

**COMMENTS AND STAFF RESPONSES
PROPOSED ORDER NO. R3-2020-0004**

The Central Coast Water Board received comments from:

- Cayucos Sanitary District (Discharger)
- State Water Resources Control Board's (State Water Board's) Division of Drinking Water
- Goleta Sanitary District
- Julie Tacker
- Montecito Sanitary District
- Surfrider
- WaterReuse California (WaterReuse CA) and California Association of Sanitation Agencies (CASA)

Responses to these comments are provided below. All comments are direct transcriptions from the letters containing them. Transcriptions do not include the entire content of the comment letter as some content is non-substantive (e.g., salutations, contact information) or is supplementary information (e.g., attachments to letters).¹

Cayucos Sanitary District – 1

Permit Effective Date (Table 3): The effective date of the Order is defined as July 1, 2020 but the WRRF is not expected to commence operation until September 2020. The District should not be subject to NPDES permit requirements and potential enforcement actions until the WRRF is operational.

Requested Tentative Order Revisions: To align the NPDES permit term with startup of WRRF operation, change the effective date to September 1, 2020, the expiration date to August 31, 2025, and Report of Waste Discharge submittal date to March 1, 2025.

Staff Response to Comment Cayucos Sanitary District – 1
At a meeting on May 26, 2020, Central Coast Water Board staff met with the Discharger to discuss the Discharger's comments. At this meeting, the Discharger explained they plan to conduct Facility startup activities in September or October 2020 and do not plan to discharge to the ocean until December 2020. Wastewater from the Discharger will continue to be treated at and discharged from the existing Morro Bay/Cayucos Wastewater Treatment Plant under Order No. R3-2017-0050, NPDES No. CA0047881 until the Facility is fully operational and after December 1, 2020. In an email on June 18, 2020, the Discharger requested that the Central Coast Water Board change the permit effective date to December 1, 2020. Central Coast

¹ Contact Central Coast Water Board staff to request copies of the entire comment letters and letter attachments.

Water Board staff revised the permit effective date pursuant to the Discharger's request and updated the other applicable dates in the Draft Order.

Change made: Revisions to Table 3 and Table E-9 of Attachment E.

Cayucos Sanitary District – 2

State Law Only Provisions (II.C., page 4): This section is supposed to identify *all* state law provisions incorporated into the NPDES permit instead of placing these in a state-only permit. This section cites to “subsections IV.B., IV.C., V.B., and VI.C.6” but there is nothing in some of these sections, and this list fails to specify all of the provisions required only by state law. For example, the Discharge Prohibitions in Section III are not required by federal law, and thus are state law requirements, as are the provisions in Section V.A., Receiving Water Limitations. Under federal law, if a discharge has reasonable potential then the discharge receives an effluent limitation, but general receiving water limitations are not required by federal law. Sections III.C. and IV.A.1.a. (prescribing flow limits), Sections VI.A.2. and Attachment D.VIII on (Regional Water Board standard provisions), VI.C.1.b (reopener), VI.C.2. (special studies, reports), VI.C.3 (pollution prevention), VI.C.4. (operation and maintenance), VI.C.5.a (biosolids management), VI.C.5.b (collection system requirements), and VI.C.7. (other special provisions) are other examples of state law requirements that should be identified in this paragraph.

This exercise is important since state law only provisions should not be enforceable in federal courts through third party litigation. If these provisions are not identified properly, then the District will be subjected to unnecessary federal litigation over these state only requirements, which was not the intent of the Clean Water Act (CWA) citizen suit provisions to enforce federal law.

Requested Tentative Order Revision: The District requests the Tentative Order be revised to identify all provisions not specifically required by federal law.

Staff Response to Comment Cayucos Sanitary District – 2

Neither federal nor State law requires National Pollutant Discharge Elimination System (NPDES) permits to identify state law-only requirements. The enumeration of specific provisions serves to expedite the identification of provisions that implement state law only, but ultimately whether a provision implements state law only is based on the language of the provision itself, not whether it is listed in section II.C. Central Coast Water Board staff modified the finding in section II.C to remove references to specific provisions in the Draft Order. The revised finding clarifies that violations of any provision or requirement of the Order that is only implementing state law, and not authorized under the federal Clean Water Act (CWA), are not subject to the enforcement remedies available for NPDES violations.

Change Made: Revision to section II.C.

Cayucos Sanitary District – 3

Response to Climate Change (II.E., page 4): This finding incorrectly states, “Aligning with Resolution No. 2017-0012, this Order requires beneficial reuse of the Facility’s treated effluent to augment local water supply increasing water supply reliability as a climate change adaptation strategy.” The Recycled Water Feasibility Planning Study and the Title 22 Engineering report both currently anticipate an agricultural irrigation program. Conversion of dry land to irrigated farming through agricultural reuse will not increase local water supply reliability as a climate change adaptation strategy.

Requested Tentative Order Revision: Delete the referenced sentence.

Staff Response to Comment Cayucos Sanitary District – 3

See Staff Response to Comment Cayucos Sanitary District – 8 regarding modifications to section VI.C.6 of the Draft Order. Section VI.C.6 of the Draft Order requires the Discharger to prepare the Recycled Water Management Plan – Phase II (Phase II Plan) to identify the Discharger’s proposed beneficial reuse options and justify how the reuse options provide the highest beneficial impact that the Discharger can viably implement, based on benefits established in the State Water Resources Control Board (State Water Board) Recycled Water Policy, with an option to propose a lower ranked beneficial reuse option if necessary.

Central Coast Water Board staff revised section II.E of the Draft Order to clarify how the recycled water management planning process aligns with Resolution No. 2017-0012.

Change Made: Revision to section II.E.

Cayucos Sanitary District – 4

Requirements to Provide Treated Effluent for Beneficial Reuse (II.F., page 5): This finding states, “Additionally, the California Constitution, Article 10, Section 2, declares in relevant part ‘that the water resources of the State be put to beneficial use...’”. We take exception to this statement in that water treated at this facility does not become a Water of the United States or a water resource of the State until it is discharged to the environment. Until discharged, the recycled water is the property solely of the District.

Requested Tentative Order Revision: Delete the referenced paragraph.

Staff Response to Comment Cayucos Sanitary District – 4
The Draft Order no longer requires the Discharger to recycle its treated effluent, so Central Coast Water Board staff removed the references to the California Constitution, article 10, section 2 in section II.G of the Draft Order and section VI.B.6 of Attachment F pursuant to the commenter’s request, since those references are no longer necessary. See Staff Response to Comment Cayucos Sanitary District – 8 for more details related to the revisions to the recycled water management requirements and explanation of the requirements for the Discharger to plan for the beneficial reuse of recycled water produced at the Facility.
Change Made: Section II.G of the Draft Order and section VI.B.6 of Attachment F.

Cayucos Sanitary District – 5

Recycled Water Specifications (IV.C.6., page 9): The recycled water specifications for total coliform are inconsistent with C.C.R. Title 22, Section 60301.230(b) requirements. The limits include a median MPN of 2.2 per 100 mL over the previous seven days and a MPN of 23 per 100 mL in more than one sample over any 30-day period (Section IV.C.6.a-b.), but are missing the single sample maximum concentration of MPN of 240 total coliform bacterial per 100 mL.

Requested Tentative Order Revision: Include all total coliform requirements from CCR Title Section 60301.230(b).

Staff Response to Comment Cayucos Sanitary District – 5
Central Coast Water Board staff made the revisions suggested by the commenter.
Change Made: Revision to section IV.C.6.

Cayucos Sanitary District – 6

Figure B-3. Monitoring Locations (page B-2): A revised Figure B-3 is attached to this comment letter (Attachment A) that modifies the monitoring locations for Receiving Water and Benthic sampling. The District requests relocation of the monitoring locations to just up coast and down coast of the Zone of Initial Dilution. With the proximity of the discharge to the impaired water body of Toro Creek, the District believes sampling as close to the outfall as possible will provide the best representation of Receiving Water quality. Sampling closer to shore would capture more of Toro Creek’s influence on Receiving Water quality than the effluent’s influence.

Requested Tentative Order Revisions: Revise Benthic and Receiving Water Monitoring locations as shown in the revised Figure B-3 and update Table E-1 monitoring location descriptions accordingly.

Staff Response to Comment Cayucos Sanitary District – 6
Central Coast Water Board staff made the revisions suggested by the commenter.
Change Made: Revisions to Figure B-3 of Attachment B and Table E-1 of Attachment E.

Cayucos Sanitary District – 7

Receiving Water Monitoring for Bacteria (VI.C.2.e., page 16 and Attachment E, VIII.A., page E-14): The Tentative Order contains a requirement to conduct receiving water monitoring for bacteria, in accordance with the Monitoring and Reporting Program (MRP), Section VIII.A., if effluent limitations for total coliform bacteria are exceeded in consecutive monitoring events. There are several inconsistencies with this requirement throughout the Tentative Order, as follows:

- The Tentative Order contains Recycled Water Specifications for total coliform, not Effluent Limitations.
- Attachment E (Section VIII.A.1.) references total coliform limitations in Section IV.A.1.c., but this section contains the monthly average requirements for percent removal of BOD₅ and TSS.
- The trigger for receiving water monitoring for bacteria is inconsistent between Section VI.C.2.e of the Tentative Order and Attachment E (Section VIII.A.1). The Tentative Order requires bacteria monitoring in the receiving water if consecutive exceedances of total coliform in the effluent are observed. Attachment E states this trigger is met if total coliform limitations are exceeded.

Requested Tentative Order Revisions: Define total coliform requirements as Recycled Water Specifications, not Effluent Limitations. Revise language in Attachment E (Section VIII.A.1.) to be consistent with language in Section VI.C.2.e of the Tentative Order.

Staff Response to Comment Cayucos Sanitary District – 7
Section VIII.A.1 of Attachment E informs when the Discharger must conduct receiving water monitoring. The recycled water specifications have no bearing on receiving water monitoring, because recycled water, pursuant to section VI.C of the Draft Order, is discharged at Discharge Point 002. So, if there is an upset that affects the recycled water quality, that will not impact receiving water.
Central Coast Water Board staff modified section VIII.A.1 of Attachment E to remove the reference to section IV.A.1.c. of the Draft Order and clarify when receiving water monitoring is triggered. Because the Draft Order does not include bacterial effluent limitations, Central Coast Water Board staff inserted language to clarify when receiving water monitoring is triggered. Central Coast Water Board staff inserted the same triggers as numbers one, four, and five discussed in Staff Response to Comment

Cayucos Sanitary District – 10.

Because malfunction of the Facility's disinfection process is covered by the general term, "process failures," Central Coast Water Board staff deleted section VIII.A.2 of Attachment E. Central Coast Water Board staff also modified section VI.C.2.e of the Draft Order and section VI.B.2.b of Attachment F to update information regarding the triggers for receiving water monitoring for bacteria.

Change Made: Revisions to section VI.C.2.e, section VIII.A.1 of Attachment E, and section VI.B.2.b of Attachment F.

Cayucos Sanitary District – 8

Special Provisions for Recycling (VI.C.6., page 18 along with supporting sections of the permit and fact sheet): This provision creates an unreasonable and potentially impossible to meet mandate for the District to beneficially reuse one hundred percent (100%) of treated effluent. This unique provision sets a dangerous and unreasonable precedent for wastewater reuse for the following reasons:

- **Demand for Recycled Water is Ignored.** The mandate for 100% reuse of treated effluent does not encompass the reality of operating a recycled water system. Recycled water user demands, not a mandate, should be used to determine the timing of recycled water deliveries. For example, the application of recycled water for irrigation uses needs to be matched to the water demand of the irrigated lands. When it is raining, or when soils are saturated, the application of recycled water will produce runoff and has the potential to create a nuisance. Even if reservoir recharge is used to capture the recycled water, there will be periods of time when placing recycled water into a reservoir that is flooding could produce negative downstream consequences. As written, the Permit creates an unreasonable and potentially impossible standard for the delivery of recycled water.
- **Fiscally Irresponsible and Potentially Illegal.** The mandate for 100% reuse of treated effluent, besides lacking legal support, has the potential to create significant financial impacts to the rate payers of the District. The language of this condition is particularly concerning since the Regional Water Board is mandating the District establish third party agreements with applicable parties (e.g. recycled water purveyors, recycled water users, reservoir commissions). The Sanitary District is not a water purveyor and as written, the Permit creates a burden on the District's rate payers to produce a water resource from which they may not see benefits. This requirement may be beyond the District's current legal authorities and cannot be accomplished without rate payer approval. Effectively the Regional Water Board is mandating that a Proposition 218 process must be undertaken by the District and approved by the voters thus requiring the imposition of a property related fee that may be unaffordable.

- **Creates Unintended Liabilities and Exceeds the State’s Recycled Water Policy.**
The mandate for 100% reuse of treated effluent exceeds the purpose and legal authority of the Regional Water Board. The effluent from this facility does not become a Water of the United States or State until after it is discharged to the environment. Regulating the quality of discharges to a Water of the United States is the entire purpose of the NPDES process. The untreated, partially treated, and more importantly the finished effluent of this facility is property of the District and the District should make the decisions about what can or will be done with this water. The State’s Recycled Water Policy includes a goal to *“Reuse all dry weather direct discharges of treated wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters that can be viably put to a beneficial use. For the purpose of this goal, treated wastewater does not include discharges necessary to maintain beneficial uses and brine discharges from recycled water facilities or desalination facilities.”* (Emphasis added.) The draft Permit’s mandate to reuse 100% of treated effluent goes far beyond implementation of the goals contained in the States Recycled Water Policy, completely ignores the concept of viability requires recycling beyond dry weather direct discharges, and creates a de facto regulation without statutory support that could subject the District to third party legal action and fines.
- **Establishes an Unreasonable Timeline.** The Regional Water Board is setting an unreasonable timeline for the implementation of this recycling program. The Regional Water Board’s expectation that a small District, with limited technical, financial, and managerial resources could concurrently bring online a new water resource recovery facility and develop a Recycled Water program with and for the benefit of agencies outside the District boundary is unreasonable. This request ignores project viability and practical limitations in order to mandate an unnecessarily aggressive timeline. While the District is supportive of recycled water, the unreasonable and unfunded 100% recycling mandate proposed in this order will do more harm than good to the implementation of recycled water projects and programs in the region. The District recommends the Regional Water Board delete this mandate, or at a minimum replace it with the requirement for the District to develop a recycling plan with an achievable timeline. Once a realistic plan is developed, future permits can require logical progress towards implementation of a Recycled Water Program.

In conclusion, while the District is supportive of recycled water, this unreasonable mandatory recycling provision in the Tentative Order will do more harm than good to the implementation of recycled water projects and programs in the region.

Requested Tentative Order Revisions: Delete, or at a minimum replace, the recycling mandate, with a requirement for the District to develop a recycled water management plan. Once a realistic plan is developed, future permits can require logical progress towards implementation of a Recycled Water Program.

Finding II.F and the corresponding sections of the Fact Sheet incorrectly justify the enforceable provisions in Section IV.C.6. of the permit requiring a Recycled Water

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Management Plan and 100% recycling of effluent. Because these justifications fail to comply with or accurately reflect the law, the corresponding requirements are also non-compliant and must be removed from the permit or substantially modified. While this Finding and the Fact Sheet correctly state that State Policy encourages the increased use of recycled water in California and that the State Water Resources Control Board has adopted goals for increased use of recycled water and reuse of dry weather discharges, these are just goals and not requirements to be implemented in NPDES permits. Federal law also does not require recycling of municipal effluent. A previous requirement of the Clean Water Act requiring advanced treatment of municipal wastes was removed from the Act decades ago due to the cost and infeasibility of requiring advanced treatment everywhere. See 33 U.S.C. §1311(b)(2)(B)(Repealed by Pub. L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632). A recent USEPA document demonstrates that, while the federal government encourages and supports reuse, that also is a goal, not a mandate. See <https://www.epa.gov/sites/production/files/2020-02/documents/national-water-reuse-action-plan-collaborative-implementation-version-1.pdf> (USEPA, Feb. 2020).

This Finding and the Fact Sheet also cites the California Constitution, at Article 10, Section 2 to justify its new recycled water mandate. However, this finding ignores a recent court order finding that Regional Water Boards have no authority or duty under this constitutional provision. In a recent case, the Los Angeles Waterkeeper alleged that the State and Regional Water Boards had violated that constitutional provision by not requiring several cities to recycle all of their wastewater. Waterkeeper argued that the Regional Water Board was prohibited from issuing the NPDES permits at issue without first determining whether the quantity of water the POTWs may discharge constitutes a waste and unreasonable use. However, neither Article X, section 2, nor Water Code section 100 impose such a mandatory duty, and no case has so held. *Los Angeles Waterkeeper v. State Water Board and Los Angeles Regional Board*, Los Angeles Superior Court, Case Nos. BS171009, BS171010, BS171011, and BS17012, Decision on Demurrer, Sept. 6, 2019 at pg. 15 (“*Waterkeeper Decision*” – attached to this comment letter as Attachment B).

The Court held that “the Regional Board does not have a constitutional duty to step in and prevent waste or impose reasonable use requirements every time it issues a discharge permit affecting water quality, and it does not have a duty to impose reasonable use requirements for the extraordinarily large discharges at issue in this case. This conclusion stems from the different roles played by the State Board and regional boards in California's integrated system of water law. Whereas the State Board is the state agency in charge of the comprehensive planning and allocation of water (Light, *supra*, 226 Cal.App.4th at 1481) that establishes statewide policy for water quality control (Water Code §13140), and has a statutory duty to institute all appropriate proceedings to prevent waste and unreasonable use (§275), the regional boards only ‘formulate and adopt water quality control plans for all areas within [a] region.’ Water Code §13240; *City of Burbank v. State Water Resource Control Board*, (‘City of Burbank’) (2005) 35 Cal.4th 613, 619.” *Waterkeeper Decision* at pg. 31 (underlining in original).

