stated purpose for the proposed monitoring required in Section K of Attachment F, the Stakeholder Workshops held in July of 2014 a rationale was not provided.

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- a. As noted above, SWRCB staff has indicated it will review the results of the laboratory testing and then place additional requirements in the Letter of Enrollment that each CWS that enrolls in the SWP will receive.
- b. However, there are no criteria presented to be used to evaluate the results. There are a number of questions that this raises.
 - i. What concentration of a parameter in a TMDL found in Section K will trigger a more frequent monitoring requirement in a Letter of Enrollment?
 - ii. Most TMDLs and WLAs are expressed as mass/day while CWS's discharges are liquid and would be expressed in mass/volume. How would the mass/day standard be applied to the mass/volume results?
- c. There was also no process described which raises other questions.
 - i. If a sample has an unusually high or low result, would resampling be allowed?
 - ii. Would averaging be allowed?

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- d. Many TMDLs are based upon parameters which naturally occur in all waters in California. For example there are TMDLs throughout the state, including in the Los Angeles and San Diego Regions, for chloride, nitrogen (as nitrate, nitrite, and ammonia), phosphorus, sulfate, Total Dissolved Solids (TDSs), and boron, to name a few.
 - i. Would every sampling location have to be sampled?
 - ii. How would concentrations of naturally occurring parameters be assessed and would that be different from how anthropogenic parameters would be assessed?
- e. For some TMDLs, there are both Wet Weather and Dry Weather WLAs in the same document (either a Basin Plan Amendment (BPA) or other). When there are two sets of WLA's for the same constituents and receiving water, which would apply?

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The process for assessing monitoring data described by SWRCB staff implies criteria and procedures that appear to be arbitrary and capricious as they are not described anywhere in the text of the draft SWP.

16) Factual Errors – Section K and TMDLs

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One of the questions raised by this process is why are some TMDLs listed and not others? TMDLs listed in Section K come from only two Regions, the Los Angeles and San Diego Regions. The text of Section K offers an explanation:

- a. *“A review of Regional Water Board TMDLs found that, as of the adoption date of this Order, only the Los Angeles Regional Water Board and the San Diego Regional Water Board have TMDLs that may indirectly imply that WLAs are applicable to the discharges from drinking water systems regulated under this General Permit. None of these TMDLs established WLAs that apply exclusively to discharges from drinking water systems. Instead, the WLAs apply to general categories of discharges (e.g., “other NPDES dischargers”) that include discharges from drinking water systems. These TMDLs and WLAs are applicable to the discharges from drinking water systems authorized under this Order and are therefore summarized below.” [Emphasis added]*
- b. In some BPAs it is true, such language occurs. For example the Dry Weather Ballona Creek Metals TMDL BPA states that: *“Concentration-based dry-weather waste load allocations are assigned to the minor NPDES permits and general non-storm water NPDES permits that discharge to Ballona Creek or its tributaries. Any future minor NPDES permits or enrollees under a general non-storm water NPDES permit will also be subject to the concentration-based wasteload allocations.”* Although CWSs or CWS specific general NPDES Permits are not explicitly named, this text is interpreted to mean that they could be. The SWRCB appears to suggest that all of the TMDLs in the Los Angeles and San Diego Regions have this or similar language, but none of the TMDLs in other Regions have it.
- c. However, the Wet Weather Metals TMDL for Ballona Creek, which is in the same BPA as the Dry Weather Metals TMDL for Ballona Creek, does not have this language. In fact, it has contradictory language: *“Short-term discharges of potable water that are required by statute are not assigned WLAs ...”* So while Wet Weather Metals TMDL seems to imply that a WLA should be assigned to CWSs, the Dry Weather Metals TMDL explicitly states the opposite.
- d. It is thus unclear why one TMDL in one watershed in a BPA with a single clause should drive regulatory compliance, but not the other TMDL in the

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same watershed in the same BPA. The broad implications that this language “indirectly implies” that CWSs should be assigned a WLA in one TMDL is contradicted by the language in the other TMDL is the same BPA.

- e. Moreover, there are, in fact, a number of TMDLs, some adopted as BPAs and others established by USEPA, which do not include this or similar language at all. For example the Los Cerritos Channel Metals TMDL, which was written by the USEPA has no such language. The WLAs are assigned to five General NPDES Permits, General Construction Stormwater Permittees, the General Industrial Stormwater Permittees, Caltrans, the City of Long Beach MS4 Permittees, and the Los Angeles County MS4 Permittees. There is no mention of assigning WLAs to “other permittees”. This is in fact a very typical approach for the Los Angeles Region TMDLs.
- f. Further, there are TMDLs in Regions other than Los Angeles and San Diego that have assigned WLAs to unnamed NPDES Permittees in the exact same fashion as the Los Angeles Region TMDL documents. For example, the footnote on Page 4 in the Napa River Pathogens TMDL BPA on Table 7-c (“Density-Based Pollutant Load Allocations and Wasteload Allocations^a for Pathogen Dischargers in the Napa River Watershed has nearly identical language in the WLA table”) states: “*Wasteload allocations apply to any sources (existing or future) subject to regulation by a NPDES permit*” which expresses the exact same idea in slightly different words.
- g. Along the same lines, Attachment 2 to Resolution No. R8 - 2011- 0037 the Organochlorine Compounds TMDLs for San Diego Creek, Upper and Lower Newport Bay includes Table NB-OCs-13 (“Implementation Tasks and Schedule”) which begins with “*Revise existing WDRs and NPDES permits: Commercial Nursery WDRs, MS4 Permit, Other NPDES Permits*”.
- h. So it would appear that not all TMDLs in the Los Angeles and San Diego Regions have this rather ambiguous language and that some TMDLs in other Regions do have similar language. The TMDLs listed in Section K do not appear to meet the criteria established by the Permit. It is factually incorrect.
- i. Additionally it is not at all clear under what legal authority the SWRCB has to select TMDLs and WLAs to be included in the requirements of this permit based upon such limited language and precedent.

