

**California Regional Water Quality Control Board
San Diego Region**

Response to Comments Report

Tentative Order No. R9-2013-0093

**WASTE DISCHARGE REQUIREMENTS
FOR
NATIONAL STEEL AND SHIPBUILDING COMPANY
BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.
SAN DIEGO UNIFIED PORT DISTRICT
UNITED STATES NAVY
SAN DIEGO BAY ENVIRONMENTAL RESTORATION FUND – NORTH
SAN DIEGO BAY ENVIRONMENTAL RESTORATION FUND – SOUTH**

July 10, 2013

STATE OF CALIFORNIA

EDMUND G. BROWN, JR. Governor
MATT RODRIQUEZ, Agency Secretary, California Environmental Protection Agency



State Water Resources Control Board

Felicia Marcus, <i>Chair</i>	Attorney
Frances Spivy-Weber, <i>Vice Chair</i>	Public
Tam M. Doduc	Civil Engineer
Dorene D'Adamo	Water Quality
Stephen Moore	Sanitary Engineer

Tom Howard, *Executive Director*

California Regional Water Quality Control Board San Diego Region

Tomas Morales, *Chair*
Gary Strawn, *Vice Chair*
Eric Anderson
Henry Abarbanel
Sharon Kalemkarian
Vacant
Vacant

David W. Gibson, *Executive Officer*
James Smith, *Assistant Executive Officer*

Catherine Hagan, *Senior Staff Counsel, Office of Chief Counsel*
Nathan Jacobsen, *Staff Counsel, Office of Chief Counsel*

This report was prepared under the direction of

David T. Barker, *P.E., Supervising WRC Engineer, Surface Water Basins Branch*
Eric Becker, *P.E. Senior Water Resource Control Engineer, Southern Watershed Unit*

by

Jody Ebsen, P.G. Engineering Geologist

RESPONSE TO COMMENTS RECEIVED REGARDING
TENTATIVE ORDER NO. R9-2013-0093
July 10, 2013

Comment No.		
1	<p>COMMENT: The proposed Tentative Order should ensure the application of proper technology to reduce cost for shipyards and to protect environment. It also should address onboard treatment of polluted water from dredging. The in-situ water treatment/discharge will reduce "disturbances" of polluted sediments from unnecessary boat traffic; a common problem in bucket dredging operation. The attachment depicts a work strategy to reduce cost while protecting environment The Final EIR is deficient for its focus on one technology and can NOT be relied on as guideline for drafting the Tentative Order. Meanwhile, I recommend to a geophysical survey to locate sea floor obstructions (e.g. anchor chains, sunken boats, mooring lines, Navy lost ordinances, etc.) to avoid future expensive downtime and unnecessary risks.</p> <p>I have solicited several industrialists and companies nationwide to share their expertise in dredging polluted marine sediments. Numerous publications of US Army Corps of Engineers have identified these technologies and its proper applications to remove polluted sediments.</p> <p>RESPONSE: Comment noted.</p>	Commenter: Aladdin M. Masry
2	<p>COMMENT: Please change all references to "BAE" to "BAE Systems".</p> <p>RESPONSE: The requested change has been made in response to the comment.</p>	Commenter: San Diego Shipyard Sediment Site Group
3	<p>COMMENT: Because there multiple dischargers, please change all references to "discharger" to "dischargers".</p> <p>RESPONSE: The term Discharger(s) applies to references to a single as well as multiple entities. The requested change will be made to the Tentative Order in the next revision.</p>	Commenter: San Diego Shipyard Sediment Site Group

