

State Water Resources Control Board

EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL ORDERS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A “general order” does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with the requirement to meet statutory disclosure requirements. For more information, see Water Code section 13287 and http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Must I disclose ex parte communications with board members regarding pending general orders?

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of “financial interest,” consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (<http://www.fppc.ca.gov/index.php?id=51>)
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

What must I disclose?

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

When is the disclosure due?

Water Board staff must receive the disclosure within seven (7) working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

Who must receive my disclosure documents?

Unless the board member(s) provided you with a different contact person, please send your materials to: commentletters@waterboards.ca.gov

What will the Water Board do with my disclosure?

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board's proceeding.

May other interested persons respond to a disclosure notice?

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order's written comment period, included in oral comments at the hearing, or both.

**STATE WATER RESOURCES CONTROL BOARD
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS
DISCLOSURE FORM**

Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: commentletters@waterboards.ca.gov. Use of this form is not mandatory.

1. Pending General Order that the communication concerned:

2. Name, title and contact information of person completing this form:
Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.

3. Date of meeting, phone call or other communication:
Time:
Location:

4. Type of communication (written, oral or both):

5. Names of all participants in the communication, including all board members who participated:

6. Name of person(s) who initiated the communication:

7. Describe the communication and the content of the communication. Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.

8. Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.



May 8, 2026

Submitted via email to: commentletters@waterboards.ca.gov

Joaquin Esquivel, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Subject: CMUA Comments on Utility Wildfire General Order

Dear Honorable Chair Esquivel,

The California Municipal Utilities Association (CMUA)¹, appreciates your attention to our continuing concerns regarding the State Water Resources Control Board (State Water Board) *Draft General Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Utility Wildfire and Similar Operations and Maintenance Activities*² (Draft Utility Wildfire General Order or Draft UWGO). CMUA represents publicly owned electric utilities (POUs) that provide power to 25% of the State. POUs share the objective of providing safe, reliable, and affordable electric services to businesses and residents in their service territories while doing so in an environmentally responsible manner. CMUA shares this letter to request fundamental revisions to the Draft UWGO prior to the release of the formal public notice for presentation to the State Water Board. Particularly, CMUA requests that the Draft UWGO be limited to activities occurring in water and immediately adjacent bed and banks, consistent with the State Water Board's statutory authority, and more clearly and unambiguously exclude activities occurring in areas covered by municipal separate storm sewer system (MS4) permitted areas.

I. Summary

CMUA remains concerned that the Draft UWGO impermissibly expands State Water Board regulation to maintenance and operations activities on land that do not involve discharges of waste to waters of the state. To the extent the Draft UWGO is attempting to regulate activities that have the potential to influence the quality of localized stormwater, such regulation is entirely duplicative of existing stormwater regulation and public policy weighs heavily against such an arbitrary approach.³ CMUA is further concerned an insufficient evidentiary record exists to support the Draft UWGO and that financial impacts on ratepayers have not been appropriately considered.

¹ CMUA represents 86 publicly owned electric, gas, water and wastewater utilities statewide. Together, CMUA members provide water service to 75 percent of Californians and electric service to 25 percent of the state.

² Latest version of the draft Utility Wildfire General Order released in March 2025.

³ Cal. Gov't Code 11349(f) ("Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication...)

CMUA has engaged with State Water Board staff and Board Members since 2023 on the development of the Draft UWGO, and we appreciate the substantial effort of agency staff, utilities, and interested parties to develop a permit structure that protects the State's waters without imposing unnecessary restrictions on utility operations. Despite CMUA's continued concerns regarding overbroad application of the Draft UWGO, CMUA acknowledges that State Water Board staff have recently proposed several marked improvements to the Draft UWGO, particularly those discussed during the workshops on January 27, 2026, March 25, 2026, and presented in the "Staff Draft Utility Wildfire General Order Excerpts" document shared in March 2026. As recently proposed by State Water Board staff, CMUA supports updating the definition of urban areas, recognizing an exclusion for municipal separate storm sewer system (MS4) permitted areas (though, as discussed below, CMUA urges further clarification of the language⁴), limiting coverage of pole replacements and structural conversions to activities located within any waters of the state, removing Tribal Cultural Resource conditions from Category A non-notifying activities, removing Vegetation Management Impact Offset Plans (VMIO) and related consultation, and several other proposed edits.