The broad and vague assertions about the nature of TMDLs and WLAs in Los Angeles and San Diego are not supported by the facts. The text of the draft SWP claims a bright line exists between the TMDLs of these two Regions and all others throughout the state, but that bright line does not in fact exist.

17) Legal Authority to Assign WLAs

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WLA's are set by either the USEPA or the various RWQCB's through BPAs. In adopting this SWP with the provisions assigning WLAs to CWSs, the SWRCB is effectively amending the Basin Plans and USPEA TMDL Documents. The SWRCB does not have the authority to unilaterally amend these documents by the adoption of a Permit. If the SWRCB wants to amend Basin Plan and TMDL documents, it would have to do so before the SWP is adopted.

The proposed SWP effectively amends Basin Plans and TMDL documents without following the appropriate procedures.

18) Legal Authority for Changes to Monitoring

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Attachment E, Section II, Paragraph E states: *"The State Water Board Deputy Director of Water Quality or an Executive Officer of the appropriate Regional Water Board may increase monitoring frequency at any time to ensure the protection of the beneficial uses of the receiving water."* However, there are no criteria or thresholds for which the Deputy Director or Executive Officer may use to make such a decision. Under what conditions or situations would the Deputy Director or Executive Officer be empowered to make these changes? Without some objective standard, this provision is arbitrary and capricious. Some language is needed to establish factual basis for making such a determination, such as *"If a monitored constituent in the discharge from a Permittee threatens to cause or contribute to an exceedance of a WQBEL or RWL, the State Water Board Deputy Director of Water Quality or an Executive Officer of the appropriate Regional Water Board may increase monitoring frequency"*.

The power to extend and expand monitoring has to be based on monitoring data.

19) Overlapping Scopes and Redundant Provisions

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Even if the use of Attachment G and Section K were appropriate, there are relatively few water bodies listed, just some in only two Regions. A large majority of CWSs are not covered under Attachment G or Section K at all. Since the majority of the draft SWP is tied to Attachment G and/or Section K, the majority of CWSs are not covered by the majority of the Permit. The few remaining parts of the SWP that are not tied to Attachment G are actually redundant with other existing permits.

- a. Most of the parts of the permit not tied to either Attachment G or Section K involve requiring CWSs to dechlorinate their discharges. The corresponding BMPs are found in Attachment C. However, CWSs are already required to implement the BMPs in Attachment C as these discharges are already regulated under all local MS4 Permits and these

BMPs are currently widely practiced. These practices will still be mandatory for CWSs whether this Permit is adopted or not.

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b. There is also a requirement to manage copper based algaecides, but there is already a State-Wide Permit issued by the SWRCB covering those activities (WATER QUALITY ORDER NO.2013-0002-DWQ, GENERAL PERMIT NO. CAG 990005).

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c. There is also a requirement covering the discharge from CWSs to land, but there is also an existing Waste Discharge Requirement (WDR) covering that activity. State-Wide Waste Discharge Requirement (WDR) for discharges to land by CWSs (WATER QUALITY ORDER NO. 2003 – 0003 – DWQ) already covers these discharges and this WDR has different requirements than the proposed SWP.

Many of the provisions of the draft SWP are redundant and some conflicting provisions of with already existing NPDES Permits and WDRs.

20) Potability and Maximum Contaminant Levels

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Throughout the draft SWP the term “Maximum Contaminant Level” (MCL) is used in a variety of locations. There are definitions of different types of water covered by the proposed Permit where the water to be discharged “*May not cause or contribute to the receiving water exceeding any MCL in a Running Annual Average (RAA) basis*”. The underlying assumption here is that water that meets all MCLs is by that very fact alone potable.

a. Surface water is never potable not because it does not meet MCLs for chemicals, such as arsenic or nitrate, but because it does not meet disinfection standards. The Surface Water Treatment Rule (SWTR) establishes conditions under which surface water can be provided by CWSs to the public. These include filtration and disinfection rather than MCLs. It is quite common for untreated surface water to meet all MCLs without any treatment, but still be considered non-potable.

b. Secondary MCLs are not usually enforceable, especially in areas with limited water supplies. CWSs can serve water with chloride, sulfate, TDS, conductivity, color, odor, and other constituents that are greater than the secondary MCLs if there are no other options. Secondary MCLs are aesthetic standards, not health based standards.

c. Potability is not synonymous with complying with MCLs. The proposed SWP requires the use of BMPs to ensure all CWS discharges to receiving waters comply with drinking water MCLs. This is entirely unwarranted for numerous receiving waters that do not have a Municipal beneficial use designation.

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The Permit is working off invalid assumptions that waters that are in compliance with MCLs are *eo ipso* “potable” and that all discharges must comply with MCLs to protect receiving water beneficial uses.

21) Potability and Level of Threat

The draft SWP routinely conflates the question of whether a volume of water can be discharged under the CWA or PCA and whether it is potable or not under the SDWA. The SWP is structured in a fashion that water that is considered potable can be discharged and water that is not potable has to meet a higher regulatory standard. “Raw water”, which the Permit assumes is non-potable, must comply with a receiving water standard while “treated water”, which the Permit assumes is potable, does not. However, this is the wrong legal standard.

