City of Santa Rosa

December 14, 2015

Via Electronic Mail (commentletters@waterboards.ca.gov)

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

Subject: **Comment Letter – North Coast Water Quality Objective Update & Editorial Amendment**

Dear Ms. Townsend:

The City of Santa Rosa's Water Department ("City") timely submits the following comments on the Regional Water Quality Control Board, North Coast Region's, ("Regional Water Board") Resolutions (R1-2015-0013 and R1-2015-0018) and associated amendments to the Water Quality Control Plan for the North Coast Region ("Basin Plan") adopted earlier this year, in June 2015 (collectively, the "Basin Plan amendments"). The City appreciates the opportunity to submit comments to the State Water Resources Control Board ("State Water Board") on this subject.

At the outset, the City would like to express its appreciation to Regional Water Board staff for working with stakeholders, including the City, in preparation of the Basin Plan amendments. Regional Water Board staff dedicated time to listen to the City's comments and questions, and a constructive dialogue occurred. The City remains committed to sound environmental stewardship, and to working collaboratively with the Regional Water Board on a variety of water quality issues in our region. While the City understands the need to update and advance the Basin Plan from time to time, the City remains concerned about the validity and implementation of several new Basin Plan provisions, and on that basis, submits these comments.

The City operates collection, treatment, storage, discharge, and reclamation facilities, employing state of the art advanced, tertiary-treatment facilities, and producing high quality recycled water that is beneficially reused in cutting edge water reclamation projects encouraged by the California Legislature. Specifically, the City of Santa Rosa owns and operates the Santa Rosa Subregional Water Reclamation System, a publicly-owned treatment works, which currently collects, treats, and recycles (and infrequently discharges) an average dry weather flow of 15 million gallons per day of industrial, commercial, and municipal wastewater from a of population of approximately 225,000 in the Cities of Santa Rosa, Cotati, Rohnert Park, Sebastopol, and the unincorporated South Park County Sanitation District.

UTILITIES DEPARTMENT
69 Stony Circle • Santa Rosa, CA 95401
Phone: 707-543-4200 • Fax: 707-543-3936
www.srcity.org

The City's NPDES Permit allows the discharge of recycled water from recycled water storage ponds to the Laguna de Santa Rosa and/or Santa Rosa Creek, both tributaries to the Russian River, from October 1st through May 14th of each year, in accordance with discharge restrictions set forth in the Regional Water Board's Basin Plan. (*See* City's NPDES Permit, Order No. R1-2013-0001, NPDES Permit No. CA0022764 (the "Permit").) However, almost all of the produced recycled water is beneficially reused throughout the year, providing agricultural operators with recycled water for beneficial water reclamation and reuse (*i.e.*, agricultural irrigation of crops, including vineyards, orchards, animal fodder, pasture, and specialty vegetable crops), participating in urban reuse (*i.e.*, golf courses, playing fields, and landscaped areas), and providing the water to the Geysers Recharge Project.

Regulatory certainty and predictability are crucial to identifying and implementing novel and beneficial water-related projects, and are necessary for long-range planning processes related to complex collection, treatment, discharge and reuse facilities. Without some degree of certainty or predictability in the regulatory process, projects become more difficult to envision, design, implement, and fund (bonds, loans, etc.), as the City must speculate as to future water quality-related requirements that may ultimately apply to a given activity or project. Evaluating the pros and cons of taking action on a particular project, activity, or infrastructure modification or improvement becomes much more difficult without the ability to identify crucial elements, such as applicable regulatory requirements. Sound public policy principles dictate that the Regional Water Board's regulatory approach be more certain and less subject to the vagaries of constant case-by-case analysis by differing Regional Water Board staff. These concerns frame the City comments provided below and in the enclosed Attachment A, which sets forth the City's final comments (April 13, 2015) on the Basin Plan amendments, prior their adoption.

Primary Issues of Concern:

- **Significant Shift from Numeric to Narrative Water Quality Objectives**

The Basin Plan amendments favor a much more generalized, narrative approach to water quality objectives and associated regulation thereunder, and remove the more specific, numeric objectives that have more clearly governed the region's activities to date. (*See, e.g.,* Regional Water Board Resolution R1-2015-0018 at Attachment 2 (redline of Basin Plan amendments) at newly amended water quality objective sections 3.4.3, 3.4.10, and 3.4.16, which eliminate specificity regarding the beneficial uses to which these objectives apply and more broadly define potentially applicable requirements.) The City raised with Regional Water Board staff, both in written comments and orally, its concern about the tremendous uncertainty this produces, and the impact upon the City's ability to identify and implement novel water-related projects.[1] As Regional Water Board staff knows, the City prides itself on tackling innovative projects to

[1] The City specified its concerns in comments submitted at each stage of the preparation and adoption of the Basin Plan amendments. Attached to this comment letter are the City's most recent written comments to the Regional Water Board, dated April 13, 2015, which address in detail all of the factual/technical legal issues implicated by this shift towards very general, narrative water quality objectives (*see* April 13, 2015 comments at Attachment 1, pages 5 - 13). Because the Regional Water Board did not modify the Basin Plan amendments as requested, the City's April 2015 comments are still relevant and applicable to the Basin Plan amendments that are before the State Water Board for review

protect and improve the natural environment; however, the City's ability to create, fund, and sustain these types of projects can hinge on whether the City can generally predict and comply with relevant regulatory requirements. Basin Plan provisions that foster a more discretionary, "moving target" compliance approach could negatively impact the ability of the City and its ratepayers to pursue certain future water management approaches that are supported by the community at large.[2] These concerns are even more pronounced given the Regional Water Board's shift away from adopting implementation plan provisions for the newly amended water quality objectives as required by Water Code section 13242. For these reasons, the City requests that the State Water Board require the Regional Water Board to take a different approach to updating the Basin Plan, by actually defining the different beneficial uses to which various criteria may apply, and by adopting more specific, tailored water quality objectives associated with those uses, to ensure the mutually shared goal of transparency and clarity in the regulatory process.