The court went on to state:

“The Regional Board’s constitutional duty to prevent waste or unreasonable use is too general to require it to take action in issuing a discharge permit concerning water quality. There are practical reasons not to require the Regional Board to do so.

First, if the Regional Board were to conclude that the permitted discharge of wastewater is a waste or unreasonable use, the Regional Board would have *no authority to require Real Parties to recycle their wastewater*; Real Parties have the exclusive authority to decide whether to reuse or discharge wastewater produced by a POTW. *City of Santa Clara v. Von Raesfeld* (1970) 3 Cal.3d 239,246 (‘Historically the treatment and disposal of city sewage is a municipal affair.’); *Mefford v. City of Tulare* (1951) 102 Cal.App.2d 919,924 (The ‘furnishing and installation of sewer and water facilities within a chartered city’ ‘are ‘municipal affairs’ within the meaning of section 6. Article XI of our state constitution.’). See Water Code §1210 (‘owner of a wastewater treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated wastewater as against anyone who has supplied the water discharged into the wastewater collection and treatment system’). Real Parties Reply at 13.

Second, the nature and timing of permit issuance weighs against prevention of unreasonable use of wastewater. Regional Board considers whether to renew a NPDES/WDR permit every five years, and it would be futile to evaluate whether the discharger should recycle the wastewater proposed to be discharged. None of the facts concerning recycling are before the Regional Board when it considers a permit (see generally Pet. RJN, Exs. A-D), and *no law mandates the use of recycled water*. At best, the Regional Board has the authority - in furtherance of state policy to do so (Water Code 13576) -- to encourage the recycling of wastewater, and it did so in the permits. Real Parties Reply at 14-15.

The permits provide: ‘Regional Water Board strongly encourages, wherever practical, water recycling...The Permittee shall submit a feasibility report evaluating the feasibility of additional recycling efforts to reduce the amount of treated effluent discharged as authorized in this Order and a recycled water progress report describing any updates to the development of increased recycled water production and/or distribution.’ Pet. RJN, Ex. A, F-17.

Third, a city’s decision to recycle water is largely a feasibility consideration involving complex, technical issues, including: (a) the physical and technical capacity to treat wastewater for reuse; (b) health and safety criteria; (c) demand for recycled water by the city’s customers; (d) existence of sufficient infrastructure to allow the city to deliver the recycled water to customers; (e)

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sufficient funding-whether through water rates, grants, or government loans-for the necessary operational components of a recycled water project; and (f) the effects of decreased discharges to a watercourse which must be approved by the State Board under Water Code section 1211. Real Parties Reply at 13-14.”²

Waterkeeper Decision at pg. 32 (bold and italics added; underlining in original).

Finally, the court ruled: “In sum, while the Regional Board has a mandatory duty to prevent waste and unreasonable use under Article X, section 2 and section 100, **these general duties do not require it to take action when issuing a discharge permit**, even the permits at issue in this case. The regional boards' statutory duties exist to ensure water quality only and their constitutional duty to prevent waste does not require them to step in where the State Board has a concomitant planning duty.

This determination is consistent with the court's decision in *Wishtoyo Foundation v. State Water Resources Control Board. et al.*, ('Wishtoyo I') BS 159479, in which the court ruled that while the Regional Board had a mandatory duty to prevent waste and unreasonable use of recycled water, it had no duty to prevent waste in issuing two recycled water permits because they were water quality permits and did not allocate water to anyone....The permits do not allocate wastewater; they control the POTWs' use of their own wastewater.”
Waterkeeper Decision at pg. 33.

As a result of this case, the Regional Water Board was dismissed along with the challenges to the NPDES permits. The Central Coast Regional Water Board is subject to the same rules and cannot mandate 100% recycling for the District. As the court in the *Waterkeeper* Decision found, the Water Code and State Water Board policies encourage recycling, but “no law mandates the use of recycled water.”³ For these

²Decreases in wastewater discharged to waterways are governed by the Water Code section 1211 process, not the NPDES permit process. Under section 1211, dischargers must apply to the State Water Board to change the discharge point, place of recycled water use, or the purpose of recycled water use if changes in the discharge of treated wastewater results in decreased flow in any portion of a watercourse. Cal. Water Code §1211. This is the appropriate place to determine the proper amount to be recycled, and to weigh potential impacts to downstream users and uses.

³ In the *Waterkeeper* case, the Attorney General representing the Water Boards argued the following in its demurrer brief and the State is estopped from arguing differently in this permit:

“Article X section 2 was not enacted to impose requirements on a state agency when issuing a water quality permit. This is true because there was no water quality permitting regime in place in 1928; the first water quality permitting statute was not enacted until 1949 when the Legislature adopted the Dickey Water Pollution Act (Stats. 1949, ch. 1549, pp. 2782-2789), the forerunner of the 1969 Porter-Cologne Water Quality Control Act which governs the Regional Board's water quality permitting program today. (Stats. 1-969, ch. 482, pp. 1045-1088; § 13000 et seq.). The Legislative water quality permitting regime does not contemplate that the Regional Board will perform a waste and unreasonable use analysis before issuing water quality permits. Water Code section 13263 is the Regional Board's statutory authority to issue WDRS regulating discharges

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reasons, this Finding along with the concurrent requirements to draft and implement a Recycled Water Management Plan requiring 100% recycling or even 100% dry weather recycling must be removed or substantially modified to encourage, but not require, recycling.

Additionally, the Antidegradation Policy cannot be utilized to mandate recycling as that policy only applies to discharges of waste that cause degradation to the receiving water. Here, high quality recycled water, not a waste, is being discharged so there is a presumption of no degradation. Further, even if applicable, the requirement for best practicable treatment and control (BPTC) applies to discharges, and cannot be read as to require the removal of discharges using BPTC from receiving waters.

Finally, the 100% recycling requirement cannot be justified on the Coastal Commission's approved Coastal Development Permit (CDP) as Condition 11 in that CDP merely requires a Recycled Water Management Plan (RWMP) describing actions that the District plans to take in the next 5-10 year to maximize reuse of recycled water with the goal of full reuse. However, the CDP does not and cannot contain a mandate for 100% recycling. The Draft NPDES permit should be revised to acknowledge the District's RWMP and not create any additional requirements related thereto.

Requested Tentative Order Revisions: (1) Remove Section II.F. or substantially revise to accurately reflect the law; (2) Remove Section IV.C.6. and related Fact Sheet provisions or substantially revise to not require recycling as that action is beyond the jurisdiction and authority of the Regional Water Board.

Staff Response to Comment Cayucos Sanitary District – 8
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Over the past decade, Central Coast Water Board staff has alerted the City of Morro Bay and the Cayucos Sanitary District (the Discharger) multiple times of the Central Coast Water Board's expectations for these entities to provide treated effluent for beneficial reuse from their future upgraded and/or new facilities. The City of Morro Bay conducted planning studies to inform potential locations for future facilities and uses for recycled water produced by an upgraded and/or new facility, both for when the City of Morro Bay and the Cayucos Sanitary District planned to continue to share a wastewater treatment facility and after the entities determined they would construct separate
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into waters of the state. The Legislature identified the issues the Regional Board is to "take into consideration" before issuing WDRS. (§ 13263, subd. (a).) These include "the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." (Ibid.) None of those considerations involve whether the quantity of water discharged itself is a waste or unreasonable use of water. If the Legislature intended for the Regional Board to also consider whether the quantity of wastewater proposed to be discharged would be a waste or unreasonable use, it could have easily included such a requirement into the list of issues for the Regional Board to consider. It did not, and the court cannot insert requirements not found in a statute. (Code Civ. Proc., § 1858.) Similarly, the Legislature identified what the Regional Board is to take into consideration when issuing NPDES permits, and nothing in those provisions suggest that the Regional Board is to take into consideration whether the quantity of water discharged constitutes a waste and unreasonable use of water under Article X section 2. (§§ 13370-13389.)

facilities. The Cayucos Sanitary District conducted separate planning studies to assess potential locations for its separate Water Resource Reclamation Facility and future uses of recycled water produced at the facility. The City of Morro Bay and the Cayucos Sanitary District have each commenced construction of new separate facilities. The City of Morro Bay plans to implement a groundwater augmentation project to address seawater intrusion issues and provide for potable reuse. Cayucos Sanitary District has taken steps to plan for and implement beneficial reuse of its treated effluent. Section VI.B.6 of the Fact Sheet to the Draft Order provides a summary of the Cayucos Sanitary District's initial progress towards establishing the framework for recycled water management planning.

Central Coast Water Board staff included requirements in section VI.C.6 in the Draft Order for making progress towards beneficial reuse of the Facility's treated effluent because the Discharger has indicated that it seeks to maximize beneficial reuse of the produced wastewater at the Facility, State policies recognize the value of water recycling, and a special condition in the California Coastal Commission's Coastal Development Permit for the Facility requires the development of a recycled water management plan.

Central Coast Water Board staff accounted for reasonableness and practicality in section VI.C.6 of the February 7, 2020 Draft Order by aligning and supporting actions the Discharger had already proposed and by providing infeasibility offramps such as additional time for implementation and exceptions to full beneficial reuse. However, in response to the Discharger's comments regarding recycled water management plan development and implementation, primarily related to issues raised about viability and practicality, Central Coast Water Board staff revised section VI.C.6 in the Draft Order. The revisions reflect Central Coast Water Board staff's acknowledgement of the unknowns related to establishing agreements with potential customers because the Discharger is not a water purveyor; uncertainties in the timing and content of the State Water Board's pending direct potable reuse regulations; and other unforeseen challenges with implementing recycled water projects.

Pursuant to the Discharger's suggestion in this comment, Central Coast Water Board staff modified section VI.C.6 to remove the requirement to reuse the Facility's treated effluent by a specified date and instead require recycled water management planning to inform requirements in future permits for implementation of a recycled water management program. Central Coast Water Board staff sought input from the Discharger to inform these revisions. Central Coast Water Board staff met with the Discharger on April 16, 2020, April 21, 2020, and May 26, 2020, to discuss the proposed revisions to section VI.C.6 made in response to the Discharger's comments on the February 7, 2020 Draft Order. Through oral and written comments, the Discharger suggested edits to the draft requirements. Central Coast Water Board staff incorporated many of these suggested edits and discussed its rationale to the Discharger for any edits not accepted.

The revised section VI.C.6 requires the Discharger to prepare the following recycled

water management plans during the term of this Order: 1) Phase I Plan (due within one year of commencing operation of the ocean outfall) to identify how and when the Discharger will prepare all the elements of the Phase II Plan and 2) Phase II Plan (due with the Report of Waste Discharge) to include all the Recycled Water Management Plan elements describing how the Discharger will maximize the amount of treated effluent used for beneficial reuse with the goal of achieving maximum beneficial reuse. The Phase II Plan includes the following elements: 1) identification and ranking of beneficial reuse options based on beneficial impacts and possible uses of the recycled water, 2) assessment and description of the feasibility of identified beneficial reuse options, 3) identification of Discharger's proposed beneficial reuse option, 4) summarization of stakeholder engagement, and 5) description of steps the Discharger will achieve towards implementing the identified beneficial reuse options.

Section IX of Attachment E still requires the Discharger to submit annual Recycled Water Management Plan Progress Reports. Central Coast Water Board staff will use the Recycled Water Management Plan Progress Reports to assess compliance with the milestones identified in the Phase I Plan and track progress towards preparing and completing the Phase II Plan elements.

Central Coast Water Board staff plans to coordinate with the California Coastal Commission when reviewing the Phase I and Phase II Plans to look for opportunities to align both agencies' goals for recycled water and streamline feedback to the Discharger.

In response to the Discharger's comment, Central Coast Water Board staff also modified the requirement for "beneficial reuse of 100 percent of treated effluent" in section VI.C.6 of the February 7, 2020 Draft Order. During development of the February 7, 2020 Draft Order, Central Coast Water Board staff worked with the Discharger to inform exceptions to the 100 percent reuse requirement, identified previously in footnote four. However, pursuant to this comment and suggested language from the Discharger received while developing the revised recycled water management planning requirements, Central Coast Water Board staff revised section VI.C.6 to require the Discharger to describe in the Phase II Plan how it will, "maximize the amount of treated effluent used for beneficial reuse, with the goal of achieving maximum beneficial reuse." Because Central Coast Water Board staff has removed the 100 percent value, the term maximize already implies the Discharger may have exceptions to being able to fully reuse all of its effluent. Therefore, staff has deleted all the exceptions originally provided in this footnote except for the brine exception. Central Coast Water Board staff acknowledges brine could be a byproduct of future water recycling processes, which is not necessarily captured by the terminology about maximizing reuse. Additionally, the State Water Board Recycled Water Policy specifically provides brine as an exception to "treated wastewater" when discussing the Policy's reuse goals.

Central Coast Water Board staff updated the Draft Order to incorporate and support the updated recycled water management planning requirements. Central Coast Water Board staff updated Draft Order findings in sections II.D, II.F, II.G, II.H, and II.I. Central Coast Water Board staff revised section VI.C.6 to incorporate the modified recycled

water management planning requirements as described in this response. Central Coast Water Board staff revised Table E-9 and section IX.C of Attachment E to incorporate the modified recycled water management planning reporting requirements. Central Coast Water Board staff revised sections III.C.4, III.C.8, III.E.2, and VI.B.6 of Attachment F to provide background, justification, and support for the updated recycled water management planning requirements.

Change Made: Revisions to sections II.D, II.F, II.G, II.H, II.I and VI.C.6; Table E-9 and section IX.C of Attachment E; and sections III.C.4, III.C.8, III.E.2, and VI.B.6 of Attachment F.

Cayucos Sanitary District – 9

Influent Chronic Toxicity Monitoring (Table E-2): The requirement to conduct chronic toxicity testing of WRRF influent is unnecessary and inconsistent with chronic toxicity requirements found in other locations of the permit. No useful regulatory or water quality information will be gained from monitoring influent samples for chronic toxicity since no aquatic life will be living in the influent. Attachment E (Section V) does not include requirements for influent monitoring and the Fact Sheet (Section VII.A. and VII.C.) does not provide justifications for influent chronic toxicity monitoring.

Requested Tentative Order Revisions: Remove requirements for influent chronic toxicity monitoring.

Staff Response to Comment Cayucos Sanitary District – 9

Central Coast Water Board staff made the revisions suggested by the commenter and provided further clarification to the Fact Sheet.

Change Made: Revisions to Table E-2 and section VII.A of Attachment F.

Cayucos Sanitary District – 10

Effluent Monitoring for Bacteria (Table E-3, E-6): Attachment E requires effluent monitoring for total coliform, fecal coliform, and enterococcus five times per week. The District believes this sampling is burdensome, given there are already requirements (Attachment E, Section VIII.A.) to conduct receiving water sampling for total coliform, fecal coliform, and enterococcus if the total coliform recycled water specifications are exceeded. The monitoring frequency for these parameters are inconsistent with similar Region 3 ocean discharge permits. For example, the Morro Bay and Cayucos Sanitary Wastewater Treatment Plant permit,⁴ which features the same trigger and receiving water monitoring requirements, does not require fecal coliform and enterococcus

³ City of Morro Bay/Cayucos Sanitary District Wastewater Treatment Plant Order No. R3-2017-0050, NPDES No. CA0047881.

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effluent monitoring. Similarly, the Monterey One Water permit⁵ only requires effluent monitoring for fecal coliform and enterococcus three times per permit term. Total coliform should be sampled five times a week as an indicator of effluent quality with periodic results collected for fecal coliform and enterococcus.

Requested Tentative Order Revisions: Reduce effluent monitoring frequency for enterococcus and fecal coliform to once per year.

Staff Response to Comment Cayucos Sanitary District – 10

In response to the Discharger's comment, Central Coast Water Board staff modified the frequencies of bacteria effluent monitoring. Central Coast Water Board staff revised Table E-3 to include the following frequencies for bacteria effluent monitoring: total coliform bacteria every day, fecal coliform bacteria twice per week, and enterococcus four times per year. Central Coast Water Board staff worked with the Discharger to inform these edits.

Central Coast Water Board staff changed total coliform bacteria effluent monitoring to once per day to ensure the Discharger is tracking bacteria levels daily. The proposed reductions for fecal coliform bacteria effluent monitoring necessitate increased total coliform bacteria monitoring to ensure adequate bacteria data (discussed below). When the Discharger produces recycled water, section VII.A of Attachment E requires the Discharger to conduct daily total coliform bacteria monitoring. If the Discharger can demonstrate the recycled water total coliform bacteria monitoring is taken from treated effluent that is representative (e.g., upstream of any chlorination) of the effluent discharged to the Pacific Ocean, the Discharger could report the same data for both monitoring requirements. Therefore, when producing recycled water, if the Discharger is able to use the same total coliform bacteria sampling results for Discharge Points 001 and 002, this increase in total coliform bacteria effluent monitoring will not increase monitoring costs for the Discharger.