<p>4</p>	<p>COMMENT: Page 7, 2nd paragraph under Project Overview. Barge dewatering will also be part of the remediation process. Please add to the statement.</p> <p>RESPONSE: The dewatering and solidification of dredged material on-shore or on a barge was included in the "Project Description" at Page 1-1 in the Final Program Environmental Impact Report which was prepared to analyze the projects potential impact on the environment. This provides a basis to include barge dewatering in the "Project" description for the Tentative Order. Finding G has been revised to provide for sediment dewatering on-shore or on a barge.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>5</p>	<p>COMMENT: Page 8, 1st paragraph, sentence starting with "In sediment areas..." Only clean sand and gravel will be placed. Please remove reference to "other armoring material". Paragraph H, The combined "under pier" area is 2.7 acres. The applicants request that the number be revised to 2.7 acres</p> <p>RESPONSE: Comment accepted in part. The term "other armoring material" is deleted from the Project description in Finding G of the Tentative Order. The evaluation of the request to revise the Tentative Order to increase the under per areas to 2.7 acres is still in process.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>6</p>	<p>COMMENT: Page 9, Paragraph I, last sentence, Please revise the sentence to read: A production rate of up to 1,200 cy per day is expected to be achieved. Paragraph J, Based on statements from Otay/Republic, in-situ sampling can be used. Therefore please revise the second sentence in that paragraph to: The sediment must be sampled and analyzed to classify the material for transport and disposal. The sediment may be sampled in situ prior to dredging or sampled once it is staged and stockpiled in the sediment management area.</p> <p>RESPONSE: Comment Accepted. Finding K of the Revised Tentative Order has been revised to provide that sediment may be sampled in situ prior to dredging or sampled once it is staged and stockpiled in the sediment management area.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>

<p>7</p>	<p>COMMENT: Page 10, Paragraph K, Based on the information from Otay/Republic and to be consistent with Paragraph J above, please remove the words "and tested" in the first sentence and the words "upon removal and" from the third sentence. Also, change "Water" to "Waste" in the last sentence. Paragraph M, The dredge volume for the South Shipyard is 50,000 cubic yards; the dredge volume for the North Shipyard is 105,000 cubic yards. Please correct the volumes shown in this paragraph.</p> <p>RESPONSE: Comment accepted. The requested revisions regarding Finding K have been made. The revisions can be viewed at new Finding L of the Revised Tentative Order.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>8</p>	<p>COMMENT: Page 18, Paragraph. Eelgrass beds far removed from dredging activities will not be impacted. The shipyards request that only eelgrass beds within 100 ft of dredge activities be marked.</p> <p>RESPONSE: This mitigation measure will help to ensure any indirect or inadvertent impacts to eelgrass beds in areas adjacent to the project site are avoided and/or minimized. This mitigation measure is also identified as necessary to protect biological resources in Exhibit B of the CEQA EIR and in Attachment B of the Tentative Order No. R9-2013-0093 to protect sea turtles that could potentially forage within and among eelgrass beds adjacent to or near by the project site that are outside of the construction zone. The requested change has not been made.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>9</p>	<p>COMMENT: Page 30, Paragraph 2A. The CAO and RAP require the Dischargers to determine chemical concentrations of the COCs at 5 cm. Please correct the reference to 10 cm in this paragraph. For consistency with the RMP, the shipyards request that the paragraph be revised to read: If all SMU concentrations are less than 120 percent of the post-remedial dredge area concentration, SMU cleanup is complete and no further action is required, though a sand cover may be applied to provide a restorative layer for biological growth.</p> <p>RESPONSE: Comment accepted in part. The reference has been corrected to 5 cm in section VII.D.2 of the Revised Tentative Order. San Diego Water Board response to the remaining part of this comment is pending and will be provided in an updated Response to Comments document.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>