- **New Water Quality Objective for Toxicity in Groundwater**

The City also continues to take issue with the incorporation of a new toxicity objective for groundwater.[3] (*See, e.g.,* Regional Water Board Resolution R1-2015-0018 at Attachment 2 at newly created water quality objective section 3.5.5) The more typical purpose of a toxicity objective is to protect aquatic life, which are absent from groundwater, and to also protect human health from exposure in drinking water supplies. The newly adopted toxicity objective for groundwater now appears focused on protecting human health (though it does still reference the protection of other undefined beneficial uses, which still concerns the City). However, existing and/or amended water quality objectives for MUN-designated groundwaters already sufficiently protect drinking water supplies and human health (*see, e.g.,* Regional Water Board Resolution R1-2015-0018 at Attachment 2 at water quality objective sections 3.5.2, 3.5.3, and 3.5.4); thus the need for the new water quality objective for toxicity in groundwater is lacking, and was not sufficiently identified or justified. If the concern relates to groundwater inputs to hydrologically connected surface waters, then the existing surface water toxicity and chemical specific objectives are adequately protective for this purpose, as those objectives would regulate those inputs at the point of any surface water inter-action.

While the City appreciates the Regional Water Board's desire for regulatory tools that authorize staff to protect groundwater supplies, we believe these tools already exist in the Basin Plan and applicable laws, and that the proposed groundwater objective for toxicity is unnecessary. Without a clearly defined basis for this new objective, or an associated implementation plan as required by Water Code section 13242, the City is concerned that this broad narrative water

---

[2] For example, the criteria selected may have been created under a separate regulatory program, such as a public health goal, that was never meant to apply in a regulatory order issued by the Regional Water Board. Many of the potential criteria that could be utilized as a particular value for a constituent may not be recommended or required for specified circumstances, and were not contemplated for use under the Clean Water Act or Porter-Cologne, since they fail to comply with the requirements of those laws (*e.g.*, no consideration of factors or requirements under Water Code sections 13241 or 13242). This sort of uncertainty is unreasonable, especially for public agencies currently facing economic strain that must undertake long-term planning efforts to efficiently and effectively manage their infrastructure and operations.

[3] The City raised its concerns regarding the new groundwater toxicity objective in its written comments to the Regional Water Board (*see* April 13, 2015 comments at Attachment 1, pages 2-5).

quality objective will be difficult to predict, and will result in inconsistent regulatory mandates and/or the imposition of heightened regulatory requirements that may not be necessary or cost-effective. For all of the reasons explained here, and in previous comments, the City urges the State Water Board to reject and/or remove this new and unnecessary objective.

The City hopes that its comments are useful to the State Water Board during its consideration of the Basin Plan amendments.

Sincerely,

David M. Guhin
Director of Santa Rosa Water

Enclosure

Attachment 1 to April 13, 2015 City of Santa Rosa Comments on February 2015 Proposed Amendments to the Water Quality Control Plan for the North Coast Region

Incorporation by Reference of the City's Previous Comments

In April of 2013, the City submitted extensive comments on the Basin Plan amendments proposed at that time. To avoid repeating each of those comments here, the City incorporates by reference those previous comments, particularly those related to the inconsistency with the other terms of the Basin Plan, the Water Code, and with the Administrative Procedures Act (APA), the "reasonableness" of the Regional Water Board's actions per Water Code 13000, and general allegations that the proposed amendments are not supported by findings, and/or findings made are not supported by adequate evidence in the administrative record, and asks that these earlier comments, where still applicable, be made part of the adoption record for these amendments should they proceed.

The Proposed Amendments Fail to Properly Amend the Bacteria Objectives

Although requested by the City in 2013, the proposed amendments still do not propose modifications to update the Basin Plan's current water quality objectives for bacteria. (SED at pp. 3-4) This is despite the fact that U.S. EPA recently modified the national water quality criteria guidance for bacterial indicators to protect recreational uses. (*See* http://water.epa.gov/scitech/swguidance/standards/criteria/health/recreation/index.cfm.) In the 2012 revised water quality criteria guidance, EPA recommended using the fecal indicator bacteria (FIB) enterococci and Escherichia coli (E. coli) as indicators of fecal contamination for fresh water and enterococci for marine water, instead of fecal coliform as currently used in the Basin Plan. "Scientific advancements in microbiological, statistical, and epidemiological methods have demonstrated that culturable enterococci and E. coli are better indicators of fecal contamination than the previously used general indicators, total coliforms and fecal coliforms." *See* EPA's Recreational Water Quality Criteria, EPA Office of Water, Doc No. 820-F-12-058 at p. 2 (2012). EPA also provided guidance on creating site-specific criteria after making a risk management decision regarding illness rate, which will determine which set (based on illness rate selected) of criteria values are most appropriate for their waters. To address the Regional Water Board's concern with having water quality standards based on the most recent and applicable science, the Regional Water Board should modify and update the bacteria water quality objectives in this proposed Basin Plan amendment.[1]

The Proposed Amendments to the Water Quality Objective for Toxicity Are Not Supported or Appropriate.

The proposed amendments to the water quality objective for toxicity have not been adequately explained or justified. For example, the changes to the last sentence entirely change the meaning

[1] Interestingly, the Regional Water Board justifies the adoption of general narrative criteria because numeric criteria are modified so often. The bacteria criteria demonstrate that this is not the case as the bacteria objectives were the same from 1986 to 2012, or for 26 years. Similarly, the California Toxics Rule criteria have not been substantially modified for 15 years, since 2000. (40 C.F.R. §131.8)

and the requirements of that sentence. The current Basin Plan contains the following final sentences:

> "In addition, effluent limits based upon acute bioassays of effluents will be prescribed. Where appropriate, additional numerical receiving water objectives for specific toxicants will be established as sufficient data become available, and source control of toxic substances will be encouraged." (*See* Current BP at 3-4.00)

The newly proposed language expands toxicity limitations that may be imposed under this objective by removing the word "acute" from the existing language "effluent limits based upon [acute] bioassays of effluents will be prescribed where appropriate," with no guidance on how this objective will be applied, or confirmation that "reasonable potential" actually exists to warrant the imposition of an effluent limit(s). (*See* 40 C.F.R. §122.44(d)(1)) Additionally, this discussion of effluent limits belongs in the Implementation Plan section of the Basin Plan, instead of as part of the objective.