At a meeting on May 26, 2020, Central Coast Water Board staff met with the Discharger to discuss the Discharger's comments. The Discharger explained that total coliform bacteria effluent monitoring results within acceptable ranges indicate that fecal coliform bacteria effluent levels are normal. Central Coast Water Board staff disagrees with reducing fecal coliform bacteria effluent monitoring frequency to yearly. Because the Draft Order does not require ongoing scheduled receiving water monitoring, fecal coliform bacteria effluent monitoring is necessary to help inform if the Facility could be causing elevated bacteria levels in receiving waters and potentially posing a threat to public health at nearby beaches. Additionally, the fecal coliform bacteria effluent monitoring frequencies in the February 7, 2020 Draft Order are consistent with most of the Central Coast Water Board's other Central Coast permits that do not include regularly scheduled receiving water monitoring. The commenter mentions the Morro Bay/Cayucos Wastewater Treatment Plant, Order No. R3-2017-0050. The Morro

⁵ Monterey One Water Regional Wastewater Treatment Plant and Advanced Water Purification Facility, Order No. R3-2018-0017, NPDES No. CA0048551

Bay/Cayucos permit does not include fecal coliform effluent monitoring, which is unique relative to most of the other Central Coast permits. In its comment, the commenter also referenced the Monterey One Water Regional Wastewater Treatment Plant and Advanced Water Purification Facility, Order No. R3-2018-0017. The Monterey One Water permit is not a good reference, because it includes scheduled monthly receiving water monitoring.

However, in response to the rationale provided by the Discharger about using total coliform bacteria as a proxy for fecal coliform levels, Central Coast Water Board staff revised the Draft Order to reduce fecal coliform bacteria effluent monitoring to twice per week, on Wednesdays and Saturdays, instead of five times per week. The intent of picking a weekday and a weekend, is to represent an average flow condition (weekday) and a higher flow condition (weekend).

Because the Draft Order includes reduced fecal coliform bacteria effluent monitoring, Central Coast Water Board staff added conditions to Table E-3 that can trigger increased fecal coliform bacteria effluent monitoring if the Facility has operational issues. In such cases, Table E-3 requires the Discharger to temporarily conduct daily fecal coliform bacteria effluent monitoring for a minimum of seven days and until the issue triggering the increased monitoring is resolved. Following are the triggers and the rationale for each trigger:

1) Effluent bacterial monitoring results exceed receiving water bacterial standards for water-contact or shellfish harvesting specified in section V.A.1 of the Order.

Rationale: If effluent results for total coliform bacteria, fecal coliform bacteria, or enterococcus exceed the receiving water bacterial standards, this could indicate bacteria levels outside of normal ranges in the effluent and the potential to cause receiving water limitation exceedances. Many other NPDES discharge permits for other Central Coast publicly owned treatment works include the receiving water bacteria standards as effluent limitations.

2) Effluent turbidity monitoring results exceed recycling specifications for turbidity in section IV.C.5 of the Order.

Rationale: In a conversation with Central Coast Water Board staff on June 3, 2020, the Facility's design engineer explained that the Facility is designed to use turbidity as the controlling indicator for measuring Facility performance. If turbidity results are not meeting recycled water specifications, this could indicate issues with the Facility's treatment processes. See item number three below related to the rationale for referencing the recycled water specifications.

3) The ultraviolet (UV) disinfection system does not meet the conditions in the recycling specifications for the UV disinfection system in section IV.C.7 of the Order.

Rationale: The Discharger relies on the UV disinfection system to provide disinfection. The Facility does not include back-up disinfection (e.g., chlorination). The Discharger relies on the same treatment processes for its recycled water and effluent discharged to the ocean. Although the Discharger is only subject to secondary treatment

standards for effluent discharged to the ocean, it is relying on an effective UV disinfection system to provide sufficient disinfection. If the Discharger is not meeting the UV disinfection system specifications for recycled water, this could indicate issues with the Facility's treatment processes.

4) Effluent violations that indicate potential for elevated bacteria concentrations in effluent.

Rationale: Effluent violations could indicate increased chances or conditions for high bacteria concentrations or other problems with the Facility that could lead to high bacteria concentrations.

5) Operational changes, plant upsets, or process failures that the Discharger determines have the potential to cause bacteria levels outside normal ranges in the effluent.

Rationale: If the Discharger determines that an operational change, plant upset, or process failure at the Facility has any potential to cause bacteria levels in the effluent outside of normal range, then it is necessary to conduct daily fecal coliform bacteria monitoring to verify the event does not cause elevated bacteria levels.

Central Coast Water Board staff also amended Table E-3 to state that the Central Coast Water Board Executive Officer can require the Discharger to conduct ongoing daily fecal coliform bacteria monitoring if the Facility has recurring issues.

In response to the commenter's request, Central Coast Water Board staff reduced enterococcus effluent monitoring frequency by changing the monitoring to quarterly. The commenter requested this sampling be changed to annually, which is too infrequent for a new Facility with no previous monitoring data. The Discharger has indicated it is amendable to the revised enterococcus effluent monitoring frequency.

This is a new facility with no previous monitoring and no water quality based effluent limitations, so it must have a robust and sufficient monitoring program to help ensure protection of water quality. Based on monitoring results and Facility performance during the term of this Order, Central Coast Water Board staff will assess monitoring frequency adjustments when reissuing the Order.

Change Made: Revision to Table E-3 of Attachment E.

Cayucos Sanitary District – 11

Biosolids Management Requirements (VI.C.5.a., page 18): Unless being discharged into waters of the United States, biosolids provisions are not required in an NPDES permit and should be covered in separate Waste Discharge Requirements (WDRs). The change can be implemented by adding the following language:

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a. Biosolids Management

This Order does not authorize any act that results in violation of requirements administered by USEPA to implement 40 CFR part 503, Standards for the Use or Disposal of Sewage Sludge. These standards regulate the final use or disposal of sewage sludge that is generated during the treatment of domestic sewage in a municipal wastewater treatment facility. The Discharger is separately responsible for meeting all applicable requirements of 40 CFR part 503 that are under USEPA's enforcement authority.

Requested Tentative Order Revisions: Modify the biosolids requirements as requested.

Biosolids Monitoring (Attachment E, IX.A, page E-17): The District plans to transport biosolids for disposal in a municipal landfill. As a result, the biosolids monitoring requirements will be determined by the landfill operator. The type of monitoring specified in Table E-8 is unnecessary and should be removed from the MRP.

Requested Tentative Order Revisions: Delete Table E-8.

Staff Response to Comment Cayucos Sanitary District – 11

Section III.C.7 of Attachment F of the Draft Order, which is consistent with section VI.C.5.a of the Draft Order, already includes the same text proposed by the commenter. Central Coast Water Board staff revised section VI.B.5.a of Attachment F of the Draft Order to clarify the Discharger is required to comply with the standards and time schedules contained in Title 40 of the Code of Federal Regulations (40 C.F.R.) part 503, which is enforceable by U.S. Environmental Protection Agency (U.S. EPA) because California has not been delegated the authority to implement this program.

The Draft Order includes requirements for the Discharger to monitor its biosolids so that it can provide data on biosolids quality related to 40 C.F.R. Part 503 regulations to the landfill. In an email on April 13, 2020, the Discharger informed Central Coast Water Board staff that it plans to contract with Mission County Disposal to transport its biosolids for land application at Cold Canyon Landfill. On July 20, 2015, the Central Coast Water Board issued Waste Discharger Requirements Order No. R3-2015-0021 for Cold Canyon Class III Landfill. Order No. R3-2015-0021 only allows the landfill to accept non-hazardous solid waste; therefore, the Discharger will need to be able to demonstrate to the landfill its biosolids are non-hazardous.

Central Coast Water Board staff modified the facility description in Section II.A of the Fact Sheet to this Order to identify that the Discharger initially plans to contract with Mission County Disposal to transport its biosolids for land application at Cold Canyon Landfill.

Change Made: Revisions to sections II.A and VI.B.5.a of Attachment F.

Cayucos Sanitary District – 12

Ocean Outfall and Diffuser Inspection (VI.C.f., page 17 and Attachment E, IX.B., page E-19): The District recently inspected and refurbished the outfall and diffuser in 2019. The structure is in good condition and a visual inspection of the system will not be warranted until after approximately 5 years of use. The District will conduct a visual inspection of structural integrity in 2025 to inform NPDES permit reissuance. Based on inspection results, a future inspection and maintenance program can be developed for Regional Water Board consideration.

Requested Tentative Order Revisions: Require an outfall and diffuser inspection to occur in 2025 prior to NPDES permit reissuance.

Staff Response to Comment Cayucos Sanitary District – 12
In an earlier draft of this Order, Central Coast Water Board staff had specified an annual inspection frequency for the Ocean Outfall and Diffuser Inspection. Central Coast Water Board staff worked collaboratively with the Discharger and agreed to reduce the inspection frequency to a minimum of once every three years, acknowledging the Discharger recently refurbished the outfall and installed a new diffuser. An inspection frequency of once per permit term is insufficient, especially if the permit is administratively extended.
Change Made: None.

Cayucos Sanitary District – 13

Monitoring and Reporting Schedule (Table E-9, page E-20): The monitoring periods and report due dates should be modified to be consistent with any changes made to the Tentative Order.

Requested Tentative Order Revisions: Change dates to be a certain number of days or months following the effective date, or reset for the following requirements: 1) TRE Workplan – November 30, 2020; 2) Ocean Outfall and Diffuser Inspection Technical Report – May 1, 2025; 3) Recycled Water Management Plan – Within 1 year of commencing outfall operation; 4) Benthic Sediment Monitoring – March 1, 2025; 5) Climate Change Response Hazards and Vulnerabilities – March 1, 2025; 6) ROWD Application – March 1, 2025.

Staff Response to Comment Cayucos Sanitary District – 13
Central Coast Water Board staff made the revisions suggested by the commenter.
Change Made: Revision to Table E-9 of Attachment E.

Cayucos Sanitary District – 14

Monitoring Station Locations (Table E-1, page E-3): The description of the recycled water monitoring location is incorrect and unnecessarily limiting.

Requested Tentative Order Revisions: Modify the description of the recycled water monitoring location as follows: “Location where representative samples of recycled effluent water ~~to be reused for irrigation~~ can be collected, after treatment and prior to discharge or distribution.”

Staff Response to Comment Cayucos Sanitary District – 14
Central Coast Water Board staff made the revisions suggested by the commenter.
Change Made: Revision to Table E-1.

Cayucos Sanitary District – 15

Effluent Monitoring Requirements (Table E-3, page E-6): The table of effluent monitoring requirements should be modified to reflect equipment that will be utilized and to include relevant operational information.

Requested Tentative Order Revisions: Modify Table E-3 to indicate turbidity samples will be “Metered” and remove Total Chlorine Residual and Chlorine Usage monitoring requirements.

Staff Response to Comment Cayucos Sanitary District – 15
Central Coast Water Board staff made the revisions suggested by the commenter for the turbidity sample type.
Central Coast Water Board staff included chlorine monitoring requirements in the Draft Order posted for public comment on February 7, 2020, because the Discharger had indicated plans to use chlorine in its May 3, 2018 Report of Waste Discharge. The Discharger’s Report of Waste Discharge included a process flow schematic (see copy in Figure C-2 of the Draft Order posted for public comment on February 7, 2020) showing a chlorination step after the effluent pump station. In the explanation of this process flow schematic submitted with the Report of Waste Discharge, the Discharger wrote, “a small dose of sodium hypochlorite is injected downstream of the UV disinfection units to provide a chlorine residual in the effluent pipeline and recycled water storage tank, followed by a dose of sodium bisulfite for dechlorination at the terminus of the effluent pipeline, upstream of the ocean outfall.”
After receiving this comment, Central Coast Water Board staff asked for clarification from the Discharger about its plans for chlorination. In an email dated April 28, 2020, the

Discharger clarified, "We will only be chlorinating the recycled water to maintain a residual in the tank. We will not be chlorinating the effluent which will be disinfected with UV light. The chlorine feed will be as shown in this updated schematic and there will be no de-chlorination." Because the Discharger no longer plans to chlorinate the effluent being discharged at Discharge Point No. 001, Central Coast Water Board staff revised Table E-3 of Attachment E to remove requirements for monitoring effluent chlorine residual and chlorine usage. Central Coast Water Board staff inserted the revised process flow schematic showing the updated information about chlorination. Additionally, Central Coast Water Board staff updated the description of chlorine usage in the wastewater treatment and controls description in Section II.A of Attachment F.

Change Made: Revisions to Figure C-2 in Attachment C, Table E-3 of Attachment E, and section II.A of Attachment F.

Cayucos Sanitary District – 16

Recycled Water Monitoring Requirements (Table E-5, page E-11): The District requests 5 times per week recycled water monitoring for pH and removal of testing for settleable solids. The data obtained under the reduced frequency will still provide useful information to evaluate recycled water quality and settleable solids will not provide any useful information for this facility's treatment process.

Requested Tentative Order Revisions: Modify Table E-5 as follows: 1) pH minimum sampling frequency 5/Week; 2) Delete Settleable Solids monitoring requirement.

Staff Response to Comment Cayucos Sanitary District – 16

Central Coast Water Board staff made the revisions suggested by the commenter.

Change Made: Revision to Table E-5 of Attachment E.

Cayucos Sanitary District – 17

Description of Wastewater Treatment and Planned Changes (Fact Sheet, II.A., page F-5 and II.E., page F-6): The Facility Phase 2 plans are in development and subject to change based on available funding and project feasibility. As a result, the Fact Sheet's description of Phase 2 should be removed or modified. The language inserted by Regional Water Board staff into the Phase 2 work description does not reflect the Recycled Water Feasibility plan or Environmental Impact Report prepared by the District.

Requested Tentative Order Revisions: Remove or modify the description of Phase 2 plans as follows: "If deemed necessary to achieve a long-term reuse strategy, Phase 2 includes the assessment of additional treatment and infrastructure to support long-term

beneficial reuse of recycled water produced at the Facility.”

Staff Response to Comment Cayucos Sanitary District – 17

Central Coast Water Board staff revised sections II.A and II.B of Attachment F of the Draft Order to remove the definitive language for Phase 2 and indicate the Discharger is assessing its future plans for beneficially reusing treated effluent produced at the Facility.

Change Made: Revisions to sections II.A and II.B of Attachment F.

Cayucos Sanitary District – 18

California Environmental Quality Act (CEQA) (Fact Sheet, III.B., page F-7): The District’s Environmental Impact Report (EIR) stopped short of providing water to the community due to the anticipated growth-inducing impacts associated with augmented water supplies. As a result, the EIR cannot be utilized to adequately address the environmental impacts from the water recycling mandate contained in this proposed permit. As such, we believe that the Regional Water Board has not met its obligations under CEQA and the Water Code for this action.

Requested Tentative Order Revisions: Remove the recycling water mandate or prepare the necessary Supplemental Environmental Impact Report or functional equivalent to address the recycling water project being mandated by the Regional Water Board.

Staff Response to Comment Cayucos Sanitary District – 18

Regarding water recycling, the Draft Order 1) includes requirements for the production of disinfected tertiary recycled water, as defined by title 22 section 60301.230 and 2) requires the Discharger to develop recycled water management plans for the beneficial reuse of its treated effluent. The requirement to recycle water has been removed from the permit. Accordingly, the District’s EIR addresses the action to adopt this Draft Order.
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Change Made: None.

Cayucos Sanitary District – 19

Antidegradation Policy (Fact Sheet, III.C.4., page F-9): The third paragraph of the Antidegradation Policy discussion presumes that the recycled water discharges will have no impacts to underlying groundwater basin water quality. In the absence of recycled water quality data, the District cannot guarantee the discharges will have no effect on underlying basin water quality particularly in regards to salts.

Requested Tentative Order Revisions: Remove the recycling mandate, and remove the third paragraph from the Antidegradation Policy discussion or prepare analysis to

support this assumption.

Staff Response to Comment Cayucos Sanitary District – 19

The Draft Order discusses how its requirements, including the recycled water management planning requirements, are consistent with California’s antidegradation policy in State Water Board Resolution No. 68-16. The antidegradation analysis in the Draft Order is limited to ocean discharges from Discharge Point 001. The Central Coast Water Board has not conducted an antidegradation analysis for Discharge Point 002, because except for limited onsite uses the Discharger is not discharging recycled water to waters of the state. An antidegradation analysis will be conducted when the recycled water produced at the Facility is provided to a user and that user applies for permit coverage to discharge the recycled water.

As part of the Cayucos Sustainable Water Project, in June 23, 2017, the Discharger prepared a Recycled Water Facilities Planning Study, partially funded by a grant from the State Water Board Water Recycling Funding Program, to examine siting alternatives for the Facility and beneficial reuse alternatives for the treated effluent from the Facility. The Discharger assessed the following recycled water alternatives: 1) provide disinfected tertiary water for unrestricted irrigation reuse, 2) provide recycled water that meets standards for indirect potable reuse via groundwater recharge, 3) provide recycled water that meets standards for indirect potable reuse via surface water augmentation, and 4) provide recycled water that meets standards for direct potable reuse. For the irrigation reuse option, the Central Coast Water Board would regulate the distribution and use of the recycled water under the State Water Board’s General Water Reclamation Requirements for Recycled Water Use (State Water Board Order No. WQ 2016-0068-DDW).