If the current version of the Draft UWGO that includes the proposed changes noted above is adopted, we still expect that tens of thousands of utility maintenance projects that occur on-land with no discharge of waste to waters would now be regulated, costing California utility ratepayers millions of dollars associated with additional fees, permitting, and administrative costs not currently required by other applicable programs.⁵ For each of these projects, which do not currently require separate waste discharge requirements (WDRs), electric utilities will be required to reform work planning processes, environmentally screen projects based on the project activity descriptions and triggering criteria, reform on-site work processes, and develop tracking, recording, and recordkeeping processes to collect required information. For many POUs, this will require costly development of new technological solutions and hiring of additional staff to accommodate the volume of on-land activities that would need to comply with the range of requirements in the Draft UWGO. Importantly, electric utilities are being asked to implement these additional, prescriptive requirements from the Draft UWGO, despite scant data in the record demonstrating a water quality benefit and many, if not all, of these activities already being subject to existing stormwater regulation.⁶

⁴ As noted below, CMUA requests State Water Board staff to revise the Draft UWGO to ensure that any activities that occur within a geographic area served by a MS4 permit are unambiguously excluded from coverage under the Draft UWGO.

⁵ The Draft UWGO proclaims in Findings Section II.M. that the State Water Board has considered the factors in section 13241, as required by Water Code section 13263, in the development of the Draft UWGO, which includes economic considerations. CMUA disagrees with the sufficiency of this consideration to date.

⁶ As discussed below, electric utilities are already required to comply with MS4 and Construction General Permit permitting requirements, which aim to regulate stormwater runoff, which appears to be the only water-quality connection to justify issuance of the Draft UWGO.

Regarding our ongoing concerns, CMUA has brought these to the attention of the State Water Board on several occasions, including in comment letters dated July 14, 2023, and April 29, 2025. These letters caution that the Draft UWGO is “expanding the scope of authority beyond that which the State Water Board has to regulate utility work.”⁷ The California Utility Joint Comments letter dated April 29, 2025, articulated similar concerns, namely that there is a lack of meaningful record development regarding fundamental aspects of the Draft UWGO and raised “significant concerns regarding threshold and jurisdictional questions.”⁸ In addition, individual CMUA members have reiterated these concerns through direct communications with State Water Board staff, including in meetings and correspondence. None of the proposed revisions described thus far will fully remedy the Draft UWGO’s regulatory overreach.

To avoid imposing these unnecessary burdens on ratepayers and communities, CMUA respectfully requests the State Water Board refocus the Draft UWGO on providing Clean Water Act section 401 certification and/or general WDRs for activities within the State Water Board’s regulatory jurisdiction – namely, those activities involving an actual discharge or proposed discharge of waste to waters of the state. Second, the State Water Board should revise the Draft UWGO to ensure that any land-based activities occurring in geographic areas served or covered by a MS4 permit are unambiguously excluded from coverage under the Draft UWGO. A final UWGO that aligns with State Water Board statutory authority as provided in this letter can provide real benefit for our state waterways and communities.

II. The Draft UWGO is duplicative of existing stormwater regulation and cannot rely on Water Code Sections 13260 and 13263 to regulate on-land activities that do not directly produce a discharge of waste to waters.

In Section III., the Draft UWGO purports to regulate listed activities, “where the Discharger is discharging or proposing to discharge waste to surface waters of the state...”⁹ The Draft UWGO describes eleven “project activities” and provides triggering criteria for when these activities require coverage. The enumerated project activities include essentially all electric utility maintenance and operations activities, including vegetation management, poles/towers maintenance and replacement, substation maintenance, overhead line reconductoring, utility line undergrounding and a general “catch-all” category that applies if the activity does not fall within one of the previously listed categories.¹⁰

The fundamental basis for requiring utilities to obtain coverage under WDRs and, by extension, general WDRs like the Draft UWGO, is Water Code section 13260. It provides the following:

⁷ Comment Letter, “CMUA, SCPA, and NCPA Comments on Administrative Draft Electric Utility General Order” submitted July 14, 2023.

⁸ Comment Letter, “California Utility Joint Comments – Utility Wildfire General Order (WDID: SB24032GN)”

⁹ Water Code, section 13260.

¹⁰ This is based on State Water Board staff communication of recent proposed edits.