The last sentence in the current Basin Plan has two parts: 1) that "where appropriate, additional numerical receiving water objectives for specific toxicants will be established as sufficient data become available"; and 2) that "source control of toxic substances will be encouraged."

The City appreciates that one of the newly proposed changes, while different from the last version, reinserts the need for sufficient data before establishing receiving water objectives by stating "Additional numeric receiving water objectives for specific toxicants will be established as sufficient data become available…" The City also appreciates the language change in the second part of the last sentence that now allows the requirement of, instead of requiring, source control. However, the City prefers the encouragement of source control for toxics because source control may not be the best remedy, or even a necessary remedy if the "toxicity" is due to other impacts on the test organisms (*e.g.,* food, temperature, etc.) Further, as before, no analysis of the impacts of the new source control requirement have been analyzed pursuant to Water Code section 13241 and no implementation plan has been prescribed as required by Water Code section 13242. More analysis and explanation of the need for these changes is required.

The Newly Proposed Water Quality Objective for Toxicity in Groundwater is Unnecessary and Incomplete

A new water quality objective for toxicity in groundwater is being proposed that states:

> "Groundwaters shall not contain toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, humans or aquatic life [footnote 14][2] or

[2] Proposed footnote 14 states "The application of numeric values protective of aquatic life may be necessary where groundwater is hydraulically connected with surface waters. Groundwater includes perched water if such water is used or usable or is hydraulically continuous with used or usable water." Where there are defined and proven hydrological connections, the surface water objectives would apply to protect the aquatic life uses. Further, the reference to "used or usable" is undefined and could apply to all water for any use, even a use where toxicity is not

> that adversely impact beneficial uses. This objective applies regardless of whether the toxicity is caused by a single substance or the synergistic effect of multiple substances."

Many problems with this new objective exist. The language of this objective specifies that it is based, in part, on protection of "aquatic life." Aquatic life are not present in groundwater, and any aquatic life that may be impacted in surface waters discharges from groundwater are protected by the surface water quality objective for toxicity. In addition, there are no native species of groundwater invertebrates, fish, or algae to perform toxicity tests upon to determine compliance with this objective. This justification and the reference to aquatic life in the proposed groundwater toxicity objective should be removed. Further, such an objective is not needed for human health because the chemical constituent objectives for both groundwater and surface waters provide adequate protection for human health.

The City notes that the Regional Water Board justifies inclusion and a "need" for the new objective based on the fact that Maximum Contaminant Levels ("MCLs") incorporated by reference via the ground water chemical constituents objective do not include "consideration of other human health exposures (*e.g.,* contact recreation or fish consumption), aquatic life exposure, or agricultural crop impacts (*e.g.,* plant growth interference or increased mortality). (*See* proposed amendments at page 3-1) However, these "exposures" or "impacts" do not exist in the groundwater itself, only in surface waters to which groundwater may or may not have any direct connection; and in that case, the surface water quality objective for toxicity provides adequate regulatory authority to regulate discharges that may reach surface waters. It appears that Regional Water Board staff are disregarding or are unclear on this point. For example, on page 1-3, the proposed amendments state, "Where groundwater and surface water are connected, the designated beneficial uses of the surface water may also apply to groundwater." The City objects to this characterization, and presents to Regional Water Board staff that a more complicated and thorough analysis of impacts is currently mandated by the State Water Board when discharges to groundwater occur that may involve a surface water connection. (*See* State Water Board Order WQO 2003-0009 (dilution and attenuation, soil adsorption, etc.)) Designated uses of a surface water do not apply to groundwater, given their markedly different characteristics, even if hydrologically connected; no "tributary rule" exists to apply such uses specifically to groundwater, and groundwater has been explicitly separated from application of such a "rule" in existing and proposed federal regulations (re "waters of the United States"). Further, if surface and groundwaters are connected, the surface water objective acts to protect surface waters, and the appropriate analysis is whether the groundwater, at the point of entry to surface waters, is protective of surface water uses; if not, then reasonable discharge restrictions may be imposed.

As explicitly referenced elsewhere in the proposed amendments, the City understands that the proposed groundwater toxicity objective is being designed to be a mechanism by which inapplicable federal criteria for priority pollutants, not adopted for or relevant to groundwater conditions, will be imported as discharge limits for projects involving a discharge to groundwater,

---

an issue (e.g., industrial supply). This overbreadth is yet another reason to not adopt an unnecessary groundwater toxicity objective.

likely due to the fact that the criteria can be lower than associated MCLs, given the focus on potentially present sensitive aquatic life that exist in surface waters (staff explicitly state elsewhere that the list of constituents for which MCLs apply is much shorter than the list of toxic pollutants in the California Toxics Rule and/or National Toxics Rule, thus justifying the need to pull in a "toxicity" objective to allow a more expansive suite of inapplicable criteria). The objective also appears to serve as a mechanism by which to import and impose more stringent requirements based on numeric values contained in other California laws, even though those numeric values were not adopted for this purpose, and therefore, doing so violates a variety of Water Code provisions (*e.g.*, Water Code sections 13241, 13242, etc.).

For example, on page 3-4 of the proposed amendments, reference is made to importing and imposing a public health goal set by the Office of Environmental Health Hazard Assessment ("OEHHA") via this proposed objective (the amendment discusses the fact that the primary MCL for tetrachloroethane is 5 micrograms per liter, while the *de minimis* risk level set by OEHHA with its public health goal ("PHG") is 0.06 micrograms per liter, and the proposed groundwater toxicity objective would be utilized to impose the OEHHA public health goal). A public health goal (PHG) published by OEHHA is not a regulatory standard. It is only one step in the process of developing a regulatory standard for drinking water by the State Water Resources Control Board. (*See* Health & Safety Code § 116365(c)(2)) As OEHHA expressly states, a PHG is a non-enforceable goal that the State Water Board later uses to develop a maximum contaminant level ("MCL"), which is an enforceable regulatory standard. In almost all cases, the PHG is far lower than the MCL. In April 2015, OEHHA published guidance entitled: "Guide to Public Health Goals (PHGs)." In its guidance (a copy of which is attached), OEHHA stated that:

- PHGs are necessary guides for making decisions about the levels of contaminants in drinking water, but these guidance levels are just one element that SWRCB must consider when maintaining the quality of drinking water.
- A PHG is not a boundary line between a "safe" and "dangerous" level of a contaminant, and drinking water can still be considered acceptable for public consumption even if it contains contaminants at levels exceeding the PHG.
- As long as drinking water complies with all MCLs, it is considered safe to drink, even if some contaminants exceed PHG levels.
- PHGs are not regulatory standards.