- a. Discharges from CWSs should be allowed to be discharged not because they are “potable” but rather because they are “low threat”. For example, under the FSR, MS4 Permittees are required to ban non-stormwater discharges. However, there are a number of exceptions including: *“...water line flushing, fire hydrant flushing, runoff from fire fighting, swimming pool drainage and discharge, landscape irrigation, diverted stream flows, uncontaminated pumped ground water, rising ground water, discharges from potable water sources, uncontaminated waters from cooling towers, foundation drains, non-contact, cooling water (such as heating, ventilation, air conditioning (HVAC) water that POTWs require to be discharged to separate storm sewers rather than sanitary sewers), irrigation water, springs, roof drains, water from crawl space pumps, footing drains, lawn watering, individual car washing, flows from riparian habitats and wetlands...”*
- b. It should be noted that only some of these conditionally exempt discharges are from CWSs. There are a number of other discharges that are clearly not potable, but share the same exemption that discharges from CWSs do. Indeed as the USEPA itself notes (Federal Register I Vol. 55, No. 222 I Friday, November 16, 1990 I Rules and Regulations 48037): *“...these were commonly occurring discharges which did not pose significant environmental problems...”*
- c. The USEPA included all of these different and diverse types of discharges together in the FSR not because they were potable, but because they pose no significant threat.

Building a permit around potability is not appropriate under the CWA or PCA.

22) Unclear, Vague and Contradictory Language – Monitoring and Compliance

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The proposed Permit has a great deal of language that is difficult to interpret, is often unclear, vague, or ambiguous and contains a number of contradictory sections. The most obvious and important example of this are the monitoring and compliance provisions.

- a. In Scope of the Permit, Section B, Discharge Definitions it states: *“To be eligible for coverage under this Order, discharge of raw water may not cause or contribute to the receiving water exceeding a primary or secondary drinking water MCL, on a running annual average basis.”* This language strongly implies that CWSs should be monitoring both their discharges and the receiving waters for compliance with all MCLs. How can a CWS say that it is eligible for coverage when it does not know if this statement is correct? Much of the other language implies monitoring as well.
- b. Standard Provisions Section C states: *“Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program in Attachment E of this Order.”*
- c. The Effluent Limitation provisions states: *“Any water purveyor authorized to discharge under this Order shall not violate any applicable basin plan or water quality control plan, and at minimum, shall not cause or contribute to an occurrence of the following in the receiving water: A. pH. The pH level to be lowered below the pH receiving water objective in a corresponding Regional Water Board basin plan. B. Chemical Constituents. Chemical constituents to be present in concentrations that adversely affect beneficial uses.G. For Water Bodies with an applicable TMDL. An exceedance of the water quality objective for the pollutant(s) that is causing the impairment.”* This language also strongly suggests that some sort of chemical analysis is needed.
- d. In attachment E there are more statements about monitoring:
 - i. Monitoring is not required for any portion of the discharges that: (1) do not ultimately reach a water of the U.S., and (2) are implemented for multiple uses or beneficial reuse.
 - ii. The State Water Board Deputy Director of Water Quality or an Executive Officer of the appropriate Regional Water Board may increase monitoring frequency at any time to ensure the protection of the beneficial uses of the receiving water.
- e. However, nowhere in the permit is there any positively stated requirement to report any monitoring results (except as applies to Section K which is discussed separately above). The Notice of Intent (NOI) does not require

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any reporting of any laboratory results nor does the Monitoring and Reporting Program (Attachment E) discuss a requirement to report any results.

f. Moreover, Attachment E, Section B states: "Chemical analyses that require laboratory testing are not required in this Order." This clearly states that no laboratory analysis is required for any chemical constituent (again with an exception for Section K) but is that different from reporting a requirement to monitor? Can the use of field kits be required by SWRCB enforcement staff? Can third parties go to court to require CWSs to use field kits for various chemical analyses?

g. Additionally, there is a provision that there is no requirement for chemical analyses that require laboratory testing, several provisions that demand that CWSs conduct monitoring and place conditions on CWSs that they not alter the chemical make-up receiving waters and that discharged water not exceed certain chemical standards (MCLs) and silence on many other sections. This leaves the enforcement staff of the Board, CWS staff, and any third party interested in ensuring that the provisions of this Permit are vigorously enforced with a great deal of ambiguity and conflicting language.

CWSs need clear and unambiguous requirements as to what needs to be monitored, what does not need to be monitored and what to do with the results.

23) Discharge Definitions

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The Permit creates three "**Discharge Definitions**" of water, "Raw", "Potable", and "Treated" that are complicated, ambiguous, and unnecessary.

a. Raw water is defined as:

i. Surface or groundwater

ii. May not cause or contribute to the receiving water exceeding any MCL in a Running Annual Average (RAA) basis

iii. Is not suitable for human consumption.

iv. Is not fully treated

b. Potable water is defined as:

i. Only groundwater and not surface water

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- ii. Meets all MCLs on a RAA basis
- iii. Is suitable for human consumption
- iv. May or may not be treated.

c. Treated drinking water is:

- i. Treated ground or surface water or water from a "distribution system".
- ii. Meets with MCLs on a RAA basis
- iii. Is suitable for human consumption
- iv. Is treated
- v. Is in accordance with the drinking water regulations in Titles 17 and 22 of the California Code of Regulations.

d. These definitions are contradicted by the language in the Fact Sheet on Page F-4 which states: "For the purposes of this Order, treated drinking water refers to treated surface water and water from drinking water distribution systems that has been treated by a water treatment facility and is suitable for human consumption in accordance with the drinking water regulations in titles 17 and 22 of the California Code of Regulations, including compliance with CDPH's **Primary Maximum Contaminant Levels (MCLs) as a 30-day average concentration and CDPH's secondary MCLs as an annual average.**" This contradicts the text at the beginning of the Permit uses a RAA for both primary and secondary MCLs.