10	<p>COMMENT: Page 30, Paragraph 2B. If the subsurface concentrations within a SMU are confirmed to be greater than 120 percent of the post-remedial dredge area concentration, the following additional remedial actions will be evaluated: Additional dredging of the SMU, obtaining and analyzing additional samples from within the SMU or clean sand placement.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Shipyard Sediment Site Group
11	<p>COMMENT: Page 30, Paragraph E For consistency with previous requirements, please change the first sentence to read: Prior to sediments leaving the sediment management areas the Dischargers shall perform analytical testing of stockpiled sediment (unless the analytical testing was conducted on sediment samples obtained in situ prior to dredging) as dictated by landfill.</p> <p>RESPONSE: Comment accepted. Provision E has been revised as suggested in the comment.</p>	Commenter: San Diego Shipyard Sediment Site Group
	The Waste Discharge Requirements Should Apply To All Responsible Parties	
12	<p>COMMENT: The Waste Discharge Requirements cannot legally list the San Diego Bay Environmental Restoration Funds as dischargers. The Waste Discharge Requirements list both the San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South as dischargers. Tentative Order No. R9-2013-0093 § II(F) at 7. These funds are not “persons” subject to regulation under the Clean Water Act or the Porter-Cologne Water Quality Control Act. See 33 U.S.C. § 1362(5); Cal. Water Code Div. 7 § 13050(c). Including these funds as dischargers creates the possibility of confusing who is actually responsible for doing the cleanup—which are the Responsible Parties under the Cleanup and Abatement Order. The Responsible Parties cannot be shielded from liability for</p>	Commenter: San Diego Coastkeeper

	<p>having to clean up the Shipyard site in a way that protects water quality by creating “funds” that apply for the permit. Unless the funds’ trustee agrees to be listed as a discharger and accepts liability for the cleanup, the funds should not be listed as dischargers.</p> <p>RESPONSE: The San Diego Water Board named the San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South as dischargers because the entities submitted and are named in the Reports of Waste Discharge and the fund signatories will be the same entities which are named Dischargers in the Cleanup and Abatement Order. Water Code Section 13050(c) does not provide an exhaustive definition of the term “person.” As suggested by the term “includes”, Section 13050(c) is not intended to provide a complete list of what is a “person” under this division of the Water Code. “Person” is construed broadly under the Water Code to include corporations, general partnerships, limited partnerships, trusts, estates, and individuals or corporations “doing business as” an unincorporated business. Therefore, San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South are considered “persons” as construed under the Water Code.</p> <p>It is not the intent of the San Diego Water Board to shield the Dischargers named in the Cleanup and Abatement Order from the responsibility of sediment remediation at the Shipyard Site. The Tentative Order names the Dischargers with the ownership and control of the Shipyard Sediment Remediation Project, namely NASSCO, BAE Systems, and the Restoration Funds as primarily responsible. The San Diego Water Board has the discretion to name the Port District and the Navy as secondarily responsible. The San Diego Water Board may seek enforcement against all or any of these entities for violations of the Tentative Order. Additionally, all Dischargers named in the Cleanup and Abatement Order are accountable for compliance with the Cleanup and Abatement Order, and the San Diego Water Board may pursue enforcement against any or all of these entities as well.</p>	
13	<p>COMMENT: The Waste Discharge Requirements should list the City of San Diego, San Diego Gas & Electric, and San Diego Marine Construction Company, Campbell Industries as dischargers. The Waste Discharge Requirements recognize that the City of San Diego, San Diego Gas & Electric, and Campbell Industries are responsible parties under the Cleanup and Abatement Order. See Tentative Order § II(F) at 7. However, the Waste Discharge Requirements fail to include these responsible parties as dischargers. See Tentative Order at 1,</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>4. Listing all responsible parties as dischargers increases accountability and ensures that the cleanup proceeds in an efficient and effective manner.</p> <p><u>RESPONSE:</u></p>	
	<p>Receiving Water Limitations Must Include Numeric Limitations To Clearly Define Compliance</p>	
14	<p><u>COMMENT:</u> The Waste Discharge Requirements should specify what “natural” pH, turbidity, and dissolved oxygen concentration are in San Diego Bay at the Shipyards site. The Waste Discharge Requirements require compliance within the range of “natural” pH, turbidity, and dissolved oxygen concentration within the remedial footprint. <i>See</i> Tentative Order at 15. But narrative standards such as “natural” water quality are difficult to interpret consistently and nearly impossible to enforce, which is not useful to the regulators, the regulated, or the community. The Waste Discharge Requirements should define what “natural” pH, turbidity, and dissolved oxygen conditions are in San Diego Bay at the Shipyards site and include those in the permit. By including numeric limitations, the Waste Discharge Requirements gain specificity, allowing the dischargers to confirm they are complying with the requirements and the Regional Board to bring enforcement action if they are not.</p> <p><u>RESPONSE:</u> The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	<p>Commenter: San Diego Coastkeeper</p>
15	<p><u>COMMENT:</u> The Waste Discharge Requirements should establish protocol for monitoring applicable water quality objectives established in the Regional Board's Basin Plan and all contaminants of concern listed in the Cleanup and Abatement Order. The Waste Discharge Requirements prohibit the dischargers from exceeding applicable water quality objectives from the Basin Plan. Tentative Order § IV(I) at 15. The only way to ensure that the dischargers do not exceed Basin Plan water quality objectives is to require dischargers to monitor those parameters that may be exceeded during dredging. Because dredging may mobilize the primary and secondary contaminants of concern listed in the Cleanup and Abatement Order – copper, mercury, HPAHs, PCBs, tributyltin, arsenic, cadmium, lead, and zinc – the Waste Discharge Requirements must include monitoring requirements to ensure that these contaminants are not mobilized into the water column during dredging.¹</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>¹ Donald MacDonald argued for this approach in his March 11, 2011 expert report: “[Analysis of primary and secondary contaminants of concern] must be compared to numeric water quality standards established in the Basin Plan to determine whether Dischargers are complying with applicable water quality standards during remediation.” Expert Report of Donald MacDonald prepared March 11, 2011 (MacDonald Report) § E.2.1 at 22.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	
	<p>The Waste Discharge Requirements Should Clearly List Required Construction Best Management Practices to Ensure Compliance</p>	
16	<p>COMMENT: The Waste Discharge Requirements should list Construction Best Management Practices in an appendix. Dischargers must comply with several sets of Best Management Practices. Compiling all of the requirements into one appendix, or at least listing the documents that contain requirements, will aid consultants and contractors in implementing each of the Best Management Practices.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	<p>Commenter: San Diego Coastkeeper</p>
17	<p>COMMENT: Best Management Practices related to silt curtains should specify how dischargers can meet water quality objectives. The Waste Discharge Requirements should not allow silt curtains to be extended only 20 feet into the water column. The Waste Discharge Requirements should not allow silt curtains to be extended only 20 feet into the water column. See Tentative Order § V(l)(6) at 17. This is inconsistent with Mitigation Measure 4.2.3 as detailed in the Mitigation, Monitoring, and Reporting Program. See Tentative Order Exhibit B at 6.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	<p>Commenter: San Diego Coastkeeper</p>

