

Response to Comments

City of Ventura
Ventura Water Reclamation Facility
Tentative Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit

This Table describes all significant comments received from interested persons with regard to the above-mentioned tentative permit. Each comment has a corresponding response and action taken.

Table 1. Comments received from City of Ventura on January 6, 2020

Comment Number	Comment	Response	Action Taken
1	PRIMARY COMMENTS		
1.a.	<p>Fact Sheet, Section IV.C.2.b.xi on page F-31: The City requests that the last paragraph in this section be revised as follows in recognition of the following facts: the water quality/wildlife ponds were constructed in 1977 in uplands along with the wastewater treatment plant to serve as a natural component of the Ventura Water Reclamation Facility (VWRF) treatment system, providing for water quality polishing (including nutrient reduction and chlorine dissipation), as well as to provide some additional benefit for bird species. The model followed in creating this treatment system component was set by the treatment system implemented in the early- to mid-1970s by the City of Arcadia. The Fact Sheet improperly characterizes the water quality /wildlife ponds in a manner akin to a receiving water, but the Santa Clara River Estuary (SCRE) and not the water quality/wildlife ponds are the receiving water. To correct the Fact Sheet, the City requests the following revisions:</p> <p>"Since the Facility discharges into the wildlife ponds, thence to the Estuary, it is necessary to protect the existing wildlife residing at these ponds. In order to ensure protection of aquatic life utilizing the ponds and aquatic life utilizing the estuary, for total ammonia, the Discharge shall comply at two points of compliance, monitoring locations EFF-001 and EFF-001A."</p>	<p>The two total ammonia effluent limitations are both water quality-based effluent limitations. In consideration of the comment and suggested revisions, the Regional Water Board has revised the language in the Fact Sheet for clarification. The paragraph beginning "Since the Facility discharges into the wildlife ponds, ..." is replaced with the following paragraph:</p> <p>"The Facility discharges to the Santa Clara River Estuary via water quality/wildlife ponds. The ponds serve water quality polishing, storage and equalization functions, and are also utilized by birds. Currently, the water quality related function of the ponds includes allowing time for temperature and pH to stabilize and more closely match ambient conditions in the estuary prior to discharge. In order to prevent water quality degradation in the ponds and ensure protection of aquatic life residing in the estuary, the Discharger is required to demonstrate compliance with effluent limitations for Total Ammonia at two separate monitoring stations: EFF-001 and EFF-001A. The effluent limitation for Total Ammonia at EFF-001 is a water quality-based effluent limitation, calculated using the treatment facility's recent historical performance and is intended to prevent water quality degradation and protect aquatic life and wildlife using the ponds. The effluent limitation for Total Ammonia at EFF-001A is also a water quality-based effluent limitation calculated using the existing data</p>	Changes were made to the permit.

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	<p>"The Facility discharges to the Estuary via constructed water quality/wildlife ponds. The ponds serve water quality polishing, storage and equalization functions, and are also utilized by birds. Currently, the water quality related function of the ponds includes allowing time for temperature and pH to stabilize and more closely match ambient conditions in the receiving water, i.e., the Santa Clara River Estuary, prior to discharge. In order to prevent water quality degradation in the ponds and ensure protection of aquatic life residing in the receiving water (estuary), the Discharger is required to demonstrate compliance with different effluent limits for Total Ammonia at two separate monitoring stations: EFF-001 and EFF-001A. The effluent limit for Total Ammonia at EFF-001 is based on the Discharger's recent historical performance and is intended to avoid potential nuisance conditions in the ponds. The effluent limit for Total Ammonia at EFF-001A is based on the applicable water quality objective, specified in the Basin Plan, and is intended to protect the designated beneficial uses of the receiving water."</p>	collected from the estuary, and is intended to protect the designated beneficial uses of the estuary."	
1.b	<p>Tentative Order, Section V.A.2 on page 9: This provision contains conflicting requirements regarding the receiving water. The receiving water is the Santa Clara River Estuary. Only one limitation on change of pH in the receiving water can be complied with, and the Basin Plan states that changes in pH levels in the estuary should be limited to 0.2 units or less. Therefore, this provision should be revised as follows:</p> <p>"The pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of wastes discharged. Ambient pH levels shall not be changed more than 0.5 units from natural conditions as a result of wastes discharged. Natural conditions shall be determined on a case-by-case basis. At the estuary, the ambient pH levels shall not be changed more than 0.2 units from natural conditions as a result of wastes discharged. <u>Natural conditions shall be determined on a case-by-case basis.</u>"</p>	The tentative Order has been revised to delete the pH differential of 0.5 unit, which does not apply in the estuary. As indicated in the tentative Order, Section V.A.2, the pH differential of 0.20 unit applies in the estuary.	Changes were made to the permit.
1.c.	<p>Tentative Order, Section VI.C.2.a, pages 16-17 (and global revisions to the term "Transition Plan"). As background for this comment, in compliance with the Current NPDES</p>	"Transition Plan" is not synonymous with "compliance schedule." These terms are not interchangeable. A compliance schedule means a set of interim requirements	None necessary.

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	<p>Permit, the City conducted the Estuary Special Studies to determine whether any effluent discharge is needed to provide enhancement and sustain the Estuary's native species pursuant to, among other applicable law, the Enclosed Bays and Estuaries Policy, and if so, how much. Current NPDES Permit, Section VI.C.2.b.i, p. 16. In addition, as the City submitted the Estuary Special Studies to Wishtoyo Foundation's Ventura Coastkeeper Program ("Wishtoyo") and Heal the Bay, who convened a Technical Review Team to review, analyze and comment on the Estuary Special Studies and produced the "TRT Reports" (as defined in the City's Report of Waste Discharge ("ROWD")), which were also provided to the Regional Board. Further, in compliance with the Regional Board's conditional approval of the Estuary Studies work plan, the City, Wishtoyo, and Heal the Bay engaged an independent scientific review panel to provide a peer review of the Estuary Special Studies and produce the "SRP Report" (as defined in the ROWD), which was also provided to the Regional Board. All of these studies reports were also provided to and analyzed by the National Marine Fisheries Service ("NMFS"), the U.S. Fish and Wildlife Services ("USFWS"), and the California Department of Fish and Wildlife ("CDFW") (collectively the "Resources Agencies") as well as other stakeholders, and the Resources Agencies commented on these reports as requested by the Regional Board in December of 2018. Based on the information and findings of these studies reports, which collectively comprise the best available scientific information regarding the need for continued discharge of tertiary treated effluent to the Estuary to sustain its native species and enhance beneficial uses, the SRP and TRT recommend that discharges to the SCRE should be reduced to an average annual closed-berm continued discharge level (collectively CDL) of 0 to 0.5 MGD. As set forth in the current NPDES Permit Fact Sheet, the information and findings of these studies and reports are now being used by Regional Water Board staff in evaluating appropriate NPDES permit terms and conditions regarding continued discharges to include in the proposed Tentative Order. Current NPDES Permit Fact Sheet, Section III.C.10, p. F-17.</p>	<p>and dates for their achievement, including an enforceable sequence of actions or operations, leading to compliance with an effluent limitation, other limitation, prohibition, or standard.</p> <p>The transition plan, as submitted, does not fully meet the regulatory requirements for a compliance schedule. Specifically, the implementation schedule, interim requirements, and deadlines do not the meet the federal requirements for a compliance schedule.</p> <p>The term transition plan, as described in this permit, is appropriate because interim tasks, milestones, and dates are still not set for implementation of the Infrastructure Diversion Project. The permit allows for the Permittee, Resources Agencies and other stakeholders to convene and finalize the transition plan.</p>	