There is no clear purpose for these definitions. Aside from the one-time analysis required in Section K for the NOI, these definitions are not used anywhere else in the permit. Since there is no clear purpose for the one-time analysis required in Section K, there is no reason to include these definitions.

24) Discharge Specifications

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The Permit then creates a complicated series of **Discharge Specifications** which are entirely different from the **Discharge Definitions**.

- a. Different Effluent Limitations for chlorine (Cl₂) are applied to different situations.
 - i. Direct Discharges to Inland Surface Waters: Cl₂ < 0.019 mg/L

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- ii. Indirect Discharges to MS4s < 300 ft from outfall: $\text{Cl}_2 < 0.019$ mg/L
- iii. Indirect Discharges to MS4s > 300 ft from outfall: No Cl_2 Limit
- iv. Direct and Indirect Discharges to the Ocean: $\text{Cl}_2 < 0.008$ mg/L
- v. Discharge to Land (Beneficial): No requirement to measure Cl_2
- vi. Any discharge > One Acre-Foot must be measured for Cl_2

b. The Permit creates conflicts for many CWSs as these same discharges are regulated under local MS4 NPDES Permits. Local MS4 NPDES Permits often have different requirements than those required in this permit. CWSs must then sort through the different permit requirements.

c. Hand held field equipment for the determination of chlorine concentrations is allowed but only electronic colorimeters. Color wheels, dip sticks, and other similar techniques are not allowed. This will create a financial burden for many very small CWSs. They may also lack the technical skills to properly maintain and operate this equipment. The same point can be made for field portable turbidity meters and pH meters.

The draft SWP discharge specifications are overly complicated and confusing. The draft SWP would be considerably easier to understand and comply with if it simply required all CWSs to dechlorinate all their discharges of any volume and to any receiving water to concentrations of less than 0.1 mg/L. The effluent limitation for any discharge to an inland receiving body is <0.019 mg/L and to the ocean it is <0.008 mg/L. Existing MS4 Permits already require this.

25) Notification Requirements

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There is a system of pre- and post-discharge notification requirements. It does not seem to serve any obvious purpose.

- a. The RWQCB has to be notified at least 72 hours before a discharge of more than one acre-foot and within five days after any discharge not in compliance with the draft SWP.
- b. The Office of Emergency Services (Cal OES) has to be notified with 24 hours of any out of compliance discharges.

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c. There does not appear to be any reason for these requirements. In particular there is no reason that a CWS needs to notify the Cal OES of a discharge. Cal OES is responsible for the coordination of overall state agency response to major disasters in support of local government. There would be very few instances, if any, of discharge by a CWS that would be considered a "major disaster".

d. What would Cal OES do with this information? The same reasoning would apply to notifying the local RWQCB. It is not clear what purpose the notification of the RWQCB achieve? If any entity should be notified, it should be the local MS4 Operator / Permittee.

Notification of the MS4 Permittee is more appropriate than notifying CalOES or the local RWQCB. The MS4 Permittee has staff and knowledge to make practical use of this information.

26) Notice of Intent

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CWSs will need to complete a NOI. Part of the NOI will be a series of maps or schematics showing the distributions system, any WOTUS in the area, a 300' radius around the WOTUSs, and samples for analytes found in Attachment G. The map/schematic also includes locations of "representative monitoring locations". This requirement can be extremely labor intensive and costly. What features are WOTUS and which are not is not always understood or agreed. Many systems are too large to create a single map with a 300 foot resolution and to include all of the required features. There are also security issues associated with releasing a map showing CWS features.

The requirement for a system map is really not necessary; it is burdensome to the CWS and of no particular use to Board staff.

27) Attachment C – Municipal Groundwater Supply Wells

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BMPs are presented in Attachment C. One BMP is for "Municipal Groundwater Supply Well Discharges". The purpose of this BMP is unclear. Why would a municipally owned well need BMPs for discharges but other wells not? Further, since municipally owned CWSs are excused from enrolling in the SWP, it seems unlikely that there would be too many municipally owned wells would be covered by this Permit. The other possibility is that this should be simply "Groundwater Supply Wells".

The word "municipal" can be struck to provide greater clarity.

28) Turbidity Measurements

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The draft SWP has provisions that address the measurement of turbidity but are very unclear and unnecessarily burdensome.

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- a. Section V C states: *"The Turbidity measure in Nephelometric Units (NTUs) in the discharge of potable water shall not exceed 10 NTUs as a daily average or per turbidity water quality objectives in the corresponding Regional Water Board basin plan, whichever is less" which applies to "all planned discharges of potable water directly to a surface water or via a storm drain".* This implies that turbidity samples and measurements are required for all planned discharges.
- b. However on Page E-2, Section I B of Attachment E states: *"Chemical analyses that require laboratory testing are not required in this Order".*
- c. In the Code of Federal Regulations, Volume 40 Part 136 only laboratory techniques (USEPA Method 180.1) are allowed for the determination of turbidity, field mobile units are not authorized for regulatory compliance monitoring with the CWA.
- d. While there is specific language in the SWP discussing hand held chlorine analyzers, there is no parallel discussion of field mobile turbidity units.
- e. However, at the Los Angeles Stakeholders Workshop, SWRCB staff discussed that CWSs would be expected to obtain and use field mobile turbidity units for discharges from well heads during "well to waste" or "pump to waste operations" for direct discharges to WOTUS.
- f. However, this approach contradicts what is written in the text. The text of the draft SWP states that all planned discharges are to be measured, not just well head operations. Further, the text is silent about requiring the use of field mobile units.
- g. Further, many wells "go to waste" at the beginning of operations which are entirely automated and can occur at any time. It is often impossible for CWS staff to be present when a well turns on as they do not know what time that might be and it may occur after normal business hours.