<p>18</p>	<p>COMMENT: The Waste Discharge Requirements should use the term “construction area” consistently. The Waste Discharge Requirements refer to the “construction area,” “active dredge area,” and “area of construction and dredging” interchangeably. See Tentative Order § VII(B)(4) at 29; see also Tentative Order § V(I) at 17. So that the Waste Discharge Requirements are consistent with the Remedial Action Plan, “construction area” should replace “active dredge area” and “area of construction and dredging.” Remedial Action Plan at 7.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	<p>Commenter: San Diego Coastkeeper</p>
<p>19</p>	<p>COMMENT: Best Management Practices related to clean sand covers should specify what dischargers must do to meet water quality objectives. The Waste Discharge Requirements should include a decision matrix for determining how thick clean sand and gravel covers must be or list the appropriate thickness. Mitigation Measure 4.2.7 states that clean sand covers shall be “thick enough” to meet certain goals related to water quality and the health of aquatic organisms. Tentative Order Exhibit B at 8. But because narrative standards such as “thick enough” only provide vague guidance, the Waste Discharge Requirements should include a decision matrix that dischargers can use to determine how thick clean sand and gravel covers must be. Or, if the appropriate thickness has been determined in the course of similar projects, such as the Campbell’s Shipyard Sediment Remediation Project, that quantity should be listed in Mitigation Measure 4.2.7.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	<p>Commenter: San Diego Coastkeeper</p>
<p>20</p>	<p>COMMENT: The Waste Discharge Requirements should clarify that Borrow Source Characterization Reports must be reviewed and approved by the Regional Water Quality Control Board. The Waste Discharge Requirements require dischargers to submit a Borrow Source Characterization Report prior to any on-site placement of import materials. See Tentative Order § V(S)(4) at 20. The Waste Discharge Requirements should specify that the Regional Board must review and approve Borrow Source Characterization Reports before these materials can be used in order to avoid contractors using problematic borrow materials.</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p><u>RESPONSE:</u> The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	
21	<p><u>COMMENT:</u> Best Management Practices related to sediment dewatering and staging areas should specify requirements to reduce air quality impacts that the dredging has on surrounding communities.</p> <p><u>RESPONSE:</u> The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
22	<p><u>COMMENT:</u> The Waste Discharge Requirements should require that dischargers secure the permit necessary to discharge wastewater into the community sewer system before beginning dredge operations. The Waste Discharge Requirements note that dischargers will send wastewater generated during sediment dewatering into the City of San Diego's sewer system to be treated at the Point Loma Wastewater Treatment Plant and discharged through the existing ocean outfall. <i>See</i> Tentative Order § 2(G) at 8. Federal law requires that dischargers obtain a Significant Industrial User Discharge Permit from the City of San Diego's Public Utilities Department prior to discharging wastewater into the sewer system. <i>See</i> 40 C.F.R. §§ 405-71. The Waste Discharge Requirements should require dischargers to obtain this permit prior to beginning dredge operations.</p> <p><u>RESPONSE:</u> The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
23	<p><u>COMMENT:</u> The Waste Discharge Requirements should stipulate that dredged sediment stockpiled on shore must be covered at all times unless it is actively being worked on. The Waste Discharge Requirements properly require that dredged sediment stockpiled on shore be covered with plastic sheeting designed to contain fugitive dust. <i>See</i> Tentative Order § V(T)(4) at 21. Contractors, however, may feel that cover is not necessary while a pile is being added to, which could be virtually any time if sediment is being dredged 24 hours per day and 6 to 7 days per week. <i>See</i> Tentative Order § II(I) at 9. To reduce the risks to the air quality in communities surrounding the staging areas, the Waste Discharge Requirements should mandate that piles be</p>	Commenter: San Diego Coastkeeper