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	<p>As anticipated when the Current NPDES Permit was issued, the City requested in the ROWD a compliance schedule to design, permit and construct the substantial infrastructure necessary to divert effluent to advanced water purification and potable reuse, and reduce discharges to the SCRE to an average annual closed berm CDL of 0 to 0.5 MGD (the "Infrastructure Diversion Project") for purposes of complying with the Enclosed Bays and Estuaries Policy. The Tentative Order currently provides for preparation and approval of a "Transition Plan," which is essentially the equivalent of a compliance schedule for implementation of the Infrastructure Diversion Project as anticipated and requested in the ROWD.</p> <p>While there appears to be no material difference in compliance schedule and the Transition Plan required by the Tentative Order, the City suggests that revising the text of the permit to replace the term "Transition Plan" with the term "Compliance Schedule" would prevent any uncertainty or confusion about the function of the Transition Plan in the City's efforts to implement reductions in discharge to the Estuary based on best available scientific information and in compliance with the Enclosed Bays and Estuaries Policy as well as the state and federal Endangered Species Acts. Therefore, the City renews its request to change the term "Transition Plan" to "Compliance Schedule."</p>		
1.d	<p>Tentative Order, Section VI.C.2.a on page 16: the middle of the first paragraph refers to the current permitted closed berm, average annual flow to the SCRE of 9 MGD ... " (emphasis added). The City inadvertently described the current flow limitation in the VWRF NPDES Permit inaccurately. In fact, the current flow limitation in the NPDES permit is monitored at monitoring location EFF-001F, and is a "dry weather" average annual flow limit, and not a "closed berm" limit. This distinction is important. For example, factually, while the berm is often closed during dry weather, that is not always the case, and the berm may also be closed for a period of time during wet weather, but the current discharge limitation would not apply when it is raining, even if the berm remains closed. Further, it requires a very different diversion and discharge system, including</p>	<p>The Board partially concurs. The suggested language addressing "dry weather" is acceptable. Regarding the substitution of transition plan with compliance schedule, see Response to Comment 1.c.</p>	<p>Changes were made to the permit.</p>

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	<p>design, permitting and construction of the Diversion Infrastructure Project, including particularly the additional diversion and storage capacity components of that project as described in this provision of the Tentative Order, for the City to be able to limit discharges to the Estuary when the berm is closed, as opposed to limiting discharges to the Estuary during "dry weather." In addition, the "dry weather" flow limitation is not based on berm dynamics or protection of the SCRE, but instead is based on limitations of the wastewater treatment plant design. Based on this explanation, the City requests that the following sentence of this section be revised as follows to correct our mistake in the ROWD and to accurately reflect the current discharge limitation, and also to reflect the City's request that the term "Compliance Schedule" be substituted for Transition Plan throughout the Permit:</p> <p>"The Transition Plan <u>Compliance Schedule</u> shall include specific infrastructure design, environmental permitting, and operational steps and engineering requirements to transition from the current permitted closed berm, average annual <u>effluent dry weather</u> flow <u>rate</u> to the SCRE of 9 MGD, to a closed berm, average annual Phase IA continued discharge level (CDL) to the SCRE (measured based on a water year from Oct. 1 to Sept. 30) (collectively, CDL) of 1.9 MGD."</p>		
1.e.	<p>Tentative Order, Table 4 on page 7: For Chronic Toxicity, the "% Effect" threshold for the MDEL is also being proposed as a part of the State Water Board's draft Toxicity Provisions. To accurately describe the application of the percent effect level, it should be footnoted here that this %Effect is for the <u>survival endpoint</u>, except for test methods that do not have a survival endpoint, in which case %Effect is for the sub lethal endpoint. The City requests that a footnote be added to Table 4 that applies to the "Pass or %Effect <50" text in the "Maximum Daily" column applicable to Chronic Toxicity, as follows:</p> <p>"For methods that have both a survival endpoint and a sublethal endpoint, the %Effect applies only to the <u>survival endpoint</u>. For methods that have only a sublethal endpoint the %Effect applies to that sublethal endpoint."</p>	<p>The Statewide Toxicity Provisions in the Inland Surface Water, Enclosed Bays and Estuaries Water Quality Control Plan (ISWEBE Plan) have yet to be adopted. Due to the Alaska Rule, draft water quality provisions may not be implemented by the Regional Water Boards until after they have undergone the full approval process, including approval by the Office of Administrative Law and by USEPA.</p>	None necessary.

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1.f.	<p>Tentative Order, V.A.24.d on page 11: If a downstream sample fails the chronic toxicity test, but the concurrent effluent sample passes, then the discharge <u>did not cause</u> toxicity in the receiving water. Because the effluent is in compliance, accelerated WET testing is not necessary, regardless of whether the upstream sample passes or fails. The reference to upstream testing can be appropriately deleted from this paragraph because instructions for evaluating upstream toxicity results are already described in the preceding permit provision (V.A.24.c). Therefore, to improve clarity and ensure proper implementation of these two related provisions, the City requests that Section V.A.24.d be revised as follows:</p> <p>“If the chronic toxicity median monthly threshold of the receiving water at both upstream and the downstream stations is not met, but the effluent chronic toxicity median monthly effluent limitation was met, then accelerated monitoring need not be implemented.”</p>	<p>Note that there is a requirement in this section that was not identified by the commenter. Section V.A.24.c. states that:</p> <p>“If the chronic toxicity median monthly threshold at the immediate downstream receiving water location is not met and the toxicity cannot be attributed to upstream toxicity, as assessed by the Permittee, then the Permittee shall initiate accelerated monitoring...”</p> <p>Based on the above, both upstream and downstream stations should have a known toxicity to be able to infer whether accelerated monitoring is required.</p> <p>This requirement is consistent with all POTWs’ NPDES permits in this region.</p>	None necessary.
1.g.	<p>Tentative Order, Section VII.A on page 26: Although the City acknowledges and understands that the permit text cannot change the proper role and application of Porter-Cologne statutory provisions and the statewide Enforcement Policy, the language in this section of the Tentative Order appears to improperly bypass the application of these legal provisions to the Regional Water Board’s consideration of monitoring data and determination of a violation. The City requests that this provision be revised as follows:</p> <p>“For purposes of reporting and administrative enforcement by the Regional and State Water Boards, the Permittee shall be deemed <u>determined</u> out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reporting level (RL) and as set forth in <u>Cal. Water Code Section 13385 and the California Enforcement Policy (2019).</u>”</p>	<p>We have revised the text as follows:</p> <p>“For purposes of reporting and administrative enforcement by the Regional and State Water Boards, the Permittee shall be deemed out of compliance with effluent limitations if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the reporting level (RL).</p>	Changes were made to the permit.
1.h.	<p>Monitoring and Reporting Program, Attachment E (MRP), Section V.A.4 on page E-12:</p> <p>The City requests that the last sentence in this section be amended by adding the following language to reflect the</p>	See Response to Comment 1.e.	None necessary.

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	<p>proper role of the 3-species screening protocol vis-a-vis a determination of exceedance, consistent with "Violation Reporting" requirements in the Draft Toxicity Provisions at IV.B.2.i on page 29:</p> <p><u>"In the case where an MDEL or MMEL is exceeded for more than one species during species sensitivity screening and rescreening, only those toxicity tests of the most sensitive species at the IWC shall be used for determining compliance with the toxicity MDEL or MMEL."</u></p>		
1.i.	<p>MRP, Section V.A. 7 on page E-14: The City requests that the provisions of this section regarding accelerated monitoring should be modified to limit the accelerated monitoring procedure to a maximum of three independent toxicity tests (consisting of the initial test and a maximum of two MMEL compliance tests) conducted within the same calendar month, consistent with the City's understanding of the proper operation of these provisions based on review and participation in the stakeholder workshops conducted by the State and Regional Water Board for the Draft Toxicity Provisions. Incorporating these provisions in the City's renewed permit will conform the text to the City's understanding of the proper methods, protocols and procedures that should be followed in conducting toxicity tests, and preparing and implementing the TRE work plan. The suggested revisions indicate the City's planned methods, protocols and procedures for compliance with the proposed permit and soon-to-be adopted Toxicity Provision, unless the Regional Water Boards directs the City in writing to revise its planned compliance approach. The requested text changes will streamline the process of determining the need to conduct a TRE and will avoid unnecessary and resource-intensive additional toxicity testing when the VWRF effluent is in compliance. The City recognizes that the requirement to implement the TRE protocol based on up to three samples within a single month as suggested by the requested text changes can be onerous, but believes that certainty in testing instructions for monitoring staff and the reduction in the total number of tests that must be performed overall are important for the City to attain maximum and efficient compliance with the new chronic toxicity</p>	See Response to Comment 1.e.	None necessary.