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- h. Additionally, the costs associated with purchasing and maintaining a field mobile turbidity meter are prohibitive for small CWSs, as those units cost over \$1,000 for the meter plus the additional cost of the associated equipment. This is to say nothing of the labor times associated with this activity. Of the over 3500 CWSs in the State of California, half have a service population of 250 or less, many of which have no more than one full time employee.

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Discharges from CWSs are not known to cause exceedances of turbidity in receiving waters, particularly for smaller systems. The turbidity provisions are confusing, costly, and unnecessary.

29) pH Control

The Permit has two provisions that address pH but are very unclear.

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- a. Attachment C in Section C on page C-1 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.”*
- b. There are not any BMPs identified to adjust pH. pH adjustment in the field is not a commonly practiced BMP and it is unclear if the necessary equipment and supplies are readily available or that it is cost effective.
- c. Page F-16 it states: *“Community drinking water systems are required to maintain a pH of 7.0 in their distribution systems as part of their corrosion control treatment plans (40 CFR Section 141.82(f)).”* However, the Code of Federal Regulations states: *“A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the State determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control.”*
- d. The regulation requires a pH of not less than 7.0 under certain circumstances, not 7.0. Those circumstances involve the Lead and Copper Rule, which makes no general rule that applies to all CWSs but rather a rule that only applies to a few CWSs and only if they do not have alternative treatment options.
- e. pH can be accurately and effectively measured using pH strips. Hand held electronic monitors are unnecessary and expensive.
- f. There is really no need for this provision. Even if CWS had a discharge with pH outside the range found in the basin plan, the volumes would be too small to actually alter the pH of a receiving water.

The pH control requirement is not necessary, as pH in the water discharged by CWSs will be too small in volume to alter the pH of receiving waters.

30) Impractical Provisions

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There are requirements in the proposed SWP that are both impractical and not reasonably related to the likely effects of CWS discharges. Under certain situations,

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CWSs are required to enter a receiving water to conduct monitoring. CWSs often do not have access (either in the physical sense or the legal sense) to or knowledge of the MS4 outfalls or the flood control channels that may be affected by a discharge to conduct such monitoring. MS4 outfalls and flood control facilities have very limited access and are generally fenced off. There are significant health and safety issues in regards to entering flood control channels.

This provision presents a number of hazards to CWS staff without any obvious benefits to the protection of human health and the environment.

31) Notice of Intent

41.43

In Section G of the NOI, CWSs are required to list the receiving waterbody(ies) for all discharges. CWSs are requested to identify whether or not the waterbody(ies) is/are listed on the current 303d list for a constituent on these discharges, along with the adopted TMDL, if applicable. The information being requested is not readily available, nor is it easily accessible. The web link given on the NOI directs you to the SWRCB TMDL Program page and not directly to information regarding 303(d) listing. Most CWSs do not have the resources for this type of research. All the information being requested is unnecessary and tracking them all down will be very difficult and will require a lot of time.

This provision is only necessary for the expansion of a new CWS which is an extremely rare event. To require so much work for such an unlikely event seems inappropriate.

32) New Draft, New Public Comment Period, New Workshops

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As mentioned above, on June 6, 2014 the SWRCB released a draft SWP. Attachment G was empty and a number of CWSs expressed concern that the proposed comment period was far too short to review two complex documents (the SWP and the CTR exemption document). The SWRCB announced an extension of the comment period and three new Stakeholder Workshops. It also announced that a new draft with an Attachment G populated with TMDLs and WLA would be included plus some minor changes to the text for clarification. However on July 3, 2014 the new draft was released and it was completely a different document. Attachment G was not populated, it was still empty. However, more than 30 pages of new text were added to the draft SWP, most of it in Section K. As a practical matter, this was a completely new Permit. This means that CWSs really did not get the full comment period starting from June 4, 2014 to comment on a relevant draft of the SWP.

Further, after the various workshops it was quite apparent that final draft SWP that is slated to be released no later than September 13, 2014 will again be significantly different from the July 3, 2014 draft of the SWP. At all workshops, SWRCB staff repeatedly stated that they were going to have to re-write many sections based on the feedback that was received at those workshops. Further, it was quite apparent that SWRCB Staff had very different ideas about what they thought the SWP should do and

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what they had actually written down. For example their entire scheme of classifying discharges based on the running annual average concentration of MCLs was unrealistic and not consistent with the CWA or PCA. That is a major effort at re-writing the SWP and it was only one of many examples.

The upcoming changes to the SWP will be too numerous and this Permit is too important to limit stakeholders' ability to review, interpret and understand those changes in the limited period of time (potentially as little as ten days) as is currently scheduled. Moreover, based on the confusion that surfaced during the recent round of Stakeholders' workshops, it is clear that another round of Stakeholder Workshops is needed.

It is extremely important that if the SWRCB decides to proceed with this permit, it must provide another 45 day comment period, additional Stakeholder Workshops, and another set of staff responses to comments in a timely matter before this SWP can be heard for adoption.

Conclusion

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In 2008 the Los Angeles Regional Water Quality Control Board proposed a General NPDES Permit for CWSs that was somewhat similar to this one. However, the Los Angeles Regional Water Quality Board found itself without a quorum. So the Executive Officer of the Los Angeles Board sent the proposed Permit to the SWRCB for adoption. After careful consideration, the Executive Officer of the SWRCB, Dorothy Rice, declined to pursue that effort. In her response she stated: "...most Regional Water Boards use municipal separate storm sewer system (MS4) permits to regulate potable water discharges to surface waters...We are not aware of any particular problems under the current practices. Therefore, we urge you to consider whether an additional regulatory mechanism is necessary to regulate these discharges at this time" (see attachment). If there are concrete data indicating that the current method of regulating discharges from CWSs is not working, then there might be some reason to adopt this permit. However to date, all indications are that the current path is working just fine.

