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BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Fallbrook Public Utility District's Petition for Review of Action and Failure to Act by the California Regional Water Quality Control Board, San Diego Region, in Adopting Order No. R9-2012-0004, NPDES Permit and Waste Discharge Requirements for the Fallbrook Public Utility District	PETITION FOR REVIEW; PRELIMINARY POINTS AND AUTHORITIES IN SUPPORT OF PETITION (WATER CODE SECTIONS 13320); REQUEST TO PLACE PETITION IN ABEYANCE

Petitioner Fallbrook Public Utility District, in accordance with section 13320 of the Water Code, hereby petitions the State Water Resources Control Board ("SWRCB" or "State Board") to review Order No. R9-2012-0004 of the California Regional Water Quality Control Board, San Diego Region ("RWQCB" or "Regional Board") reissuing the National Pollutant Discharge Elimination System ("NPDES") Permit for Fallbrook Public Utility District ("District"). A copy of Order No. R9-2012-0004 is attached to this Petition as Exhibit A. A copy of the Petition has been sent to the RWQCB. A copy of the Request to Prepare Record of Proceeding is not attached at this time because the District is requesting that this petition be held in abeyance. The issues and a summary of the bases for the Petition follow. If the Petition is removed from abeyance, and the full administrative record is made available along with any other material has been submitted, the District will file a more detailed memorandum in support of the Petition.[1]

[1] The State Water Resources Control Board's regulations require submission of a memorandum of points and authorities in support of a petition, and this document is intended to serve as a preliminary memorandum. However, it is impossible to prepare a thorough memorandum or a memorandum that is entirely useful to the reviewer in the absence of the complete administrative record, which is not yet available.

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The District was incorporated as a political subdivision of the State of California in 1922 and operates under the provision of the Public Utility Act, Division 7, of the Public Utility Code as adopted in 1953. The District constructs, operates, and maintains facilities to supply water and sewer services to the town of Fallbrook and to supply water and recycled water to the surrounding residential and agricultural areas comprising approximately 28,200 acres. The District's mission is "to provide for the community of Fallbrook, now and in the future, a reliable supply and delivery of high quality retail potable water service. And to see to the collection, and disposal, of wastewater and solids, consistent with the optimal use of recycled water in the most efficient and economical means possible." Since many of the District's Permit requirements conflict with this mission, the District files this Petition for Review.

1. NAME AND ADDRESS OF PETITIONER:

Brian Brady, General Manager
Fallbrook Public Utility District

P.O. Box 2290
Fallbrook, CA 92088-2290

1425 South Alturas Road
Fallbrook, CA 92028

2. THE SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW:

Petitioner seeks review of Order No. R9-2012-0004, reissuing NPDES Permit No. CA0108031 for the District ("District Permit"). The specific permit requirements which the State Board is requested to review include, but are not limited to, the following issues:

(A) Failure to readily identify State law only requirements or place State law only requirements in a separate waste discharge requirements ("WDR").

(B) The District's Permit contains provisions more stringent than Federal law and the conclusion that it does not must be removed.

(C) The Permit contains duplicative and unnecessary provisions.

(D) The Permit contains mass limits not required by Federal law or adequately justified.

(E) The Permit contains daily or instantaneous limits not required by Federal law without the mandated impracticability analysis.

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(F) The Permit contains new final Total Residual Chlorine effluent limitations for which compliance is infeasible.

(G) The TCDD Equivalents Limits have not been adequately justified and no compliance schedule was given for these new limits.

(H) Additional clarification of receiving water limitations language is necessary.

(I) The bacteria Receiving Water Limitations and extensive monitoring requirements are unnecessary for the District's Permit given its disinfection processes.

(J) The Regional Board failed to remove or modify problematic compliance determination language that determined "violations" without due process.

(K) Failure to make other clarifying changes.

The State Board is also requested to review the Regional Board's actions in adopting the District Permit for compliance with due process and equal protection requirements, the California Water Code, the California Administrative Procedures Act (APE), the California Ocean Plan, and EPA regulations.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED:

The Regional Board adopted the District's Permit on August 8, 2012.

4. A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER:

Below is a statement of the reasons why the Regional Board's action to adopt Order No. R9-2012-0004 was improper, in order of appearance in the District's Permit.[2]

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[2] In addition, the District raises constitutional issues. Under the Fifth Amendment to the United States Constitution, "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." (See also U.S. Const., 14th Amend. ["[n]o state shall ... deprive any person of life, liberty, or property, without due process of law"].) In almost identical words, the California Constitution likewise guarantees due process of law. (Cal. Const., art. I, §§ 7, subd. (a) ["A person may not be deprived of life, liberty, or property without due process of law"], 15 ["Persons may not ... be deprived of life, liberty, or property without due process of law."].) When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal. (*Withrow v. Larkin* (1975) 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712.) A fair tribunal is one in which the decision maker is free of bias for or against a party. (*People v. Harris* (2005) 37 Cal.4th 310, 346, 33 Cal.Rptr.3d 509, 118 P.3d 545; see *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025, 119 Cal.Rptr.2d 341, 45 P.3d 280 ["When due process requires a hearing, the adjudicator must be impartial."]; *Morongo Band of Mission Indians v. State Water Resources*

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1) Section II. Findings, Paragraph C, pg. 5 - State Law Only Requirements Must Be Readily Identifiable or Placed in a Separate WDR.

The final version of the District's Permit states that: "This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the CWC (commencing with section 13260)." While the District appreciated the addition of Finding II.Q., regarding the potential non-enforceability of the state law only requirements, the District requested that the state law only requirements be conspicuously identified either in a finding, in a separate section of the permit, or by specific markings to clearly identify the provisions that implement state law only. As an entity that has previously been subjected to a citizen suit, the District offered to assist the Board in identifying the state law requirements as requested, but that offer was ignored.

As an alternative, the District requested that the state law only provisions be moved out of the NPDES permit and placed in a separate waste discharge requirements ("WDR"), which is not enforceable by third parties under the Clean Water Act. By failing to indicate which provisions are state law only or removing those requirements from the NPDES permit, the Regional Water Board may be, in essence, *federalizing* the requirements and making them subject to U.S. EPA and citizen enforcement, when such enforcement would not be authorized if the requirements were contained in a separate WDR. Failure by the Regional Board to address these issues was arbitrary and capricious, and placed the District in enforcement jeopardy under federal law for state only offenses.

Request: ***Remand the Permit to clearly identify (or remove) the state law only provisions of the Permit in order to implement Finding II.Q.***

2) Section II. Findings, Paragraph K, pg. 7 – The Permit Contains Provisions More Stringent than Federal Law and, Therefore, the Conclusion that It Does Not Must be Removed.

Control Board, 45 Cal.4th 731, 736-7 (Cal.2009).) The District alleges that the Regional Board failed to have separate counsel for the Board and Staff at this quasi-adjudicatory hearing. (*See Quintero v. City of Santa Ana, supra,* 114 Cal.App.4th 810, 816(4th Dt. 2003)("… dual representation is not barred so long as there is an adequate separation of the two roles and the attorneys performing them. [citation omitted] What is inappropriate is one person simultaneously performing both functions.")

The District also alleges equal protection violations since the same laws are applied differently throughout the state making the District potentially liable for violations of its permit when another discharger does not face the same compliance jeopardy.

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Finding II.K. of the District's Permit improperly and inaccurately states that "These limitations are no more stringent than required to implement the requirements of the CWA," and "This Order's restrictions on individual pollutants are no more stringent than required by the CWA." These statements are inaccurate and must be removed. No evidence was provided to demonstrate that each requirement or limitation was not more stringent than required by the CWA and, in fact, the District demonstrated in comments and at the hearing that many individual requirements exceeded federal law requirements and the additional analysis needed was not done or was inadequate. (*See City of Burbank v. State Water Resources Control Board, et al,* 35 Cal. 4th 613, 618 (2005)("When, … a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic factors, including the wastewater discharger's cost of compliance.") In that case, the California Supreme Court remanded the matter for further proceedings at the Superior Court level to determine whether the individual pollutant limitations in the permits challenged met or exceeded federal standards.) Effluent limitations more stringent than required by federal law are likely to be overturned. (*See* Statement of Decision, *City of Burbank v. State Water Resources Control Board, et al*, Case No. BS060960 (June 28, 2006).) A similar overturning of the more stringent limits could also occur here upon further review. Therefore, these self-serving conclusions are inappropriate.