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	<p>requirements. Accordingly, the City requests that section V.A.7 on page E-14 of the MRP should be revised to incorporate provisions consistent with the Draft Toxicity Provisions as follows:</p> <p>"When there is discharge on more than one day in a calendar month, the Median Monthly summary result shall be used to determine if accelerated testing needs to be conducted. When there is discharge on only one day in a calendar month, the Maximum Daily single result shall be used to determine if accelerated testing needs to be conducted.</p> <p>Once the Permittee becomes aware of this result, the Permittee shall implement an accelerated monitoring schedule within five calendar days of the receipt of the results. However, if the sample is contracted out to a commercial laboratory, the Permittee shall ensure that the first of four <u>two</u> accelerated monitoring tests is initiated within seven calendar days of the Permittee becoming aware of the result. The accelerated monitoring schedule shall consist of four <u>two</u> independent toxicity tests (including IWC), conducted at approximately two-week intervals, initiated within the same calendar month over an eight-week period; in preparation for the TRE process and associated reporting, these results shall also be reported using the EC25. If each of the accelerated toxicity tests results in "Pass", the Permittee shall return to routine monitoring for the next monitoring period. If one of the accelerated toxicity tests results in "Fail," the Permittee shall immediately implement the TRE Process conditions set forth below."</p>		
1.j.	<p>MRP, Section V.A.8.a on page E-14: The City's toxicity laboratory (Pacific Eco Risk in Fairfield, CA) notified the City that fifteen days is an insufficient amount of time to conduct a thorough facility performance evaluation, perform the initial data evaluation, and then prepare the Detailed TRE Work Plan to fulfill information requirements that include actions to correct the causes of toxicity and actions to mitigate the effects of the discharge. The City requests that this requirement be modified to allow thirty days for submittal of the Detailed TRE Work Plan.</p>	<p>The Board concurs. The MRP has been revised to change 15 days to 30 days.</p>	<p>Changes were made to the permit.</p>

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1.k.	MRP , Footnote 20 on page E-18: This footnote should be modified to require receiving water chronic toxicity monitoring at RSW-005 (upstream station) and <u>RSW-004</u> <u>because</u> , as Table E-1 on page E-5 makes clear, RSW-004 is the receiving water monitoring station located "immediately downstream of the discharge". This revision is important because samples collected at RSW-003 and RSW-002 are likely to be influenced by sources of toxicity not related to the VWRf discharge, and RSW-002 is on the opposite side of the estuary from the VWRf discharge. Moreover, the footnote should be modified to clarify that only samples from one upstream (RSW-005) and one downstream (RSW-004) receiving water station must be tested for chronic toxicity.	The Board concurs. Footnote 20 on page E-18 was revised to indicate that samples for chronic toxicity shall be collected upstream (at RSW-005) and immediately downstream (at RSW-004) only.	Changes were made to the permit.
1.l.	MRP , Footnote 20 on page E-18: This footnote refers to "section V" for chronic toxicity monitoring requirements in receiving water, whereas species sensitivity screening procedures described in section V are not relevant to receiving water monitoring. The City requests that this footnote be modified to clarify that the species sensitivity screening element of section V does not apply to receiving water chronic toxicity monitoring.	The Board concurs. Corrections have been made. The species sensitivity screening does not apply to receiving water. Footnote 20 was revised to reflect the changes.	Changes were made to the permit.
2	COMMENTS ON MONITORING STATIONS AND PROPOSED EFFLUENT AND RECEIVING WATER LIMITATIONS		
2.a.	Tentative Order , page 1, the latitude and longitude of Discharge Point 001 locate the discharge at the VWRf entrance gate. The City requests that coordinates be revised to reflect the actual Discharge Point 001 location as follows: Latitude: 34.23977 <u>34.23937</u> ° Longitude: 119.26020 - <u>119.25870</u> °"	The Board concurs. Corrections have been made to reflect the correct coordinates.	Changes were made to the permit.
2.b.	Tentative Order , Table 4 on pages 6 and 7: The current permit contains a provision in the Fact Sheet that precludes an exceedance of the nitrate-N limit from being double-counted as an exceedance of the nitrate+nitrite-N limit. The City understands that this approach will continue to be employed, and therefore requests that a footnote be added to these limits to retain language from the current permit as follows:	The statement in the Fact Sheet of the previous permit was an error. Hence, it was not carried forward to this proposed permit. There is no exception to an exceedance of any effluent limitation except as noted in section IV.A.1.e. of the Order, which states: ... "During wet-weather storm events in which the flow exceeds the design capacity, the mass discharge rate	None necessary.

Comment Number	Comment	Response	Action Taken
	"The effluent limitation for nitrate+nitrite as N in concentration shall not apply when the concentration limitation for nitrate as nitrogen or nitrite as nitrogen is exceeded. The effluent limitation in mass load shall not apply when the mass load limitation for nitrate as nitrogen or nitrite as nitrogen is exceeded."	limitations shall not apply, and concentration limitations shall be the only applicable effluent limitations."	
2.c.	Tentative Order , Section V.A, pages 8 to 11: The City notes, and, in complying with the draft permit once adopted, intends to rely in determining its compliance with receiving water limitations on the statement in the Fact Sheet at IV.C.2.b.xvi on page F-39, which provides: compliance with effluent limits for nutrients demonstrates that the VWRf discharge does not cause or contribute to exceedances of receiving water limits, specifically those narrative limits at V.A.3, V.A.10, V.A.11, V.A.18, V.A.21 and V.A.22	The Board disagrees. Compliance with the numeric effluent limitations for nutrients does not guarantee compliance with the narrative receiving water limitations identified by the City in its comment. Compliance with some of these narrative receiving water limitations may be affected by more than just discharge of nutrients. Additionally, the Board notes that the receiving water limitation for dissolved oxygen in Section V.A.3 is a numeric limit, not a narrative limit.	None necessary.
2.d.	Attachment B , page B-1: the flow monitoring location (EFF-001F) is not identified. Included with this comment letter is a revised map with the location of EFF-001F identified for the Regional Water Board's use in Attachment B of the Tentative Order.	The Board concurs. Attachment B is replaced with a revised map.	Changes were made to the permit.
2.e.	MRP , Table E-1 on page E-5: The "Monitoring Location Description" for EFF-001F is incorrect and should be revised as follows: "Effluent Monitoring Station: At the Parshall flume flow meter located downstream from EFF-001 and is used for flow measurement only. Latitude: 34.23981677 , Longitude: -119.260755946 (Previously designated as M-001F)"	The Board concurs. Corrections have been made.	Changes were made to the permit.
2.f.	Fact Sheet , Section II.B.1 on page F-5: The coordinates used to describe the location of Discharge Point EFF-001 place the discharge at the City of Simi Valley Water Quality Control Plant. The City requests that the coordinates be corrected as follows: Latitude: 34.2393728200 , Longitude: -119.25870 - 118.81290	The Board concurs. Corrections have been made.	Changes were made to the permit.
3	COMMENTS ON THE MONITORING AND REPORTING PROGRAM		

Comment Number	Comment	Response	Action Taken
3.a.	<p>MRP, Section I on page E-4: The Monitoring and Reporting Program should clarify that "spikes" (excursions) on continuous monitoring equipment that are due to routine equipment maintenance (calibration, cleaning) are not considered violations of permit limits. The City requests that an additional subsection "P" be added to clarify this exception as follows:</p> <p>"Temporarily elevated monitoring results associated with routine maintenance or a malfunction of continuous monitoring equipment shall not be considered a permit violation."</p>	Spikes (excursions) are addressed in Attachment D – Standard Provisions section I.H. – Upset. Additional language is not necessary. No revisions are necessary.	None necessary.
3.b.	<p>MRP, In Table E-3 on page E-8, the required monitoring frequency for Enterococcus in final effluent is daily. The City requests that this requirement be reduced to the <u>weekly</u> monitoring frequency that is in the current permit for the following reasons:</p> <ol style="list-style-type: none"> 1. Under the current permit (January 1, 2014 through March 31, 2018), 253 weekly samples of effluent were analyzed for enterococci, with only 7 "detected" results (less than 3% of samples analyzed). 2. Of the 7 detected results, the highest detected result was 4 MPN/100 mL. 3. There were no exceedances of the 104 MPN/100 mL TMDL single sample maximum numeric target in over 4 years. 4. The maximum rolling 6-week geometric mean result was 1.6 MPN/100 mL, whereas the TMDL numeric target is 35 MPN/100 mL. <p>There is no reasonable justification for increasing the monitoring frequency from weekly to daily, as enterococcus results in final effluent are historically not detected or well below TMDL numeric targets.</p>	The Board concurs. The MRP has been revised to reduce the monitoring frequency for enterococci to weekly.	Changes were made to the permit.
3.c.	<p>MRP, Footnote 9 on page E-8 states that samples for microbiological parameters "shall be collected at monitoring location EFF-001." Section IV.C.2.xii(a)(3) on page F-37 of the Fact Sheet appropriately identifies the current sampling location for chlorine as "immediately following disinfection", which is located at the end of the chlorine contact chamber in compliance with appropriate microbiological testing</p>	The Board concurs. Corrections have been made.	Changes were made to the permit.