For these reasons, it is not appropriate for the any water quality objective, including the proposed toxicity objective for groundwater, to import PHGs as regulatory standards by which discharges or cleanup actions are governed.

Finally, the impacts of this new water quality objective were not appropriately analyzed pursuant to Water Code section 13241, and an adequate implementation plan has not been prescribed as required by Water Code section 13242. The impacts are more than just economic and each must be fully explored. For example, the overview of the Section 13241 analysis at pages 1-9 to 1-10

appears to be for the entire package of amendments, not each objective individually, which is contrary to law. Further, the analysis is incomplete. For example, the part describing compliance with section 13241(c) states:

> "(c) *Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.* Key pollution threats to groundwater and surface water in the region include industrial wastes, leaking petroleum tanks, septic leakage, urban and agricultural runoff, forestland and urban road runoff, and the disposal of waste to land and to surface waters. The use of best achievable technology in many cases has proven to prevent or remediate pollution, which in turn supports beneficial uses. Additionally, several areas through the region are high quality waters. For additional discussion see Section 2.3 of this Staff Report;"

This discussion includes an unsupported statement that "in many cases" the use of best achievable technology has proven to prevent or remediate pollution. On page 2-51, it further states, without supporting evidence, that:

> "Through the coordinated control of factors, water quality in the North Coast has been preserved, maintained and restored in an enumerable amount of cases from groundwater remediation success stories to wastewater treatment systems infrastructure upgrades to stream habitat improvement projects. Therefore, it is reasonable to expect that the water quality objective amendment will result in the continuation of this pattern."

This limited discussion does not review each objective and answer the statutory mandate of "water quality conditions that could be reasonably achieved" and admits that, in some cases, pollution may continue despite the coordinated control of all factors that affect water quality. If a proposed objective is not achievable, state law requires modification of that objective to that 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 social, tangible and intangible." (*See* Water Code §13000)

The Regional Water Board cannot avoid the required performance of this analysis for each objective, nor can it rely on improper justifications, such as protection of aquatic life, or because this reflects current policy. The premise that the adoption of this new objective will have no cost or impact because the action is consistent with how Regional Water Board staff have already been allegedly and unlawfully interpreting and applying its objectives is flawed. Thus, the adoption of this water quality objective and other water quality objectives as presently proposed violates the Water Code. (*See City of Tracy v. SWRCB,* Sacramento Sup. Ct. Case No. 34-2009-80000392, Final Statement of Decision (May 10, 2011))

The Proposed Amendment to the Narrative Objective for Chemical Constituents Violates State and Federal Law

The Regional Water Board is proposing to amend the water quality objective for chemical constituents for surface waters in Section 3.4.3 and in groundwater in Section 3.5.2 in several

crucial ways, by (1) broadening the scope of its general applicability from waters designated with an MUN or AGR use to *all* beneficial uses; and (2) incorporating a generalized policy by which the generic statement will be "translated" into discharge or cleanup requirements, discussed in detail below, which itself, provides a broad range of sources by which those discharge requirements may be derived with no certainty as to how a particular source will be selected or interpreted. This approach is problematic for a variety of reasons set forth below.

Objectives must be set to protect specific uses, as required by both the Clean Water Act, and the Water Code. (*See* 33 U.S.C. §1313(c)(2)(A)[3] and Water Code §13050(j) and §13241) The fact that the existing objectives may not protect other designated beneficial uses (besides MUN and AGR), as referenced by Regional Water Board staff, is of no accord in terms of its validity. Other objectives, which are not proposed to be changed, only protect a single use. For example, the temperature objectives are for the WARM and COLD uses (Current BP at 3-4.00), different bacteria objectives protect the REC-1 and SHELL uses (*id.*), and the dissolved oxygen and pH objectives are to protect aquatic life uses (*id.*). Decoupling the objective from any particular beneficial use violates the water quality standard concept underlying both the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act. Further, the Regional Water Board has not adequately justified or explained how the newly amended chemical constituents objectives will be applied or interpreted to protect beneficial uses not previously associated with these objectives, such as the COMM, SHELL, FISH, CUL, COLD, WARM, SPWN, WILD, and RARE beneficial uses, and what that might mean for those regulated entities that discharge into receiving waters with these uses.

Further, the City is also concerned that the broadened applicability of the objectives may result in federal or other related toxicity criteria being applied via this objective, when the narrative water quality objective for toxicity is supposed to govern the regulation of toxic pollutants.[4] (*See, e.g.*, proposed Basin Plan amendments at page 1-7, last full paragraph, referencing the federal California and National Toxics Rules and the related State Implementation Plan) Also, the Regional Water Board's segue way in the same section, citing these objectives as a potential basis for implementing "controls with respect to constituents that have the potential to cause groundwater toxicity" makes clear that the Regional Water Board is expanding the scope of the chemical constituents objectives beyond its original boundaries, and into the toxicity realm that is already occupied. The City requests that the Regional Water Board remove references to toxic pollutants or "toxicity," from the Basin Plan provisions justifying a change to, or that may

---

[3] "The federal Clean Water Act (Section 303, 33 U.S.C. § 1313) requires states to adopt water quality standards (water quality objectives and beneficial uses) for navigable waters of the United States and to review and update those standards on a triennial basis." (*See* Current BP at 1-3.00)

[4] Clean Water Act section 303(c)(2)(B) requires numeric criteria for toxic pollutants where section 304(a) guidance criteria exist. (33 U.S.C. §1313(c)(2)(B).) Thus, where 304(a) criteria exist, numeric water quality objectives are required to be adopted in accordance with state law, through a public process, taking into account site-specific factors and Water Code section 13241 factors. (*Id.*; 40 C.F.R. §131.5(a)(3) and §131.6(e).) Thus, if numeric objectives are not being adopted as required by federal law, then, at the very least, the narrative chemical constituent water quality objective should exclude its use for any toxic chemical constituents that have 304(a) criteria.

implement, the surface or ground water chemical constituent water quality objectives, as the existing federal and state numeric and narrative objectives for toxic pollutants adequately occupy this arena, and such references may be confusing to Regional Water Board staff and the public alike as to the appropriate methods of future regulation.