State Water Board Order No. WQ 2016-0068-DDW strongly encourages water recycling, discusses the benefits, and includes a comprehensive antidegradation discussion. The antidegradation analysis in State Water Board Order No. WQ 2016-0068-DDW concludes that if recycled water is treated to appropriate standards, including best practicable treatment or control, and the required treatment level based on the intended use and applied at appropriate rates, it will not unreasonably affect beneficial uses or result in water quality that is less than that prescribed in applicable policies. Additionally, section B.3 in State Water Board Order No. WQ 2016-0068-DDW specifies the following: “uses of recycled water with frequent or routine application (for example: agricultural or landscape irrigation uses) shall be at agronomic rates and shall consider soil, climate, and plant demand. In addition, application of recycled water and use of fertilizers shall be at a rate that takes into consideration nutrient levels in recycled water and nutrient demand by plants.” Lastly, if the District’s treated effluent is used for agricultural applications, agriculturalists using this water must also adhere to the Central Coast Water Board permit for irrigated lands, if applicable.

Change Made: None.

Cayucos Sanitary District – 20

Antidegradation Policy (Fact Sheet, III.C.4., page F-10): The fourth paragraph falsely indicates that, “environmental conditions necessitate the reuse of treated wastewater.” In this case, the Regional Water Board is mandating the use of recycled water without regards to the environmental conditions or water supply requirements of the Cayucos community.

Requested Tentative Order Revisions: Remove the recycling mandate, or delete the fourth paragraph of this discussion.

Staff Response to Comment Cayucos Sanitary District – 20

Central Coast Water Board staff revised section VI.C.6 in the Draft Order to no longer require the Discharger to reuse its treated effluent by a specified date. See Staff Response to Comment Cayucos Sanitary District – 8 for further details.

Section III.C.4 of the Attachment F of the Draft Order states, “The changing climate with increasing and more intense drought conditions is profoundly impacting our natural environment and hydrologically dependent water supplies. With the state of technology today, and environmental conditions which necessitate the reuse of treated wastewater, best practicable treatment or control means recycling treated wastewater where feasible.” In the sentence prior to that quoted by the commenter, Attachment F of the Draft Order explains that climate change is having a significant impact on the environment and water supplies. This is a broad statement that applies throughout California.

Additionally, it is critical to seek options for building local resiliency to climate change impacts and to look within and beyond municipal borders when assessing the best beneficial uses for treated effluent.

Water demand for the town of Cayucos and surrounding area is discussed in San Luis Obispo County’s May 2012 Final Master Water Report, a comprehensive plan, evaluating water management strategies, to meet water resource needs for the entire County. The report assesses water management strategies for the Cayucos Area Water Organization (including Morro Rock Mutual Water Company, Paso Robles Beach Water Association, County Service Area 10A, and Cayucos Cemetery District), which encompasses the primary urban users within the Cayucos Water Planning Area. According to section 4.8.12.3 of Volume II of the report, Whale Rock Reservoir is the primary source of water supply for urban users and groundwater is the primary water supply for agricultural and rural users in the Cayucos Water Planning Area. The report explains that the shallow alluvial deposits characterizing these groundwater basins are typically more susceptible to drought impacts, water level and well capacity

typically declines during periods of drought, and sea water intrusion is a constraint in the lower portion of the basin. Section 4.8.12.4 of Volume II of the report states the following: “Since the forecast build-out demands will push the CAWO [Cayucos Area Water Organization] members to their supply limit, an alternative supply should be developed as a reliability reserve. Water conservation measures provide minimal opportunity to further reduce water demands. Further mandatory or emergency conservation would be used to off-set an emergency or reliability supply, not to support growth. The most viable option for a reliability reserve supply is the NWP [Nacimiento Water Project], since the existing agreement with CSA [County Service Area] 10A allows up to 90 AFY to be exchanged.” Section 4.7.5 of Volume II of the report discusses opportunities to optimize use of the Nacimiento Water Project, including using the “unsubscribed water in exchange of a currently used water resource. Examples include connecting CMC [California Men’s Colony] or Cal Poly [California Polytechnic State University, San Luis Obispo] to the NWP and freeing up State Water and/or Whale Rock Reservoir water for use by others.” Both Whale Rock Reservoir and Nacimiento Reservoir are hydrologically dependent water supplies, so augmentation with treated effluent from the Facility could diversify Cayucos Area Water Organization’s water portfolio source types to increase resiliency during periods of drought.

The San Luis Obispo County’s May 2012 Final Master Water Report also discusses water demands for other nearby entities. For example, the City of Morro Bay relies on State Water Project water and groundwater for its water supply. There are constraints on groundwater availability because of water quality issues such as seawater intrusion and excessive nitrates. According to the report, Cambria Community Services District’s water supply is at a Level III (resource capacity has been met or exceeded), the highest level of severity, due to unreliability of the groundwater supply to meeting existing demands. This severity ranking system is based on the Resource Management System of the San Luis Obispo County General Plan, Framework for Planning.

Additionally, Cal Poly’s June 2019 Campus Master Plan indicates that full master plan buildout will require additional water sources. Cal Poly currently gets water from Whale Rock Reservoir. Because there is already infrastructure in place to convey water from the reservoir to Cal Poly, the university could be a viable customer of the Discharger’s treated effluent, if the Discharger were to pursue a surface water augmentation project at Whale Rock Reservoir.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

Cayucos Sanitary District – 21

Antidegradation Policy (Fact Sheet, III.C.4., page F-10): The fifth paragraph ignores the entire NPDES regulatory framework. The District is requesting an NPDES permit to discharge highly treated effluent. The fifth paragraph states, “Any decrease in the

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amount of waste discharged as a result of reuse will correspondingly decrease the degradation to high quality ocean waters.” The Fact Sheet provides no evidence to support this assertion. As such, the District requests that the Regional Water Board produce the studies or evidence upon which this statement is based. The District currently discharges wastewater via a shared facility with the City of Morro Bay. The District and the City of Morro Bay had historical discharges under a 301(h) waiver that allowed the discharge of sub-secondary treated effluent. There is no evidence that the much lower quality combined historic discharge caused any degradation of the marine environment and, thus, there is no evidence to support that the District’s higher quality effluent would cause degradation. In fact, the first paragraph of this section requires, “The permitted discharge must be consistent with the antidegradation provision of 40 C.F.R. section 131.12 and State Water Board Resolution No. 68-16,” which means no degradation is authorized to occur.

Requested Tentative Order Revisions: Remove the fifth paragraph of this discussion.

Staff Response to Comment Cayucos Sanitary District – 21

The State Antidegradation Policy states in relevant part that “[a]ny activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.”

The Discharger is currently releasing its waste at a different location in the Pacific Ocean. Central Coast Water Board staff commends the Discharger for proposing to produce disinfected tertiary treated effluent, and staff acknowledges this proposed effluent quality will exceed the quality of effluent discharged from the Cayucos Sanitary District and City of Morro Bay jointly owned facility that currently treats sanitary wastewater from Cayucos. However, the Discharger’s proposed discharge at Discharge Point 001 from the Facility permitted by this Draft Order is still a discharge of waste; therefore, it is subject to the State Antidegradation Policy without the need for a specific finding of degradation. Section III.C.4 of the Fact Sheet to the Draft Order acknowledges the Discharger currently discharges a volume of waste with pollutants to high quality waters, but that volume and concentration of pollutants are not expected to increase with this new discharge location. However, if the Discharger recycles its wastewater, it will decrease the amount of waste discharged to high-quality waters. Section III.C.4 further describes compliance with the State Antidegradation Policy.

Change Made: None.

Cayucos Sanitary District – 22

Global Comment – District Definition: The Tentative Order defines the District as a “Discharger.” Because this term has a negative connotation, the District requests this term be modified to be “Permittee” throughout. Since the Fact Sheet (Section I.A., page F-4) states these are equivalent terms, the District would prefer use of “Permittee” since its discharges of high quality effluent and recycled water are permitted and this is the term used in federal regulations. See *accord* 40 C.F.R. Part 122. Alternatively, the word “District” would be preferred over “Discharger.” This change can be easily made using the “replace” function throughout the document.

Requested Tentative Order Revision: Change “Discharger” to “Permittee” or “District” throughout.

Staff Response to Comment Cayucos Sanitary District – 22
Central Coast Water Board staff used the State Water Board NPDES permit template for ocean discharges to develop this Order. The statewide template uses the term “Discharger;” therefore, Central Coast Water Board staff proposes to not make any changes to maintain consistency with other permits. The use of “Permittee” versus “Discharger” in this permit has no bearing on the enforceability or intent of this permit, so this requested change is unnecessary.
Change Made: None.

Cayucos Sanitary District – 23

Discharge Prohibitions (III., page 7): No prohibitions against discharges not in compliance with the permit, Basin Plan, or Ocean Plan are required in NPDES permits because what is not specifically authorized would be prohibited as an unpermitted discharge unless it falls within the gambit of the permit shield. 33 U.S.C. §1342(k). The District notes that some of these prohibitions (e.g. III.C.) duplicate provisions included in other parts of the Permit (e.g., IV.A.1.a) or the Standard Provisions. Such duplication harms the District by creating two or more permit provisions that could be violated by a single activity, subjecting the District to duplicate enforcement jeopardy and penalties. Section III.F. should either just reference “except as provided for in Attachment D,” or should reference both Standard Provisions I.G or I.H., since either may apply under federal law depending on the situation.

Requested Tentative Order Revisions: 1) Remove Discharge Prohibitions or other Provisions that are duplicated in the Permit; 2) Revise Sections III.F. as requested above.

Staff Response to Comment Cayucos Sanitary District – 23
See Staff Response to Comment Cayucos Sanitary District – 24 for information about how Central Coast Water Board staff revised the draft Order to remove the effluent

limitation for flow to address the commenter's concern about duplicate provisions for flow limitations. Central Coast Water Board staff disagrees that the remaining discharge prohibitions are not necessary, and the basis for each discharge prohibition is provided in section IV.A of Attachment F of the Draft Order. Central Coast Water Board staff also disagrees that the discharge prohibitions are duplicative of other provisions in the permit. The first sentence in Standard Provision I.G.3 has been revised to reflect that it merely reiterates section III.F of the Draft Order and is not an additional discharge prohibition.

Change Made: Revision to Standard Provision I.G.3. See revisions listed in Staff Response to Comment Cayucos Sanitary District – 24.

Cayucos Sanitary District – 24

Flow Rate of Discharge (IV.A.1.a., page 7): Since the Tentative Order contains a discharge prohibition related to flow, the effluent limitation for flow rate is duplicative and unnecessary. Effluent limits for flow are not required by federal law because flow is not a pollutant, so this should be identified as a performance goal or a state law only provision or should be deleted as unnecessary. Having a flow limit and mass limits are duplicative as mass is just a calculation of concentration times flow. Thus, an inherent flow limit is included in any mass limit. In addition, including flow as an “effluent limitation” arguably subjects the District to mandatory minimum penalties for exceeding a flow cap, which has no water quality impact and should not be penalized. A treatment plant is ultimately constrained by design flows so no flow limit is needed.

Requested Tentative Order Revision: Remove effluent limitation for flow.

Staff Response to Comment Cayucos Sanitary District – 24

In response to the commenter's request to remove the duplicative flow limits, Central Coast Water Board staff removed the flow rate effluent limitations in section IV.A.1.a. Central Coast Water Board staff revised the flow rate discharge prohibition in section III.C to add a prohibition for maximum daily effluent flow because this was removed from the effluent limitation and was not previously in the prohibitions.

Because the Draft Order no longer includes effluent limitations for flow rate, Central Coast Water Board staff amended Table 4 to include mass-based effluent limitations for BOD₅ and TSS (secondary treatment standards). To include measures to protect beneficial uses of the receiving waters, Central Coast Water Board staff made these modifications so that the Discharger will still be subject to mandatory minimum penalties if it releases too high of a loading of these pollutants.

Section 5.1.3.2 of the U.S. EPA's NPDES Permit Writers' Manual states, “mass-based discharge limitations are not specifically required to implement secondary treatment standards [which are for BOD and TSS only]; however, permit writers can choose to include mass-based limitations in a permit. In general, regulations at [40 CFR] section 122.45(b)(1) require using the design flow rate of the POTW [publicly

owned treatment works] to calculate limitations.” Section 5.2.2.5 of the manual states, “where effluent limitations are expressed in terms of mass, a provision at [40 CFR] section 122.45(f)(2) allows the permit writer, at his or her discretion, to express limitations in additional units (e.g., concentration units). Where limitations are expressed in more than one unit, the permittee must comply with both. The permit writer may determine that expressing limitations in terms of both concentration and mass encourages the proper operation of a treatment facility at all times.”

Having mass-based effluent limitations should have no bearing on cost of compliance. There is no extra sampling because of these limitations, so the cost of compliance does not increase. The cost of violating these limitations may be higher, but as the Discharger states, the effectiveness of the Facility is constrained by the design flow, so the Central Coast Water Board finds it justifiable to hold the Discharger accountable to meeting these limitations.

See Staff Response to Comment Cayucos Sanitary District – 25 for further justification regarding inclusion of mass-based limitations and information regarding calculation of mass-based limitations.

Change Made: Revisions to sections III.C, IV.A.1.a, Table 4; sections IV.A.3, IV.B.2, IV.D.3 and Tables F-5 and F-8 of Attachment F.

Cayucos Sanitary District – 25

Duplicate Mass and Concentration Limits for Oil and Grease (Table 4, page 8): The Tentative Order includes both mass limits and concentration limits for oil and grease, making the District potentially liable for multiple violations for the same constituent based on a single effluent sample. Mass limits are not required if concentration limits are included, and vice versa. 40 C.F.R. §§133.102; 122.45(f)(1)(ii). Thus, because including both types of limits is discretionary (section 122.45(f)(2) (“may be limited...”), including both is more stringent than required by federal law and additional analysis is required. See *City of Burbank v. SWRCB*, 35 Cal. 4th 613 (2005).

In addition, if mass limits are maintained despite this objection, then these limits should be based on design flows,⁶ and specifically not apply during wet weather as done in other regions⁷ since wet weather could make this problematic by artificially limiting capacity below design. Maximum weekly and maximum monthly flows have not been accommodated in the mass limits included in the permit.

⁶ See accord 40 C.F.R. §122.45(b)(In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.”)

⁷ For example, the Los Angeles Region (Region IV) uses the following language: “*The mass emission rates are calculated using XX MGD, consistent with the water-quality based limits in the previous permit: lbs/day = 0.00834 x Ce (Effluent concentration in ug/L) x Q (flow rate in MGD). During storm events when flow exceeds XX MGD, the mass emission rate limitation shall not apply.*”

Requested Tentative Order Revisions: Remove the mass limit for oil and grease.

Staff Response to Comment Cayucos Sanitary District – 25

Central Coast Water Board staff disagree that inclusion of both mass limits and concentration limits is more stringent than federal law. 40 CFR section 122.45(f)(1) and 122.45(f)(2) read together endorse the application of both concentration and mass limits, and section 122.45(f)(2) further states that compliance with both limits is required.

The limits for oil and grease are expressed in terms of both mass and concentration because flow itself is not separately limited and design capacity can be subject to re-rating that could result in increasing the capacity. The inclusion of mass limitations is necessary to ensure that the discharge of pollutants will not exceed the level that has been deemed necessary for a particular situation. Since compliance with mass limits can be achieved by reducing flow while increasing the concentration of a pollutant, it is also necessary to limit concentrations to prevent negative effects to receiving water quality.

Violation of a mass-based effluent limitation and a concentration-based effluent limitation are two separate offenses. While the same conduct might violate both limitations, each of these limitations exists to protect against different harms to the waterbody and to promote different policies. (*Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc.* (D. Del. 1992) 800 F.Supp. 1, 20-21 (aff'd in part, rev'd in part on different grounds, *Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc.* (3d Cir. 1993) 2 F.3d 493); *Public Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals, Inc.* (3d Cir. 1990) 913 F.2d 64, 78-79, cert. denied, 498 U.S. 1109 (1991).) For instance, concentration limits require dischargers to retain removal efficiency even if flow declines. Mass limitations, conversely, prevent attainment of the limit by increasing flow and diluting the effluent.

Central Coast Water Board staff does not recommend providing an exception to the mass-based limitations during the wet season or providing separate mass-based limitations during the wet and dry seasons. Intermittent wet weather events should not greatly increase the mass loading of pollutants and may provide more dilution. The primary reason for using an average flow is to ensure that dilution is not used as a substitute for proper treatment for complying with the concentration-based effluent limits. Application of less stringent mass limitations during periods of high infiltration/inflow is inconsistent with the intent of mass-based effluent limitations. Additionally, section 5.1.3.2 of the U.S. EPA's NPDES Permit Writers' Manual states, "To calculate a mass-based limitation for a POTW (in pounds per day [lbs/day]) a permit writer would use the equation and follow the example calculations in Exhibit 5-7." Exhibit 5-7 in the manual provides an example for a publicly owned treatment works with a design flow of 2.0 million gallons per day (MGD). The example uses 2.0 MGD for both the average monthly and average weekly mass-based limitation calculations, demonstrating U.S. EPA's intent to carry the same design flow

throughout each mass-based limitation at a Facility.

40 CFR section 122.45(b)(1) states, "In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow." The CWA does not specify which design flow to use for calculating mass-based limitations. Therefore, it is left to the discretion of the Central Coast Water Board to make this decision.

Use of an average flow is consistent with other Central Coast Region permits. Additionally, since the Facility is new, Central Coast Water Board staff anticipates that it will operate at better performance than secondary standards and therefore is expected to be able to comply with mass-loading limits based on an average flow as opposed to a peak flow.