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	<p>protocols. Samples collected downstream of the chlorine contact chamber will not measure the effectiveness of the disinfection process and are not representative of the disinfection system. Accordingly, the City requests that footnote 9 on page E-8 be revised to state that samples for microbiological parameters:</p> <p><u>"shall be collected at monitoring location the end of the chlorine contact chamber, adjacent to EFF-001."</u></p> <p>This text change will allow continued collection of samples in accordance with proper testing protocols designed to demonstrate the effectiveness of the disinfection system and compliance with effluent limits for bacteria.</p>		
3.d.	<p>MRP, Table E-3 on page E-9 and Table E-5 on page E-18: The City requests that the effluent and receiving water monitoring frequency for Selenium be reduced from quarterly to semiannually. There is no reasonable potential or permit limits for Selenium, so to be consistent with influent monitoring requirements, the monitoring for this parameter should be included with the other <u>semiannual</u> priority pollutants.</p>	The Board concurs. The MRP has been revised to reduce the monitoring frequency for selenium to semiannual.	Changes were made to the permit.
3.e.	<p>MRP, Table E-3 on page E-10 and Table E-5 on page E-18: analysis of Perchlorate, 1,4-Dioxane and 1,2,3-Trichloropropane is required semiannually and annually for effluent and receiving water, respectively. However, the City has collected semiannual final effluent data for these three pollutants for at least 4 years, with all results reported as "Not Detected" (ND). Because reasonable potential for the pollutants has not been established and effluent monitoring data are ND, the City requests that monitoring for these constituents be removed from Table E-3 and Table E-5, or that the monitoring frequency for final effluent and receiving water be reduced to once per permit term.</p>	The monitoring frequencies for these emerging compounds are consistent with all POTWs in this region. The semi-annual monitoring frequency is reasonable and would provide sufficient data points to conduct a reasonable potential analysis while the proposed once-per-permit-term monitoring does not comply with the SIP's minimum data for an RPA.	None necessary.
3.f.	<p>MRP, Table E-3 on page E-10: the Sample Type specified for "Remaining Priority Pollutants" is incorrect. The Sample Type should be revised to be consistent with requirements for priority pollutants at INF-001:</p> <p><u>"grab/24-hour composite/grab for VOC, Cyanide, and Chromium VI"</u></p>	The Board concurs. Corrections have been made.	Changes were made to the permit.
3.g.	<p>MRP, Item IV.B.2 on page E-10: the chlorine residual monitoring location referred to as "at the current location"</p>	There are two types of total residual chlorine (TRC) measurements required in this permit: (1) "continuous"	None necessary.

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	should be revised to specify "at EFF-001" because as worded, the provision incorrectly conveys that monitoring results from some location other than EFF- 001 triggers additional grab samples, which is inaccurate.	using a recorder and (2) "grab" samples at EFF-001. The current location refers to the location of the "continuous" chlorine residual monitoring probe that sends the data to the continuous recording chart, or data logger. This probe location may not be the same location where "grab" samples from EFF-001 are collected. The discussion in section IV.B.2 on page E-10, Total Residual Chlorine Additional Monitoring, is applicable to "continuous" measurements only. By following the conditions stated in this section, the Permittee is able to determine the "trigger" for when to conduct increased "grab" samples. No change is necessary.	
3.h.	MRP , VIII.A.1 on page E-17: This provision requires the City to monitor flow at each receiving water station "if surface water is moving." The City requests that this requirement to measure flow at each receiving water station be deleted because water within the estuary is always moving in some manner, even though surface water in the SCRE does not measurably "flow" unless the berm is open, in which case flow monitors cannot feasibly provide flow data because the high flow velocities during open berm conditions sweep away monitoring devices.	The Board concurs. Measurement of discharge at the estuary where the flow is not laminar is difficult to accomplish. The MRP has been revised to remove the flow measurement requirement.	Changes were made to the permit.
3.i.	MRP , Item VIII.A.1 on page E-17: Footnote 19 to Table E-5 states that algal biomass (Chlorophyll a) samples "shall be collected by obtaining scrapings from the substrate." Table E-5 requires that Chlorophyll a result must be reported in units of mg/L. The City requests that this footnote be revised to propose sampling and analytical methods that allow the City to obtain Chlorophyll a result as a concentration in mg/L, which is not possible from implementation of the methods described, which rely on collection of algal biomass from solid samples of algae.	The revised footnote 19 will read as follows: Chlorophyll a samples shall be collected using water column grab samples, concurrently with pH, dissolved oxygen, and (macro)invertebrate monitoring. Algal biomass percent cover shall also be reported. Chlorophyll a samples shall be collected on days in the spring and fall when algal biomass is well developed and low dissolved oxygen conditions may exist.	Changes were made to the permit.
3.j.	MRP , VIII.A.2 on page E-18 and E-19: the permit should acknowledge that there are times during the nesting season that receiving water sites cannot be legally accessed by the City in compliance with state and federal Endangered Species Acts without disturbing or destroying nests of listed species. This provision should be revised to add the following language:	The Board concurs. The suggested language will be accepted with the addition of the Regional Water Board staff language below. "If rescheduled for one of the aforementioned reasons, sampling shall be conducted as soon as possible to achieve the requirements of the MRP."	Changes were made to the permit.

Comment Number	Comment	Response	Action Taken
	"Sampling may be rescheduled at receiving water stations if weather and/or flow conditions would endanger personnel collecting receiving water samples, or if accessing monitoring sites would adversely impact species listed for protection under the state or federal Endangered Species Acts."		
3.k.	<p>MRP, Section VIII.B.1, Table E-6, and Section VIII.B.2 on page E-19: These provisions address visual observations and visual monitoring. The City currently has no methods or means for making accurate quantitative observations or recordings of the information requested. Therefore, to accurately reflect the types of data to be collected under these provisions of the Tentative Order, the City requests that the text that inaccurately refers to the visual observation requirements as requirements to "quantify" volume, depth, and area be removed for all parameters listed in the table, and instead, the text should indicate that the City will record its observations and will "estimate" volume, depth and area. The following text revisions are requested:</p> <p>V.III.B.1: "The Discharger shall make <u>estimate</u> quantitative water and habitat appearance descriptions <u>characteristics identified in Table E-6 at RSW-001, RSW-002, RSW-003, RSW-004 and RSW-005 as follows. and maintain a log thereof.</u>"</p> <p>VIII.B.2: "At the time of sampling, the following additional qualitative <u>and quantitative</u> observations (<u>estimates</u>) shall be made..."</p>	The Board concurs. The MRP has been revised as suggested.	Changes were made to the permit.
3.l.	<p>MRP, Table E-6 on page E-19, and Sections VIII.B.2.h, m, n, and o on page E-19: These requirements all impose an obligation on the City to make observations and estimates of habitat types, habitat conditions, and presence of aquatic and terrestrial wildlife. These same conditions are to be monitored pursuant to applicable protocol survey methods and more stringent measurement protocols pursuant to the Pre-Construction Monitoring and Assessment Program, which the City is ordered in the draft permit to prepare in coordination with the Resources Agencies, Wishtoyo and Heal the Bay, and must submit to the Regional Water Board within 180 days of the effective date of the proposed permit, and is subject to approval of the Executive Officer. Coordination of these monitoring activities with the</p>	<p>The Board concurs. Subsection VIII.D (below) was added to address any duplication of monitoring and reporting issues regarding ecological observations, etc.</p> <p><u>VIII.D. Portions of sections VIII.B. and C, above, may become duplicative requirements of the Pre-Construction Monitoring and Assessment Program (in section VI.C.2. of the Order). Upon approval of the Pre-Construction Monitoring and Assessment Program by the Executive Officer, any monitoring and reporting requirements of sections VIII.B. and C, including, without limitation, those of Tables E-6 and E-7, that are duplicative or are not included in the Pre-Construction Monitoring Assessment Program, shall be superseded and replaced by monitoring and</u></p>	Changes were made to the permit.