It does not seem reasonable to adopt a permit that serves no obvious purpose, is technically flawed, has numerous arbitrary and capricious provisions, was presented in an incomplete fashion, and is being hastily and unnecessarily rushed.

The undersigned CWSs respectfully urge the State Water Resources Control Board not to adopt this permit and to not pursue this effort to develop or adopt a State-Wide NPDES General Permit for CWSs. We thank you for your attention to this matter.

Sincerely,



David E. Kimbrough, Ph.D. Water Quality Manager, Pasadena Water & Power

DEK/hs

Concurrences:



Shan Kwan, Assistant General Manager, Pasadena Water & Power



Keith Abercrombie, General Manager, Valencia Water Company



Ramon Abueg, P.E., Chief Assistant General Manager Glendale Water & Power



Louis Atwell, Director of Public Works, City of Inglewood



Dan Arrighi, Water Resources Manager, San Gabriel Valley Water Company

A handwritten signature in black ink, appearing to read "Steve Bigley".

Steve Bigley, Director of Environmental Services, Coachella Valley Water District

A handwritten signature in black ink, appearing to read "John Bosler".

John Bosler, PE, Chief Operating Officer, Cucamonga Valley Water District

A handwritten signature in black ink, appearing to read "Ken Bradbury".

Ken Bradbury, General Manager, Montebello Land & Water Company

A handwritten signature in blue ink, appearing to read "Jeanne-Marie Bruno".

Jeanne-Marie Bruno, General Manager and Senior Vice President, Park Water Company

A handwritten signature in blue ink, appearing to read "Jared Bouchard".

Jared Bouchard, General Manager, Channel Islands Beach Community Services District

A handwritten signature in black ink, appearing to read "J. Byerrum".

Jim Byerrum, President, California Domestic Water Company

A handwritten signature in black ink, appearing to read "Douglas M. Caister".

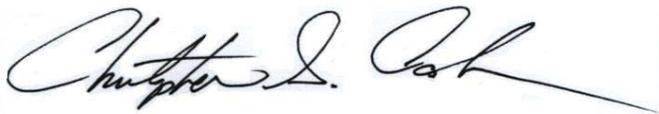
Doug Caister, General Manager, La Cañada Irrigation District

A handwritten signature in black ink, appearing to read "Myriam Cardenas".

Myriam Cardenas, Assistant Manager for Water Production and Treatment, City of Santa Monica

A handwritten signature in black ink, appearing to read "Barbara A. Carrera".

Barbara Carrera, General Manager, San Gabriel County Water District

A handwritten signature in black ink, appearing to read "Christopher S. Cash".

Christopher S. Cash, Director of Public Works, City of Paramount

A handwritten signature in blue ink, appearing to read "Edward A. Castaneda".

Ed Castaneda, General Manager, Orchard Dale Water District



Mary Chavez, Director of Public Works, City of Alhambra



Stephen Cole, General Manager, Newhall County Water District



Alberto Corrales, General Manager, South Montebello Irrigation District



David Coxey, General Manager, Bella Vista Water District



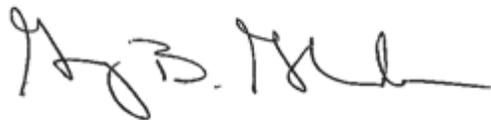
Ron Davis, General Manager, Burbank Water and Power



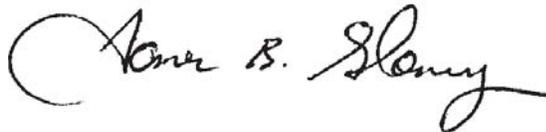
Michael J. Egan, City Manager, City of Norwalk



Dennis Erdman, General Manager, Crescenta Valley Water District



Greg B. Galindo, General Manager, La Puente Valley County Water District



James B. Glancy, Director of Water Resources, City of Lakewood



Daniel W. Keeseey, Director of Public Works, City of La Verne



Mauricio E. Guardado, Jr., Retail Manager, Santa Clarita Water Division



Dale Gonzales, Environmental Director, California Water Services Company



Mark Grajeda, General Manager, Pico Water District



Robert J. Hayward, General Manager, Lincoln Avenue Water Company



Rick Hansen, General Manager, Three Valley Municipal Water District



Jose Herrera, Del Rio Mutual Water Company



Michael Holmes, General Manager, Walnut Valley Water District

A handwritten signature in black ink, appearing to read "Bill Inman", with a long horizontal flourish extending to the right.

Bill Inman, Director of Public Works, City of Sierra Madre

A handwritten signature in black ink, appearing to read "Nina Jazmadarian", with a long horizontal flourish extending to the right.

Nina Jazmadarian, General Manager, Foothill Municipal Water District

A handwritten signature in blue ink, appearing to read "David K. Luker", with a long horizontal flourish extending to the right.

David K. Luker, General Manager of Desert Water Agency

A handwritten signature in blue ink, appearing to read "P. David Michalko", with a long horizontal flourish extending to the right.

P. David Michalko, General Manager, Valencia Heights Water Company

A handwritten signature in blue ink, appearing to read "Melvin L. Matthews", with a long horizontal flourish extending to the right.

Melvin L. Matthews, General Manager, Kinneloa Irrigation District

A handwritten signature in black ink, appearing to read "Dan Masnada", with a long horizontal flourish extending to the right.