Response To Comments
 Tentative Order No. R9-2013-0093

	<p>covered at all times except for the specific area being worked on.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	
24	<p>COMMENT: Best Management Practices related to the transportation and disposal of dewatered sediment should specify requirements to reduce dredging impacts on communities adjacent to the staging areas. The Traffic Control Plan should protect those who live near the staging areas from continuous truck traffic. Dischargers anticipate dredging 6 to 7 days per week. See Tentative Order § II(I) at 9. If trucks are allowed to run 6 to 7 days per week, residents of the neighborhoods surrounding the staging areas will be constantly subjected to the noise and air pollution created by trucks transporting.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
25	<p>COMMENT: The Waste Discharge Requirements should require that the Traffic Control Plan be completed as soon as possible and made available for public comment. The Traffic Control Plan will determine which routes trucks will travel through the neighborhoods surrounding the staging areas. See Mitigation Measure 4.3.8, Tentative Order Exhibit B at 18-19. Because it is their community that will be impacted, the residents of these neighborhoods, along with the rest of the public, should have an opportunity to comment on the Traffic Control Plan and have their concerns addressed.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
26	<p>COMMENT: Best Management Practices detailing response actions to monitoring results should specify the protocol required to achieve water quality objectives. The Waste Discharge Requirements should require that additional Best Management Practices be implemented if a visual observation or water sample indicates an exceedance of a receiving water limitation along the early warning arc. Early warning stations were designed to quickly inform Project Team members of potential impacts to water quality so that dredging or Best Management Practices can be adjusted before an exceedance occurs at a compliance station. See Tentative Order § VII(B)(2)(b) at 26. Therefore, the Waste Discharge Requirements</p>	Commenter: San Diego Coastkeeper