Comment Number	Comment	Response	Action Taken
	<p>Resources Agencies is legally required because conducting more intensive and accurate data collection efforts with respect to species listed under the state and federal Endangered Species Acts pursuant to the Pre-Construction Monitoring and Assessment Program once approved will require authorizations from the Resources Agencies. Because the Pre-Construction Monitoring and Assessment Program will provide for more accurate collection and characterization of data related to these habitat and species related conditions pursuant to the recommendations of the Resources Agencies than collecting, estimating and performing visual observations under these provisions of the MRP, and given that the collection of data under the NPDES permit and the Pre-Construction Assessment Monitoring Program once approved is inefficient and creates a risk of inconsistency in results reported under the two different programs, the City requests that a footnote be added to this provision to state:</p> <p>“Upon approval of the Pre-Construction Monitoring and Assessment Program by the Executive Officer, the monitoring and reporting requirements for habitat and fish seining in Table E-6, and for the parameters set forth in subsections h, m, n, and o of MRP Section VIII.B, shall be superseded and replaced by monitoring and reporting requirements of the approved Pre-Construction Monitoring and Assessment Program.”</p> <p>In addition to eliminating the risk of duplicative, but inconsistent monitoring results, this approach creates monitoring and cost efficiency for the City, which is important because the City already must assume significant costs to prepare and implement the Pre-Construction Monitoring and Assessment Program.</p>	<p><u>reporting requirements of the approved Pre-Construction Monitoring and Assessment Program.</u></p>	
3.m.	<p>MRP, Section VIII.B.2 on page E-19, requirement “l”: In light of complex federal case law as to when camping is legal v. illegal, field personnel cannot make an assessment as to whether camping is legal or illegal, and the City may not have legal authority under case law to enforce City ordinances regarding camping. The City must therefore report evidence of homeless encampments to comply with this visual assessment requirement, and will be unable to report whether those encampments are legal or illegal.</p>	<p>Observations regarding homeless encampments need not mention legal or illegal. The MRP has been revised accordingly.</p>	<p>The comment was noted.</p>

Comment Number	Comment	Response	Action Taken
3.n.	<p>MRP, Section VIII.C and Table E-7 on page E-20 and E-21: The City requests a footnote to this Section recognizing that the sediment and benthic community monitoring requirements set forth in this section shall be integrated into the Pre-Construction Monitoring and Assessment Program required to be prepared by the City in coordination with Wishtoyo, Heal the Bay and the Resources Agencies, and submitted to the Executive Officer for approval, and, upon its approval by the Executive Officer as set forth in the Tentative Order, the monitoring requirements set forth in Section VIII.C. shall be superseded and replaced by the monitoring requirements of the approved Pre-Construction Assessment and Monitoring Program. Pursuant to the December 2018 letter of the California Department of Fish and Wildlife submitted to the Regional Water Board, the Pre-Construction Monitoring and Assessment Program must address the monitoring parameters set forth in Section VIII.C and Table E-7. Monitoring and reporting results for these parameters separately under the NPDES permit and the Pre-Construction Monitoring and Assessment Program is inefficient, and is likely to result in additional costs for the City (which is already going to be responsible for very significant costs to prepare and implement the Pre-construction Monitoring and Assessment Program). Therefore, the City requests the addition of the following footnote to Section VIII.C:</p> <p><u>“Upon approval of the Pre-Construction Monitoring and Assessment Program by the Executive Officer, the monitoring and reporting requirements of this Section VIII.C, including, without limitation, those of Table E-7, shall be superseded and replaced by monitoring and reporting requirements of the approved Pre-Construction Monitoring and Assessment Program.”</u></p>	<p>The Board concurs. Subsection VIII.D was added to address any duplication of monitoring and reporting issues regarding ecological observations, etc.</p> <p>(See Response to Comment 3.l., above.)</p>	Changes were made to the permit.
3.o.	<p>MRP, Section IX.A on page E-21 requires the City to participate in the Regional Watershed-Wide Monitoring Program for the Santa Clara River Watershed (SCRWMP). To accurately reflect the City’s requirements under, and contribution to the SCRWMP, the City requests that the first sentence in the second paragraph be revised to reflect that the monitoring and reporting required under the Pre-Construction Monitoring and Assessment Program,</p>	<p>The Board concurs partially. The MRP was revised to incorporate some of the suggested language. For other changes that will happen in the future or when the Pre-Construction Monitoring and Assessment Program is approved, those changes will be addressed by new subsection VIII.D, as stated in response to comment 3.l., above.</p>	Changes were made to the permit.

Comment Number	Comment	Response	Action Taken
	<p>including sediment and benthic community monitoring conducted pursuant to Section VIII.C constitute the City's implementation of the Watershed-Wide Monitoring Program for the SCRWMP. Without these revisions, the provision sounds like it imposes supplemental, but completely undefined monitoring and reporting obligations, which is inaccurate, and inconsistent with regulations governing requirements governing specificity of permit provisions and conditions. The following text revisions accurately describe the City's contribution to SCRWMP and the manner in which the City intends to continue to comply with SCRWMP requirements:</p> <p><u>"The SCRWMP requires that t</u>To<u> achieve the monitoring goals of the Watershed-wide Monitoring Program set forth in this section, the Discharger</u>dischargers<u> within the plan area shall undertake the responsibilities delineated under an the approved watershed-wide monitoring plan developed for in the implementation of the Watershed-wide Monitoring Program for the Santa Clara River, which was approved by the Regional Water Board on July 3, 2012. The Permittee shall participate in efforts to implement the plan approved SCRWMP within the permit cycle-<u> by complying with the monitoring and reporting for sediment and benthic communities as required by Section VIII.C., as those requirements will be replaced and superseded by the Pre-Construction Monitoring and Assessment Program upon approval of that program by the Executive Officer.</u></u></p> <p><u>The Permittee's compliance with Section VIII.C monitoring and reporting requirements, including preparation and implementation of the Pre-Construction Monitoring and Assessment Program for sediment and benthic communities as required by Section VIII.C, will satisfy the requirements of the SCRWMP, including the requirements of the SCRWMP set forth in this Section. The SCRWMP requires that dischargers shall, in coordination with interested stakeholders in the Santa Clara River Watershed, the Discharger shall</u>conduct<u> instream bioassessment monitoring once a year, during the spring/summer period (unless an alternate sampling period is approved by the Executive Officer)..."</u></p>		

Comment Number	Comment	Response	Action Taken
4.	CORRECTIONS		
4.a.	Tentative Order , V.A.25 on page 11: the sentence should end with “result.” (i.e., “... then the calculated objective shall be compared to the receiving water sample <u>result</u> .”)	The Board concurs. Corrections have been made.	Changes were made to the permit.
4.b.	Tentative Order , Section VI.C.2.a on page 16, Section IX.A.d on page E-22, and Section III.C.10 on page F-19: the California Department of Fish and Wildlife is incorrectly identified as the California Department of “Fish and Game”.	The Board concurs, except for revising the “Fish and Game Code” on page F-19. Corrections have been made.	Changes were made to the permit.
4.c.	Attachment A , page A-3: The Method Detection Limit (MDL) definition in this section is no longer accurate or valid – the MDL procedure and definition were updated with EPA’s 2017 Methods Update Rule (MUR) that modified the procedure and definition at 40 CFR Part 136, Appendix B. The MDL definition in this section should therefore be updated to reflect the current regulatory definition as follows: “MDL is defined as the minimum measured concentration of a substance that can be reported with 99% confidence that the measured concentration is distinguishable from method blank results.” The current EPA definition can be accessed at the following location: 40 CFR Part 136 Appendix B_MDL.	The Board concurs. Corrections have been made.	Changes were made to the permit.
4.d.	Attachment A , page A-3: the definition for Monthly Median Effluent Limitation (MMEL), used to express WET limits in the permit, is missing and should be added. The following text, as provided in the Glossary section of the Draft Toxicity Provisions, is suggested: “ Median Monthly Effluent Limitation (MMEL) For the purposes of chronic aquatic toxicity, MMEL is an effluent limitation based on a maximum of three independent toxicity tests, analyzed using the TST.”	The Board concurs. The MMEL definition was added.	Changes were made to the permit.
4.e.	MRP , Section I.A on page E-2: the last sentence should be revised for clarity to read, “Results of monthly, quarterly, semiannual, and annual analyses shall be reported <u>as by</u> <u>the</u> due date specified in Table E-8 of <u>the</u> MRP.”	The Board concurs. Corrections have been made.	Changes were made to the permit.
4.f.	MRP , Item I.H on page E-3: The first sentence should be revised by deleting “USEPA”, because many USEPA-approved methods are not authored by USEPA (e.g., those from <i>Standard Methods for the Examination of Water and Wastewater</i>), and because the State and/or Regional Water	The Board concurs. USEPA was deleted.	Changes were made to the permit.