(a) Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board:

(1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

Relying on this authority and Water Code section 13263¹¹, the Draft UWGO aims to regulate discharges of waste to waters of the state (e.g., the discharge of dredged or fill material), as well as any *activities* that do not involve discharge, but could incidentally contribute to pollutants becoming entrained in stormwater runoff (e.g., “the possibility of discharges associated with related activities, such as discharges of sediment, herbicides, oils and greases, and some vegetative waste”).¹² These latter “discharges” are almost exclusively related to actions that could theoretically (or as described in the Draft UWGO “possibly”) influence the quality of stormwater runoff. The State Water Board’s Response to Comments on the June 28, 2024, Draft UWGO makes clear that the Draft UWGO’s purpose is to regulate soil disturbing activities that do not per se produce discharge, but that could “possibly” affect an unidentified future stormwater circumstance:

*“The General Order is designed to regulate soil-disturbing activities that have the potential to cause sedimentation and degrade water quality, whether or not they occur directly within or adjacent to waters of the state ... Even low-risk activities can have cumulative impacts that result in significant water quality impacts.”*¹³

However, the State Water Board does not have authority under Water Code Sections 13260 and 13263 to regulate on-land activities without an identified discharge of waste, which necessitates limiting the coverage of the Draft UWGO to discharges to waters of the state. Further, the regulation of construction and municipal stormwater runoff via specific authority conferred by the federal Clean Water Act [33 U.S.C. §1342(p) and 40 C.F.R. §122.26], and Water Code section 13377¹⁴ already occupies the field, with respect to regulating activities that might influence the

¹¹ The State Water Board issues WDRs, including general WDRs, pursuant to Water Code section 13263. Section 13263(a) provides “The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. ...” This language relies on the discharge described in Water Code section 13260 occurring.

¹² Draft UWGO at Section II.V.

¹³ Response to Comments at 3.7 (emphasis added); note that nine of the eleven “project activities” are triggered by “soil disturbance”, and there is strong conceptual overlap with the Construction General Permit, another stormwater permit (see General NPDES Permit/WDRs for Discharges of Stormwater Associated with Construction and Land Disturbance Activities, State Water Board Order WQ 2022-0057-DWQ.).

¹⁴ Water Code section 13377 states that “Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue

quality of runoff, and results in the Draft UWGO being unreasonably duplicative, in contravention to Water Code section 13000 and applicable provisions of the Administrative Procedures Act (Cal. Gov't Code sections 11349, *et seq.*).

- a. *Stormwater runoff is already regulated through existing stormwater permitting programs, namely the Construction General Permit (CGP) and MS4 programs, and the Draft UWGO's regulation of on-land activities unnecessarily duplicates this regulatory program.*

As noted above, the regulation of construction and municipal stormwater runoff occurs as a result of specific authority conferred by the federal Clean Water Act (33 U.S.C. §1342(p) and 40 C.F.R. §122.26), and Water Code section 13377. Also as discussed above, the Draft UWGO, without clearly affirmatively stating such, is effectively a secondary and duplicative stormwater permit, rather than a narrower permit authorizing the discharge of “waste” to surface waters of the state per Water Code section 13263 and requiring utilities to seek coverage thereunder per Water Code section 13260.¹⁵ As the State Water Board is aware, significant statewide (CGP, Phase II MS4) and regional (Phase I MS4) permits regulating construction and municipal stormwater runoff already exist, are applicable to electric utility activities, and utilities currently operate pursuant to the requirements of those permits. Many electric utility construction efforts are already covered by the CGP, and those projects not covered by the CGP (less than one acre of soil disturbance) are dually subject to the applicable statewide or regional MS4 permits.¹⁶ Amongst other requirements, MS4 Permits must require controls be implemented within each relevant jurisdiction to reduce the discharge of pollutants to surface waters to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.¹⁷

waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

¹⁵ If the State Water Board truly believed the categories of activities identified as “on land” above independently result in the discharge of waste, the Draft UWGO would cite authority under Title 27 of the California Code of Regulations, which sets forth discharge requirements and standards for the placement of waste on land that could detrimentally affect ground waters of the state. Notably, the Draft UWGO does not do so, and in the Response to Comments document, the State Water Board specifically disclaims that the Draft UWGO applies to or is regulating waste discharge to land that could affect groundwaters of the state. *See* Response to Comments at Section 3.15.

¹⁶ MS4 permitting applies to municipalities serving a population of 250,000 or more (Phase I MS4) or 100,000 – 250,000 (Phase II MS4). 33 U.S.C. § 1342(p)(2). Typically, a county and all of the incorporated cities within a county are co-permittees for regional Phase I MS4 Permits; Phase II MS4 permittees apply to be covered under the statewide permit.