Request: Remove the last sentences of both paragraphs in Finding II.K.

3) Section III. Discharge Prohibitions D. and E. – Remove these Duplicative and Unnecessary Provisions.

As pointed out in several comment letters submitted by the District, many of the Permit provisions are duplicated later in the permit or Fact Sheet, are inconsistent with other provisions, or are inapplicable to a POTW discharges. Several of these duplications were removed from the Permit as previously requested and the District appreciates those changes; however, new provisions have been added that also create unnecessary duplication. For example, the District's Permit

contains two new Discharge Prohibitions in Section III. of the Permit (D.and E.). These new prohibitions are unnecessary as they are already included in Attachment G of the Permit, and incorporated into the Permit. (*See* Finding II.D, and Attachment G at I.1-4, and II.1-18.) In addition, these additions are inconsistent with the Fact Sheet that states that incorporation of these provisions into the order is not needed because included in Attachment G. (*See* Attachment F at F-12, section IV.A.3, end of second paragraph.) For these reasons, and because inadequate justification was provided in the Fact Sheet, the new Discharge Prohibitions D. and E. should be removed.

If duplicate provisions exist in a permit, then any alleged violation could implicate numerous provisions, each subject to up to $37,500 in a citizen suit or enforcement action. No reason exists to have each of these requirements in the permit more than once, so any provision should only appear once and the Permit must be revised to remove the duplication.

Request: ***Remove duplicative prohibitions in Discharge Prohibitions D. and E. and other duplicative provisions in the permit.***

4) Section IV. Effluent Limitations and Discharge Specifications, Tables 7 and 8 - Inclusion of Mass Limits Is Not Required by Federal Law.

While the District expressed its appreciation that the Regional Water Board removed the mass-based performance goals from Table 9, the District's Permit still contains new mass limits for other constituents in Tables 7 and 8 that were not included in the previous permit, were not adequately justified, and were not necessary since the permit also contains concentration-based limits and a flow cap (thereby including inherent mass limits since mass is derived from concentration and flow).

Federal law does not require mass limits where, as here, other included limits and the applicable water quality objectives are concentration-based. (*See* 40 C.F.R. §122.45(f)(ii)("all pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass, except: (ii) When applicable standards and limitations are expressed in terms of other units of measurement.")(emphasis added).) The Regional Water Board's addition of new mass limits

not included in the previous permit are more stringent than required by federal law.[3] As such, the mass limits should be removed or, as held by the California Supreme Court, the Regional Water Board must perform a comprehensive and adequate California Water Code section 13263/13241 analysis specific to and prior to imposing these limits. (*See City of Burbank v. State Water Resources Control Board,* 35 Cal. 4th 613, 629 (2005).)

In the District's previous permit, the Regional Water Board gave the following justification for ***NOT*** including mass limits, stating: "the need for mass emission rate (MER) limitations that are directly related to protection of ocean waters or proper operation has not been determined." (Order No. R9-2006-002 at F-25.) The Regional Board failed to justify why this finding has changed. Therefore, the new addition of mass limits has not been adequately justified, was not required, and was not necessary. (*See id.* (further stating that the 1979 regulations requiring mass limits "indicated that concentration was clearly one of the 'other terms than mass'" justifying not including mass limits where standards and other limits are based on concentration).) The law has not changed since the last permit was issued and similar justifications remain to not include mass limits for $CBOD_5$, TSS, Oil and Grease, Settleable Solids, Total Chlorine Residual, and TCDD equivalents, which were not required in the last permit.

Mass limits are also specifically *not required* for Technology-Based Limits, such as CBOD and TSS. The federal regulations only require concentration-based effluent limits along with 85% removal requirements. (*See* 40 C.F.R. §133.102(a)(1)-(3) and (b)(1)-(3).) Mass limits are only authorized where *substituting* the percent removal requirements with a mass loading limit for less concentrated influent wastewater for separate sewers. (40 C.F.R. §133.103(d).) Since the Regional Water Board did *not* substitute mass limits for percent removal requirements (the Permit requires both), the mass limits are not justified under federal law.

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[3] The fact that the federal regulations do not prohibit a state from going beyond federal law to include both mass and concentration limits (40 C.F.R. §122.45(f)(2)) does not make this a federal *requirement.* The Regional Water Board's choice to be more stringent than required by federal law requires additional analysis and justification. (*Burbank*, 35 Cal. 4th at 629.)

In addition, a justification that these limits are required to ensure proper operation and maintenance is insufficient as Permit already requires proper operation and maintenance such that these additional requirements are duplicative and unnecessary. (*See* Attachment D, I.D at pg. D-1.) If being justified based on state law, then these requirements are more stringent than federal law and have not been adequately justified and all considerations under Water Code section 13263 and 13241 have not been adequately considered.

Request: ***Remove all mass limits from Tables 7 and 8.***[4]

5) Section IV. Effluent Limitations and Discharge Specifications, Tables 7 and 8 - Inclusion of Daily or Instantaneous Limits Is Not Required by Federal Law.

Federal law only authorizes monthly and weekly average effluent limitations without a demonstration that such effluent limitations are "impracticable." (*See* 40 C.F.R. §122.45(d)(2)("For continuous discharges all permit effluent limitations, standards and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as: (2) Average weekly and average monthly limitations for POTWs.")) The District's Permit includes not only average weekly and average monthly limits, it also includes limits based on maximum daily or instantaneous values. These proposed limits are more stringent than required by federal law and have not been adequately justified.[5] California courts have already held that such limits are not allowed unless demonstrated to be impracticable and these decisions are binding on the Water Boards since not appealed. (*See City of Burbank v. State Water*

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[4] The District also suggested that, if not removed, then the limits should be rounded to the District's benefit (instead of being rounded down as proposed) and language must be inserted that the mass limits do not apply in wet weather as is done in other regions where mass limits have been adequately justified. The District also suggested the following language could be inserted to protect from mass limit violations when the flows exceed dry weather average values used to calculate the mass limits: "If the effluent flow exceeds the permitted dry monthly average effluent flow of 2.7 mgd due to wet-weather storm events, the effluent mass limitations contained in Final Effluent Limitations Tables 7 and 8 shall not apply and only the concentration limits shall apply in such instances." Failure to make these changes was arbitrary, capricious, and contrary to law. Moreover, since the same laws apply statewide, and the District is being treated differently under the same laws, this violates the constitutional equal protection requirements.

[5] The Regional Water Board cannot justify its actions based on federal guidance because EPA guidance cannot overrule promulgated federal regulatory requirements contained in 40 C.F.R. §122.45(d)(2). Further, to the extent that the Regional Water Board attempts to rely on the California Ocean Plan, the District would bring an as-applied challenge to that plan since it failed to comply with Water Code sections 13241 and 13242, and with federal laws.

Resources Control Board, 35 Cal. 4th 613, 623, n.6 (2005)(The Supreme Court held: "Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that… (2) the administrative record failed to support the specific effluent limitations; (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages;…)(emphasis added).)