Comment Number	Comment	Response	Action Taken
	Boards may require some methods that are not approved by USEPA.		
4.g.	MRP , In Table E-3, footnote 10, on page E-9: The footnote should cross reference not only section V of the Tentative Order which addresses toxicity monitoring, but also Section VII.J of the Tentative Order, which also addresses toxicity monitoring requirements and provides additional instructions and information regarding testing protocols.	Section VII.J. addresses chronic toxicity compliance determination while footnote 10 on page E-9 discusses the monitoring requirements. Each one can function independently without relying on the other.	None necessary.
4.h.	MRP , Item V.A.2 on page E-11: the last sentence should be revised to read, "No more than 36 hours shall elapse before <u>between</u> the conclusion of sample collection and test initiation."	The Board concurs. Corrections have been made.	Changes were made to the permit.
4.i.	MRP , Footnote 23 on page E-18 should be revised to be consistent with footnote 3 on page E-7 (i.e., the same reference should be cited in both locations for the list of priority pollutants).	The Board partially concurs. Corrections have been made. However, instead of correcting footnote 23 on page E-18, footnote 3 on page E-7 was corrected to match footnote 23.	Changes were made to the permit.
4.j.	MRP , Section X.D.2 and X.D.3 on page E-25: the references to section X.C and X.C.7 appear to be incorrect, as SMR reporting requirements are described in section X.B.7.	The Board concurs. Corrections have been made.	Changes were made to the permit.
4.k.	Attachment I – Pretreatment Reporting Requirements , Section B.1: The City requests that this provision be revised to remove the reference to the Hyperion Treatment Plant, as follows: "In accordance with 40 CFR section 122.44(j)(2)(ii), the POTW shall provide a written technical evaluation of the need to revise local limits under 40 CFR section 403.5(c)(1) within 180 days of issuance or reissuance of the Hyperion Treatment Plant <u>Facility's</u> NPDES permit.	The Board concurs. Corrections have been made.	Changes were made to the permit.
	The City appreciates Regional Water Board staff's time and effort toward crafting a NPDES permit that is aligned with the City's goals of protecting the health of City residents and the environment, supports the City's commitment toward long-term water resources planning, and recognizes the collaborative and coordinated efforts the City is making with the Resources Agencies, Wishtoyo and Heal the Bay to divert VWRP discharges to water reclamation uses while improving the ecology of the Santa Clara River Estuary, including protection of the listed species and critical habitats within the estuary.	Comment noted.	

Table 2. Comments on the Tentative Order, Department of Fish and Wildlife on January 6, 2020

Comment Number	Comments	Response	Action Taken
1	<p>Water Quality Standards</p> <p>CDFW requests that additional sampling is required to ensure stabilization or improvement of endangered fish species. CDFW recommends Los Angeles Regional Water Quality Control Board (LARWQCB) review the mitigation measures under Comment #7 in our previous DEIR comment letter to the City (Attachment A).</p> <p><u>Recommended Condition #1-1:</u> In addition to reviewing the DEIR, CDFW recommends the fish species count with sieve net (Table E-6 of the draft NPDES permit) be conducted quarterly instead of annually and have reports provided to CDFW. To understand potential impacts for future reductions, CDFW recommends temperature be recorded daily through a CDFW approved sampling plan. Daily temperature monitoring is required to ensure enough data is collected to establish appropriate conditions for future reductions and to understand the existing conditions for fish species. CDFW also recommends the continuous deployment of four or five datasondes strategically placed within the SCRE to determine hourly, real-time, short-term, long-term, and seasonal variation of water conditions within the estuary, water levels, temperature, salinity, pH, and dissolved oxygen.</p>	<p>The Transition Plan as discussed in section VI.C.2. of the Order provides an opportunity for these specific monitoring requirements to be incorporated in the Monitoring and Reporting Program. The Pre-Construction Monitoring and Assessment Program of the Transition Plan shall be submitted by the Permittee 180 days after the effective date of this permit. The Permittee shall coordinate preparation of the monitoring and assessment program with the Regional Water Board, USFWS, NMFS, and CDFW along with Heal the Bay and Wishtoyo, and shall implement the program after approval by the Executive Officer of the Regional Water Board.</p>	<p>None necessary.</p>
2	<p>1.9 MGD is the best conservative estimate</p> <p>The current effluent discharges into the estuary provide supplemental waters in an anthropogenically altered watershed that support the open water habitat and habitat diversity. These discharges may also assist in building species' resilience to climate change. According to Sloat and Osterback (2013), "fish acclimated at higher temperatures have greater thermal resistance to elevated temperatures (e.g., Lee and Rinne 1978; Currie et al. 1998; Myrick and Cech 2000) (Page 70). CDFW emphasizes 1.9 MGD as a minimum average discharge to account for the stressors that are further expected to increase with climate change, as human demand for water increases (Crozier et al. 2019). Moyle et al. (2017) references Williams et al. (2016) to further assert that</p>	<p>Please see response to comment #1, above. In addition, the Transition Plan shall be designed to address scientific uncertainties and concerns associated with reducing discharges from a Phase 1a CDL of 1.9 MGD to a Phase 1b CDL of between 0 to 0.5 MGD.</p>	<p>None necessary.</p>

Comment Number	Comments	Response	Action Taken
	<p>"climate change impacts on salmonids are increasing over time, suggesting that building resilience in remaining populations will be essential for persistence of steelhead in Southern California. Without resilience of population size, habitat diversity and quantity, and genetic variation, climate change will reduce long-term viability of [Distinct Population Segments] (NMFS 2016)" (Pg. 348, Moyle et al. 2017).</p> <p>There is a level of uncertainty with the amount of dilution of nutrient concentrations associated with the current 4.7 MGD treated effluent discharges into the estuary despite the conclusions of the Phase III Study report indicating that the VWRP discharge is benefiting (i.e., diluting) the nutrient loading to the SCRE (TRT 2018). The Stillwater Report (Stillwater, 2018) recommends 1.9 MGD for the Enhancement Discharge Levels, CDL, and Maximum Ecologically Protective Diversion Volume (MEPDV). The 1.9 MGD minimum average effluent discharge would include sufficient contingency to account for the level of uncertainty described in the City's Estuary Studies, Stillwater (2018) report, and unforeseen factors. CDFW believes this flow represents a conservative best estimate to maintain ecological functions, minimize reduction of surface water and habitat for wildlife, and monitor changes to habitat and species in SCRE. CDFW is requests that LARWQCB review the mitigation measures under Comment #1 in our previous DEIR comment letter to the City (Attachment A).</p> <p><u>Recommended Condition #2-1:</u> In addition to reviewing the DEIR, CDFW recommends that the permit focus on the reissuance of the NPDES permit for current and proposed discharges related to a 1.9 MGD reduction. CDFW appreciates the efforts included in the draft NPDES Permit regarding details for a Transition Plan to describe infrastructure designs, permitting, monitoring, studies, consultation, public outreach activities, schedules, and a Post-Construction Monitoring, Assessment, and Adaptive Management Plan (MAAMP) sufficient to implement further discharge reductions to the levels determined by completed Special Studies and scientific peer reviews to</p>		

Comment Number	Comments	Response	Action Taken
	provide enhancement of estuary beneficial uses. Any further wastewater discharge reductions should be discussed in a future NPDES permit once this renewed permit expires.		
3	Comment #3 California Least Tern CDFW requests that LARWQCB review the recommended mitigation measures under Comment #3 in our previous FEIR comment letter to the City (Attachment B).	Comment noted. The permit addresses CDFW's comment about open water habitat for least terns by allowing for the Permittee, Resources Agencies and other stakeholders to convene and to finalize the transition plan, including the Pre-Construction Monitoring and Assessment Program and the MAAMP.	None necessary
4	Comment #4 Water Code 1211 CDFW agrees with the draft NPDES permit's assertion that a water rights 1211 application will be necessary to proceed with a 1.9 MGD wastewater discharge during closed-mouth, dry-weather conditions into the estuary in 2025. According to the NPDES permit, "[t]he City has been operating its recycled water program under Water Reclamation Requirements (WRR) Order No. 87-45 and, in February 2015, the City filed Wastewater Petition WW0083 with the State Water Board pursuant to California Water Code Section 1211" (Pg. F-22). CDFW will provide additional recommendations during the Water Code section 1211 petition for the wastewater change process.	Comments noted.	None necessary.