Response To Comments
 Tentative Order No. R9-2013-0093

	<p>should require that additional Best Management Practices be implemented if visual observation or water quality monitoring indicate an exceedance of a receiving water limitation along the early warning arc.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	
27	<p>COMMENT: The Waste Discharge Requirements should allow the Biological Monitor to determine operational modifications in the event of a confirmed exceedance of a receiving water limitation. The Waste Discharge Requirements are silent as to who has the authority to determine operational modifications in the event of a confirmed exceedance of a receiving water limitation. Because the Biological Monitor is the Project Team member best able to understand the consequences of an exceedance, and because the Biological Monitor can halt or redirect dredging activities under other circumstances, the Biological Monitor should be able to determine operational modifications in the event of a confirmed exceedance of a receiving water limitation. See Mitigation Measure 4.5.11, Tentative Order Exhibit B at 24-25.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
28	<p>COMMENT: The Waste Discharge Requirements should require that dredging stop if there are two consecutive exceedances of a receiving water limitation. The Waste Discharge Requirements do not define the point at which dredging will stop if Construction Best Management Practices fail to mitigate an exceedance of a receiving water limitation. To ensure that exceedances do not result in unmitigatable impacts to water quality, the Waste Discharge Requirements should require that dredging stop if two consecutive exceedances of a receiving water limitation are confirmed.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
	<p>Stringent Monitoring Protocol Is Essentials To Protecting Water Quality And Public Health</p>	

<p>29</p>	<p>COMMENT: Monitoring requirements for receiving water should be strengthened to ensure that water quality objectives are met. The Waste Discharge Requirements should clearly define when the dischargers should take water quality measurements. Language in the Waste Discharge Requirements regarding when, relative to the start of dredging operations each day, water quality measurements will be taken is currently inconsistent. See Tentative Order § VII(B)(3)(a) at 26-27. So that procedure is clear to Project Team members, and to ensure that water quality objectives are achieved, the Waste Discharge Requirements should specify that manual samples will be collected once a day after dredging has been underway for an hour and automated samples will be collected continuously throughout dredging operations.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	<p>Commenter: San Diego Coastkeeper</p>
<p>30</p>	<p>COMMENT: The Waste Discharge Requirements should allow the Regional Board to request split samples. The Waste Discharge Requirements are silent on the issue of split samples. The Regional Board should be allowed to request split samples in order to ensure that monitoring results are accurate and that water quality objectives are met.</p> <p>RESPONSE: Comment Accepted. The following sentence has been added to the monitoring requirements in section VII.A.1. of the Revised Tentative Order. "The Discharger shall provide split samples to the San Diego Water Board upon request."</p>	<p>Commenter: San Diego Coastkeeper</p>
<p>31</p>	<p>COMMENT: The Waste Discharge Requirements should describe the monitoring station beyond the influence of dredging activities as either "background" or "reference," and use the term consistently. The Waste Discharge Requirements refer to the monitoring station beyond the influence of dredging activities as both a "background station" and a "reference station." See Tentative Order § VII(B)(2)(c) at 26; see also Tentative Order § VII(B)(3)(a) at 27. The Waste Discharge Requirements should use one term consistently so that procedure is as clear as possible.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be</p>	<p>Commenter: San Diego Coastkeeper</p>