¹⁷ 33 U.S.C. § 1342(p)(3). For example, [Order No. R5-2016-0040](#), NPDES Permit No. CAS0085324 (“CVRWQCB Phase I Regionwide MS4”) is a regionwide MS4 permit issued by the Central Valley Regional Water Quality Control Board (“CVRWQCB”), the purpose of which is to reduce pollutants from being entrained in stormwater that will ultimately reach surface waters of the United States and waters of the State. The CVRWQCB Regionwide MS4 and resulting local ordinances include similar conditions as those listed in Section IV. Conditions of the Draft UWGO,

As such, the provisions of the Draft UWGO, regulating on-land, largely construction-related, activities that “might” contribute pollutants to stormwater that “might” reach surface waters, creates a secondary, entirely duplicative, unnecessary, and unduly burdensome, regulatory program.

Importantly, State Water Board staff already recognized this duplication, exempting from coverage those activities regulated by the CGP from earlier versions of the Draft UWGO. More recently, State Water Board staff agreed to exempt utilities from coverage under the Draft UWGO if the activity “discharges to municipal separate storm sewer systems (MS4) that are regulated by a National Pollutant Discharge Elimination System (NPDES) Permit...”¹⁸ While CMUA appreciates the recognition of the overlap between the Draft UWGO and MS4 permitting, CMUA seeks further clarification to the exemption to avoid any future confusion as to the applicability of the exemption, since, as noted above, the activity does not discharge, but later precipitation may create a condition where discharges could occur that contain materials or pollutants associated with the activity if not properly handled. Specifically, CMUA requests that utilities be exempt from the Draft UWGO for “land-based activities that occur in geographic areas served or covered by a municipal separate storm sewer system (MS4) National Pollutant Discharge Elimination System (NPDES) permit...”

- b. The State Water Board does not have authority under Water Code section 13260 and 13263 to regulate on-land activities that do not independently discharge waste separate from any potential influence on stormwater runoff.*

Even with the above-referenced exclusion for MS4 areas, the Draft UWGO purports to be based on and must find its authority in Water Code sections 13260 and 13263. This means for the Draft UWGO to be within the State Water Board’s statutory authority, Water Code section 13263 must authorize the issuance of WDRs for the action being regulated, and the State Water Board must be empowered to require utilities to file a report of waste discharge pursuant to Water Code section 13260. CMUA disagrees that Water Code section 13263 authorizes WDRs for all the actions proposed for regulation in the Draft UWGO, and specifically objects to requiring utilities to file reports of waste discharge to secure coverage under the Draft UWGO for on-land activities.

First, the State Water Board appears to be inserting words and concepts that don’t appear in the statute itself. For example, in prior drafts, the UWGO claimed to authorize listed activities, “where the activities may cause or threaten to cause a discharge of waste to waters of the state...”¹⁹ However, the term “threaten” does not appear in Water Code sections 13260 or 13263. Rather, the term “threaten” was imported from inapplicable provisions of the Water

including slope and soil characteristics. The CVRWQCB Regionwide MS4 prescribes best management practices and other controls be instituted by project proponents and enforced by the municipal agency permittees via local ordinances and enforceable stormwater management plans. Notably, utility work is not exempt from regulation under the CVRWQCB Regionwide MS4.

¹⁸ See “Staff Draft Utility Wildfire General Order Excerpts” document at page 1 (reflecting changes to Draft UWGO at Section III.).

¹⁹ See Draft UWGO (Redline version), March 2025.

Code pertaining to emergency enforcement statutes.²⁰ The Legislature could have used “threaten” in section 13260 and 13263 if it intended such broad coverage, as demonstrated in these contrasting statutes, but it chose not to grant the State Water Board such broad authority here.²¹

Later in the Draft UWGO development process, the language “threaten” was appropriately removed and revised to focus on “discharges and proposed discharges”, consistent with sections 13260(a)(1) and 13263(a). Despite correcting this language, the Draft UWGO was not revised to conform the project activity descriptions and triggering criteria to limit application to only present “discharges and proposed discharges.” Rather, as staff explained in response to comments, “[p]roposing to discharge waste includes a person who has undertaken actions that *could cause a potential discharge* of waste to occur that may affect state surface waters or groundwater.”²² When statutes are unambiguous, administrative agencies should accord them their plain meaning.²³ Nowhere in sections 13260 or 13263 does the word “potential” appear, nor does it apply to “actions that could cause” a discharge; as such, there is no basis in statute for regulating actions that could cause a “potential” discharge of waste. Expanding the application of Water Code sections 13260 and 13263 – whether explicitly by using the word “threaten” or implicitly by substituting the word “potential” – is contrary to the text and its plain meaning.