Additionally, the justification for the incorporation of all primary and secondary MCLs as water quality objectives is not adequate; however, if the Regional Water Board plans to continue using these criteria to protect waters designated with the MUN beneficial use, the Regional Water Board must incorporate the annual average application of the MCLs as they are applied to drinking water and disallow the criteria to be imposed as daily or instantaneous maximums, weekly averages, or monthly averages. Those compliance timeframes have been proven unnecessary to protect human health via the incorporated by reference drinking water statutes and regulations.

Finally, the proposed amendment to this objective cannot be validly adopted as the Regional Water Board has entirely not substantively considered the factors set forth in Water Code section 13241, and has not set forth an implementation plan as required by Water Code section 13242. Regional Water Board staff attempt to justify this omission by inaccurately stating that the baseline for purposes of considering the Water Code section 13241 factors is the current practice of imposing requirements not supported by existing Basin Plan provisions, rather than the duly adopted provision in the existing Basin Plan. Until this analysis is properly performed, and implementation actions by the regulated community evaluated and prescribed, the proposed amendment fails to comply with law.

Prospective Incorporation By Reference of MCLs, or Other Criteria, Violates Water Code Section 13241, CEQA, and the Administrative Procedures Act.

The Draft Amendments, at Sections 3.4, 3.4.3, 3.4.8, 3.4.10, 3.4.14, 3.5.2, 3.5.3, and 3.5.4, attempt to prospectively incorporate by reference future changes to the California Toxics Rule, National Toxics Rule, State Water Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), and the drinking water MCLs contained in Title 22 of the California Code of Regulations. Such incorporation by reference of another agency's criteria is legally invalid, and fails to comply with Water Code, CEQA, and APA requirements.

On May 10, 1995, the Office of Administrative Law ("OAL") issued a Notice of Approval and Disapproval, and Reasons for Approval and Disapproval of Parts of a Rulemaking Action on the 1994 Central Valley Basin Plan Amendments (OAL File No. 95-0328-01). This approval/disapproval decision on the 1994 Central Valley Basin Plan determined that "[a] prospective incorporation-by-reference (one that automatically incorporates future changes to an incorporated document) is of dubious validity." (*Id.* at pg. 10 (emphasis added).)

Prospective incorporation by reference would allow the Regional Water Board to abdicate its responsibility to consider the factors contained in Water Code sections 13241 and to develop an

implementation plan for these prospectively incorporated objectives as required under Water Code section 13242. This analysis is required each time a new or more stringent MCL or other criterion is newly incorporated into Title 22.

The use of the prospective incorporation-by-reference method of adopting water quality objectives further violates the requirement that affected state and local agencies be consulted with and their concerns be considered, the applicable public notice and participation requirements of the Water Code, and the requirement that changes to a Basin Plan must be approved by the State Board before those changes become effective. (*See* Water Code §§13240, 13244, and 13245) The Regional Water Board cannot defer or delegate[5] its required analysis to any analysis previously undertaken by the Department of Health Service (DHS)/Department of Public Health (DPH), as any previous analysis did not comply with explicit Water Code or CEQA requirements.[6]

The California Supreme Court has even weighed in on the problems with not undertaking the appropriate 13241 analysis when objectives are adopted:

> "Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board)--the body responsible to enforce the statutory framework--failed to comply with its statutory mandate.
>
> For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirement set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so.... the result here is an unseemly bureaucratic bait-and-switch."

City of Burbank v. State Water Resources Control Board, et al, 35 Cal.4th 613, 630-634; 26 Cal. Rptr. 3d 304, 316-318 (2005)(concurring opinion). For these reasons, the Regional Water Board should refrain from adopting Basin Plan provisions that prospectively incorporate by reference other criteria not originally adopted for use under the Porter-Cologne Water Quality Act or the Clean Water Act. Fear of MCLs being out of date at some time in the future is not an adequate

---

5 The Regional Water Board's delegation of powers only allow delegation of certain activities, and only to the Board's Executive Officer. See Water Code section 13223(a). Delegation of basin planning activities to another agency is not authorized.

6 Since DHS/DPH did not adopt MCLs as water quality objectives, their CEQA analysis does not extend to potential impacts of applying these numbers as water quality objectives to all waters of the State.

justification for the proposed objective changes. If the MCL values are correctly adopted directly as water quality objectives after full compliance with the Water Code, but become out of date, these objectives can be updated or modified as needed to protect the designated uses to which these criteria are set to apply by directly adopting the values into the Basin Plan. In fact, all water quality objectives are required to be reviewed and updated periodically under state and federal law. (33 U.S.C. §1313(c)(1); Water Code §13143)

If, however, the Regional Water Board continues to pursue prospective incorporation by reference (which the City does not recommend), the Basin Plan's Implementation Plan must expressly allow for a renewed review of the 13241 factors not previously reviewed prior to imposition, and a revised Implementation Plan consistent with Water Code section 13242 must be considered and adopted for each new prospectively incorporated objective, at the very least, concurrent with the permitting stage under Water Code section 13263 (which explicitly references the need for renewed 13241 analysis, where appropriate).

The Proposed Narrative Water Quality Objective Translator/Policy Does Not Comply with Federal and State Law

In the revised proposed Basin Plan amendments, the Regional Water Board appears to be abandoning the adoption of a specific water quality "translator" for narrative water quality objectives, as originally proposed in 2013, in favor of even more generalized guidance as to how narrative water quality objectives are to be interpreted and implemented in regulatory orders. (*Compare* recommended Alternative 4 in Section 5.3.4. to Alternative 3 in Section 5.3.3 (both appear on page 5-10); *see also* Section 3.4.1 (pages 3-8 to 3-10), setting forth the general process by which Basin Plan narrative objectives are improperly utilized to incorporate a variety of constituent values; and Appendix A at Section 3.1.1) The City previously objected to the Regional Water Board's specified "translator" as not compliant with applicable federal and state law, and again objects here to the revised process outlined in the proposed amendments, given it provides even less clarity and certainty, and could be subject to abuse in site-specific circumstances. As expressed previously, while the City understands the Regional Water Board's role and authority to protect water quality, the City favors regulatory clarity that is not just recommended, but required, by applicable law.