At a meeting on May 26, 2020, Central Coast Water Board staff met with the Discharger to discuss the Discharger's comments. At this meeting, Central Coast Water Board staff explained to the Discharger why it recommends using an average daily design flow instead of a maximum weekly or maximum monthly design flow to calculate the mass-based limitations. Central Coast Water Board staff discussed the following: rationale for using the same design flow for all the mass-based limitations; rationale for setting mass-based limitations based on anticipated performance of the Facility; rationale for not calculating maximum limitations based on peak wet weather conditions; and reasoning for maintaining consistency with other Central Coast region permits.

In a follow-up email on June 3, 2020, the Facility's design engineer explained that because Cayucos has significant dry season peaks in its influent during peak tourism periods, its maximum daily and maximum weekly flows may occur during the dry season. The Facility's design engineer explained that these summer peaks, nearly as high as winter peaks, will have high loadings relative to winter peaks because they do not have the reduction in influent concentration that normally occurs with infiltration/inflow related to winter peak flows. The Facility's design engineer explained that the Facility is designed to accommodate these seasonal peaks and loading conditions. In a follow-up call with the Facility's design engineer on June 3, 2020, Central Coast Water Board staff explained that using these maximum design flow values results in mass-based limits that are not meaningful for typical daily operations.

Central Coast Water Board staff worked with the Facility's design engineer to identify a design flow to use in calculating the mass-based limitations that is tailored to the Discharger's unique influent flow circumstances and plant design, while still meeting the intent of the mass-based limitations. The Discharger explained it anticipates being able to meet maximum daily and weekly mass-based limits calculated based on the "average dry weather flow" and that this would better represent peak season conditions relative to "average annual daily flow." Recognizing this unique situation in Cayucos, Central Coast Water Board staff recalculated the mass-based limitations

throughout the Draft Order using the “average dry weather flow” of 0.370 MGD, instead of the “average annual daily flow.”

The Discharger also included the “average dry weather flow” of 0.370 MGD in Drawing No. 00-601, “Design Criteria,” of the construction plans for the Facility that the Discharger submitted with its May 3, 2018 Report of Waste Discharge.

In a conversation with Central Coast Water Board staff on June 3, 2020, the Facility’s design engineer explained that the Facility is designed to use turbidity as the controlling indicator for measuring Facility performance. The February 7, 2020 Draft Order requires the Discharger to conduct effluent turbidity monitoring five times per week. As explained in this response, Central Coast Water Board staff reduced the mass-based limitations to address the Discharger’s anticipated dry season peaks, likely to occur on holiday weekends. Central Coast Water Board staff modified the effluent turbidity monitoring frequency to daily to require the Discharger to monitor for its controlling performance measure on weekends, so there is not a lapse in turbidity monitoring during the Discharger’s anticipated dry season peaks.

Change Made: Revisions to Table 4; Table E-3 of Attachment E; section IV.C.4 and Tables F-5 and F-8 of Attachment F.

Cayucos Sanitary District – 26

Daily Maximum Limits (Table 4, page 8): No daily maximum limit should be included in the permit because federal law authorizes only monthly and weekly average effluent limitations for POTWs without a demonstration that these longer term average effluent limitations are “impracticable.”⁸ See 40 C.F.R. §122.45(d)(2)(“For continuous discharges all permit effluent limitations, standards and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as: (2) Average weekly and average monthly limitations for POTWs”). No impracticability analysis was conducted for any of the daily maximum limits proposed, and it is clearly not impracticable to include average monthly and average weekly limits because those limits have been prescribed as well.

Requested Tentative Order Revisions: Remove daily maximum effluent limits that are not adequately justified with an impracticability analysis.

⁸ The term “impractical” is not defined in federal law, but should be deemed equivalent to “infeasible” as included in the SIP at Appendix 1-3, which defines it as “not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” This term is generally defined by the Meriam Webster Dictionary as “not practicable: incapable of being performed or accomplished by the means employed or at command.” Similarly, the Oxford Press Dictionary defines “impracticable” as “impossible in practice to do or carry out.”

Staff Response to Comment Cayucos Sanitary District – 26

40 CFR section 122.45(d) requires that all NPDES permit effluent limitations for continuous discharges shall be stated as average weekly and average monthly for publicly owned treatment works unless it is impracticable. The Central Coast Water Board included average weekly and average monthly limitations in the Draft Order because the Water Board does not find it impracticable to monitor and adhere to these limitations.

The federal regulations do not prohibit the permit authority from adding additional limitations and do not require the permitting authority to prove impracticability to justify additional limitations. Cayucos has significant dry season peaks in its influent during peak tourism periods. Due to high peaking factors in Cayucos, maximum daily effluent limitations are necessary to restrict the discharges on a daily basis, at a level that is achievable for the Facility, that targets its treatment at the long-term average. The technical basis for the daily maximum effluent limit is explained in Section IV.B.2 of the Fact Sheet.

Additionally, in an email on June 3, 2020, the Discharger informed Central Coast Water Board staff that “Based on recent discussions we would like to rescind our comment number 26 regarding Daily Effluent Limitations. We agree with you that with the Mass Effluent Limitations being included in the Permit, allowing for Daily Effluent Limitations are appropriate.”

Change Made: Revision to Fact Sheet Section IV.B.2

Cayucos Sanitary District – 27

Collection System Requirements (VI.C.5.b., page 18 and Fact Sheet, page F-25 to 26): The discussion of the Sanitary Sewer System WDRs should avoid language that would arguably incorporate by reference into the NPDES permit and create an argument that the state-only WDRs is somehow federally enforceable under the NPDES permit. To remove this ambiguity, the word “separately” should be added to the text of the permit and modifications should be made as follows:

- Permit – VIC.5.b. Collection System: The Discharger is subject to the requirements of and must separately comply with State Water Board Order 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, including monitoring and reporting requirements as amended by State Water Board Order WQ 2013-0058-EXEC and any subsequent order.
- Fact Sheet VI.C.5.b Collection System: The State Water Board issued General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order 2006-0003-DWQ (General Order) on May 2, 2006. The State Water Board amended the Monitoring and Reporting Program for the General Order through Order WQ 2013-0058-EXEC on August 6, 2013. The General Order requires public agencies

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that own or operate sanitary sewer systems with sewer lines one mile of pipe or greater to enroll for coverage and comply with the General Order. The General Order requires agencies to develop sanitary sewer management plans and report all sanitary sewer overflows, among other requirements and prohibitions. The General Order contains requirements for operation and maintenance of collection systems and for reporting and mitigating sanitary sewer overflows that are more extensive, and therefore, more stringent than the requirements under federal standard provisions. The Discharger obtained enrollment for regulation under the General Order on January 9, 2007 and is separately subject to the General Order's requirements, which are not incorporated by reference.

Requested Tentative Order Revisions: Modify collection system requirements as requested.

Staff Response to Comment Cayucos Sanitary District – 27
Central Coast Water Board staff made the change to section VI.C.5.b of the Draft Permit requested by commenter. Section VI.B.5.b of Attachment F states that the Discharger obtained enrollment for regulation under the State Water Board issued General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order 2006-0003-DWQ on January 9, 2007. This statement is simply providing a fact about the enrollment date. It is unnecessary to add the clause suggested by the commenter.
Change Made: Revisions to section VI.C.5.b.

Cayucos Sanitary District – 28

Stringency of Requirement for Individual Pollutants (Fact Sheet, IV.D.3., page F-22): The Fact Sheet (Section IV.D.3 “Stringency of Requirements for Individual Pollutants”) alleges “These limitations are not more stringent than required by the CWA.” The District disagrees with the findings in this section because a number of the Tentative Order’s requirements are more stringent than CWA technology-based and water quality-based requirements. For example, the Tentative Order contains numeric effluent limitations, daily limits, and mass limits, which are not required by federal law.⁹ The Tentative Order also contains technology-based effluent limitations more stringent than federal requirements. The effluent limitations are based on Table 4 in the Ocean Plan, which includes limitations for oil and grease, settleable solids, and turbidity. Limitations for these three parameters are not included in the federal secondary treatment standards, and thus are more stringent than required by federal law.¹⁰

⁹ See e.g., 40 C.F.R. Section 122.44(d) and (k)(3) and Sections 122.45(d)(2) and (f)(1); see also *Communities for a Better Environment v. State Water Resources Control Board* (2003) 109 Cal.App.4th 1089, reh. den., 2003 Cal.App. LEXIS 1082 (1st Dist. June 27, 2003), cert. den., 2003 Cal LEXIS 7251 (Sept. 24, 2003).

¹⁰ 40 C.F.R Section 133.102. These regulations describe the minimum level of effluent quality attainable by secondary treatment in terms of the parameters-BOD, suspended solids, and pH.

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In April 2005, the California Supreme Court ruled when a regional board proposes pollutant restrictions in a wastewater discharge permit more stringent than federal law requires California requires the regional board to take into account the factors set forth in Water Code 13263, including the incorporated factors in Section 13241 and economic factors (i.e., the wastewater discharger's cost of compliance). See *City of Burbank v. State Water Resources Control Board*, 35 Cal.4th 613, 628 (April 4, 2005).

Consequently the Regional Board is required to conduct an analysis of these limits under Water Code Section 13263, including factors contained in Section 13241. In addition the Regional Board must revise the Tentative Order's Finding and Fact Sheet to reflect that the permit contains restriction more stringent than required by the federal CWA.

Requested Tentative Permit Revisions: 1) Conduct an analysis of effluent limits that are more stringent than required by federal law, per Water Code Section 13263, including the factors contained in Section 13241; 2) Revise Permit to reflect that the permit contains restrictions more stringent than required by the federal CWA, and to include the Water Code Sections 13263 and 13241 analysis.

Staff Response to Comment Cayucos Sanitary District – 28

See Staff Response to Comment Cayucos Sanitary District – 24 for information about how Central Coast Water Board staff revised the draft Order to remove the effluent limitation for flow. See Staff Responses to Comments Cayucos Sanitary District – 24, 25, and 26 for justification for inclusion of mass limits and daily maximum limits.
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The Ocean Plan-based effluent limitations for oil and grease, settleable solids, and turbidity are required by the USEPA-approved Ocean Plan. Section IV.D.3 of Attachment F has been revised to clarify that although inclusion of the Ocean Plan-based effluent limitations is mandatory, staff has considered the factors in California Water Code section 13241 when including the effluent limitations in the Draft Order.

For other provisions in the Draft Order not required by federal law, Central Coast Water Board staff has added a finding in section II.D of the Draft Order indicating that the factors in section 13241 have been considered.
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Change Made: Revisions to section II.D and section IV.D.3 of Attachment F. See revisions listed in Staff Response to Comment Cayucos Sanitary District – 24.
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Cayucos Sanitary District – 29

Global Comment - The Regional Water Board Imposed Unreasonable Requirements in Violation of Water Code Section 13000: The California Legislature has found and declared that activities affecting water quality "shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and

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social, tangible and intangible.” See Water Code §13000. This section sets State policy and imposes an overriding requirement on the Regional Water Boards that all effluent limits be reasonable considering all circumstances. For reasons set forth above, the requirements contained in the Tentative Order as discussed above are not reasonable, considering all of the related circumstances. Therefore, the chronic toxicity limits and related implementation provisions contained in the Tentative Order violate Water Code Section 13000.

The Regional Water Board imposed numerous requirements that the District objects to as being unreasonable, including, but not limited to, excessive and expensive monitoring. To assess the reasonableness of these requirements, the permit must include a 13267(b) analysis of the cost and reasonableness of the monitoring being requested. This Tentative Order includes more monitoring more than many other ocean dischargers are required to do, which raises issues of unequal regulation and fundamental fairness.

Requested Tentative Order Revisions: Remove unreasonable and unnecessary requirements from the Tentative Order.

Staff Response to Comment Cayucos Sanitary District – 29

California Water Code section 13000 consists of the legislative findings in support of enacting the Porter-Cologne Act and as such does not impose enforceable requirements on the Central Coast Water Board. Accordingly, California Water Code section 13000 has not been violated.

The monitoring and reporting requirements in the Draft Order for chronic toxicity are authorized by California Water Code section 13383, not section 13267(b). California Water Code section 13383 authorizes the Central Coast Water Board to establish monitoring, inspection, entry, reporting and recordkeeping requirements in connection with NPDES permits for publicly owned treatment works. An “analysis of the cost and reasonableness of the monitoring being requested” is not required under section 13383, and the chronic toxicity monitoring and reporting requirements are properly included in the Draft Order.

The Draft Order does not include any chronic toxicity limits. The Draft Order requires the Discharger to sample annually for chronic toxicity and sets a chronic toxicity trigger of 386.3 TUc (Toxicity Units Chronic) to inform when the Discharger must notify the Central Coast Water Board and conduct further investigations, including a Toxicity Reduction Evaluation. The trigger value is based on the Discharger’s modeled minimum initial dilution for the new diffuser at the outfall. The Discharger’s initial dilution value of 385.3 is high relative to the dilution ratio in many other NPDES discharge permits for other Central Coast publicly owned treatment works; therefore, the Discharger has a higher trigger value than most of its counterparts. Central Coast Water Board staff asserts the chronic toxicity requirements are reasonable. These requirements align with chronic toxicity requirements in other recently adopted NPDES discharge permits for other Central Coast publicly owned treatment works.

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The toxicity reduction requirements are only triggered if the discharge has high toxicity. Additionally, the fact that this is a new Facility, with no previous monitoring, further substantiates the need for robust monitoring requirements and triggers for follow-up investigations if monitoring indicates exceedances of limitations. Accordingly, the monitoring and reporting requirements for chronic toxicity are reasonable.
Change Made: None.

Cayucos Sanitary District – 30

Typos, Formatting Errors:

- Permit, Recycling Specifications IV.C.11. is a duplicate of IV.C.9.
- Permit, Special Studies VI.C.2.b., TRE Workplan requirements should be number as i, ii, iii.
- Attachment E, Section V.A is followed by V.G. and V.H.
- Attachment E, Section VII.B. is followed by Section VII.A.

Requested Tentative Order Revisions: Fix listed typos and formatting issues.

Staff Response to Comment Cayucos Sanitary District – 30
Central Coast Water Board staff made requested edits.
Change Made: Editorial revisions made to sections IV.C.11 and VI.C.2.b; and sections V.B, V.C, VII.A, and VII.B of Attachment E.

State Water Board’s Division of Drinking Water – 1

I am attaching recommended permit provisions for the 1500e. Please review and let me know if there are any questions.

Attachment: General Permit conditions for Xylem Water Solutions WEDECO LBX 1500E UV disinfection system

1. The Xylem Water Solutions WEDECO LBX 1500E UV disinfection system must be preceded by filtration meeting the definition of "filtered wastewater" under CCR, Title 22, Section 60301.320.
2. Conditional acceptance for the Xylem Water Solutions LBX 1500E UV disinfection system is limited to the following parameter ranges:
 - a. Up to the maximum that is tested during full-scale UV commissioning, not to exceed 13.5 MGD per reactor

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- b. UVTs at or above the minimum that is tested during full-scale UV commissioning, not to be below 34.7 percent,
 - c. UV sensor intensities ranging from 17.2 to 310.7 W/m²,
 - d. Power range 50 to 100 percent.
3. The following two empirical equations based on the performance data collected during the validation test must be used for calculation of the RED value in actual installations. These equations are to be used as part of the automatic UV disinfection control system for calculating UV dose and should be specified as a permit provision.

$$S_{pred} = (A \times B^{UVA} \times UVA^C) \times (D \times E + F \times P_L^G) / (E \times P_L^G)$$

$$RED_{MS2} = 0.929 \times 10^{A+B \times UVA} \times UVA^{C+D \times UVA} \times [S / S_{pred,100\%} / Q]^{E+F \times UVA^2}$$

Where:

S_{pred} = Predicted UV sensor value (W/m²),

UVA= UV absorbance at 254 nm

S = Measured UV sensor intensity value (W/m²).

$S_{pred,100\%}$ = Predicted UV intensity at full lamp power, corresponding to new lamps with clean sleeves (W/m²).

P_L = Percent ballast power setting (100% = 100)

RED_{MS2} = UV dose per reactor (mJ/cm²).

Q = Flow rate in MGD¹¹

A - G = Empirical constants, whose values are listed in the validation report for each equation.

4. To verify performance on the site-specific recycled water, upon completion of construction and prior to operation, an on-site check-point bioassay must be performed on the reactor using seeded MS2 coliphage as described in *2012 NWRI UV Guidelines*. The on-site bioassay protocol must be approved by DDW and must be conducted over a range of flows. Results, documenting virus disinfection performance of the system to the standards found in Title 22 of the CCR, must be submitted to DDW for approval.