Table 3. Comments received from Heal the Bay and Wishtoyo on January 6, 2020

Comment Number	Comment	Response	Action Taken
1	Although we would like to see reduction of the discharge of effluent from the VWRP to the Estuary to a CDL of 0-0.5 million gallons per day (MGD) as soon as possible to protect the Estuary's native and endangered species, ecological health, and natural beneficial uses, given the concerns of the resource agencies, we support the phased approach to reach the final CDL of 0-0.5 MGD by no later than 2030, as outlined in the Tentative Permit. In 2012, Heal the Bay and Wishtoyo entered into a settlement agreement with the City of Ventura (City) to	Comment noted.	None necessary.

Comment Number	Comment	Response	Action Taken
	<p>address the discharge of treated wastewater to the Estuary, which negatively impacts the ecological health of the Estuary by increasing the load and concentration of contaminants of emerging concern and of nutrients, which can cause eutrophic conditions; by raising surface water levels, which contributes to unseasonal Estuary berm breach events; by reducing the natural salinity levels, which creates favorable conditions for non-native species that prey on and out-compete the Estuary's native and endangered species and also reduce the ecological health of the Estuary; and by reducing habitat quality for native listed bird species that rely on the Estuary.</p> <p>As per the opinion of the Technical Review Team (TRT) and the Scientific Review Panel (SRP), best science demonstrates that to adequately protect the Estuary's native and endangered species (including Southern California Steelhead, Tidewater Goby, California Least Tern, and the Western Snowy Plover) and to restore these species' habitat, the discharge of effluent from the VWRP to the Estuary must be reduced to 0-0.5 MGD as soon as possible, with a discharge of 0 MGD to be achieved depending on the results of adaptive management. Now that extensive and rigorous research has been completed to identify the necessary CDL based on the best available science, we would like to see reduction of the discharge to a CDL of 0-0.5 MGD as soon as possible. However, we understand that the resource agencies have expressed concerns about the reduction of effluent discharge below a CDL of 1.9 MGD. Although we would like to see reduction of the discharge to a CDL of 0-0.5 MGD as soon as possible, which is needed to protect the ecological health of the Estuary, the Estuary's native endangered species, and the Estuary's natural beneficial uses, given the concerns of the resource agencies, we support the phased approach to effluent discharge reduction as outlined in the Tentative Permit, which will begin with a reduction of the discharge to a CDL of 1.9 MGD in 2025, followed by adaptive management and additional discharge reduction to 0-0.5 MGD by no later than 2030.</p>		

Comment Number	Comment	Response	Action Taken
2	<p>The Permit should provide an opportunity for all interested Resources Agencies, Wishtoyo, and Heal the Bay to provide comment on the Transition Plan, the Pre-Construction Monitoring and Assessment Program, and MAAMP for the Regional Board Executive Officer to review prior to approval of any of these Plans.</p> <p>But for one request for modification, Wishtoyo and Heal the Bay support the approach and language in the Permit section: Special Studies, Technical Reports and Additional Monitoring Requirements, including for the Transition Plan, the Pre-Construction Monitoring and Assessment Program, and MAAMP. We request that the Permit should provide an opportunity for all interested Resources Agencies, Wishtoyo, and Heal the Bay to provide analysis on the Transition Plan, the Pre-Construction Monitoring and Assessment Program, and MAAMP for the Regional Board Executive Officer to review prior to approval of any of these Plans. Such a process is needed to ensure sufficient information is collected for the Regional Board and all resource agencies to permit/achieve the SRP's and TRT's recommendation to reduce the discharge of effluent from the VWRP to the Estuary to 0-0.5 MGD. Such input prior to Executive Officer approval is necessary because these critical plans and special studies, unlike in prior NPDES permits for the VWRP, are not detailed in this draft permit and require agency, Wishtoyo, and Heal the Bay input and review prior to Regional Board approval to ensure their adequacy. To ensure that this process occurs, we request the following language changes be made to the Tentative Permit:</p>	As discussed in section VI.C.2. of the Order, the Transition Plan, including the Pre-Construction Monitoring and Assessment Program and the MAAMP, will be shared with and analyzed by the Regional Water Board and all interested Resources Agencies, as well as the Wishtoyo Foundation Ventura Coastkeeper Program (Wishtoyo) and Heal the Bay prior to the Executive Officer's decision regarding approval of the plans. See, also, Responses to Comments 3-6, below.	None necessary.
3	<p>Page 16, Section VI.C.2.a.</p> <p>"The Transition Plan, including plans for preparation of the MAAMP, will be shared with, and analyzed by the Regional Water Board and all interested Resources Agencies, as well as Wishtoyo Foundation (Wishtoyo) and Heal the Bay prior to Executive Officer approval."</p>	The Board concurs.	Changes were made to the permit.
4	<p>Pages 16 and 17, Section VI.C.2.a.(a)</p> <p>"The discharger shall coordinate preparation of the monitoring and assessment program with the Regional</p>	The Board partially concurs. The changes proposed by Wishtoyo and Heal the Bay were accepted.	Changes were made to the permit.

Comment Number	Comment	Response	Action Taken
	Water Board, USFWS, NMFS, and CDFW, Wishtoyo, and Heal the Bay . The plan must be submitted to the Regional Water Board after being shared with, and analyzed by the Regional Water Board and all interested Resources Agencies, as well as Wishtoyo Foundation (Wishtoyo) and Heal the Bay , 180 days after the effective date of the permit and shall be implemented upon approval of the Executive Officer."		
5	Page 17, Section VI.C.2.a.(b) "The discharger shall coordinate preparation of the MAAMP with the Regional Water Board, USFWS, NMFS, and CDFW, Wishtoyo, and Heal the Bay ."	The Board concurs.	Changes were made to the permit.
6	"The plan MAAMP, which shall be implemented upon approval of the Executive Officer, must be submitted to the Regional Water Board after being shared with, and analyzed by the Regional Water Board and all interested Resources Agencies, as well as Wishtoyo Foundation (Wishtoyo) and Heal the Bay , as soon as possible, but at the latest as an attachment to the next Report of Waste Discharge, which is due six (6) months prior to the expiration of this NPDS Permit."	The Board concurs.	Changes were made to the permit.
7	We support numeric toxicity effluent limits and the use of the TST statistical analysis, but the Permittee must immediately initiate a TRE in response to a chronic toxicity violation. <i>We support numeric toxicity effluent limits and the TST statistical analysis.</i> The TST statistical analysis provides an unambiguous "pass" or "fail" measurement of a test concentration's toxicity, and its low false positive and false negative rates provide more statistical power to correctly identify a test concentration as toxic or non-toxic. Although the TST statistical analysis is not promulgated, there is United State Environmental Protection Agency guidance on the TST statistical analysis, which has withstood vigorous peer review. Considering the pace at which policy changes can be made at a federal or state level, we applaud the Regional Board for incorporating an analysis approach that is scientifically robust and protective of	Comments noted.	