In the District's previous permit, the Regional Water Board gave the following justification for ***NOT*** including such limits: "Order No. R9-2006-002 does not retain the maximum at anytime concentration […] for $CBOD_5$ and total suspended solids contained in Order No. 2000-012 and previous permits for the Discharger which were established using best professional judgment. Recent attempts to derive maximum at anytime limitations based on the secondary treatment standards at 40 CFR 133 using appropriate statistical approaches did not yield similar results as the previous maximum at anytime limitations; therefore, based on this new information, retaining the previous maximum at anytime limitations in Order No. R9-2006-002 is not supported." (*See* Order No. R9-2006-002 at F-17.) Because no additional analysis has been done to support the newly added daily and instantaneous limits and no impracticability analysis has been performed, the State Water Board must order removal of the instantaneous maximum, daily maximum, and/or 6-month median limits from the District's Permit at Tables 7 and 8 that are inconsistent with and more stringent than federal law because not stated as weekly and monthly averages.

The justification for use of instantaneous maximum limits is not clear for the constituents in Table 7 since these are not water quality-based limits.[6] The only purported justification is located in the technology-based limitations section of the Fact Sheet. However, limits other than weekly and monthly averages are contrary to the holding in State Board Order No. 2002-0012 at pg. 20

[6] The Fact Sheet at pgs. F-12 to F-14 states that these are technology-based limits, but they are not the technology-based limits prescribed by federal law for POTWs, which is secondary treatment. 40 C.F.R. Part 133. Further, mass limits are not required under the federal technology standards. *Id.* Thus, these are state-only requirements, more stringent than required by federal law, and must be justified by an adequate Water Code section 13263/13241 analysis, and could be subject to claims for state mandates. The discussion in the Fact Sheet is inadequate to justify the instantaneous/daily and mass limits proposed where no reasonable potential exists for these limits and when these limits can adversely affect the development and use of recycled water. (Wat. Code §13241(f).)

("Weekly averages are effective for monitoring the performance of biological wastewater treatment plants.").

Further, the findings in the Fact Sheet do not prove that weekly and monthly average limits prescribed by federal law are impracticable, particularly when those limits are also simultaneously prescribed. (40 C.F.R. §122.45(d)(2); Permit at Table 7.). Therefore, these daily limits are not authorized by federal law, by state case law binding on the Water Boards, or by State Water Board precedent. Since these are only arguably required under the Ocean Plan's implementation plan, these limits must be specified as "state-only" requirements so these limits will not be federally enforceable. (*See* comments on Finding II.C above.)

Request: ***Remove all effluent limits not expressed as weekly or monthly averages.***

6) Section IV. Effluent Limitations and Discharge Specifications, Table 8 - The Proposed Final Total Residual Chlorine Effluent Limitations Are Infeasible.

The District's Permit contains both concentration and mass limits for total residual chlorine, including six-month median, maximum daily, and instantaneous maximum limits. For the reasons provided above, only concentration-based monthly and weekly average limits are required by federal law. Therefore, these limits must be revised to comply with federal regulations or additional analysis is required.

Further, although the District appreciated the adoption of a Time Schedule Order ("TSO") with interim limits for total residual chlorine, this TSO may not protect the District from third-party lawsuits to enforce the final limits contained in the permit. The District offered the following possible solutions:

a) Place the TSO interim limits within the Permit so that these interim limits modify the permit in the interim until the time schedule expires; or

b) State that the final limits in the permit are not in effect until the interim limits expire. (*See accord Citizens for a Better Environment v. Tesoro,* 109 Cal. App. 4th 1089, 1106-07 (2003)(Numeric effluent limits are not required and effluent limitations can be a schedule of remedial measures including an enforceable sequence of actions or operations leading to

compliance).[7]) These modifications would have provided more assurance that the District would not be liable for non-compliance with the final chlorine limits in the permit while it undertakes the activities to construct dechlorination facilities on the schedule required by the TSO. The Regional Water Board's failure to make these changes was arbitrary, capricious, and contrary to law.

Request: ***Modify the Total Residual Chlorine limits in the permit as requested.***

7) Section IV. Effluent Limitations and Discharge Specifications, Table 8 - The TCDD Equivalents Limits Have Not Been Adequately Justified.

The Regional Water Board failed to adequately demonstrate that reasonable potential exists for TCDD equivalents. Reasonable potential was only found because the District used data from labs that were using more sensitive detection techniques below the Minimum Levels ("MLs"), and not prescribed by state law or in Appendix II of the Ocean Plan. Therefore, it was inappropriate for this data to be used in a the Regional Board's Reasonable Potential Analysis. The calculations should have been rerun with only non-estimated data using a prescribed ML and deeming any estimated data points below the ML to be Detected, Not Quantified ("DNQ") instead of using the estimated data to determine if reasonable potential existed. An outside consultant performed this analysis and determined that reasonable potential should not be found to exist. If no reasonable potential existed, then the limits for TCDD equivalents should have been removed and a performance goal should have been reinserted instead.[8]

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[7] In 2009, the State Water Board made changes characterized as "non-substantive" to the Ocean Plan. The changes related to compliance schedules (changes shown in strike out and underlining) are the following:

> F. Revision of Waste* Discharge Requirements
> ~~1. The Regional Board shall revise the waste* discharge requirements for existing* discharges as necessary to achieve compliance with this Plan and shall also establish a time schedule for such compliance~~. ....
> G. Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits
> 1. Compliance schedules in NPDES permits are authorized in accordance with the provisions of the State Water Board's Policy for Compliance Schedules in [NPDES] Permits (2008).

If the Regional Water Board argues or the State Board determines that the Ocean Plan no longer allows the inclusion of compliance schedules in the District's Permit, then the District believes that the Ocean Plan modifications were in fact substantive changes, subject to challenge as-applied in this permit.

[8] The District also believes that only concentration limits should be maintained because the TCDD objectives are concentration-based and mass is not an issue for this human-health based constituent group that would justify duplicative mass limits (since mass limits are merely flow times concentration where both flow and concentration are

Imposition of a TCDD limit is also unnecessary since wastewater discharges have been demonstrated to not provide a large input of loading of dioxins. Nationally, for example, *The Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States: The Year 2000 Update* (External Review Draft, March 2005; EPA/600/P-03/002A) includes an inventory of contemporary releases from known sources in the United States. Only preliminary estimates were available for municipal wastewater discharges but, at 13 g TEQ/yr, they accounted for only 0.2% of the total estimated releases in the United States for 2000. Releases to air, at 8,187 g TEQ/yr, accounted for 98.6% of the 2000 total.

Further, fair regulation of TCDD includes both utilization of bioaccumulation equivalency factors (BEFs) and better use of data below detection. The District provided recommendations that should have been utilized in relation to TCDD equivalents, but was ignored. The failure to adopt the District's suggestions was arbitrary, capricious, and contrary to law.

Request: ***Because the District is being penalized for using more sensitive monitoring, the TCDD limit should be a performance goal only.***

8) Section V. Receiving Water Limitations, Para. A, Surface Water Limitations – Additional Clarification of Language Necessary.

The District proposed additional language used in other regions to clarify the scope and purpose of Receiving Water Limitations; however, that proposed language was ignored. The District encouraged the Regional Water Board to insert the proposed language and to remove the concept of "or contributes to" as these changes will make the permit more clear. In addition, the concept of "or contributes to" has no authority in state law, and only exists in federal law when determining reasonable potential. (40 C.F.R. §122.44(d)(1).) Because no authority has been provided for this regulatory expansion, the new language regarding contribution should have been removed.

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separately prescribed). (*See* arguments above related to mass limits.) Duplicative mass limits merely create additional opportunities for Mandatory Minimum Penalties ("MMPs") and other enforcement actions, and do not provide additional water quality or human health protection.

This is particularly important if bacteria requirements are maintained as discussed in the next section. Citizen suit cases have already been brought in federal court alleging that one organism (or one molecule of other pollutants) can be considered a contribution and, thus, a violation of the permit. (*NRDC and Santa Monica Baykeeper v. City of Malibu,* Central District Court of California, Case No. 2:08-cv-01465-AHM –PLA.) Such a provision does nothing more than lead to legal finger-pointing and years of litigation trying to painstakingly determine each discharge point and each discharger's specific contribution to a particular water quality exceedance, which is difficult[9] and does nothing except create more legal challenges.