Further, the Draft UWGO appears to rely on misinterpretations of Water Code section 13260. For example, the manner in which the phrase “proposing to discharge” is used in Water Code section 13260(a)(1) is meant to require that persons who are physically proposing to discharge waste must first submit a report of waste discharge. It is reasonable for a person discharging or proposing to discharge waste to waters to obtain requirements from state or regional water boards to ensure the protection of water quality; this is something that utilities regularly do when activities will result in discharge of waste to waters. But “proposing to discharge waste” as used in section 13260(a)(1) is not the same as requiring permits for any future unidentified “potential” discharge nor does it include any undetermined “proposed” activity that could hypothetically result in an indirect discharge under specific circumstances.

Moreover, we understand that the State Water Board may be justifying the Draft UWGO by interpreting the phrase “within a region” within Water Code section 13260 to allow the State

²⁰ See, e.g., Water Code § 13301 (“[w]hen a regional board finds that a discharge of waste is taking place, or *threatening* to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist...”)

²¹ The Legislature understands how to authorize the State and Regional Water Board to act in the face of a “threatened” discharge and chose not to include such phrasing in Water Code section 13260(a)(1). The maxim “[expressio unius est exclusio alterius](#)” supports well-established statutory construction principles, that if the Legislature uses a specific word in some statutes but omits it from another, they intended to exclude it. For this reason, the State Water Board cannot utilize Water Code section 13260(a)(1) to issue a statewide permit for “potential” discharges and must limit the scope of permitting to the control of actual discharge.

²² Emphasis added. See Response to Comments at 3.13.

²³ See, e.g., *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727.

Water Board to regulate activities occurring entirely on land (“within a region”) that have no identifiable discharge to waters of the state. Reading section 13260(a)(1) in context reveals this interpretation is unsupportable. Section 13260 appears within Chapter 4 of the Porter-Cologne Water Quality Control Act, entitled “Regional Water Quality Control.” Earlier in Chapter 4, Water Code section 13200 describes the division of the state into nine regions, and states that the “regions defined and described in this section shall be as precisely delineated on official maps of the department and include all of the areas within the boundaries of the state.” Water Code section 13260(a)(1), then indicates that WDRs are required for persons discharging waste within any of these regions of the state of California; in contrast, section 13260(a)(2) applies to “a person who is a *citizen, domiciliary, or political agency or entity* of this state discharging waste, or proposing to discharge waste, *outside the boundaries of the state* in a manner that could affect the quality of the waters of the state *within any region*,” (emphasis added). Read in context, the phrase “within a region” does not confer unlimited jurisdiction on the State Water Board to regulate every on-land activity within the state as potentially affecting a region. A much clearer and reasonable interpretation is that “region” in this context refers to the regional boards, of which this chapter of the Water Code is focused, and particularly appears to be included here to help distinguish coverage under (a)(1) – applying to all persons discharging within the state – and (a)(2) – applying only to certain persons that act outside of the state but whose discharges affect water quality within the state.

Examination of the legislative history of Water Code section 13260 confirms CMUA’s understanding, and what the Legislature intended by the phrase “within any region.” In 1969, Water Code section 13260 was enacted as a single, relatively compact provision that embedded its jurisdictional framework directly in the statutory text (i.e., “within a region” is directly related to *who* the report should be filed to not *when* a report should be filed). As enacted in Chapter 482, Statutes of 1969, § 13260 provided (emphasis added):

(a) Any person discharging waste or proposing to ***discharge waste within any region*** that could affect the quality of the waters of the state, other than into a community sewer system, and any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste or proposing to discharge waste outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region, ***shall file with the regional board of that region*** a report of the discharge, containing such information as may be required by the board...