	provided in an updated Response to Comments document.	
32	<p><u>COMMENT:</u> The Waste Discharge Requirements should list the criteria that need to be met before a sand cap is placed and identify the person responsible for determining whether a sand cap is necessary. Decision rules (b) and (c) discuss the placement of sand caps, but neither describes under what specific circumstances or by whom the decision to place a sand cap will be made. See Tentative Order § VII(D) at 30. The Waste Discharge Requirements should list the criteria that need to be met before a sand cap is placed and identify the person responsible for determining whether a sand cap is necessary. As is noted in Donald MacDonald’s Expert Report for the Cleanup and Abatement Order, “failure to establish clearly interpretable decision rules. . .will almost certainly result in decisions that are not consistent with the expectations of the. . .Regional Board and other participants in the process.” See MacDonald Report § E.3.7 at 26.</p> <p><u>RESPONSE:</u> The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
33	<p><u>COMMENT:</u> The Waste Discharge Requirements should include stronger sediment disposal monitoring to protect public health. The Waste Discharge Requirements should require that dewatered sediment be tested to determine pollutant concentration before a landfill is selected. The Waste Discharge Requirements state that dewatered sediment will be stockpiled and tested to determine its suitability for disposal at selected landfills. See Tentative Order § VII(E) at 30. Because landfill acceptance criteria depend on the nature and concentration of pollutants, dischargers must test the sediment before it is stockpiled to determine which landfill phase classification is appropriate.</p> <p><u>RESPONSE:</u> The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper

34	<p>COMMENT: The Waste Discharge Requirements should define how often dewatered sediment will be tested and set a maximum volume of sediment that will be allowed to accumulate in each sediment management area. The Waste Discharge Requirements are silent as to how often dewatered sediment will be tested and the maximum volume that will be allowed to accumulate in each sediment management area. The maximum volume should be calculated based on the capacity of the plastic sheeting designed to contain fugitive dust. This will reduce the impact the dredging will have on air quality in neighborhoods adjacent to the staging areas.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
35	<p>COMMENT: The Waste Discharge Requirements should require protocol to ensure that less-toxic sediment is not mixed with sediment that is more toxic to reduce the net concentration of pollutants. It is critical that contractors not, inadvertently or otherwise, combine dewatered sediment that is less toxic with sediment that is more toxic to decrease the net concentration of pollutants and qualify the resultant mix for admission to landfills of a lower phase classification. These landfills are often not lined and therefore risk groundwater contamination if filled with toxic sediment.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
	<p>The Waste Discharge Requirements Should Require That Noncompliance Reports That May Endanger Human Health Or The Environment Be Shared With Community Members</p>	
36	<p>COMMENT: The Waste Discharge Requirements state that dischargers must report any noncompliance that may endanger human health or the environment to the Regional Board. <i>See</i> Tentative Order § VIII(E) at 31. However, the adjacent community should be notified if public health or the environment is at risk. The Waste Discharge Requirements should require that reports of noncompliance that may endanger human health or the environment be shared with community members and should detail a method for disseminating the information.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be</p>	Commenter: San Diego Coastkeeper

	provided in an updated Response to Comments document.	
	The Sediment Management Unit For Polygon NA19 Must Not Be Smaller Than The Area Established In The Cleanup And Abatement Order	
37	<p>COMMENT: The sediment management unit for polygon NA19 seems to be smaller than the dredge remedial area for that polygon established in the Cleanup and Abatement Order. See Tentative Order Attachment A Figure 4; <i>see also</i> Cleanup and Abatement Order at 43. To ensure that the area being dredged is consistent with that agreed upon by the Project's stakeholders during the development of the Remedial Action Plan, the sediment management unit for polygon NA19 must be at least as large as the area established in the Cleanup and Abatement Order.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
	The Background Station Should Be Located Upstream Of The Remedial Footprint	
38	<p>COMMENT: The Waste Discharge Requirements note that the background station will be located 1,000 feet from the dredging activity in the direction of the head of the bay and beyond the influence of construction activities. See Tentative Order § VII(B)(2)(c) at 26. But in the Receiving Water Monitoring Diagram, the station is located south, or downstream, of the remedial footprint. See Tentative Order Attachment C. Because an accurate background measurement is vital to the success of water quality monitoring, the background station must be upstream of the remedial footprint and beyond the influence of construction activities.</p> <p>RESPONSE: The San Diego Water Board response to this comment is pending and will be provided in an updated Response to Comments document.</p>	Commenter: San Diego Coastkeeper
	The Port District Objects To Being Named As A Discharger	