Request: ***Remove the "or contribute to" language from Section V.A.***

9) Section V. Receiving Water Limitations, Paragraphs A.1., and Attachment E, Section VIII, A. and B. – The Bacteria Receiving Water Limitations and Extensive Monitoring Requirements are Unnecessary for the District's Permit.

The District provides tertiary-treated and disinfected recycled water to users off the land outfall line in accordance with Title 22 requirements. The District only discharges secondary effluent if a plant upset/equipment failures result in an inability to meet Title 22, which in turn requires bypassing filtration and disinfection. In addition, the District is in the process of planning capital improvements to improve the reliability of the plant, which should greatly minimize the occurrence of plant upsets. For these reasons, the District has generally very effective disinfection capabilities and is not a substantial source of bacterial loading to the ocean.

Nevertheless, the District's Permit includes receiving water limitations and other new requirements to monitor for total coliform, fecal coliform, and *enterococcus* in the receiving water. These requirements are not necessary, and will result in a greater monitoring burden on the District.[10] For example, the Los Angeles Regional Water Board's Resolution No. 01-018 specified

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[9] The difficulty of this exercise cannot be over-emphasized. Trying to determine and prove (or disprove) each source's specific contribution to each water quality impairment would take an inordinate amount of scientific and financial resources and would not, in and of itself, do anything to improve water quality.

[10] In addition, because of the levels of total residual chlorine in the District's discharge necessary to meet Title 22 requirements (*see* above discussion on chlorine and *see also* the District's discharge monitoring reports for the last few years, which were requested to be incorporated into the administrative record for this Permit re-adoption), it is unlikely that the District's portion of the Oceanside Ocean Outfall discharge would be causing any bacteria exceedances in the ocean, assuming there are any.

that total coliform receiving water monitoring is not appropriate for a REC-1 beneficial use (which is the use ostensibly being protected here even though this use has not been formally designated for the area off the Oceanside Outfall) and does not provide any useful information. Therefore, total coliform should be removed from the receiving water limitations and the monitoring. Further, REC-1 requirements specify that either fecal coliform or *enterococcus*, not both, is appropriate for monitoring in receiving water. Testing for all three forms of coliform is unnecessary as *enterococcus* is a form of fecal coliform, which is a form of total coliform. All three forms essentially provide the same information (with *enterococcus* being the most relevant to human illness prevention) and the costs to perform all three are additive since it would require using multiple test methods with different media and equipment. For these reasons, the requirements should be modified to only require that a single bacterial indicator, *enterococcus*, be monitored.[11]

Therefore, the bacteria receiving water limitations and monitoring requirements and studies for the District should have been removed, or the Regional Board should have, at least, performed a Water Code section 13267(b)/13325(c) burden/benefit analysis before mandating these new studies and monitoring.[12]

Request: ***Remove total and fecal coliform from receiving water limitations and monitoring requirements, and require only require enterococcus monitoring. Modify the monitoring requirements to lessen the burden of reduced monitoring provisions.***

10) Sections VI., Para. A.2.c. and VII. A. – Remove or Modify Problematic Compliance Determination Language.

Section VII. of the District's Permit completely changed the compliance determination language that was carefully negotiated in the last permit without justification or any change in legal

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[11] To the extent these requirements are being driven by the Ocean Plan, the District has an as-applied challenge to the scientific and legal validity of these plan requirements.

[12] In addition, among other things, the District requested that the language of the monitoring program be made consistent such that the "reduced" monitoring should be bi-annually instead of monthly since reduced monitoring is where the limits and performance goals are being met. In addition, the District requested that the requirement to meet limits and performance goals to qualify for Reduced Monitoring should be limited to only those limits and goals related to bacteria, since other effluent limits have not been demonstrated to affect the near shore or off shore bacteria levels being monitored. Since this change was not made, there is no nexus between the Permit's requirements and the monitoring required.

requirements that would mandate such a change. The proposed language, without providing an enforcement hearing, due process, or the opportunity to present contrary evidence or defenses, unlawfully presumes that the permittee "shall be deemed out of compliance," even though there may be an explanation or excuse for such non-compliance (*see e.g.,* Standard Provisions D.1.G. and H.) All such references prejudging "violations" must be removed and can be replaced with a more generic "may be deemed out of compliance" or "may be grounds for an enforcement action." The compliance determination language belongs in the Enforcement Policy, not in an individual NPDES permit. Reliance on the permit template issued by the State Water Board is not an acceptable justification as this is not a regulation, merely a guidance document able to be readily changed. Further, there is no reason why the determination cannot be reversed to state when the permittee is "in compliance" as was done previously or as included in the District's proposed redline changes.

Another alternative suggested by the District was to merely reference the Ocean Plan, which contains compliance determination language. That way, the language would be referenced and accessible, but the permit itself would not prejudge what is a permit violation before a hearing and due process can be provided on that matter. The Regional Board's failure to make these changes was arbitrary, capricious and contrary to law.

Request: ***Replace the current Compliance Determination language with the language from the previous permit, or alternatively remove all references to "violation(s)" or conclusions that the permittee "shall be deemed out of compliance" and change the wording in the compliance determination language to reflect that exceedances are "alleged violations" and that exceedances "may" be deemed violations, since they may also NOT be deemed violations if some defense or excuse exists. Alternatively, just reference the Ocean Plan or the statewide Enforcement Policy for how compliance determinations will be made.***

11) Other Requested Modifications Not Made.

The District provided the Regional Board with other clarifying changes to the definitions in Attachment A, Standard Provisions in Attachment D, to the monitoring requirements in Attachment E, and to the Fact Sheet at Attachment F. While some of these modifications were

made, not all were. Thus, the Regional Board's failure to make the remaining changes was arbitrary, capricious and contrary to law.

Request: ***Make the requested clarifying modifications.***

5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:

The challenged requirements contained in the District's Permit, which are inconsistent with law, are infeasible to comply with, or are unclear as to the meaning, place the District in enforcement jeopardy from Mandatory Minimum Penalties ("MMPs") under Water Code section 13385, from civil and even criminal enforcement actions, and from third party citizen suits under the Clean Water Act. In addition, the challenged requirements, where inadequately justified, forces the District to expend limited public funds on compliance activities and implementation of programs without any demonstrated water quality or other public benefit.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS:

Petitioner seeks an Order by the State Board that will remand Order No. R9-2012-0004 to the Regional Board for revisions and will direct the Regional Board to:

(A) Readily identify State law only requirements or place State law only requirements in a separate WDR.

(B) Remove the provision that concludes that the provisions of the District's Permit are not more stringent than Federal law.

(C) Remove all duplicative and unnecessary provisions.

(D) Remove all mass limits since inadequately justified and not required by Federal law.

(E) Remove all daily or instantaneous effluent limits imposed without the mandatory practicability analysis required by Federal law.

(F) Remove the final Total Residual Chlorine effluent limitations for which compliance is infeasible when it should have referenced the interim limits in the time schedule order..

(G) Remove the unnecessary and unjustified TCDD Equivalents Limits.

(H) Remove Receiving Water Limitations Language that is unnecessary and not required by law.

(I) Remove the Bacteria Receiving Water Limitations and extensive monitoring requirements, which are unnecessary for the District's Permit given its disinfection processes.

(J) Remove or modify problematic Compliance Determination language.

(K) Make other requested changes.

Petitioner also requests that the State Board take this opportunity to review the California Ocean Plan since many of its requirements are contrary to federal law (inclusion of effluent limits not prescribed by federal law), or are contrary to state findings (e.g., finding that 2009 Ocean Plan amendment removing compliance schedule authority was "non-substantive").

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION:

The District's preliminary statement of points and authorities are set forth in Section 4 above. The District may supplement this statement, if the petition is removed from abeyance, upon receipt and review of the full record.