As enacted in 1969, section 13260 required a report of waste discharge to be filed “with the regional board of that region,” which makes clear that the term “region” refers to the territorial jurisdiction of the applicable Regional Water Quality Control Board, not the geographic limits of the waters potentially affected. The effects-based clause defines the scope of regulated discharges, while “region” performs a jurisdiction-assigning function. Put more simply, Water Code section 13260 asks whether a discharge to waters could potentially impact water quality at all. If yes, the reference to a “region” is used only to determine which Regional Water Quality Control Board the report must be sent to. Although Water Code section 13260 was later

reorganized into its current form, the reorganization simplifies the wording but does not change the meaning.

Finally, if the State Water Board's expansive interpretations were correct, then it must be the case that tens of thousands of electric utility maintenance and operations projects on-land throughout the state currently require individual WDRs. And, not just electric utilities, but also telecommunication companies, water utilities, natural gas utilities, and any private landowner would be required to seek WDRs for land-based activities without discharges to waters. This is because any activity – construction, maintenance, or operations – has the hypothetical “potential” to result in a stormwater discharge and would be located on land within a “region” of the state. Despite this implication, the State Water Board has not previously indicated that electric utilities or other entities should already be obtaining individual WDR permits for land-based activities now proposed to be covered by the Draft UWGO and no data demonstrates widespread electric utility non-compliance with existing WDR permitting.²⁴ In sum, there is no rational basis in the Water Code to support the sweeping proposal and adoption of the Draft UWGO as presently drafted.

In discussions with State Water Board staff, CMUA requested examples of permitting in the manner proposed under the Draft UWGO. Staff directed CMUA to General WDRs pertaining to operations involving compost and wineries as examples where the State Water Board has regulated discharges to land and activities associated therewith.²⁵ Those permits present entirely different factual and legal scenarios from the Draft UWGO, and by the express terms of those permits, the activity regulated involved specific discharges of manufacturing-related process water and/or waste to land for disposal purposes expressly regulated by Title 27 for the protection of *groundwater*, which the Draft UWGO specifically disclaims.²⁶ Such examples are inapplicable to justify the terms of the Draft UWGO. Subsequently, State Water Board staff pointed to an NPDES permit/WDRs for water pumped from utility vaults and discharged directly to receiving waters as a precedent for the Draft UWGO (Utility Vault NPDES permit).²⁷ However, again, the Utility Vault NPDES permit addresses a clear point source discharge to surface waters, which is distinguishable and distinct from the maintenance activities regulated under the Draft UWGO.

In sum, a portion of the Draft UWGO is operating as a duplicative MS4 stormwater permit, which is unnecessary and unreasonable. Moreover, the statutory authority under Water Code sections

²⁴ Additionally, this underscores the reality that the Draft UWGO's purpose is not merely to streamline the individual WDR process but rather represents the attempt to create a new regulatory program that applies almost entirely to land-based utility activities without discharges of waste to waters.

²⁵ *General Waste Discharge Requirement for Commercial Composting Operations* (WQ 2020-0012-DWQ) and *General Waste Discharge Requirements for Winery Process Water* (WQ 2021-0002-DWQ).

²⁶ Response to Comments at 3.15; Section III. (stating “This General Order authorizes the following listed activities...where the Discharger is discharging or proposing to discharge waste to *surface waters* of the state...”)(emphasis added).

²⁷ *General National Pollutant Discharge Elimination System (NPDES) Permit For Discharges From Utility Vaults And Underground Structures To Waters of the United States* (Water Quality Order 2014-0174-DWQ)

13260 and 13263 cannot be stretched to cover on-land activities with no specific discharges of waste to surface waters. If the State Water Board wishes to adopt a general WDR applicable to electric utility operations and maintenance activities, it must be limited to regulating in-water activities involving a discharge of waste thereto.

III. There is a lack of public record to justify Draft UWGO.

This proceeding also lacks a sufficient record to support a reasoned State Water Board decision on the Draft UWGO. The State Water Board must act reasonably in developing general WDRs and must consider enumerated factors when issuing WDRs, like the Draft UWGO.²⁸ The primary document that attempts to evaluate the Draft UWGO is the Draft Environmental Impact Report (Draft EIR) developed in June 2024 but even this document does not evaluate the current language of the Draft UWGO or provide justification for the current proposal as would commonly be required when developing a regulation.²⁹ Particularly troubling is the lack of meaningful economic analysis of the Draft UWGO, or preparation of State Water Board estimates, or evaluation of the good-faith cost estimates developed by electric utilities.³⁰

The Draft UWGO's record should provide data on several basic aspects of the regulation, including:

- (1) Data and evidence establishing utility maintenance and operations sought to be regulated involve specific discharges to waters of the State;
- (2) Data and evidence that the Draft UWGO will result in demonstrable benefits to water quality;
- (3) Analysis and data-informed justification for the triggering criteria and alternatives considered; and
- (4) Quantitative analysis of the operational activities required by the Draft UWGO and costs imposed on electric utility ratepayers.