¹¹ At flow rates below 0.5 MGD, this value (0.5 MGD) should be used as the default value in the RED calculation

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5. Conditional acceptance is predicated upon using a calibrated germicidal sensor that meets international standards (ÖNORM) and is integral to the monitoring of the system.
6. The WEDECO LBX 1500E disinfection system uses UV lamps by WEDECO, Lamp Part No. SO 20101, which have a maximum power of 320-watts. This validation report does not address the determination of lamp aging or lamp fouling factors. Instead, this validation is based upon dose-pacing methodology, relying on detailed and accurate UV sensor readings to confirm adequate UV dose delivery similar to drinking water UV applications, so that the regulated UV dose is delivered and the combined effects of lamp aging and sleeve fouling are incorporated.¹² Detailed information related to the UV sensors to be employed under this project is presented in the 2015 report from Carollo Engineers.
7. The accuracy and repeatability of the on-line UV sensors must be demonstrated to DDW.
8. On-line monitoring of flow, UV intensity, UVT, UV lamp operation hours, and power must be provided at all times.
9. The flow meters, UV intensity sensors, and UVT analyzers must be calibrated in accordance with procedures and frequencies recommended by the manufacturers to ensure proper disinfection.
10. At least monthly, all duty UV intensity sensors must be checked for calibration against a reference UV intensity sensor.
11. For all UV intensity sensors in use, the ratio of the duty UV sensor intensity to the reference UV sensor intensity must be less than or equal to 1.2. If the calibration ratio is >1.2, the failed duty UV sensor must be replaced by a properly calibrated sensor and recalibrated by a qualified facility. The reference UV intensity sensors shall be recalibrated at least annually by a qualified facility using a National Institute of Standards and Technology (NIST) traceable standard.
12. The duty online UVT analyzer must be inspected and checked against a reference bench-top unit to document accuracy on a weekly basis.
13. The on-line UVT analyzer must be recalibrated if the reading varies from the bench-top spectrophotometer UVT reading by 2% or more. The recalibration

¹² Since the UV Intensity sensor monitors more than one lamp, the lamps should be rotated once a quarter to ensure uniform intensity due to aging. Unless another operational procedure can be developed and demonstrated, the rotation of lamps described in the EPA UVDGM should be followed quarterly, "If UV sensors monitor more than one lamp, verify that the lamp with the lowest intensity value is closest to the UV sensor by replacing the lamp closest to the UV sensor with one-fourth of the lamps in each module (minimum of three). Place the lowest intensity lamp next to UV sensor." "If all the lamps monitored by a UV sensor are close in age (i.e., their age varies by less than 20 percent), it is not necessary to check the output of each lamp. In this case, the oldest lamp should be placed in the position nearest the UV sensor."

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must be conducted by a procedure recommended by the UVT analyzer manufacturer.

14. The flow meters measuring the flow through the UV reactor must be verified to determine accuracy on a monthly basis. The verification must compare the flow meter readings with other flow determination methods.
15. The WEDECO LBX 1500E UV disinfection system must be designed with built-in automatic reliability features that must be triggered by critical alarm setpoints.
16. Conditions triggering an alarm and startup of the redundant UV reactor include the following:
 - a. The UV dose goes below 105% of the minimum UV dose
 - b. Ballast failure
 - c. Multiple lamp failure.
17. Conditions that should divert the UV system effluent to waste include the following:
 - a. UV dose is below the minimum UV dose
 - b. UVT is below the minimum UVT tested during full-scale UV commissioning
 - c. UV intensity below the minimum validated of 17.2 W/m²
 - d. Complete UV reactor failure
 - e. Flow above the maximum that is tested during full-scale UV commissioning maximum flow, not to exceed the maximum validated of 13.5 MGD per reactor
18. The facility should be operated in accordance with an approved operations plan, which specifies clearly the operational limits and responses required for critical alarms. The operations plan should be submitted and approved prior to issuance of the operating permit. A copy of the approved operations plan should be maintained at the treatment plant and be readily available to operations personnel and regulatory agencies. A quick reference plant operations data sheet should be posted at the treatment plant and include the following information:
 - a. The alarm set points for flow, UV dose, UV intensity, UVT, and power.
 - b. Values of flow, UV dose, UV intensity, and UVT when effluent must be diverted to waste.
 - c. The required frequency of verification and calibration for all meters/analyzers measuring flow, UV intensity, and UV transmittance.
 - d. The required frequency of mechanical cleaning and equipment inspection.
 - e. The UV lamp tracking procedures and replacement intervals.

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19. The validation report did not address sleeve fouling. Each site should address the fouling potential of the wastewater. Each site must demonstrate proper cleaning procedures are in place. Proper maintenance and cleaning must be performed. The dose equation does not incorporate a fouling factor. This is not essential due to the fact that this reactor is proposed to be controlled via a calibrated germicidal sensor, which will account for the amount of lamp fouling in its intensity readings. However, the design engineer must consider fouling in the overall design capacity calculations.
20. Substitutions of equivalent equipment, including lamps, should not be accepted without an adequate demonstration of equivalent disinfection performance.

Staff Response to Comment State Water Board's Division of Drinking Water – 1

Central Coast Water Board staff consult State Water Board's Division of Drinking Water staff when developing recycled water production requirements for permits. Central Coast Water Board staff rely on State Water Board's Division of Drinking Water staff to provide ultraviolet (UV) disinfection system requirements because each UV disinfection system must abide by specific conditions to be officially considered in compliance with title 22 Water Recycling Criteria.

In an email on February 18, 2020, the State Water Board's Division of Drinking Water submitted UV disinfection system criteria recommended for inclusion in this Order (see comment above for email content). On April 14, 2020, after the public comment period for the February 7, 2020 Draft Order ended, the State Water Board's Division of Drinking Water submitted a comment letter¹³ providing the same provisions as above for the operation of the ultraviolet disinfection system at the Facility. Following is the direct transcript from the April 14, 2020 letter:

“Cayucos Sanitary District (CSD) submitted to the Division of Drinking Water (DDW) a final Engineering Report dated December 13, 2019 and provided additional information regarding the UV system on February 4, 2020. The UV proposal was reviewed by Mr. Brian Bernados in the DDW's Recycled Water Unit. On February 18, 2020 Mr. Bernados provided the Central Coast Regional Water Quality Control Board general permit provisions related to the proposed UV reactor; Xylem Water Solution's WEDECO LBX 1500E. At the time of the review, the UV reactor had not been built, therefore general provisions, related to the WEDECO LBX 1500E, are provided. Some provisions require Division of Drinking Water review and approval prior to operation of the proposed UV unit. The twenty (20) general provisions provided by Mr. Bernados are copied below:..[provided the same twenty provisions that are included in comment above.]...These twenty (20) provisions are considered necessary to achieve the equivalent of 450 mg-min/L chlorine disinfection treatment required to produce disinfected tertiary water specified in Title 22.”

¹³ Contact Central Coast Water Board staff to request a copy of the signed Division of Drinking Water letter on California Water Boards letterhead.

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Central Coast Water Board staff revised section IV.C to include the UV disinfection system criteria recommended for inclusion in this Order by State Water Board's Division of Drinking Water staff. Central Coast Water Board staff modified the UV disinfection system criteria recommended for inclusion in this Order by State Water Board's Division of Drinking Water staff to include the following: require that in addition to receiving State Water Board's Division of Drinking Water's approval, the Discharger must receive approval from the Central Coast Water Board Executive Officer for the on-site bioassay protocol, disinfection system performance, and operations plan; and revise the language about "prior to issuance of the operating permit" to prior to operation of the UV disinfection system.

Central Coast Water Board staff also revised section IV.G of Attachment F to the Draft Order to add clarifying language about requirements based on State Water Board's Division of Drinking Water recommendations.

Change Made: Revisions to sections IV.C and IV.G of Attachment F.

Goleta Sanitary District – 1

The Goleta Sanitary District ("GSD") appreciates the Regional Board's desire and efforts to advance water reuse as we have recycled over 8 billion gallons of waste water since 1990 and are seeking ways to expand reuse with our local water purveyor, the Goleta Water District. The purpose of this letter is to advise you of the serious concerns we have with certain provision that are contained in Draft Order No. R3-2020-0004 for the Cayucos Sanitary District ("CSD"). The provisions in question would require CSD to (i) prepare and implement a Recycled Water Management Plan to achieve, within ten years, beneficial reuse of 100 percent of the treated effluent from the CSD treatment plant, and (ii) demonstrate that the selected reuse approach will achieve the highest beneficial impact and best uses possible of the recycled water.

One of our concerns is that the Draft Order is inconsistent with the amended Water Quality Control Policy for Recycled Water that was adopted by the State Water Resources Control Board (SWRCB) on December 11, 2018 (the "Recycled Water Policy"). According to the SWRCB website the 2018 amendment (1) removes statewide recycled water mandates; and (2) sets narrative goals for the production and use of recycled water. Section 4.5.1.1 of the Recycled Water Policy states

"In the Amendment, the mandates were removed. If the mandates were maintained, the State Water Board would need to develop tools to make mandates enforceable. But at this time, pursuing a path of enforcement is not appropriate."

The Draft Order is inconsistent with the Recycled Water Policy because it mandates CSD to recycle 100 percent of its wastewater. In addition, under Section 3.1.2., the Water Recycling Policy sets forth a goal for reuse of all dry weather direct discharges of treated wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters

that can be viably put to a beneficial use. The Draft Order does not limit the recycling/reuse requirement to dry weather periods but instead provides that recycling may be limited to dry weather periods only if CSD demonstrates infeasibility. Under the infeasibility option, CSD is still required to maximize the volume of treated effluent reused during the wet season, which goes beyond the stated goal of the Recycled Water Policy.

Staff Response to Comment Goleta Sanitary District – 1

In response to comments regarding recycled water management plan development and implementation, primarily related to issues raised about viability and practicality, Central Coast Water Board staff revised section VI.C.6 in the Draft Order to remove the requirement to reuse the Facility’s treated effluent by a specified date and instead require recycled water management planning to inform requirements in future permits for implementation of a recycled water management program (See Staff Response to Comment Cayucos Sanitary District – 8). Also, see Staff Response to Comment Cayucos Sanitary District – 8 for additional information about changes in Draft Order requirements related to the 100 percent reuse language.

Although the State Water Board Recycled Water Policy generally encourages recycling statewide by providing incentives rather than enforceable requirements, the Policy provides the California Regional Water Quality Control Boards the flexibility to address site-specific situations. Section 1.5 of the Recycled Water Policy states, “It is the State Water Board’s intent to maximize consistency in the permitting of recycled water projects while also preserving sufficient authority and flexibility for the regional water boards to address site-specific conditions.”

Section III.C.8 of the Fact Sheet provides the legal justification for the recycled water management planning requirements and Section VI.B.6 of the Fact Sheet discusses how the State Water Board Recycled Water Policy supports these requirements and provides additional rationale for the requirements.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

Goleta Sanitary District – 2

A second concern is that achieving 100 percent beneficial reuse of wastewater may be financially infeasible for many agencies. GSD estimates that, in its case, compliance with such a requirement would cost close to 100 million dollars in capital expenditures, significantly increase our ongoing operating costs, and likely result in the doubling of our sewer service fees. Due to the Proposition 218 process, there can be no assurance that GSD could raise its rates to the level that would be required to cover such an enormous expense. A requirement for 100 percent beneficial reuse should not be imposed without first developing a plan for addressing the serious financial implications.

Staff Response to Comment Goleta Sanitary District – 2

See Staff Response to Comment Cayucos Sanitary District – 8 for an explanation about how Central Coast Water Board staff revised section VI.C.6 to remove the requirement to reuse the Facility’s treated effluent by a specified date and instead require recycled water management planning, in alignment with this comment.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

Goleta Sanitary District – 3

Finally, the requirements set forth in CSD’s Draft Order are being imposed on the wrong type of agency. In many cases, agencies that operate wastewater treatment plants do not serve as water purveyors to the public and do not have the authority to do so. That is the case with Cayucos Sanitary District and is also the case with the Goleta Sanitary District. A mandate for the increased use of recycled water should be not imposed on agencies that do not provide water service and do not have the authority to distribute recycle water.

Although Draft Order No. R3-2020-0004 obviously does impose any requirements on GSD directly, it can be expected to establish a precedent for orders issued for other wastewater treatment plants in the future. This concern is supported by the letter from the Central Coast Regional Water Quality Control Board to the Montecito Sanitary District dated January 28, 2020 (attached) which states as follows:

“In the future, we anticipate requiring all ocean dischargers to recycle 100 percent of their treated wastewater.”

Before the Regional Board establishes a precedent through the Cayucos permit or issues other permits requiring agencies to recycle 100 percent of their effluent, we believe it is essential for the Regional Board to engage with all affected agencies on this important issue. Imposing such a recycling requirement goes far beyond the Recycled Water Policy and has the effect of creating a “one size fits all” unfunded mandate through permit conditions. By first engaging in an outreach effort, perhaps a better solution can be achieved with the broad support of all affected agencies.

Staff Response to Comment Goleta Sanitary District – 3

See Staff Response to Comment Cayucos Sanitary District – 8 for an explanation about how Central Coast Water Board staff revised section VI.C.6 to remove the requirement to reuse the Facility’s treated effluent by a specified date and instead require recycled water management planning. The revised requirements in section VI.C.6 require the Discharger to identify local water purveyors and other potential customers that could use the Discharger’s treated effluent to achieve the goals for beneficial reuse and to engage identified entities to review the need and practicality of using the Discharger’s treated effluent. Section VI.B.6 of the Fact Sheet outlines the rationale for requiring the Discharger to identify and demonstrate engagement with

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local water purveyors and other potential customers about beneficially reusing the recycled water produced at the Facility.

The revised requirements in section VI.C.6 also require the Discharger to demonstrate it has meaningful engagement with applicable stakeholders throughout all critical stages of the recycled water management planning and feasibility assessment process.

Central Coast Water Board staff will seek opportunities to engage applicable stakeholders at critical stages in its planning and permitting processes related to recycling related requirements, to support producers of recycled water in finding beneficial uses for that water, and to the fullest extent possible within its authority to streamline permitting of recycled water projects. During the development of this Draft Order, through a combination of Central Coast Water Board staff initiation and stakeholder initiation, staff directly engaged staff from the following entities regarding the recycled water management requirements: Whale Rock Reservoir owners, California Coastal Commission (see Staff Response to Comment Cayucos Sanitary District – 8), Environmental Protection Agency, Surfrider Foundation, California Coastkeeper Alliance, WaterReuse California, California Association of Sanitation Agencies, and a few other Central Coast sanitary districts. Central Coast Water Board staff also informed other parties, identified on the interested parties list, of the opportunity to comment on the Draft Order and the public hearing to consider the issuance of the proposed Draft Order.

See Staff Response to Comment Montecito Sanitary District – 1 regarding Central Coast Water Board staff's January 28, 2020 letter to Montecito Sanitary District.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

Julie Tacker – 1

Citizens on the Central Coast have been impressed by Cayucos Sanitary District's progress toward building their new Water Resource Recovery Facility. What many didn't know, including your Board, is that the project doesn't have a sustainable disposal scheme and never has.

The "Achilles heel" of every wastewater project is disposal. An Achilles heel is a weakness in spite of overall strength, which can lead to downfall. While the mythological origin refers to a physical vulnerability, idiomatic references to other attributes or qualities that can lead to downfall are common. It is difficult to believe that this important component of the project hasn't been satisfactorily worked out to date. It is alarming that the above referenced project is allowed to dump its treated effluent to the Pacific Ocean for any period of time, let alone as many as ten years. The Draft Order, page 18, item 6.a. requires "Within one year of commencing operation of the ocean outfall, the Discharger shall submit to the Central Coast Water Board Executive Officer for review

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and approval a Recycled Water Management Plan detailing how the Discharger will achieve, within ten years of commencing operation of the ocean outfall, beneficial reuse of 100 percent of treated effluent.”

Ten years is too long to waste the water. The residents of Cayucos will pay handsomely to treat their wastewater to tertiary standards only to throw the resource away. If this truly is a “Water Resource Recovery Facility” or as the district calls it throughout their references, “Sustainable Water Project” and the project is allowed to discharge to the ocean, for even one day, it’s neither a “water resource recovery facility” nor a “sustainable water project.” As of the District April 2017 Final EIR no options for beneficial reuse have been identified.

The district broke ground on the project in August of 2018 with no “recovery” or sustainable” disposal scheme in place. Here we are nearly three years later, and the district is no closer to a satisfactory solution for disposal of high quality effluent. Today, the future looks no brighter, as the ocean outfall has been installed and per the Draft Order, the Water Board will allow this disposal method to continue for as many as 10 years (the district could ask for future extensions). The district may still have no alternative of disposal at the end of 10 years. The district should be required to develop a disposal scheme that excludes the Pacific Ocean prior to approval of the subject NPDES permit.

Staff Response to Comment Julie Tacker – 1

Wastewater from the Cayucos Sanitary District is currently treated at and discharged from the existing Morro Bay/Cayucos Wastewater Treatment Plant (WWTP) under Order No. R3-2017-0050, NPDES No. CA0047881. The Central Coast Water Board issued Time Schedule Order No. R3-2018-0019 to the Cayucos Sanitary District and the City of Morro Bay establishing a deadline to comply with Order No. R3-2017-0050, NPDES No. CA0047881, through the planning for and construction of wastewater treatment facility improvements. According to the information that the Cayucos Sanitary District provided with its Report of Waste Discharge, its new facility will produce higher-quality effluent, based on the facility design and treatment technologies being deployed, relative to effluent quality of the current Morro Bay/Cayucos WWTP. The Central Coast Water Board supports the initial use of the new discharge location because this will be more protective of receiving waters relative to sending Cayucos Sanitary District’s wastewater for treatment and discharge at the current Morro Bay/Cayucos WWTP.

Despite the Discharger’s producing higher quality effluent from its new facility relative to its old facility, the Central Coast Water Board expects the Discharger to work towards minimizing discharges from this new discharge location. Pursuant to California Water Code section 13263(g), “all discharges of waste into waters of the state are privileges, not rights.” Therefore, the Discharger does not have autonomy to discharge its treated wastewater to the ocean in perpetuity. Additionally, the State Water Board Recycled Water Policy includes the goal for reuse of all dry weather direct

discharges of treated wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters that can be viably put to beneficial use. In order to align this Order with the State Water Board Recycled Water Policy and to continue moving the Central Coast towards the statewide goal of reducing ocean discharges, this Order holds the Discharger accountable to seeking beneficial uses for its treated effluent to reduce discharges of treated effluent to the ocean for the long term.