In Section 4, the District asserts that provisions of Order No. R9-2012-0004 are inconsistent with the law and otherwise inappropriate for various reasons, including: failure to comply with the Porter-Cologne Water Quality Control Act (Cal. Water Code, section 13000 *et seq.*); failure to comply with the Administrative Procedures Act (APA, Cal. Gov't Code, section 11340 et seq.); inconsistency with the Water Quality Control Plan, San Diego Region (Basin Plan) and the California Ocean Plan; inconsistency with the Clean Water Act (33 U.S.C. § 1251 *et seq.*) and its implementing regulations (40 C.F.R. Parts 122, 123, 130, and 131); inconsistency with USEPA guidance (USEPA's Water Quality Standards Handbook (1993, 2nd edition)); absence of findings supporting the provisions of the Order; RWQCB findings that are not supported by the evidence; and other grounds that may be or have been asserted by the District.

8. A LIST OF PERSONS KNOWN TO HAVE AN INTEREST IN THE SUBJECT MATTER OF THE PETITION:

No other persons besides the Regional Water Board and the District appeared at the District's Permit hearing or are known to have an interest in this Petition.

9. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL BOARD AND TO THE DISCHARGER:

A true and correct copy of this Petition was mailed by First Class mail on September 5, 2012 to the San Diego Regional Board at the following address:

San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340

10. A COPY OF A REQUEST TO THE REGIONAL BOARD FOR PREPARATION OF THE REGIONAL BOARD RECORD:

At this time, the District has not attached a copy of a letter requesting the Regional Board staff to prepare the administrative record in this matter since the District is requesting that the Petition for Review be held in abeyance. If the petition is taken out of abeyance, the District will then timely request that the administrative record be prepared.

11. REQUEST FOR PETITION TO BE HELD IN ABEYANCE

The District respectfully requests that the District's Petition for Review be held in abeyance for two (2) years.

DATED: September 5, 2012

DOWNEY BRAND LLP

By: _____
Melissa A. Thorme
Attorneys for
Fallbrook Public Utility District

1274902.1

DOWNEY BRAND LLP

EXHIBIT A

California Regional Water Quality Control Board, San Diego Region

ORDER NO. R9-2012-0004
NPDES NO. CA0108031

WASTE DISCHARGE REQUIREMENTS FOR THE FALLBROOK PUBLIC UTILITY DISTRICT WASTEWATER TREATMENT PLANT NO. 1 DISCHARGE TO THE PACIFIC OCEAN VIA THE OCEANSIDE OCEAN OUTFALL

The following Discharger is subject to waste discharge requirements as set forth in this Order:

Table 1. Discharger and Facility Information

Discharger	Fallbrook Public Utility District
Name of Facility	Fallbrook Public Utility District Treatment Plant No. 1
Facility Address	1425 South Alturas Road Fallbrook, CA 92028
The U.S. Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board, San Diego Region have classified this discharge as a **major** discharge.	

Discharges by the Fallbrook Public Utility District from the Facility listed in Table 1 at the discharge point identified in Table 2 are subject to waste discharge requirements as set forth in this Order:

Table 2. Discharge Location

Discharge Point No.	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
001	POTW effluent	33° 09' 46" N	117° 23' 29" W	Pacific Ocean

Table 3. Administrative Information

This Order was adopted by the California Regional Water Quality Control Board, San Diego Region on:	**August 8, 2012**
This Order shall become effective on:	**September 28, 2012**
This Order shall expire on:	**September 27, 2017**
The Discharger shall file a Report of Waste Discharge in accordance with Title 23, California Code of Regulations, not later than 180 days in advance of the Order expiration date as application for issuance of new waste discharge requirements.	

I, David W. Gibson, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on August 8, 2012.

David W. Gibson
Executive Officer

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Attachment G – Discharge Prohibitions contained in the Ocean Plan and Basin Plan G-1

I. FACILITY INFORMATION

The following Discharger is subject to waste discharge requirements as set forth in this Order:

Table 4. Facility Information

Discharger	Fallbrook Public Utility District
Name of Facility	Fallbrook Public Utility District Treatment Plant No. 1
Facility Address	1425 South Alturas Road Fallbrook, CA 92028
Facility Contact, Title, and Phone	Jack Bebee, Engineering and Planning Manager, (760) 728-1125
Mailing Address	990 East Mission Road P.O. Box 2290, Fallbrook, CA 92088
Type of Facility	Publicly Owned Treatment Works (POTW)
Facility Permitted Discharge Flow Rate	2.7 million gallons per day (MGD)

II. FINDINGS

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds:

A. Background. The Fallbrook Public Utility District (hereinafter Discharger or FPUD) is currently discharging pursuant to Order No. R9-2006-002 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0108031. FPUD submitted a Report of Waste Discharge (ROWD), dated September 30, 2010, and applied for a NPDES permit renewal to discharge up to 2.7 MGD of treated wastewater to the Oceanside Ocean Outfall (Oceanside OO) from Treatment Plant No. 1, hereinafter Facility. The application was deemed complete on October 30, 2010.

B. Facility Description. FPUD owns and operates Treatment Plant No. 1, the FPUD land outfall pipeline, and the FPUD sanitary collection system, hereinafter FPUD Facilities. FPUD's Treatment Plant No. 1 is a publicly owned treatment works (POTW) as defined in section 403.3, title 40 of the Code of Federal Regulations (40 CFR 403.3). FPUD provides municipal wastewater treatment services to a population of approximately 25,000 within the boundaries of the FPUD, treating primarily residential and commercial wastewater. There are no significant industrial users within the FPUD service area

Wastewater treatment processes at Treatment Plant No.1 include preliminary treatment by mechanical bar screening, aerated grit removal, primary sedimentation, aeration and secondary clarification (activated sludge treatment process), and chlorination. Sludge from the secondary treatment facilities is thickened, aerobically digested, and dewatered via centrifuge. Dewatered sludge is fed to a thermal dryer system to produce Class A EQ sewage sludge and disposed of via land application. If the dryer system is off-line, sewage sludge is dewatered via drying beds and hauled to a land application site in Yuma, Arizona by a contractor. Grit and screenings collected from preliminary treatment processes are collected and disposed of at a landfill in San Diego County.

Recycled water distributed from the Facility is regulated under a separate order, Order No. 91-39, which is not incorporated by reference into this permit. Treated wastewater from the Facility that is not distributed as recycled water, hereinafter referred to as effluent, is discharged to the

FPUD-owned land outfall pipeline. This pipeline conveys effluent to the Oceanside OO at the site of the City of Oceanside's La Salina Wastewater Treatment Plant. FPUD has a contractual agreement with the City of Oceanside to discharge up to 2.4 MGD on an annual average basis through the Oceanside OO. The Oceanside OO is owned and operated by the City of Oceanside.

The City of Oceanside is regulated under Order No. R9-2011-0016 (NPDES Permit No. CA0107433) and has a total flow limitation of 22.9 MGD. An additional 6.155 MGD of capacity is allocated to FPUD, US Marine Corps Base Camp Pendleton, and Genetech, Inc. Attachment B of this Order provides maps of the area around the Facility, land outfall pipelines, and the Oceanside OO. Attachment C of this Order provides flow schematics of the Facility.

C. Legal Authorities. This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the United States Environmental Protection Agency (USEPA) and chapter 5.5, division 7 of the California Water Code (CWC) (commencing with section 13370). It shall serve as a NPDES permit for point source discharges from this Facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the CWC (commencing with section 13260).

D. Background and Rationale for Requirements. The San Diego Water Board developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments A through E and G are also incorporated into this Order.

E. California Environmental Quality Act (CEQA). Under CWC section 13389, this action to adopt a NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.