Notwithstanding the language of the Clean Water Act at section 303(c)(2)(B), U.S. EPA regulations permit States to adopt narrative, rather than numeric, criteria to protect designated uses so long as the State provides "information identifying the method by which the State intends to regulate point source discharges of toxic pollutants … based on such narrative criteria." (40 C.F.R. § 131.11(a)(2).) This "narrative translator" procedure is intended to ensure "acceptable scientific quality and full involvement of the public and EPA." (57 Fed. Reg. 60853 (1992).) However, the regulations only allow narrative objectives "where numerical criteria cannot be established or to supplement numerical criteria." (40 C.F.R. §131.11(b)(2)) Here, there is no reason why numeric criteria cannot be established, and the narrative is not proposed to be merely supplemental.

In addition, the Regional Water Board is attempting to adopt a very general "translator" mechanism for all narrative water quality objectives, meaning that the "translator" is even more difficult to ascertain the outcome, because the "translator" is not specifically tied to any one narrative objective; compounding confusion further is the fact that each narrative standard is meant to protect water quality for different purposes. This approach is contrary to federal rules, which recognize that a narrative "translator" tied to, and adopted with, a specific narrative water quality objective, may satisfy the requirements of Clean Water Act section 303(c)(2)(B), if established and correctly applied. (*See* 57 Fed. Reg. 60853, 60873 (Dec. 22, 1992).

Further, the Regional Water Board has wholly failed to comply with Water Code section 13242 when implementing a narrative translator because it has not considered the nature of the actions needed to achieve the translated narrative objectives, the feasibility or ability of doing so, or the economic impacts of those actions, a time schedule for when these actions could be undertaken, or how compliance will be determined. This failure violates Water Code section 13242 and must be remedied. (*See City of Tracy v. SWRCB,* Sacramento Sup. Ct. Case No. 34-2009-80000392, Final Statement of Decision (May 10, 2011))

Without a specific and clear translator mechanism for each narrative objective, dischargers have no input into the regulatory process and will be simply left to guess how their discharges will be regulated under the narrative criteria. Moreover, the proposed amendments fail to provide permit writers with sufficient guidance for establishing appropriate and reasonable numeric criteria and allows them to simply draw permit limits seemingly out of thin air.

To avoid this type underground rulemaking, which violates the California Water Code and Administrative Procedures Act, U.S. EPA provides that a State's translator procedure for narrative criteria is needed and should specifically describe:

- methods the State will use to identify those pollutants to be regulated in a specific discharge;
- an incremental cancer risk for carcinogens;
- methods for identifying compliance thresholds in permits where calculated limits are below detection;
- methods for selecting appropriate hardness, pH, and temperature variables for criteria expressed as functions;
- methods or policies controlling the size and in-zone quality of mixing zones;
- design flows to be used in translating chemical-specific numeric criteria for aquatic life and human health into permit limits; and
- other methods and information needed to apply standards on a case-by-case basis.

(*See U.S. EPA Water Quality Standards Handbook, Second Edition*, EPA-823-B-12-002, March 2012, at § 3.5.2 & Exhibit. 3-3) In EPA's Technical Support Document for Water Quality-Based Toxics Control ("TSD," March, 1991) at page 31, U.S. EPA stated:

> To ensure that narrative criteria for toxicants [not covered by CWA § 303(c)(2)(B)] are attained, the water quality standards regulation requires States to develop implementation procedures (see 40 C.F.R. § 131.11(a)(2)). Such implementation procedures (Box 2-1) should address all mechanisms used by the State to ensure that narrative criteria are attained.

Box 2-1 sets forth the "Components of an Ideal State Implementation Procedure" that satisfy the requirements of 40 C.F.R. § 131.11(a)(2). Importantly, U.S. EPA in Box 2-1 on page 32 of the TSD identified a particularized list of elements that are needed in a State's translation mechanism, and are similar to those set forth in the Water Quality Standards Handbook cited above. The translation procedures required and described in detail by U.S. EPA ensure that certainty in the regulatory process is preserved and that the public is properly notified of how it is going to be regulated.[7] Further, the implementation procedure must ensure that the State complies with relevant state laws (*e.g.*, Cal. Water Code §§13000, 13241 and 13242; APA).

The proposed translation mechanism seems to allow any guidance documents or other water quality goals, whether formally adopted by any regulatory agency or not, to be used as "de facto" water quality objectives, with no consideration of site specific factors, ambient water conditions, or effects on beneficial uses. None of the enumerated requirements for a proper translator have been included. Moreover, this translator fails to ensure that the guidance numbers are being utilized in an appropriate manner, which has been rejected previously. For example, the Central Valley Regional Water Board attempted to use a European Union Council Directive to set an ammonia limit in an NPDES permit based on the taste and odor narrative. This action was overturned by the State Water Board because the Regional Water Board implemented the EU ammonia value in a manner not consistent with its intent - to be used for solely as a monitoring purposes and as an indicator parameter - not to address taste and odor regulatory concerns as was imposed. (*See*

---

[7] Since narrative criteria are generalized statements of prohibited chemical, physical or biological conditions, rather than quantitative standards, the State must provide information to EPA and the public identifying how point sources will be regulated based upon narrative criteria. (*See, e.g.*, U.S. EPA Water Quality Standards Handbook 2d. Ed. at 2-17 to 2-21 (Aug. 1994).) This requirement not only provides the public and the regulated community with fair notice of what is expected of them, but also ensures that the narrative criteria have clear bounds and a rational basis for their implementation and that permits are not created based on the views of Regional Water Board staff based on unwritten or non-promulgated agency policy or non-regulatory goals. U.S. EPA itself expressly recognized that any criteria derived from a narrative standard "may invite legal challenge" and that "public participation in development of derived numeric criterion may be limited." (*See* EPA Memorandum from Rebecca W. Hammer, Acting Assistant Administrator for Water, "Transmittal of Final 'Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)'"(Dec. 12, 1988) at 10.) Thus, U.S. EPA recommended that States adopt "a sound and predictable method to develop numeric criteria" from narrative standards, which could be used once EPA approved the State's procedure. (*Id.* at 10, 13.) Here, the proposed procedure is neither technically sound nor predictable.