Central Coast Water Board staff agrees with the commenter that the sooner the Discharger can start providing its treated wastewater for beneficial reuse the better. However, see Staff Response to Comment Cayucos Sanitary District – 8 explaining that Central Coast Water Board staff revised section VI.C.6 to remove the requirement to reuse the Facility’s treated effluent by a specified date. In that response, Central Coast Water Board staff acknowledges the unknowns related to establishing agreements with potential customers because the Discharger is not a water purveyor, uncertainties in the timing and content of the State Water Board’s pending direct potable reuse regulations, and other unforeseen challenges with implementing recycled water projects.

Central Coast Water Board staff recognizes long-term benefits in taking time to develop a reuse strategy if the end result will be a project providing higher benefits compared to a more readily available reuse option that may provide lower benefits. The revised recycled water management planning requirements in section VI.C.6 require the Discharger to demonstrate it goes through a diligent, well-thought out process for identifying and selecting a beneficial reuse option for its treated effluent that supports, if possible, the recycled water benefits identified in the State Water Board Recycled Water Policy. To hold the Discharger accountable to continuing to make tangible progress towards providing its treated effluent for beneficial reuse, section VI.C.6 requires the Discharger to identify next steps it will take during the term of the following Order to continue making measurable progress.

Change Made: None.

Julie Tacker – 2

Additionally, please consider requiring a reduction in wastewater flows through the order. The district should be required to engage the County of San Luis Obispo Planning Department in implementing ordinances that would require water conservation.

The community of Cayucos has never had a mandatory water conservation program. The community is comprised of many older homes and hotels, many of which are still fitted with high flow plumbing fixtures, such as toilets, showerheads and faucet aerators. Neighboring communities have seen great success by implementing 2:1 offsets/Retrofit-to- Build and Retrofit-on-Sale programs. These programs reduce water use, in turn reducing wastewater flows to be wasted through an ocean outfall and/or resulting in

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fewer complexities in identifying a sustainable disposal scheme. Several jurisdictions have used 50 gallons per capita per day for interior water use as a benchmark.

Los Osos and Cambria are exceeding all expectations in water use reductions, these communities exemplify conservation efforts. In theory, the less water pumped, used, conveyed, treated and disposed reduces impacts to the environment resulting in less impact to the ratepayers pocketbook.

Staff Response to Comment Julie Tacker – 2

Central Coast Water Board staff strongly supports water conservation and efficient water use and does not intend for its regulations to present barriers to efficient water use. Although Central Coast Water Board staff is very supportive of water conservation measures, it disagrees with amending the Order to require a reduction in flows as requested by the commenter.

Section III.C in the Draft Order includes a prohibition to regulate flows discharged from the Facility to hold the Discharger accountable to not discharging flows greater than its design flows. Additionally, Central Coast Water Board staff modified the Draft Order to include mass-based effluent limitations for BOD₅ and TSS (See Staff Response to Comment Cayucos Sanitary District – 24). The Draft Order now includes mass-based limits for all pollutants identified in Table 4 except for pH, for which mass-based limits do not apply. According to section 5.2.2.5 of the U.S. EPA's NPDES Permit Writers' Manual, "mass-based permit effluent limitations encourage water conservation [at the Facility] (e.g., minimize the potential for diluting process wastewaters by non-process wastewater, more efficient use of water) and pollution prevention (e.g., reduce waste loads to wastewater treatment facilities by physically collecting solid materials before using water to clean equipment and facilities)."

The Draft Order requires the Discharger to develop a plan for beneficially reusing its treated effluent. To bring this planning effort to fruition, the community of Cayucos or another community benefiting from use of the treated effluent may explore rate increases to pay for recycling projects. Progressive utility rate structures often heavily incentivize water conservation. For example, the Soquel Creek Water District recently modified its rate structure and service charges to fund its groundwater replenishment and seawater intrusion prevention project and has heavily incentivized water conservation by charging substantially higher rates when usage goes above a base tier.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 24.

Montecito Sanitary District – 1

The Permit as proposed mandates the reuse of 100 percent of the Cayucos Sanitary District's treated effluent. This mandate raises serious concerns for ocean discharging sanitary agencies such as the Montecito Sanitary District. Requiring the beneficial reuse

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of 100 percent of the District's treated effluent goes far beyond the implementation of the State's Recycled Water Policy goal and would be very difficult for Cayucos Sanitary District to meet given fluctuation in daily and seasonal water flows. The requirement to accomplish this feat in a 10 year time period is unrealistic if not impossible.

The Montecito Sanitary District's concerns about the permit condition are heightened by recent correspondence to Montecito Sanitary District from the Central Coast RWQCB wherein the Executive Officer states *"In the future, we anticipate requiring all ocean dischargers to recycle 100 percent of their treated wastewater."* A copy of this January 28, 2020 letter is attached for your reference.

We recommended that the RWQCB completely delete the 100 percent reuse mandate from the Cayucos Sanitary District permit. If water reuse must be addressed, the Board may consider Cayucos Sanitary District develop a recycling plan with an achievable timeline.

Staff Response to Comment Montecito Sanitary District – 1

In response to comments regarding recycled water management plan development and implementation, primarily related to issues raised about viability and practicality, Central Coast Water Board staff revised section VI.C.6 in the Draft Order to remove the requirement to reuse the Facility's treated effluent by a specified date and instead requires recycled water management planning to inform requirements in future permits for implementation of a recycled water management program (See Staff Response to Comment Cayucos Sanitary District – 8). Also, see Staff Response to Comment Cayucos Sanitary District – 8 for additional information about changes in Draft Order requirements related to the 100 percent reuse language.

On May 22, 2020, Central Coast Water Board staff sent a follow-up letter to Montecito Sanitary District to clarify portions of its January 28, 2020 letter. In the May letter, Central Coast Water Board staff clarified there is no mandate for the district or any other entity to recycle 100 percent of its wastewater.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

Surfrider – 1

Surfrider Foundation's is dedicated to the protection and enjoyment of oceans, waves, and beaches through a powerful activist network. Our San Luis Obispo chapter has opposed the Cayucos Sanitary District's ocean outfall, preferring the presently-shared outfall with Morro Bay until the two communities could work together toward a future of "No Ocean Outfall". However, as they say, "That ship has sailed". So, the chapter has reviewed the Draft Order and we have the following comments.

Staff Response to Comment Surfrider – 1
Comment Noted.
Change Made: None.

Surfrider – 2

Per the DRAFT ORDER NO. R3-2020-0004:

“Comprehensive Response to Climate Change requires a proactive response to climate change in all California Water Board actions, with the intent to embed climate change consideration into all programs and activities. Aligning with Resolution No. 2017-0012, this Order requires beneficial reuse of the Facility’s treated effluent to augment local water supply, increasing water supply reliability as a climate adaptation strategy, in addition to decreasing ocean discharges. The Discharger’s wastewater was previously treated and discharged from a facility in an area subject to coastal hazards and vulnerabilities. Aligning with Resolution No. 2017-0012, the Discharger sited this new Facility away from coastal hazards and vulnerabilities. To proactively plan for the future, this Order requires the Discharger to continue to identify and plan for hazards and vulnerabilities at this new Facility related to flooding, temperature, and influent fluctuations exacerbated by climate changes.”

Further, *“With the state of technology today, and environmental conditions which necessitate the reuse of treated wastewater, best practicable treatment or control means recycling treated wastewater where feasible. Recycling wastewater, as opposed to disposing this valuable resource to ocean waters, is critical to provide the maximum benefit to and to promote the health and welfare of the people of the state.”*

Surfrider SLO supports the managed retreat of vital coastal infrastructure associated with Cayucos Sanitary District’s Sustainable Water Project (SWP). However, we weren’t concerned with the conveyance of advanced secondary or tertiary treated waters between Cayucos and the outfall in Morro Bay. A new outfall will bring new problems.

Draft Order R3-2020-0004 adds another active outfall to our county, may institutionalize ocean outfall in Cayucos, does not fully consider proactive response to climate change, and does not require planning for the maximum benefit of sustainable recycling of wastewater. Further, the availability of this ocean outfall could have compounding, negative effects on the Central Coast. Surfrider’s comments on Cayucos’ SWP Draft EIR (April 10, 2017) said:

...“The project as described in the DEIR does not provide a path to sustainability. On page I-18 of the report, the projected maximum ocean outfall from the new plant will be 350 AFY. When recycled water is distributed for tertiary irrigation (Phase 1), ocean outfall will be decreased to 270 AFY. Finally, if/when Direct Potable Reuse is authorized by California regulators and also favored and subsidized by Cayucos residents in Phase

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2, 75 AFY will still be discharged to the ocean. Without Direct Potable Reuse, the water project described in the DEIR will still lose 77% to ocean outfall. To be truly “Sustainable”, the project’s goal should be for no ocean outfall.”

Neither Cayucos, nor the Draft Order, illustrate a clearly sustainable pathway for the last portion of effluent (calculated at 75 AFY) which may be used to convey brine discharge to the ocean. Since Cayucos Sustainable Water Project Phase 2 will take many years and additional substantial investment, Surfrider is concerned Cayucos Sanitary District will begin Brine Discharge Program for others (such as Cambria’s desalination project) to utilize. Building dependence for a method of brine discharge through ocean outfall will, in fact, institutionalize ocean outfall while wasting valuable water to convey the brine discharge. Without further measures written into the Draft Order, we believe the Order falls short of the policy outlined above (i.e. “maximum benefit of recycling wastewater”) and in fact will institutionalize Cayucos’ ocean outfall through the dependence it creates.

Brine Discharge Programs through ocean outfall will have predictable consequences for our Central Coast communities. A lack of reliable fresh water resources has been the primary balancing factor in tempering growth. For example, short-sighted plans with Cambria’s Sustainable Water Facility did not prepare for many factors such as “What do we do with the waste?” and “Do we need this project at all?”

In the case of Cambria, during shortages from drought, many citizens chose to import non-potable water from a neighboring groundwater source. Though the Cambria CSD does not measure or monitor this amount of imported water, the practice is still clearly visible when you see large water tanks in the yards of Cambria residents. In our letter to Cambria CSD regarding their Sustainable Water Facility Draft Subsequent EIR (10/13/2016), Surfrider SLO wrote: Our chapter does not support Cambria CSD’s building and expanding its desalination plant without measurement of all other available water resources and without extensive environmental review.

If Draft Order NO. R3-2020-0004 does not prohibit it, short-sighted plans such as Cambria’s SWP could simply plan to dump their brine waste into the ocean at Cayucos.

The California Coastal Commission agreed with Surfrider that growth-inducing effects (in places like Cambria) due to Cayucos’ new ocean outfall could impact SLO County (CCC Application No. 3-19-0617, on 9/11/2019). During the meeting in 2019, the CCC requested and authorized Special Condition 14 to their Coastal Development Permit: “Limitation on Outfall Use. The outfall approved through this CDP shall only be used for the development approved in this CDP, and any other use is prohibited.”

We request Central Coast Regional Water Quality Control Board (CCRWQCB) review the CCC’s actions and adopt a similar approach. Again, as long as the Board continues to permit new outfalls, California will not move away from ocean outfall. Similarly, until districts like Cayucos Sanitary District (or desalination plants) find a different method for discharging brine waste, ocean outfalls will remain institutionalized throughout

California.

Staff Response to Comment Surfrider – 2

The finding in section II.F of the Draft Order summarizes how the Draft Order provides a proactive response to climate change. The Discharger's wastewater was previously treated and discharged from a facility in an area subject to coastal hazards and vulnerabilities, and the Discharger sited this new facility away from coastal hazards and vulnerabilities. To proactively plan for the future, the Draft Order requires the Discharger to continue to identify and plan for hazards and vulnerabilities at this new facility related to flooding, temperature, and influent flow and loading fluctuations exacerbated by climate changes. Section VI.C.7.b in the Draft Order outlines requirements for submitting a Climate Change Response Hazards and Vulnerabilities Plan. Also, to proactively plan for the future, the Draft Order requires the Discharger to identify and assess the viability of beneficial reuse options for the Facility's treated effluent. Section VI.C.6 in the Draft Order outlines requirements for preparing recycled water management plans to describe in detail how the Discharger will maximize the amount of the Facility's treated effluent used for beneficial reuse, with the goal of achieving maximum beneficial reuse.

The Discharger's Report of Waste Discharge did not specify it would have a large brine component. In the future, if the Discharger proposes to accept brine of a significant quantity, it would need to notify the Central Coast Water Board pursuant to section VII.A in Attachment D (Standard Provisions) of the Draft Order, and the Central Coast Water Board Executive Officer can approve the introduction of new wastes if they determine the proposed new waste streams are consistent with the already permitted waste stream.

During the development of the Draft Order, Central Coast Water Board staff inquired if the Discharger had plans to develop a program to accept brine wastes in the future. The Discharger explained that conditions in the California Coastal Commission's Coastal Development Permit for the Facility may preclude the Discharger from accepting and discharging brine wastes. The Discharger indicated it may have interest in a brine acceptance program if this were allowable. The Central Coast Water Board sees an increased need for brine disposal locations in the Central Coast region; therefore, the Central Coast Water Board sees a need to promote distributed discharge locations to discourage long-distance transport of brine to reduce greenhouse gas emissions.

This Draft Order requires the Discharger to plan for and make measurable progress towards the beneficial reuse of its treated effluent. Depending on the end user of the treated effluent, the District may need to provide a higher level of treatment, resulting in a brine waste stream. The Central Coast Water Board strives to remove barriers to water recycling and therefore supports the Discharger's using the ocean outfall for disposal of brine if that is a byproduct of future water recycling processes. Footnote four in section VI.C.6 of the Draft Order specifies that brine discharges from recycled water facilities would be exempt from future expectations related to minimizing ocean

discharges. This footnote aligns with Section 3.1 of the State Water Board's Recycled Water Policy including the goal, "to support water supply diversity and sustainability and to encourage the increased use of recycled water in California: Reuse all dry weather direct discharges of treated wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters that can be viably put to a beneficial use. For the purpose of this goal, treated wastewater does not include discharges necessary to maintain beneficial uses and brine discharges from recycled water facilities or desalination facilities." In the future, if the District proposes a discharge of brine from its recycling processes, the Central Coast Water Board would reassess effluent limitations and monitoring requirements in the Order.

Central Coast Water Board staff revised section VI.C.7 of the Fact Sheet to emphasize its commitment to coordinate with the California Coastal Commission during reviews of the recycled water management plans required by the Draft Order. This coordination provides an opportunity to work with the California Coastal Commission to support both the Central Coast Water Board's and California Coastal Commission's water management and recycling goals and collaborate to promote streamlined permitting of recycled water projects.

Change Made: None.

Surfrider – 3

So, Surfrider SLO requests the CCRWQCB support research and development for constructed wetland projects which will be built for brine discharge burial and provide the surrounding communities (and our climate) with many additional benefits. Planning for constructed wetlands complies with California's policy outlined above: Recycling wastewater, as opposed to disposing this valuable resource to ocean waters, is critical to provide the maximum benefit to and to promote the health and welfare of the people of the state. On the Central Coast, open space is still available for constructed wetlands which would offer natural balance (open and/or recreational space), carbon and salt burial, sustainability, and the reduction of Greenhouse Gas emissions associated with hauling brine waste from desalination plants or wastewater reclamation facilities to ocean outfalls.

Surfrider SLO also advocates for constructed wetlands as redundancy for potential Sanitary Sewer Overflows (SSO), such as the existing WWTP site in Morro Bay. Once Morro Bay's Water Recycling Facility is completed on South Bay Blvd, the wetland could be built down-grade from their main lift station near Highway 1 and Morro Rock. Such a wetland could help reduce tsunami run-up, could capture or "Slow the flow" during storm events (urban run-off) or during a SSO, and would provide valuable climate change reduction benefits in an open, recreational space.

We don't have many chances to design sustainability and climate change adaptability into the lives of citizens on the Central Coast. Please follow the Coastal Commission's

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lead and add a prohibition of a future Brine Discharge Program into Cayucos' Draft Order NO. R3-2020-0004.

Please also work toward sustainable and climate adaptable solutions, such as those provided by constructed wetlands. Surfrider believes these steps are consistent with existing policy, and we are hopeful the CCRWQCB will use them to "proactively plan for the future".

Staff Response to Comment Surfrider – 3

Central Coast Water Board staff commends the commenter for advocating for innovative approaches to managing wastewater on the Central Coast. However, Central Coast Water Board staff disagrees with amending the Draft Order to require the Discharger utilize constructed wetlands as described in this comment. There are multiple methods to discharge brine and address climate change, so adding a requirement to pursue a specific solution would be overly prescriptive. If the Discharger and/or a partnering entity opted to pursue this type of project, it could potentially apply for grant funding from the State Water Board if such a project met grant funding project criteria.

See Staff Response to Comment Surfrider – 2 regarding the commenter's suggestion to prohibit future brine discharges.

Change Made: None.

WateReuse California (WateReuse CA) and California Association of Sanitary Agencies (CASA) – 1

The California Association of Sanitation Agencies (CASA) and WateReuse California (WateReuse CA) appreciate the opportunity to provide comments on the Draft Order establishing requirements for recycled water production and the discharge of treated effluent from the Cayucos Sanitary District's Water Resource Recovery Facility. CASA is a nonprofit association representing more than 125 public agencies and municipalities that provide essential public services throughout the state to protect the environment and public health, including wastewater collection, treatment, and recycling, biosolids management, and resource recovery. The mission of WateReuse CA is to promote responsible stewardship of California's water resources by maximizing the safe, practical and beneficial use of recycled water.