F. Technology-Based Effluent Limitations. Section 301(b) of the CWA and implementing USEPA permit regulations at 40 CFR 122.44, require that permits include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. 40 CFR Part 133 establishes the minimum weekly and monthly average level of effluent quality attainable by secondary treatment for carbonaceous biochemical oxygen demand ($CBOD_5$), total suspended solids (TSS), and the instantaneous minimum and maximums for pH. The discharge authorized by this Order must meet minimum federal technology-based requirements based on Secondary Treatment Standards at 40 CFR Part 133. TBELs contained in Table A of the 2009 *Water Quality Control Plan for Ocean Waters of California, California Ocean Plan* (hereinafter Ocean Plan), which include grease and oil, TSS, settleable solids, turbidity, and pH, are also applicable to discharges from the Facility. A detailed discussion of the technology-based effluent limitations (TBELs) development is included in the Fact Sheet (Attachment F).

G. Water Quality-Based Effluent Limitations. Section 301(b) of the CWA and 40 CFR 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards.

40 CFR 122.44(d)(1)(i) mandates that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no

numeric criterion or objective for the pollutant, water quality-based effluent limitations (WQBELs) must be established using: (1) USEPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in 40 CFR 122.44(d)(1)(vi).

H. Water Quality Control Plans. The San Diego Water Board adopted a *Water Quality Control Plan for the San Diego Region* (hereinafter Basin Plan) on September 8, 1994 that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for the Pacific Ocean and other receiving waters addressed through the plan. Subsequent revisions to the Basin Plan have also been adopted by the San Diego Water Board and approved by the State Water Resources Control Board (State Water Board). Beneficial uses applicable to the Pacific Ocean specified in the Basin Plan are as follows:

Table 5. Basin Plan Beneficial Uses of the Pacific Ocean

Discharge Point No.	Receiving Water Name	Beneficial Use(s)
001	Pacific Ocean	Industrial service supply; navigation; contact water recreation; non-contact water recreation; commercial and sport fishing; preservation of biological habitats of special significance; wildlife habitat; rare, threatened, or endangered species; marine habitat; aquaculture; migration of aquatic organisms; spawning, reproduction, and/or early development; and shellfish harvesting.

Requirements of this Order implement the Basin Plan.

I. California Ocean Plan. The State Water Board adopted the Ocean Plan in 1972 and amended it in 1978, 1983, 1988, 1990, 1997, 2000, 2005, and 2009. The State Water Board adopted the latest amendment on September 15, 2009 and it became effective on March 10, 2010. The Ocean Plan is applicable, in its entirety, to point source discharges to the ocean. The Ocean Plan identifies beneficial uses of ocean waters of the State to be protected as summarized below:

Table 6. Ocean Plan Beneficial Uses of the Pacific Ocean

Discharge Point No.	Receiving Water Name	Beneficial Use
001	Pacific Ocean	Industrial water supply; water contact and non-contact recreation, including aesthetic enjoyment; navigation; commercial and sport fishing; mariculture; preservation and enhancement of designated Areas of Special Biological Significance (ASBS); rare and endangered species; marine habitat; fish migration; fish spawning and shellfish harvesting.

In order to protect the beneficial uses, the Ocean Plan establishes water quality objectives and a program of implementation. Requirements of this Order implement the Ocean Plan.

J. Alaska Rule. On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes. (40 CFR 131.21; 65 Fed. Reg. 24641 (April 27, 2000).) Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000 may be used for CWA purposes, whether or not approved by USEPA.

K. Stringency of Requirements for Individual Pollutants. This Order contains both TBELs and WQBELs for individual pollutants. The TBELs consist of restrictions on $CBOD_5$, TSS, pH, oil and grease, settleable solids, and turbidity. Restrictions on these pollutants are discussed in section IV.B of the Fact Sheet (Attachment F of this Order). This Order's technology-based pollutant restrictions implement the minimum, applicable federal technology-based requirements. These limitations are not more stringent than required by the CWA.

WQBELs have been scientifically derived to implement water quality objectives that protect beneficial uses. Both the beneficial uses and the water quality objectives have been approved pursuant to federal law and are the applicable federal water quality standards. The scientific procedures for calculating the individual WQBELs are based on the Ocean Plan, which was approved by USEPA on October 8, 2010. All beneficial uses and water quality objectives contained in the Basin Plan were approved under state law and submitted to and approved by USEPA prior to May 30, 2000. Any water quality objectives and beneficial uses submitted to USEPA prior to May 30, 2000, but not approved by USEPA before that date, are nonetheless "applicable water quality standards for purposes of the CWA" pursuant to 40 CFR 131.21(c)(1). This Order's restrictions on individual pollutants are no more stringent than required to implement the requirements of the CWA.

L. Antidegradation Policy. 40 CFR 131.12 requires that the State water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The San Diego Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies (San Diego Basin Plan Chapter 3, page 3-2). As discussed in detail in the Fact Sheet (Attachment F of this Order), the permitted discharge is consistent with the antidegradation provision of 40 CFR 131.12 and State Water Board Resolution No. 68-16.

M. Anti-Backsliding Requirements. Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at 40 CFR 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Some effluent limitations in this Order are less stringent that those in the previous Order. As discussed in detail in the Fact Sheet (Attachment F of this Order), this relaxation of effluent limitations is consistent with the anti-backsliding requirements of the CWA and federal regulations.

N. Endangered Species Act. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 USCA sections 1531 to 1544). This Order requires compliance with effluent limits, receiving water limits, and other requirements to

protect the beneficial uses of waters of the State. FPUD is responsible for meeting all requirements of the applicable Endangered Species Act.

O. Monitoring and Reporting. 40 CFR 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results. CWC sections 13267 and 13383 authorize the San Diego Water Board to require technical and monitoring reports. The Monitoring and Reporting Program (MRP) establishes monitoring and reporting requirements to implement federal and State requirements. This MRP is provided in Attachment E of this Order.

P. Standard and Special Provisions. Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR 122.42, are provided in Attachment D of this Order. The San Diego Water Board has also included in this Order special provisions applicable to FPUD. A rationale for the special provisions contained in this Order is provided in the Fact Sheet (Attachment F of this Order).

Q. Provisions and Requirements Implementing State Law. Some of the provisions/requirements in subsections VI.C of this Order are included to implement State law only. These provisions/requirements are not required or authorized under the federal CWA; consequently, violations of these provisions/requirements are not subject to the enforcement remedies that are available for NPDES violations. As described in the fact sheet, the requirements of this Order take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of CWC section 13241.

R. Executive Officer Delegation of Authority. The San Diego Water Board by prior resolution has delegated all matters that may legally be delegated to its Executive Officer to act on its behalf pursuant to CWC section 13223. Therefore, the Executive Officer is authorized to act on the San Diego Water Board's behalf on any matter within this Order unless such delegation is unlawful under CWC section 13223 or this Order explicitly states otherwise

S. Notification of Interested Parties. The San Diego Water Board has notified FPUD and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet (Attachment F of this Order).

T. Consideration of Public Comment. The San Diego Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet (Attachment F of this Order).

THEREFORE, IT IS HEREBY ORDERED, that Order No. R9-2006-002 is rescinded upon the effective date of this Order except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the CWC (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal CWA and regulations and guidelines adopted thereunder, FPUD shall comply with the requirements in this Order.

III. DISCHARGE PROHIBITIONS

A. The discharge of waste from the Facility not treated by a secondary treatment process and not in compliance with the effluent limitations specified in section IV.A of this Order, and/or to a location other than Discharge Point No. 001, unless specifically regulated by this Order or separate waste discharge requirements, is prohibited.

B. The bypassing of untreated wastes is prohibited, except as allowed by Federal Standard Provisions I.G or I.H of this Order. (Attachment D).

C. The discharge of wastes from the Facility during dry-weather months (May to October) in excess of a monthly average effluent flow of 2.7 MGD, and during wet-weather months (November to April) in excess of a monthly average effluent flow of 3.6 MGD is prohibited.

D. The Discharger must comply with Ocean Plan Discharge Prohibitions, summarized in Attachment G, as a condition of this Order.