SWRCB Order No. 2002-0015 at 47.) The failure to indicate which values will be utilized and for what purposes makes the proposed narrative objective translation process impossible to predict.

Without a proper translator describing the exact step-wise process that the Regional Water Board will employ, the proposed narrative objectives will be subject to misuse through the imposition of inappropriate effluent limitations. For example, with the currently proposed translator, the Regional Water Board can identify the lowest number from anywhere in the world in relation to a particular pollutant (*e.g.,* European Union goals or World Health Organization guidance) and then impose this number as an effluent limitation in a permit without following the legal procedures normally required when adopting new water quality objectives (*e.g.,* Cal. Water Code, APA, CEQA). Using a narrative objective in this way results in "moving target" regulation, which is especially troubling to publicly owned treatment works that cannot cease treating the public's sewage and must determine, on a short schedule, how to comply with these ever-changing effluent limitations that may have no relation to actual beneficial use protection or site-specific conditions. This is made clear by the memo and Table included in Appendix E of the proposed amendments, which demonstrates that notwithstanding the adopted water quality objectives contained in Table 3-2 of the current Basin Plan, the Regional Water Board staff has randomly and not uniformly selected lower numbers to place in permits and other regulatory orders. In addition, the proposed Policy contains undefined terms such as "most limiting of these values" and "true background level." (SED at pg. 3-11, Figure 3-3.) The failure to provide a better explanation of how the ultimate limits are derived will not succeed in reaching the Regional Water Board's goal of having more streamlined permit renewals and will merely cause additional contentious issues.

The Regional Water Board appears to be trying to impose the "most protective threshold for chemical constituents or toxicity to protect human health or aquatic life when developing permits, orders and other regulatory actions" (SED at pg. 2-45) when that is not the mandate required by state or federal law. The requirement is to impose limits based on "water quality objectives reasonably required" to "ensure the *reasonable* protection of beneficial uses." (Cal. Wat. Code, §13263(a); §13241) (emphasis added). Choosing the most stringent number available for permitting purposes ignores the Water Code's express recognition that "it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." (Cal. Wat. Code, §13241) In addition, by adopting a narrative objective that facilitates the use of an undefined, but most stringent criteria or guidance number available, completely avoids the factors analysis required under Water Code section 13241. (Cal. Wat. Code, §13241(a)-(f))

If there is a particular numeric value that Regional Water Board staff believes is the proper value to be used as a water quality objective in order to protect beneficial uses and to impose permit limits, then that value should be adopted through the legally mandated process. Water quality standards are required to be reviewed every three years, so if the value initially selected becomes inappropriate in the future, it can be properly modified through the public process. (*See* Cal. Wat. Code, §13240; 33 U.S.C. §1313(c)(1); *see also* Current BP at 1-4.00 ("Both Porter-Cologne (CWC Section 13240) and the Clean Water Act (Section 303(c)(1)) require review of basin plans

at least once each three-year period to keep pace with changes in regulations, new technologies and policies, and physical changes within the Region."(emphasis added))

Finally, the proposed amendments, which formally broaden the scope of how existing narrative water quality objectives are interpreted and implemented, cannot be validly adopted as the Regional Water Board has entirely not substantively considered the factors set forth in Water Code section 13241. For example, even though the Regional Water Board expressly acknowledges that the proposed amendments will result in the imposition of more stringent requirements, because the Regional Water Board already engages in the practice they are seeking to validate through these amendments, Regional Water Board staff take the position that there will be no additional costs to comply; or, in other words, the cost to comply with the new groundwater toxicity objective, and the revised narrative objectives and Policy will be "a fraction of the total cost of compliance, if there is any additional cost at all." (SED at pg. 6-3). This hugely mis-states the baseline for purposes of considering the Water Code section 13241 factors. The factors set forth in Water Code section 13241 must be substantively evaluated as compared to the existing Basin Plan requirements, not as compared to potentially invalid and unauthorized implementation activities. Until this analysis is properly performed, the proposed amendments fail to comply with law.

The Proposed Implementation Plan at Chapter 4 Does Not Meet the Requirements of Water Code section 13242.

The proposed changes to Chapter 4 of the Basin Plan, set forth in Appendix B, purport to satisfy Water Code section 13242's requirement for a detailed implementation plan, which describes how compliance with duly adopted water quality objectives will be achieved. Instead, Chapter 4 is simply a basic recitation of existing laws and policies that describe the regulatory actions the Regional Water Board is authorized to undertake (*e.g.*, a description of the water quality certification process under Clean Water Act section 401, NPDES permits, waste discharge requirements or waivers thereof, monitoring and reporting programs, and enforcement activities, including those that allow additional time for compliance). (*See* Appendix B pages B-2 – B-8; see also Section 4.3 on page B-2, which explicitly states, "This section is intended to generally describe the authorities of the State Water Board, the Regional Water Board and other agencies with respect to water quality control") While informative to the reader, this recitation fails to satisfy the planning requirements of Water Code section 13242 (which "shall include": "a description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private; a time schedule for the actions to be taken; and a description of surveillance to be undertaken to determine compliance with objectives."). (Water Code §13242)

Further, the recitation contains legal errors; for example, on page B-2, the recitation includes a description of "controllable water quality factors" that states, "when other factors result in the degradation of water quality beyond the levels or limits established as water quality objectives, controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from human activities that may influence the quality of the waters of the state and that may be reasonably controlled."

These statements are inaccurate, do not properly characterize either Water Code section 13241 (where the concept of "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area" is discussed as a factor to be considered when adopting a water quality objective) or the State's anti-degradation policy (Resolution 68-16). The City requests that Chapter 4 be revised, to accurately describe authorities, and to properly include implementation plans for the Chapter 3 water quality objectives.