Comment Number	Comment	Response	Action Taken
	California aquatic ecosystems. We strongly support the role of the reversed acute and chronic null hypotheses to provide dischargers with an incentive to improve the precision of test results by improving laboratory procedures and/or by increasing the number of replicates used in a given toxicity test.		
8	<p><i>The Permittee must immediately initiate a TRE in response to a chronic toxicity violation.</i></p> <p>To protect aquatic life, regional Basin Plans include narrative objectives allowing for no toxicity because toxic conditions do not need to persist to have a devastating effect on critical species. Objectives within the Clean Water Act and the State Implementation Policy both echo this goal to eliminate toxicity. Given these objectives, there should be strict enforcement capabilities for exceedances of toxicity limits in the Tentative Permit, as well. The Regional Board currently treats an exceedance of toxicity objectives not as an enforceable violation, but as a trigger for an accelerated monitoring program, which has been proven to be an ineffective method of addressing toxicity. If the Permittee receives a failing test result, they must be considered in violation of the limitation. At a minimum, the use of accelerated monitoring to determine violation or compliance must be conducted within a single calendar month. For this case, we would recommend that the Tentative Permit require that two out of three samples taken within a calendar month receive a TST “pass” to receive no toxicity violation, or that two out of three samples taken within a calendar month receive a TST “fail” to receive a toxicity violation. The two samples (or three, if necessary) must be collected within a single calendar month to make a timely determination of violation or compliance. Additionally, the Permittee must immediately initiate a TRE in response to a chronic toxicity violation, which would be aligned with the requirements of the draft statewide toxicity provisions.</p>	<p>Table 4 of this Order contains numeric chronic toxicity effluent limitations with median monthly and maximum daily effluent limitations (MMEL and MDEL). These effluent limitations are enforceable and violations are subject to mandatory minimum penalties (MMPs).</p> <p>Once the MMEL is exceeded, in addition to being subject to MMPs, the Permittee is required to conduct accelerated monitoring. The commenter is referring to this scenario as a “trigger” for accelerated monitoring.</p>	None necessary
9	<p><i>Sources of chronic toxicity in receiving waters must be identified and remediated.</i></p> <p>As currently written in the Tentative Permit, “[i]f the chronic toxicity median monthly threshold of the receiving water at</p>	All tasks related to conducting a TRE and TIE are the sole responsibility of the Permittee. Further, specifying requirements for other entities in the NPDES permit for the VWRP would not be appropriate.	None necessary.

Comment Number	Comment	Response	Action Taken
	both upstream and downstream stations is not met, but the effluent chronic toxicity median monthly effluent limitation was met, then accelerated monitoring need not be implemented” (Attachment E, Page E-18, Footnote 20). However, if chronic toxicity is observed in receiving waters, the sources of the toxicity must be identified and remediated in order to protect in-stream aquatic health. If the Permittee is able to determine that the discharge from the VWRf is not causing or contributing to the in-stream chronic toxicity, we agree that the Permittee shall not be responsible for the identification of the source of toxicity. However, we recommend that the Regional Board clearly identify, in the permit, the entity that shall be responsible for identifying the source of the chronic toxicity.		
10	<p>Samples that are ND or DNQ should be properly incorporated into multiple sample analyses.</p> <p>As currently written in the Tentative Permit, “[w]hen determining compliance with a measure of central tendency (arithmetic mean, geometric mean, median, etc.) of multiple sample analyses and the data set contains one or more reported determinations of DNQ or ND, the Permittee shall compute the median in place of the arithmetic mean...” (Page 26, Section VII.B.). This approach potentially excuses the exceedance of water quality objectives as long as there are enough ND or DNQ sample results. We recommend that the Regional Board require that the Permittee report either the actual test result or the method detection limit for each sample, as described in the California State Water Resources Control Board ND/DNQ Guidance,⁴ and use this data to compute the arithmetic mean when determining compliance with a measure of central tendency of multiple sample analyses.</p>	All NDs and DNQs are properly accounted for and considered during the reasonable potential analysis of any pollutant. The rules for assigning the proper values involving NDs and DNQs are explained in section 1.4, step 3 of the SIP.	None necessary.
11	<p>Reporting for anticipated non-compliance or modifications cannot lead to unenforced violations of water quality standards.</p> <p>As currently written in the Tentative Permit, “[t]he Discharger shall give advance notice to the Regional Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with this Order’s requirements. (40 CFR section 122.41(l)(2).)”</p>	The Code of Federal Regulations prohibits material changes to NPDES discharges without an amendment to the permit, which would require public notice and a hearing. (40 C.F.R. § 122.62.) Similarly, the Water Code adequately details enforcement of violations, which applies equally in a time of anticipated noncompliance, and is operative regardless of whether it has been cited in the permit.	None necessary.

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	<p>(Attachment D, Page D-7, Section V.G.). We suggest the following clarifying language be added to Attachment D, section V.G., to ensure that the Regional Board review the proposed changes/anticipated noncompliance and determine if this is allowable, and to ensure that other parties should be able to review the proposal and provide comments on the potential impact the proposal will have on in-stream aquatic health:</p> <p>“The Permittee shall give advance notice to the submit a plan for public review and Regional Water Board approval of any planned changes in the permitted facility or activity that may result in noncompliance with this Order’s requirements. (40 CFR section 122.41(l)(2).) Reporting anticipated noncompliance does not preclude enforcement action by the Regional Water Board in the event of effluent limit violations under this permit during the period of anticipated noncompliance.</p>		
12	<p>When no sample is taken and no reasonable justification is provided, a monitoring violation must be accordingly determined, with appropriate enforcement action.</p> <p><i>For any one calendar month during which no sample (daily discharge) is taken and no reasonable justification is provided, a violation must be accordingly determined for that calendar month, with appropriate enforcement action.</i></p> <p>As currently written in the Tentative Permit, “[f]or any one calendar month during which no sample (daily discharge) is taken, no compliance determination can be made for that calendar month with respect to the AMEL” (Page 26, Section VII.C.). However, it is important that samples are taken on schedule as required by the permit, unless there are safety concerns, or sampling was otherwise not possible. We understand that skipping a sampling event without reasonable justification is usually determined as a monitoring violation rather than a water quality violation, and request that clarifying language be added to the permit. We recommend the following language be added to the first paragraph under Section VII.C. of the Tentative Permit:</p>	<p>Other sections of the permit adequately describe monitoring requirements and situations in which exceptions are permitted. No additional augmentation is required here. The proposed edits appear to create a situation in which a failure to monitor at one point would nullify reporting for other valid monitoring. This potentially creates additional penalty provisions not contemplated in the Water Code and Enforcement Policy. No citations to the Water Code are necessary to make monitoring and reporting requirements enforceable.</p>	None necessary.

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	<p>“For any one calendar month during which no sample (daily discharge) is taken, no compliance determination can be made for that calendar month with respect to the AMEL. If no reasonable justification (i.e. unsafe sampling conditions, no discharge, etc.) is provided in the absence of a sampling event for a calendar month, the associated monitoring report shall be rejected. If a monitoring report is not submitted and accepted, a violation shall be determined pursuant to Water Code section 13385(h)(i) and section 13385.1(a)(1).”</p>		
	<p><i>For any one calendar week during which no sample (daily discharge) is taken and no reasonable justification is provided, a violation must be accordingly determined for that calendar week, with appropriate enforcement action.</i></p> <p>As currently written in the Tentative Permit, “[f]or any one calendar week during which no sample (daily discharge) is taken, no compliance determination can be made for that calendar week with respect to the AWEL” (Page 27, Section VII.D.). However, it is important that samples are taken on schedule as required by the permit, unless there are safety concerns, or sampling was otherwise not possible. We understand that skipping a sampling event without reasonable justification is usually determined as a monitoring violation rather than a water quality violation, and request that clarifying language be added to the permit. We recommend the following language be added to the first paragraph under Section VII.D. of the Tentative Permit:</p> <p>“For any one calendar week during which no sample (daily discharge) is taken, no compliance determination can be made for that calendar week with respect to the AWEL. If no reasonable justification (i.e. unsafe sampling conditions, no discharge, etc.) is provided in the absence of a sampling event for a calendar week, the associated monitoring report shall be rejected. If a monitoring report is not submitted and accepted, a violation shall be determined pursuant to Water Code section 13385(h)(i) and section 13385.1(a)(1).”</p>	See Response to Comment 12.	None necessary.

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	<p><i>For any 180-day period during which no sample (daily discharge) is taken and no reasonable justification is provided, a violation must be accordingly determined for that 180-day period, with appropriate enforcement action.</i></p> <p>As currently written in the Tentative Permit, “[f]or any 180-period during which no sample is taken, no compliance determination can be made for the six-month median effluent limitation” (Page 28, Section VII.H.). However, it is important that samples are taken on schedule as required by the permit, unless there are safety concerns, or sampling was otherwise not possible. We understand that skipping a sampling event without reasonable justification is usually determined as a monitoring violation rather than a water quality violation, and request that clarifying language be added to the permit. We recommend the following language be added to the first paragraph under Section VII.H. of the Tentative Permit:</p> <p>“For any 180-day period during which no sample (daily discharge) is taken, no compliance determination can be made for the six-month median effluent limitation. If no reasonable justification (i.e. unsafe sampling conditions, no discharge, etc.) is provided in the absence of a sampling event within a 180-day period, the associated monitoring report shall be rejected. If a monitoring report is not submitted and accepted, a violation shall be determined pursuant to Water Code section 13385(h)(i) and section 13385.1(a)(1).”</p>	See Response to Comment 12.	None necessary.