Dan Masnada, General Manager, Castaic Lake Water Agency

A handwritten signature in black ink that reads "K.S. Milligan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin S. Milligan, P.E., Riverside Public Utilities Assistant General Manager-Water

A handwritten signature in blue ink that reads "Susan B. Mulligan". The signature is cursive and elegant, with a prominent loop at the end of the last name.

Susan B. Mulligan, General Manager, Calleguas Municipal Water District

A handwritten signature in black ink that reads "Lynda Noriega". The signature is cursive and somewhat stylized, with a large loop at the end of the last name.

Lynda Noriega, General Manager, Valley County Water District

A handwritten signature in blue ink that reads "J. Oskoui". The signature is cursive and relatively simple, with a small loop at the end of the last name.

John Oskoui, P.E. Assistant City Manager, City of Downey

A handwritten signature in black ink that reads "David W. Pedersen". The signature is cursive and somewhat stylized, with a long horizontal stroke at the end.

David W. Pedersen, General Manager, Las Virgenes Municipal Water District

A handwritten signature in black ink that reads "Darron Poulsen". The letters are cursive and fluid.

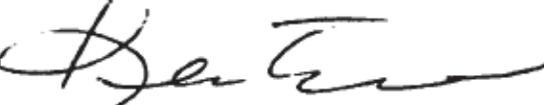
Darron Poulsen, Water & Wastewater Operations Manager, City of Pomona

A handwritten signature in black ink that reads "Jorge J. Rifá". The signature is highly stylized and cursive.

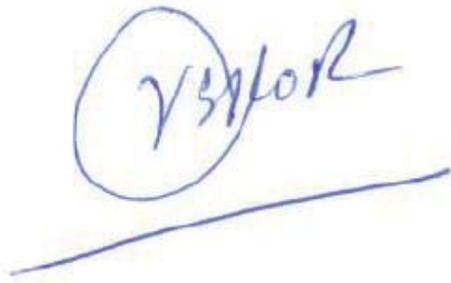
Jorge J. Rifá, City Administrator, City of Commerce

A handwritten signature in black ink that reads "Brian Saeki". The signature is cursive and somewhat compact.

Brian Saeki, City Manager, City of San Fernando

A handwritten signature in black ink that reads "Ken Tcheng". The signature is cursive and flows from left to right.

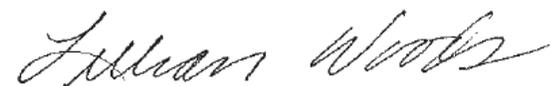
Ken Tcheng, General Manager, Sunny Slope Water Company

A handwritten signature in blue ink. The word "VERNON" is written in a cursive style, with the "V" and "N" being particularly prominent. The signature is enclosed within a hand-drawn circle, and a long horizontal line is drawn below the circle.

Paul Toor, Public Works Director, City of South Pasadena

A handwritten signature in black ink, appearing to be "S. Wilson". The signature is stylized and somewhat abstract, with a long, sweeping stroke at the beginning.

Samuel Kevin Wilson PE, Director of Public Works, Water, & Development Services City of Vernon

A handwritten signature in black ink, appearing to be "Lillian Woods". The signature is written in a clear, cursive style.

Lillian Woods, Director of Operations, Rubio Cañon Land and Water Association

Attachments

ORDER NO. R1-2009-0045
GENERAL NPDES PERMIT NO. CA0024902

WASTE DISCHARGE REQUIREMENTS
FOR
LOW THREAT DISCHARGES
TO SURFACE WATERS IN THE NORTH COAST REGION

ORDER NO. R9-2006-0103
NPDES NO. CAG091001

WASTE DISCHARGE REQUIREMENTS
GENERAL PERMIT
For
DISCHARGES WITH LOW THREAT TO WATER QUALITY

ORDER NO. R4-2009-0028

WASTE DISCHARGE REQUIREMENTS
FOR
DISCHARGES OF LOW THREAT HYDROSTATIC TEST WATER TO
SURFACE WATERS
IN
COASTAL WATERSHEDS OF LOS ANGELES AND VENTURA COUNTIES

ORDER NO. R9-2009-0091
NPDES NO. CAG090001

WASTE DISCHARGE REQUIREMENTS
FOR DEWATERING AND OTHER LOW THREAT DISCHARGES
TO SURFACE WATERS

BOARD ORDER NO. R07-2008-0073
NPDES NO. CAG080001

REVISED WASTE DISCHARGE REQUIREMENTS AND NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT FOR
LIMITED THREAT DISCHARGES TO SURFACE WATERS

ORDER NO. R9-2002-0200
NPDES NO. CAG020001

GENERAL WASTE DISCHARGE REQUIREMENTS (CWA) AND
GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT
FOR LOW THREAT DISCHARGES TO SURFACE WATERS
WITHIN THE COLORADO RIVER BASIN REGION

California Regional Water Quality Control Board
Santa Ana Region

ORDER NO. R9-2006-0104

Amending Order No. R9-2006-0104, NPDES No. CAG060001
As amended by Order No. R9-2006-0104
General Waste Discharge Requirements for Discharges to Surface Waters That Pose An
Insignificant Or Moderate Threat to Water Quality

GENERAL WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES OF HYDROSTATIC TEST WATER AND POTABLE WATER TO
SURFACE WATERS AND STORM DRAINS OR OTHER CONVEYANCE SYSTEMS WITHIN
THE SAN DIEGO REGION

REVISED
TENTATIVE ORDER NO. R9-2010-0003
NPDES NO. CAG679001

SOUTH COAST



WATER DISTRICT

August 19, 2014

Board of Directors

Wayne Rayfield
President

Bob Moore
Vice President

Dick Dietmeier
Director

Rick Erkeneff
Director

Richard Runge
Director

VIA EMAIL (commentletters@waterboards.ca.gov)

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Comment Letter – Draft Drinking Water Systems General Permit and Resolution

Dear Ms. Townsend:

South Coast Water District (“SCWD”) hereby provides the following comments on the Draft Drinking Water Systems General Permit (“Draft SWP”).