Given the necessity of electric utility service, this proceeding must reflect a thorough evaluation of the factors above in order to drive regulatory decisions. Despite raising these issues in prior written comments, including in comments dated April 29, 2025, this proceeding's record still

²⁸ See Water Code Section 13000 (requiring "reasonable" regulation, considering all demands made on waters and values involved); Section 13263(a) (requiring consideration of provisions of section 13241, which includes economic considerations).

²⁹ See e.g., Government Code 11346.2 (requiring an initial statement of reasons that explains the rationale for the determination, purpose, supporting data, reasonable alternatives considered, and evidence relied upon.)

³⁰ Compare PG&E Comments (April 29, 2025); SMUD Comments (April 29, 2025) with Response to Comments (June 28, 2024) at 165-168. Consider that such an economically impactful regulation (exceeding \$50 million is a "major regulation" under Government Code 11342.548) typically requires a robust economic impact assessment "...to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner." Given that this general WDR does not merely streamline individual permitting, but is predominantly a new regulatory regime, it should be afforded similar consideration and assessment.

lacks meaningful investigation or data on these threshold questions. Without this fundamental, threshold data in the record, interested parties and the regulated community have continually struggled to understand the reasoning, justification, and need for all current elements of the Draft UWGO. At this stage, CMUA questions how the State Water Board's decision can be found "reasonable"³¹ without this essential record development. CMUA requests the State Water Board to re-evaluate the scope of the Draft UWGO, and in doing so, develop and/or confirm the necessary record to support any future decision.

IV. Conclusion

CMUA urges the State Water Board to right-size the Draft UWGO to avoid duplicative regulation and ensure remaining regulation is squarely within its statutory authority. CMUA respectfully requests the following revisions to the Draft UWGO prior to the release of a revised draft and the formal public notice scheduling any State Water Board hearing:

1. Revise each project activity (Section III.A. through III.K.) to only cover activities occurring in-water, excluding impermissible regulation of land-based activities, following the example below:
 - A. Vegetation management: limbing, cutting, trimming, mastication, mowing, crushing, prescribed herbivory, chipping, skidding, mulching, uprooting, and removal of plant materials such as leaves, plants, dead or dying trees, branches, or trunks located within any waters of the state, which includes immediately adjacent bed and banks, ~~that are:~~
 - ~~1. within 50 feet of any waters of the state; or~~
 - ~~2. cumulatively results in over 0.50 acre of soil disturbance in locations with slopes equal to or greater than 30% and soils having erodibility K factor equal to or greater than 0.2.~~
2. Clarify that the Draft UWGO does not apply to areas served or covered by existing municipal separate storm sewer system (MS4) regulation, as shown below:

III. Project Description

This General Order authorizes the following listed activities being performed for the purpose of wildfire mitigation, operation and maintenance of infrastructure, or post -fire response, where the Discharger is discharging or proposing to discharge waste to surface waters of the state, including discharges of dredged or fill materials except as set forth in Section IV.A., Compliance With Other Water

³¹ See Water Code sections 13000 and 13263.

Board Authorities. Where there is physical separation (e.g., berm, dike, levee) between the Project Area and all aquatic resources that prevents discharge, the activities are not covered. Except for project activities that include a discharge of dredge or fill material, this General Order does not regulate land-based activities in geographic areas served or covered by ~~discharges to~~ municipal separate storm sewer systems (MS4s) National Pollutant Discharge Elimination System (NPDES) permits or project activities within an Urban Area as defined by the 2020 U.S. Census.³²

3. Develop the record necessary to address the evidentiary gaps discussed above.

Thank you for considering our comments. If you have any questions regarding these comments, please contact Megan Murphy at (916) 841-3329 or mmurphy@cmua.org.

Sincerely,



Megan Murphy
Senior Regulatory Advocate
California Municipal Utilities Association

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³² Language that CMUA is proposing redlines to is based on proposal from State Water Board staff in "Staff Draft Utility Wildfire General Order Excerpts" document provided in March 2026.