E. The Discharger must comply with Discharge Prohibitions contained in Chapter 4 of the Basin Plan, summarized in Attachment G, as a condition of this Order

IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS

A. Effluent Limitations and Performance Goals – Discharge Point No. 001

1. Final Effluent Limitations

a. FPUD shall maintain compliance with the following effluent limitations at Monitoring Locations M-001, as described in the attached MRP (Attachment E of this Order).

Table 7. Effluent Limitations at M-001 (Secondary Effluent from Wastewater Treatment Plant No. 1)

Parameter	Units	Effluent Limitations					
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum	6-Month Median
Carbonaceous Biochemical Oxygen Demand (5-day @ 20°C) ($CBOD_5$)[1]	mg/L	25	40	--	--	--	--
	lbs/day	560	900	--	--	--	--
TSS[1]	mg/L	30	45	--	--	--	--
	lbs/day	680	1,000	--	--	--	
Oil and Grease	mg/L	25	40	--	--	75	--
	lbs/day	560	900	--	--	1,700	--
Settleable Solids	ml/L	1.0	1.5	--	--	3.0	--
Turbidity	NTU	75	100	--	--	225	--
pH	standard units	--	--	--	6.0	9.0	--

[1] The average monthly percent removal of $CBOD_5$ and TSS shall not be less than 85 percent.

b. FPUD shall maintain compliance with the following effluent limitations at Discharge Point No. 001, with compliance measured at Monitoring Locations M-001 or M-002 as described in the attached MRP (Attachment E of this Order):

Table 8. Effluent Limitations at M-001 or M-002

Parameter	Unit	Effluent Limitations[1]			
		6-Month Median	Maximum Daily	Instantaneous Maximum	Average Monthly
OBJECTIVES FOR PROTECTION OF MARINE AQUATIC LIFE					
Total Residual Chlorine[2]	µg/L	180	700	5,300	
	lbs/day	4.0	16	120	
OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – CARCINOGENS					
TCDD[3]	µg/L	--	--	--	3.4E-07
	lbs/day	--	--	--	7.7E-09

[1] Scientific "E" notation is used to express effluent limitations. In scientific "E" notation, the number following the "E" indicates that position of the decimal point in the value. Negative numbers after the "E" indicate that the value is less than 1, and positive numbers after the "E" indicate that the value is greater than 1. In this notation a value of 6.1E-02 represents 6.1×10^{-2} or 0.061, 6.1E+02 represents 6.1×10^{2} or 610, and 6.1E+00 represents 6.1×10^{0} or 6.1.

[2] The water quality objectives for total chlorine residual applicable to intermittent discharges not exceeding two hours shall be determined through use of the following equation:

$$\log y = 0.43(\log x) + 1.8$$

where,

y = the water quality objective (in µg/L) to apply when chlorine is being discharged;

x = the duration of uninterrupted chlorine discharge in minutes.

Actual effluent limitations for total chlorine, when discharging intermittently, shall then be determined according to Implementation Procedures for Table B from the Ocean Plan and using a minimum probably dilution factor of 87 and a flow rate of 2.7 MGD.

[3] TCDD equivalents represent the sum of concentrations of chlorinated dibenzodioxins (2,3,7,8-CDDs) and chlorinated dibenzofurans (2,3,7,8-CDFs) multiplied by their respective toxicity factors.

2. Performance Goals

a. Constituents that do not have reasonable potential to cause or contribute to an exceedance of water quality objectives, or for which reasonable potential to cause or contribute to an exceedance of water quality objectives cannot be determined, are referred to as performance goal constituents and are assigned the performance goals listed in the following table. Performance goal constituents shall be monitored at M-001 or M-002, but the results will be used for informational purposes only, not compliance determination, because the listed performance goals are not enforceable as effluent limitations.

Table 9. Performance Goals

Parameter	Unit	Performance Goals[1]			
		6-Month Median	Maximum Daily	Instantaneous Maximum	30-Day Average
OBJECTIVES FOR PROTECTION OF MARINE AQUATIC LIFE					
Arsenic, Total Recoverable	µg/L	4.4E+02	2.6E+03	6.8E+03	--
Cadmium, Total Recoverable	µg/L	8.8E+01	3.5E+02	8.8E+02	--
Chromium VI, Total Recoverable[2]	µg/L	1.8E+02	7.0E+02	1.8E+03	--
Copper, Total Recoverable	µg/L	9.0E+01	8.8E+02	2.5E+03	--
Lead, Total Recoverable	µg/L	1.8E+02	7.0E+02	1.8E+03	--
Mercury, Total Recoverable	µg/L	3.09E+00	1.4E+01	3.5E+01	--
Nickel, Total Recoverable	µg/L	4.4E+02	1.8E+03	4.4E+03	--
Selenium, Total Recoverable	µg/L	1.3E+03	5.3E+03	1.3E+04	--
Silver, Total Recoverable	µg/L	4.8E+01	2.3E+02	6.0E+02	--
Zinc, Total Recoverable	µg/L	1.1E+03	6.3E+03	1.7E+04	--
Cyanide, Total Recoverable[3]	µg/L	8.8E+01	3.5E+02	8.8E+02	
Ammonia (expressed as nitrogen)	µg/L	5.3E+04	2.1E+05	5.3E+05	--
Acute Toxicity	TUa	--	2.9E+00	--	
Chronic Toxicity[4]	TUc	--	8.8E+01	--	--
Phenolic Compounds (non-chlorinated)[5]	µg/L	2.6E+03	1.1E+04	2.6E+04	--
Chlorinated Phenolics[6]	µg/L	8.8E+01	3.5E+02	8.8E+02	--
Endosulfan[7]	µg/L	7.9E-01	1.6E+00	2.4E+00	--
Endrin	µg/L	1.8E-01	3.5E-01	5.3E-01	--
HCH[8]	µg/L	3.5E-01	7.0E-01	1.1E+00	--
Radioactivity	pCi/L	Not to exceed limits specified in Title 17, Division 1, Chapter 5, Subchapter 4, Group 3, Article 3, Section 30253 of the California Code of Regulations, Reference to Section 30253 is prospective, including future changes to any incorporated provisions of federal law, as the changes take effect.			

OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – NONCARCINOGENS					
Acrolein	µg/L	--	--	--	1.9E+04
Antimony	µg/L	--	--	--	1.1E+05
Bis(2-chloroethoxy) Methane	µg/L	--	--	--	3.9E+02
Bis(2-chloroisopropyl) Ether	µg/L	--	--	--	1.1E+05
Chlorobenzene	µg/L	--	--	--	5.0E+04
Chromium (III), Total Recoverable	µg/L	--	--	--	1.7E+07
Di-n-butyl Phthalate	µg/L	--	--	--	3.1E+05
Dichlorobenzenes[9]	µg/L	--	--	--	4.5E+05
Diethyl Phthalate	µg/L	--	--	--	2.9E+06
Dimethyl Phthalate	µg/L	--	--	--	7.2E+07
4,6-dinitro-2-methylphenol	µg/L	--	--	--	1.9E+04
2,4-dinitrophenol	µg/L	--	--	--	3.5E+02
Ethylbenzene	µg/L	--	--	--	3.6E+05
Fluoranthene	µg/L	--	--	--	1.3E+03
Hexachlorocyclopentadiene	µg/L	--	--	--	5.1E+03
Nitrobenzene	µg/L	--	--	--	4.3E+02
Thallium, Total Recoverable	µg/L	--	--	--	1.8E+02
Toluene	µg/L	--	--	--	7.5E+06
Tributyltin	µg/L	--	--	--	1.2E-01
1,1,1-trichloroethane	µg/L	--	--	--	4.8E+07
OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – CARCINOGENS					
Acrylonitrile	µg/L	--	--	--	8.8E+00
Aldrin	µg/L	--	--	--	1.9E-03
Benzene	µg/L	--	--	--	5.2E+02
Benzidine	µg/L	--	--	--	6.1E-03
Beryllium	µg/L	--	--	--	2.9E+00
Bis(2-chloroethyl) Ether	µg/L	--	--	--	4.0E+00
Bis(2-ethlyhexyl) Phthalate	µg/L	--	--	--	3.1E+02
Carbon Tetrachloride	µg/L	--	--	--	7.9E+01
Chlorodane	µg/L	--	--	--	2.0E-03
Chlorodibromomethane	µg/L	--	--	--	7.6E+02
Chloroform	µg/L	--	--	--	1.1E+04
DDT[10]	µg/L	--	--	--	1.5E-02
1,4-dichlorobenzene	µg/L	--	--	--	1.6E+03
3,3'-dichlorobenzidine	µg/L	--	--	--	7.1E-01
1,2-dichloroethane	µg/L	--	--	--	2.5E+03
1,1-dichloroethylene	µg/L	--	--	--	7.9E+01
Dichlorobromomethane	µg/L	--	--	--	5.5E+02
Dichloromethane	µg/L	--	--	--	4.0E+04
1,3-dichloropropene	µg/L	--	--	--	7.8E+02
Dieldrin	µg/L	--	--	--	3.5E-03
2,4-dinitrotoluene	µg/L	--	--	--	2.3E+02
1,2-diphenylhydrazine	µg/L	--	--	--	1.4E+01
Halomethanes[11]	µg/L	--	--	--	1.1E+04