CASA and WateReuse CA are strong proponents of maximizing water reuse in California and appreciate the Regional Board's interest in increasing reuse in the Central Coast. We have been actively engaged in development of the Recycled Water Policy, supporting research and regulations for potable reuse, and efforts to increase funding for recycled water projects. As statewide organizations, we do not typically comment on matters pending before the nine regional water quality control boards. We do weigh in, however, when a proposed action raises significant issues with the

potential to set a precedent for other recyclers and discharges in the state.

As discussed in detail below, the proposed mandate for Cayucos Sanitary District (District) to recycle 100% of its treated effluent within a 10-year time frame is of serious concern to our members. The mandate/discharge ban contained in Special Provision 6 is unwarranted, impractical, and cost prohibitive. We believe the provision as drafted exceeds the Regional Board's authority as a water quality regulatory agency. Moreover, we do not believe that individual utility mandates are effective in advancing recycled water given the many complex factors that affect the feasibility of recycling, many of which are outside the agency's control.

Staff Response to Comment WaterReuse CA and CASA – 1

In response to comments regarding recycled water management plan implementation, primarily related to issues raised about viability and practicality, Central Coast Water Board staff revised section VI.C.6 in the Draft Order to remove the requirement to reuse the Facility's treated effluent by a specified date and instead require recycled water management planning to inform requirements in future permits for implementation of a recycled water management program (See Staff Response to Comment Cayucos Sanitary District – 8). Also, see Staff Response to Comment Cayucos Sanitary District – 8 for additional information about changes in Draft Order requirements related to the 100 percent reuse language.

Central Coast Water Board staff tailored the revised recycled water management planning requirements in the Draft Order to the Discharger and its proposed Facility. The Central Coast Water Board has not approved a new ocean discharge location for treated sanitary wastewater in decades. Therefore, the timing and specific components of the recycled water management planning requirements may not apply in other parts of the State of California. Central Coast Water Board staff worked closely with the Discharger during this Order issuance process to develop requirements that are reasonable and applicable to the Discharger. See the Staff Report for a discussion about Central Coast Water Board staff engagement and collaboration with the Discharger.

See Staff Responses to Comment WaterReuse CA and CASA – 2 through WaterReuse CA and CASA – 7 regarding the specific issues raised by WaterReuse CA and CASA.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

WaterReuse CA and CASA – 2

The Recycling Mandate Should be Replaced with a Feasibility Study –
We understand and share the Board's desire to maximize recycling as part of a sustainable water supply future. Given the many complexities that affect where, when, and how much any individual agency can realistically recycle, the necessary first step is

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to study the cost, regulatory framework, customer base, technical and jurisdictional impediments and other factors that are relevant to creating a viable program. The proposed permit puts the cart well ahead of the horse by mandating the recycling first and then directing the District, in essence, to “go figure it out.”

As an alternative, we recommended that Special Provision 6 be recast as a requirement for a special study on the feasibility of maximizing water recycling. We understand that the Coastal Commission has already conditioned its approval of the outfall on completion of such a study. The results of the study can be considered in developing the next five-year permit, or this permit could be reopened if necessary to incorporate appropriate provisions and milestones to implement the District’s plan to recycle dry weather flows that can be viably put to beneficial use. This would be consistent with the Recycled Water Policy.

Staff Response to Comment WaterReuse CA and CASA – 2

In alignment with the recommendation in this comment, Central Coast Water Board staff amended section VI.C.6 to remove the requirement to reuse the Facility’s treated effluent by a specified date and instead require recycled water management planning to inform requirements in future permits for implementation of a recycled water management program. See Staff Response to Comment Cayucos Sanitary District – 8 for more information about these modifications.

Section VI.B.6 of the Fact Sheet to the Draft Order provides a summary of the Discharger’s initial progress towards establishing the framework for recycled water management planning.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

WaterReuse CA and CASA – 3

The Special Provision for Recycling is Inconsistent with the Water Board’s Recycled Water Policy –

The Recycled Water Policy sets forth the state’s goal of beneficially reusing wastewater that can viably be recycled. The Recycled Water Policy goal states:

“Reuse all dry weather direct discharges of treated wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters that can be viably put to a beneficial use. For the purpose of this goal, treated wastewater does not include discharges necessary to maintain beneficial uses and brine discharges from recycled water facilities or desalination facilities.”

In adopting this goal the Water Board considered—and expressly rejected—mandating specific percentages of recycling.

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Among other considerations, the Board was mindful of the fact that the regulatory framework necessary for agencies like Cayucos Sanitary District to plan and implement projects to recycle significant volumes of water does not exist. Existing beneficial reuse options are limited. The State Water Board is charged with developing regulations for Direct Potable Reuse by 2023. Until that regulatory scheme has been developed it will be nearly impossible for agencies to plan for, let alone implement, projects to meet the Water Board goal, let alone an enforceable permit mandate.

Staff Response to Comment WaterReuse CA and CASA – 3

In alignment with the recommendation in this comment to remove specific percentages of recycling, Central Coast Water Board staff amended section VI.C.6 of the Draft Order. See Staff Response to Comment Cayucos Sanitary District – 8 for details about this modification.

The revised requirements in section VI.C.6.b of the Draft Order require the Discharger to submit Recycled Water Management Plan – Phase II describing in detail how it will maximize the amount of treated effluent used for beneficial reuse, with the goal of achieving maximum beneficial reuse (exception provided for brine discharges from recycled water facilities). Requiring the Discharger to plan for the maximum beneficial reuse of treated effluent is important, instead of limiting planning solely to reusing dry weather discharges of treated effluent to the ocean. The Central Coast Water Board makes this finding for the following reasons: 1) to align with the California Coastal Commission’s recycled water management planning objective to ensure the maximum amount of tertiary treated recycled water is produced and the maximum amount of such water is used for beneficial reuse purposes, 2) to support some of the beneficial reuse options the Discharger is currently assessing, such as reservoir augmentation, which could potentially accommodate dry and wet season flows during most times, 3) to promote the reuse of the disinfected tertiary recycled wastewater the Discharger is capable of producing during dry and wet seasons, 4) to incorporate the maximum benefit language proposed by the Discharger when staff and the Discharger worked collaboratively to amend section VI.C.6, and 5) to provide maximum viable benefit to people of the state. The State Water Board Recycled Water Policy leaves the California Regional Water Quality Control Boards the flexibility to address site-specific situations. Section 1.5 of the Recycled Water Policy states, “It is the State Water Board’s intent to maximize consistency in the permitting of recycled water projects while also preserving sufficient authority and flexibility for the regional water boards to address site-specific conditions.” Central Coast Water Board staff incorporated the recycled water management planning requirements into the Draft Order to include a clear approach for maximizing the amount of treated effluent used for beneficial reuse, with the goal of achieving maximum beneficial reuse, while maintaining consistency with the State Water Board Recycled Water Policy.

The State Water Board’s Recycled Water Policy has a goal to “reuse all dry weather direct discharges of treated wastewater to...ocean waters that can be viably put to a beneficial use,” yet this Draft Order permits the Discharger to discharge treated

effluent to a new location in the ocean. The requirements in the Draft Order for the Discharger to make progress towards providing recycled water for beneficial reuse, instead of discharging its treated effluent to the ocean in perpetuity, hold the Discharger accountable to aligning its actions with the State Water Board Recycled Water Policy, as opposed to moving the Discharger further away from the Policy's goals.

Central Coast Water Board staff acknowledges the uncertainties in the timing and content of the State Water Board's pending direct potable reuse regulations. In Staff Response to Comment Cayucos Sanitary District – 8, staff explains that this uncertainty was part of the rationale for revising the recycled water management requirements in section VI.C.6.

In the June 23, 2017 Recycled Water Facilities Planning Study, the Discharger suggests a surface water augmentation project using Whale Rock Reservoir as a preferable beneficial reuse option. The Discharger could potentially cover a reservoir augmentation project in Whale Rock Reservoir under Surface Water Source Augmentation Project (SWSAP) regulations found in Article 5.3 of the State Water Board's Recycled Water Regulations.¹⁴ However, to qualify for indirect potable reuse via surface water augmentation, the Discharger would need to demonstrate it can meet qualifying criteria, including a minimum theoretical retention time in the reservoir before extraction.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

WaterReuse CA and CASA – 4

The Proposed Permit Presumes that 100% Recycling is Achievable – Without any information in the record to conclude that 100% recycling—or anything close to it—is feasible, the permit nonetheless would establish an enforceable permit condition requiring it. We understand that the District will produce Title 22 tertiary recycled water, which is suitable for a variety of nonpotable uses. However, use of tertiary recycled water for irrigation is seasonally limited. Wet weather conditions would reduce or eliminate demand. If the District ultimately elects to pursue potable reuse such as reservoir augmentation, the advanced treatment process needed to comply with regulations would generate brine that would have to continue to be discharged, along with off-spec water.

The proposed order does provide a limited “out” in the form of an infeasibility option, but this provision would still require recycling of 100% of the dry season flows and maximizing the wet weather recycling—again without any evidence that this would be

¹⁴ State Water Resources Control Board Regulations Related to Recycled Water, effective October 1, 2018, https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/lawbook/rwregulations.pdf.

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technically or economically feasible.

The District is not a water purveyor, which means it cannot by itself ensure compliance with the recycling mandate. Including this requirement in an NPDES permit, enforceable by third parties, exposes the District to significant liability. It also places the District in an unequal bargaining position with regard to negotiation of purveyorship contracts.

Staff Response to Comment WaterReuse CA and CASA – 4

Central Coast Water Board staff made revisions to section VI.C.6 of the Draft Order that address the commenter’s feedback about the 100 percent recycling requirements, infeasibility issues, and unknowns related to establishing agreements with potential customers because the Discharger is not a water purveyor. See Staff Response to Comment Cayucos Sanitary District – 8 for further explanation about modifications to the recycled water management requirements and staff’s response to these issues.

The revised requirements in section VI.C.6.b of the Draft Order require the Discharger to submit Recycled Water Management Plan – Phase II describing in detail how it will maximize the amount of treated effluent used for beneficial reuse, with the goal of achieving maximum beneficial reuse. This sentence includes a footnote (see footnote four in the Draft Order) explaining that “treated effluent...does not include brine discharges from recycled water facilities.” This exception is directly from section 3.1.2 from the State Water Board Recycled Water Policy.

The Central Coast Water Board is invoking state law to require the recycled water management plans (see section III.C.8 of the Fact Sheet to the Draft Order for additional details). Additionally, section VI.B.6 of the Fact Sheet to the Draft Order states that the requirements related to the recycled water management plans in the Draft Order exceed the requirements of the CWA. Because the recycled water management planning requirements are state requirements, the Discharger would not be subject to third-party lawsuits under the CWA.

See Staff Response to Comment Cayucos Sanitary District – 6 for an explanation about how the revisions to section VI.C.6 of the Draft Order address the commenter’s concerns about placing the Discharger in an unequal bargaining position with regard to negotiating with potential recycled water users.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

WaterReuse CA and CASA – 5

The Time Frame is Unrealistic –

The proposed order requires the District to achieve 100% recycling within 10 years of commencing outfall operations. This timeframe is far too short to complete the multiple

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steps the permit itself acknowledges would be required: entering into contracts, identifying use sites and customers, planning, design, environmental permitting, construction, rate setting, financing and stakeholder engagement. To put this in perspective, some of the most ambitious recycling projects underway in the state currently have 20 to 30-year project schedules, and when fully operational will still not meet the proposed 100 percent discharge reduction.

Most water recycling projects are done in phases for a variety of reasons. Gradually phasing in reuse over time is more feasible financially, helps to build public support and confidence in recycled water, and gives permittees experience with the technologies to build on progress made over time. A short term 100% mandate is not only infeasible it is also unwise, as it does not allow for addressing these types of considerations in a thoughtful and locally driven adaptive manner.

Staff Response to Comment WaterReuse CA and CASA – 5
Central Coast Water Board staff revised section VI.C.6 in the Draft Order to no longer require the Discharger to reuse its treated effluent by a specified date and to remove the 100 percent reuse requirement. See Staff Response to Comment Cayucos Sanitary District – 8 for further details.
Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

WaterReuse CA and CASA – 6

Compliance with the Recycled Water Mandate Would be Cost Prohibitive – The 10-year timeline and 100% recycling mandate will increase the costs to this small District’s ratepayers. The one-sided mandate—on the sanitary district alone—will place the District at a serious disadvantage in negotiating with water purveyors and customers regarding the rate at which recycled water would be sold, the cost of delivery and the cost of additional treatment infrastructure. Knowing that the District is under a strict requirement, there is little incentive for partner entities to engage in cost sharing or fair pricing of the water.

Further, the District may never be able to achieve the 100 percent, 365 days a year mandate, which will require additional costly facilities and will have significant impacts to the ratepayers. It is surely not achievable without potable reuse or reservoir augmentation, both of which would require advanced treatment including reverse osmosis. The price of the water produced would be very expensive, and the District could run afoul of Proposition 218 and other laws if it were to shift the cost for producing water supply to its existing customers.

Staff Response to Comment WaterReuse CA and CASA – 6
Central Coast Water Board staff revised section VI.C.6 to no longer require the Discharger to reuse its treated effluent by a specified date and to remove the 100 percent reuse requirement. See Staff Response to Comment Cayucos Sanitary District

– 8 for further details.

The revised recycled water management requirements no longer require the Discharger to reuse its treated effluent by a specified date, addressing the commenter’s concern about a mandate putting the Discharger in an unequal bargaining position for negotiating with potential water purveyors and customers. The revised requirements instead solely focus on planning to inform future beneficial uses of recycled water produced at the Facility, including engaging local water purveyors and other potential customers to review the need and practicality of using the Discharger’s treated effluent.

Central Coast Water Board staff collaborated with the Discharger when revising section VI.C.6 to incorporate funding-related requirements tailored to the Discharger including the following: 1) to inform the selected beneficial reuse, provide cost estimates for identified reuse options and identify and evaluate funding options and limitations for the reuse options and 2) once a reuse option is selected, provide a financial strategy for the proposed beneficial reuse. The Discharger helped inform the requirements for the Discharger to assess opportunities to obtain outside funding (e.g., revenues from recycled water sales, grant and loan funding opportunities) and funding from partnering entities and benefiting parties (e.g., water purveyors, customers) to finance a beneficial reuse project. The Draft Order no longer requires the Discharger to consider and evaluate increases to its own utility rate structure as part of its comprehensive evaluation of funding options for future projects.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.

WaterReuse CA and CASA – 7

The Regional Water Board Does Not Have Authority to Mandate Recycling – Water Code section 13360(a) provides that a regional water quality control board may not specify the “particular manner” in which compliance may be had with waste discharge requirements. The Regional Board may set effluent and receiving water limitations and impose prohibitions where information in the record demonstrates that those requirements are necessary to protect water quality. The proposed order goes beyond this authority to dictate a particular water supply management program in the form of recycling.

The Regional Board lacks the authority to require the District, a local agency, to recycle its wastewater. The District governing Board has the exclusive authority to decide whether to reuse or discharge wastewater produced by a POTW. (*Los Angeles Waterkeeper v. State Water Resources Control Board. et al.*, Los Angeles Superior Court Case No BS171009 (2019) (*LA WaterKeeper*) Water Code section 1210 provides that “the owner of a wastewater treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated wastewater...”

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As the Los Angeles Superior Court found in rejecting a claim that wastewater agencies should be required to recycle water under the waste and unreasonable use provisions of the California Constitution:

None of the facts concerning recycling are before the Regional Board when it considers a permit (citations omitted), and no law mandates the use of recycled water. At best, the Regional Board has the authority - in furtherance of state policy to do so (Water Code 13576) -- to encourage the recycling of wastewater. (*LA WaterKeeper* at p.32.)

The proposed permit goes even further by requiring not only full reuse but specifying that the District demonstrate that the selected reuse approach will “achieve the highest beneficial impact and best uses *possible* of the recycled water.” (Proposed Permit at P.20.) The permit would mandate not only that the District recycle its water but that the Regional Board would have the final say as to how the water is used, without regard to cost or feasibility. The District’s treated wastewater belongs to the agency, and the Regional Board does not have the legal authority to substitute its judgement for that of the locally elected governing board regarding the appropriate use of the water.

Staff Response to Comment WaterReuse CA and CASA – 7

In response to comments regarding recycled water management plan development and implementation, primarily related to issues raised about viability and practicality, Central Coast Water Board staff revised section VI.C.6 in the Draft Order to remove the requirement to reuse the Facility’s treated effluent by a specified date and instead require recycled water management planning to inform requirements in future permits for implementation of a recycled water management program (See Staff Response to Comment Cayucos Sanitary District – 8). The revised Draft Order does not prescribe a specific method of compliance but rather requires the Discharger to demonstrate it selects the beneficial reuse option providing the highest beneficial impact that it can viably implement. The requirement for the Discharger to consider beneficial impact when assessing uses of its recycled water aligns with section 2 of the State Water Board Recycled Water Policy outlining benefits of recycled water. The Draft Order specifies a process for assessing beneficial reuse option feasibility, including costs, to help inform the Discharger’s recommendation. The Draft Order provides an option for the Discharger to pursue a lower ranked beneficial reuse option, for reasons other than viability constraints, but it needs to provide the rationale for pursuing an option providing lower benefits.

Change Made: See revisions listed in Staff Response to Comment Cayucos Sanitary District – 8.