The Term "Adversely Affect" Should be Removed from Water Quality Objectives

Many of the water quality objectives set forth in the proposed amendments, as well as existing water quality objectives set forth in the Basin Plan, state that waters should not contain substances that "cause nuisance or adversely affect beneficial uses." (*See* Current BP at 3-3.00 to 3-5.00 and new Section 3.4.3; 3.4.8; 3.5.2; and 3.5.3). The term "adversely affect" is not defined in the Basin Plan and is inconsistent with state law, which requires "reasonable protection" of beneficial uses, and requires that uses are not "unreasonably" affected. (Cal. Wat. Code, §13241 (emphasis added).) Thus, the term "adversely affect" should be changed to "unreasonably affect" throughout Chapter 3 in order to achieve required consistency with the Water Code.

The Proposed Amendment Still Contains Other Substantial Errors That Must Be Corrected

1) On page 3-6, the Regional Water Board is proposing changes to the following paragraph:

> "Under ~~this policy~~ the federal Antidegradation Policy, an activity that results in discharge would be prohibited if the discharge ~~will~~ would lower the quality of surface waters that do not currently attain water quality standards. Both the state and federal policies acknowledge that an activity that results in minor water quality lowering, even if incrementally small can result in violation of antidegradation policies through cumulative effects, especially, for example, when waste discharge contains ~~is~~ a cumulative, persistent, or bioaccumulative pollutant or pollutants."

The federal policy at 40 C.F.R. 131.12 contains no such prohibition or acknowledgement, and state law expressly rejects this concept. Provisions of the Water Code (adopted after the state's Antidegradation Policy (No. 68-16) and arguably preempting any contrary language) state that "it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses." Cal. Water Code §13241. Moreover, there are numerous circumstances or methods that discharges can be allowed where receiving waters are not currently attaining water quality standards (*e.g.*, TMDL preparation and implementation schedules, variances, site specific objectives, compliance schedules, time schedule orders, etc.). (*See* U.S. EPA Guidance on Implementing the Anti-degradation Provisions of 40 CFR 131.12 (1987) at p. 2; SWRCB Order No. WQ 2001-06.) Thus, this paragraph should be removed. In fact, this entire section on "Anti-degradation Policies" should be removed except for the discussion of state and federal policies in the first paragraph. This paragraph could just be included without the last two sentences or the remainder of the section in which the Regional Water Board

misinterprets the requirements of these policies (as demonstrated by the example above), thereby creating a new "rule." These policies speak for themselves and should not be incorrectly re-interpreted throughout the proposed amendments to the Basin Plan.

2) On page 2-44, the Regional Water Board characterizes footnote #2 to the current Chemical Constituents objective at Table 3-2 as specifying that other more stringent criteria and protective policies may be applied, such as SIP, Resolution No. 92-49, and cancer potency factors. However, footnote 2 to Table 3-2 says nothing of the sort. In its entirety, footnote 2 reads:

> "The values included in this table are maximum contaminant levels for the purposes of groundwater and surface water discharges and cleanup. Other water quality objectives (e.g., taste and odor thresholds or other secondary MCLs) and policies (e.g., State Water Board 'Policy With Respect to Maintaining High Quality Waters in California') that are more stringent may apply."

Contrary to the Regional Water Board's contentions and seemingly improper use of this footnote, this footnote merely states that "The values included in this table are maximum contaminant levels for the purposes of groundwater and surface water discharges and cleanup. Other water quality objectives (e.g., taste and odor thresholds or other secondary MCLs) and policies (e.g., State Water Board "Policy With Respect to Maintaining High Quality Waters in California") that are more stringent may apply." Thus, other objectives (*e.g.*, Taste and Odor Thresholds, which are included separately as objectives under the Current Basin Plan at 3-3.00) may be used to set limits more stringent than those in Table 3-2, or that the State Water Board Res. No. 68-16, the State's Antidegradation Policy, may be used in conjunction with the chemical constituents water quality objectives, when demonstrated to be necessary to reasonably protect beneficial uses. However, the current footnote language did not create a *carte blanche* ability to use alternative cancer potency factors, or other water quality goals as water quality objectives *in lieu of* those contained in the current Basin Plan's Table 3-2. Such a process violates Water Code section 13241 and 40 C.F.R. §131.11(b)(2)(allowing narrative criteria "where numerical criteria cannot be established or to *supplement* numerical criteria").

3) Footnote 9 added to the Groundwater Objectives at page 3-11 includes a definition of groundwater that means "subsurface water in soils and geologic formations that are fully saturated all or part of the year" and "any subsurface bodies of water which is beneficially used or usable." These definitions are not consistent with the definition in the Water Code, which defines groundwater as "all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels." Water Code §§10721(g), 10752(a). The Regional Water Board's definition should not differ from the state law definition.

4) Section 3.9 on page 3-19 states that Revisions are made to ensure the section is consistent with the State Water Board's *Policy for Compliance Schedules in National Pollutant*

Discharge Elimination System Permits [Res. No. 2008-0025], adopted in 2008, which upon adoption superseded the *Compliance with Water Quality Objectives* contained within Chapter 3 of the Basin Plan and *Schedules of Compliance* section presented in Chapter 4." This characterization ignores the express language of Res. No. 2008-0025, Para. 10, which states that: "Nothing in this Policy precludes the Water Boards from authorizing compliance schedules as part of a new or revised standard that are longer than those authorized in this Policy, provided that the Water Boards adequately justify the compliance schedule length and that the State Water Board and the U.S. EPA approve the new or revised standard." Thus, the Regional Water Board's Basin Plan should continue to include **independent authority** for compliance schedules consistent with state and federal law that may fall outside the scope of the State Water Board's compliance schedule policy, and specifically note the lack of conflict between the Basin Plan and the State Water Board's compliance schedule policy should the conditions set forth in the policy exist.

In addition, the changes set forth on page B-5 should include "compliance schedule" in addition to "time schedule" in Section 4.6 since the term time schedule has a connotation that it is included only in a Time Schedule Order, and not within an NPDES permit, WDR, or other order.

5) On page 5-30, the word "publically" is used in the second bullet, when it should be "publicly." This incorrect word is also used on page 7-3 in the last paragraph regarding POTWs.

6) On page 3-13 of Appendix A, footnote 14, the phrase "may be" should be changed to "are only."

7) The proposed amendments continue to violate CEQA for the same bases as set forth in the City's earlier comments.