Heptachlor	µg/L	--	--	--	4.4E-03
Heptachlor Epoxide	µg/L	--	--	--	1.8E-03
Hexachlorobenzene	µg/L	--	--	--	1.8E-02
Hexachlorobutadiene	µg/L	--	--	--	1.2E+03
Hexachloroethane	µg/L	--	--	--	2.2E+02
Isophorone	µg/L	--	--	--	6.4E+04
N-nitrosodimethylamine	µg/L	--	--	--	6.4E+02
N-nitrosodi-N-propylamine	µg/L	--	--	--	3.3E+01
N-nitrosodiphenylamine	µg/L	--	--	--	2.2E+02
PAHs[12]	µg/L	--	--	--	7.7E-01
PCBs[13]	µg/L	--	--	--	1.7E-03
1,1,2,2-tetrachloroethane	µg/L	--	--	--	2.0E+02
Tetrachloroethylene	µg/L	--	--	--	1.8E+02
Toxaphene	µg/L	--	--	--	1.8E-02
Trichloroethylene	µg/L	--	--	--	2.4E+03
1,1,2-trichloroethane	µg/L	--	--	--	8.3E+02
2,4,6-trichlorophenol	µg/L	--	--	--	2.6E+01
Vinyl Chloride	µg/L	--	--	--	3.2E+03

1 Scientific "E" notation is used to express certain values. In scientific "E" notation, the number following the "E" indicates that position of the decimal point in the value. Negative numbers after the "E" indicate that the value is less than 1, and positive numbers after the "E" indicate that the value is greater than 1. In this notation a value of 6.1E-02 represents 6.1×10^{-2} or 0.061, 6.1E+02 represents 6.1×10^{2} or 610, and 6.1E+00 represents 6.1×10^{0} or 6.1.

2 Dischargers may, at their option, apply this performance goal as a total chromium performance goal.

3 If FPUD can demonstrate to the satisfaction of the San Diego Water Board (subject to USEPA approval) that an analytical method is available to reliably distinguish between strongly and weakly complexed cyanide, performance goals may be evaluated with the combined measurement of free cyanide, simple alkali metals cyanides, and weakly complexed organometallic cyanide complexes. In order for the analytical method to be acceptable, the recovery of free cyanide from metal complexes must be comparable to that achieved by the approved method in 40 CFR Part 136, as revised May 14, 1999.

4 Chronic toxicity expressed as Chronic Toxicity Units (TUc) = 100/NOEL, where NOEL (No Observed Effect Level) is expressed as the maximum percent effluent or receiving water that causes no observable effect on a test organism.

5 Non-chlorinated phenolic compounds represent the sum of 2,4-dimethylphenol, 4,6-Dinitro-2-methylphenol, 2,4-dinitrophenol, 2-methylphenol, 4-methylphenol, 2-Nitrophenol, 4-nitrophenol, and phenol.

6 Chlorinated phenolic compounds represent the sum of 4-chloro-3-methylphenol, 2-chlorophenol, pentachlorophenol, 2,4,5-trichlorophenol, and 2,4,6-trichlorophenol.

7 Endosulfan represents the sum of alpha-endosulfan, beta-endosulfan, and endosulfan sulfate.

8 HCH (hexachlorocyclohexane) represents th

c. At all areas where shellfish may be harvested for human consumption, as determined by the San Diego Water Board, the median total coliform density shall not exceed 70 per 100 ml throughout the water column, and not more than 10 percent of the samples shall exceed 230 per 100 ml.

2. Physical Characteristics

a. Floating particulates and grease and oils shall not be visible.

b. The discharge of waste shall not cause aesthetically undesirable discoloration of the ocean surface.

c. Natural light shall not be significantly reduced at any point outside the initial dilution zone as a result of the discharge of waste.

d. The rate of deposition of inert solids and the characteristics of inert solids in the ocean sediments shall not be changed such that benthic communities are degraded.

3. Chemical Characteristics

a. The dissolved oxygen concentration shall not at any time be depressed more than 10 percent from that which occurs naturally, as the result of the discharge of oxygen demanding waste materials.

b. The pH shall not be changed at any time more than 0.2 units from that which occurs naturally.

c. The dissolved sulfide concentration of waters in and near sediments shall not be significantly increased above that present under natural conditions.

d. The concentration of substances set forth in Chapter II, Table B of the Ocean Plan, shall not be increased in marine sediments to levels that would degrade indigenous biota.

e. The concentration of organic materials in marine sediments shall not be increased to levels that would degrade marine life.

f. Nutrient materials shall not cause objectionable aquatic growths or degrade indigenous biota.

g. Numerical water quality objectives established in Section II, Table B of the California Ocean Plan shall not be exceeded outside of the zone of initial dilution as a result of the discharges from the Facility.

4. Biological Characteristics

a. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.

b. The natural taste, odor, color of fish, shellfish, or other marine resources used for human consumption shall not be altered.

c. The concentration of organic materials in fish, shellfish, or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health.

5. Radioactivity

a. Discharge of radioactive waste shall not degrade marine life.

B. Groundwater Limitations – Not Applicable

VI. PROVISIONS

A. Standard Provisions

1. **Federal Standard Provisions**. FPUD shall comply with all Standard Provisions included in Attachment D of this Order.

2. **San Diego Water Board Standard Provisions**. FPUD shall comply with the following provisions:

   a. FPUD shall comply with all requirements and conditions of this Order. Any permit non-compliance may constitute a violation of the CWA and/or the CWC and may be grounds for enforcement action, permit termination, revocation and reissuance, or modification, or for denial of an application for permit renewal, modification, or reissuance.

   b. FPUD shall comply with all applicable federal, State, and local laws and regulations that pertain to sewage sludge handling, treatment, use and disposal, including CWA section 405 and USEPA regulations at 40 CFR Part 257.

   c. FPUD's wastewater treatment facilities shall be supervised and operated by persons possessing certificates of appropriate grade pursuant to Title 23, Division 3, Chapter 26 of the California Code of Regulations (CCR).

   d. All proposed new treatment facilities and expansions of existing treatment facilities shall be completely constructed and operable prior to initiation of the discharge from the new or expanded facilities. FPUD shall submit a certification report for each new treatment facility, expansion of an existing treatment facility, and re-ratings, the certification report shall be prepared by the design engineer. For re-ratings, the certification report shall be prepared by the engineer who evaluated the treatment facility capacity. The certification report shall:

      i. Identify the design capacity of the treatment facility, including the daily and 30-day design capacity,

      ii. Certify the adequacy of each component of the treatment facility, and

      iii. Contain a requirement-by-requirement analysis, based on acceptable engineering practices, of the process and physical design of the facility to ensure compliance with this Order.