SCWD is a public retail water agency organized and existing as a County Water District under California Water Code Section 30000 *et seq.* SCWD serves approximately 12,500 water accounts with an estimated winter population of 40,000 in the South Laguna and Dana Point areas. Tourism adds an additional 2 million visitors to the SCWD service area on an annual basis. SCWD’s service area encompasses approximately 8 sq. miles, and SCWD delivers approximately 6400 acre feet of potable water annually. SCWD maintains approximately 48 million gallons of water storage in 14 area reservoirs (an approximately 8 day supply) in the event of a disruption in water supply.

SCWD hereby joins in the comments made by Pasadena Water and Power dated on or about August 19, 2014. In addition, SCWD provides the following comments.

1. General Comments

During the workshop on July 23, 2014 hosted by Metropolitan Water District of Southern California (“MWD”), many parties raised the fact that the Draft Permit was quite different from prior drafts and that the accelerated time frame (adoption of the final permit is scheduled on September 23, 2014) does not give stakeholders enough time to process the new draft and to work through issues with the language. This point was further highlighted by State Board

staff's acknowledgement that in some instances, the language of the Draft SWP did not reflect the State Board's intent.

Staff even raised new issues that are not included in the current draft. For example, staff indicated that it was considering adding filter backwash to the categories of discharge regulated by the General Permit. We strenuously object to adding new categories at this stage. If the State Board chooses to make significant changes to the existing draft, it must recirculate the new draft and allow stakeholders to comment.

Staff also indicated that the intent of the Draft SWP is to allow CWSs to use existing data gathered pursuant to the Safe Drinking Water Act and not to impose onerous additional monitoring requirements. If this is the case, the State Board should clarify the language of the SWP to allow this and limit the monitoring over and above the Safe Drinking Water Act requirements.

Finally, Pasadena Water and Power ("PWP") repeatedly indicated that given the regulatory framework in place (i.e., MS4 permit program and other local programs), it is unclear why this SWP is necessary. Indeed, it is difficult to see a significant risk of contaminants entering waters of the U.S. via the discharge of drinking water. We agree with PWP that the MS4 Permits that are currently in place already require Community Drinking Water Systems ("CWS") to dechlorinate and control sediments which are the objectives cited by State Water Quality Control Board ("State Board") staff in developing the Draft SWP. As such, we do not believe that the SWP is necessary. If some CWSs are requesting the SWP, we would suggest that this Draft SWP be modified to become a form NPDES permit for those individual CWSs to obtain on an individual basis.

2. NPDES Authorized Discharges (p. 4, Section I.4.)

Modify as follows:

The water purveyor is regulated under a separate NPDES permit issued by the Regional Water Board because (a) the discharge is within the operations covered by the NPDES permit~~not within the scope of activities covered by this Order~~, and/or (b) a Total Maximum Daily Load (TMDL) has been adopted and the Regional Water Board has determined that TMDL-specific permit requirements for discharges from drinking water systems are appropriate because those discharges may contribute to the impairment of the waterbody. If a water purveyor has some discharges that are covered by an NPDES permit, those discharges shall not be regulated by this permit.

SCWD conducts groundwater supply well flushing that is covered by its NPDES permit for its groundwater recovery facility. While groundwater supply well flushing is "within the scope of activities covered by this Order," it is already regulated by the NPDES permit. As such, for this portion of SCWD's discharges, the NPDES permit, and not the SWP, should govern.

3. Monitoring Locations and Sampling (p. E-3, Section II.A. and B.)

Modify as follows:

- A. The Discharger shall monitor ~~the following:~~
 - 1) ~~Direct or non-direct (traveling via a storm drain or other conveyance system) discharges to a water of the U.S. greater than 325,850 gallons per event~~
 - 2) ~~direct or non-direct discharges that are greater than 325,850 gallons per event.~~
- B. The Discharge shall monitor all other direct and non-direct discharges (traveling via a storm drain or other conveyance system) based on representative monitoring, as specified below.
 - 1. . . .
 - 2. The Discharger shall monitor all labeled representative monitoring location on its site plan by sampling at least one time per calendar year, in accordance with all discharge monitoring and reporting requirements . . .

As staff indicated during the workshop, as written, every event under 325,850 gallons that involves a direct discharge (e.g., a routine fire hydrant flushing) is required to be monitored. Staff did not intend this, as it would be unduly burdensome for CWS to monitor, for example, every fire hydrant flushing if it results in a direct discharge to waters of the U.S. The above language clarifies that all discharges under 325,850 gallons per event may be monitored via representative sampling.

4. Monitoring Locations and Sampling (p. E-3, Section II.C.)

Modify as follows:

- C. Monitoring samples of the discharge are required as described ~~below~~ above and in Table E-1. Table E-1 shall apply only to large planned discharges greater than one acre-foot pursuant to Section VI.

It seems that a CWS could only sample pursuant to the Table E-1 protocol only if the discharge is planned. Otherwise, a CWS could not anticipate when the discharge would begin or end in order to, for example, sample within the first ten minutes or last ten minutes of the discharge.

Should you have any questions, please feel free to contact us.

Sincerely,



Andrew Brunhart
General Manager
South Coast Water District