39	<p>COMMENT: The Port District is not the party proposing to make the discharges for which the WDRs are being issued, nor is it the operator of any of the facilities on which the discharges are proposed to be made; it is merely the non-operating landlord and public trustee of the subject tidelands under the San Diego Unified Port District Act (Harb. & Nav. Code, App. 1).</p> <p>RESPONSE: Various State Water Resources Control Board (State Water Board) Orders and policy memoranda clearly establish that the San Diego Water Board has the discretion to name the Port District as a “Discharger” in the Tentative Order even though it will not be involved in or controlling the day to day operations of the Project, subject to certain considerations. In Order No. WQ 90-3 the State Water Board held that the Port District may properly be named as a “Discharger” in waste discharge requirements (WDRs) under the California Water Code with the provision that 1) the WDRs should not hold the Port District responsible for the day to day operation of the regulated facilities or for monitoring requirements and 2) the WDRs must provide the Port District with the opportunity to attain tenant compliance prior to San Diego Water Board enforcement action against the Port District. The inclusion of the Port District as a “Discharger” in the Tentative Order, under these circumstances, is discretionary. This being said, it is not the customary practice of the San Diego Water Board to name the Port District as primarily responsible in WDRs or NPDES permits issued to its tenants. Moreover the Port District, in its comment letter, offered its assistance in maintaining the Project applicants’ compliance with the Tentative Order as well as its independent assistance in enforcing the Coastal Development Permits as necessary. Based on these considerations the Tentative Order will be revised to remove the Port District as a Discharger. The San Diego Water Board may exercise its discretion during these proceedings to name the Port District as a Discharger which is secondarily liable for permit obligations under the Tentative Order.</p> <p>In applying similar reasoning, the Tentative Order will be revised to also exclude the U.S. Navy as a Discharger. The Tentative Order also includes the U.S. Navy as a “Discharger” based on its ownership of the S-Lane parcel where sediment dewatering and stockpiling operations are scheduled to occur. As with the Port District, the U.S. Navy is a “non-operating” landowner and will not be engaged with the day to day operations of the Project at the S-Lane parcel. The inclusion of the U.S. Navy as a “Discharger” in the Tentative Order, under these circumstances is not mandatory. Based on these considerations the Tentative Order will be revised to remove the U.S. Navy as a Discharger. The San Diego Water Board may exercise its discretion during</p>	Commenter: San Diego Unified Port District
----	---	---

Response To Comments
 Tentative Order No. R9-2013-0093

	these proceedings to name the U.S. Navy as a Discharger which is secondarily liable for permit obligations under the Tentative Order.	
40	<p>COMMENT: Consistent with the 1990 agreement between the State Water Board, the Regional Board, and the Port District, the Regional Board's long-standing business practice has been not to name the Port District as primarily liable in WDRs issued for work to be performed by or on behalf of its tenants and there is no reason to depart from that practice in connection with these WDRs.</p> <p>RESPONSE: See response to comment 39.</p>	Commenter: San Diego Unified Port District
41	<p>COMMENT: In no event can the Port District be liable for any proposed activities or WDRs issued with respect to the "S Lane," which is owned by the United States Navy, and over which the Port District has no jurisdictional authority.</p> <p>RESPONSE: Comment noted. Persons who own land on which a discharge is occurring can properly be included as "dischargers" in waste discharger requirements under the California Water Code. This principle is based on three elements: ownership of the land, knowledge of the activity and the ability to control it where the source of the discharge is the land and the activities on the land. The application of these general principles to the S- Lane parcel would support the Port District's position that it should not be held accountable as a public trustee for discharges from the S-Lane parcel over which it has no jurisdiction.</p>	Commenter: San Diego Unified Port District