

RESPONSE TO COMMENTS
to the
***Proposed Amendment to the Water Quality Control Plan
for the
North Coast Region
to
Establish Exception Criteria
to the
Point Source Waste Discharge Prohibitions
by
Revising the Action Plan for Storm Water Discharges
and
Adding a New Action Plan for Low Threat Discharges
(Proposed Low Threat Amendment)***

July 1, 2009



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of the
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Introduction

The proposed Basin Plan Amendment to “Establish Exception Criteria to the Point Source Waste Discharge Prohibitions by Revising the Action Plan for Storm Water Discharges and Adding a New Action Plan for Low Threat Discharges” (proposed Amendment) will be presented to the Regional Water Quality Control Board, North Coast Region (Regional Water Board) at its July 23, 2009 Board meeting. The following document contains Regional Water Board staff responses to comments submitted by interested parties regarding the proposed Amendment. The comment period for the proposed Amendment was opened from November 20, 2008 to January 29, 2009.

In addition to comments received during the public comment period, Regional Water Board staff received numerous oral comments and comment letters during the California Environmental Quality Act (CEQA) scoping process which occurred during 2005 and again in 2007. The CEQA scoping comments were considered during the development of the proposed Amendment. Summaries of the scoping comments, along with other documents related to the proposed Amendment, are available on the Regional Water Board’s web site at http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/low_threat_discharges.shtml .

Please note that the comments in this document are organized into several categories. In many cases a particular comment may reasonably be placed in more than one category. Thus, searching for a particular comment may require having to look through two or more categories in order to locate it.

The following is the list of categories under which the summary comments have been organized:

- General Support of the Amendment (or portions of thereof)
- Opposed to Amendment (or portions of thereof)
- Requested Changes to Proposed Amendment Language
- Requests to Postpone Adoption
- Monitoring
- General Issues
- Water Quality Objectives and Beneficial Use Protection
- Best Management Practices
- Recycled/Wastewater
- Incidental Runoff
- Laguna de Santa Rosa
- Chemicals of Concern
- California Environmental Quality Act

A glossary of terms and acronyms used in this Response to Comments is also included for the reader’s convenience.

Index of Commenters

Date Received	Name	Organization	Method of submittal
7/12/2005	Stephen Ferry	HydroScience Engineers	Written
8/6/2005	Victoria Wikle	Self	Written
8/7/2005	Beth Martinez	Self	Written
8/7/2005	Rick Coates	Forest Unlimited	Written
8/7/2005	Douglas Emery	Self	Written
8/7/2005	Helen Shane	Self	Written
7/23/2007	Stephen Rowell	Sonoma County Water Coalition	Written
8/29/2007	Don McEnhill	Russian RiverKeeper	Written
8/29/2007	Brenda Adelman	Russian River Watershed Protection Committee (RRWPC)	Written
9/4/2007	Brenda Adelman	RRWPC	Written
9/5/2007	Howard Wilshire	Public Employees for Environmental Responsibility (PEER)	Written
9/7/2007	Michael Kirn	City of Healdsburg	Written
9/10/2007	Greg Scoles	City of Santa Rosa	Written
9/10/2007	Jake Mackenzie	Russian River Watershed Association (RRWA)	Written
9/11/2007	R. Shepps	Self	Written
9/11/2007	Deneene Bell	Self	Written
9/11/2007	Victoria Wikle	Self	Written
9/11/2007	Nichae Blume	Self	Written
9/13/2007	Brenda Adelman	RRWPC	Written
1/7/2008	Melissa Farmer	Self	Written
1/8/2008	Mary Grace Pawson	WateReuse Association	Oral
1/8/2008	Jim Flugum	City of Healdsburg	Oral
1/2009	320 RRWPC Members	RRWPC	Written
1/8/2008	Richard Dowd	City of Santa Rosa Public Utilities	Oral
1/8/2008	Dan Carlson	City of Santa Rosa Public Utilities	Oral
1/8/2008	Jane Rozge	CH2MHill	Oral
1/8/2008	Carl Campbell	Santa Rosa Chamber of Commerce	Oral
1/8/2008	Richard Burt	Town of Windsor	Oral
1/8/2008	Kevin Booker	Sonoma County Water Agency (SCWA)	Oral
1/8/2008	Don McEnhill	Russian RiverKeeper	Oral
1/8/2008	Dan Schurman	Laguna de Santa Rosa Foundation (Laguna Foundation)	Oral
9/2/2008	Brenda Adelman	RRWPC	Written

Date Received	Name	Organization	Method of submittal
10/14/2008	David Smith	Merrit Smith	Written
11/13/2008	Elizabeth Frantz	Surf to Snow Environmental Resource Management	Written
11/13/2008	Isabella Johannes	Pacific Gas and Electric	Written
12/1/2008	Brenda Adelman	RRWPC	Written
12/16/2008	Carol Sklenicka	Self	Written
12/16/2008	Greg Scoles	City of Santa Rosa	Written
1/7/2009	Chris Lynch	Santa Rosa Chamber of Commerce	Written
1/13/2009	Dan Schurman	Laguna Foundation	Written
1/21/2009	Carol Sklenicka	Self	Written
1/22/2009	Sarah Glade Gurney	City of Sebastopol	Written
1/22/2009	Paula Zerzan	Self	Written
1/22/2009	Andrea Kaufman	Self	Written
1/22/2009	Allen Charlton	Self	Written
1/23/2009	Mac Freeman	Self	Written
1/23/2009	Hal Olson	Self	Written
1/25/2009	Stella Lundquist	Self	Written
1/25/2009	John Lyhne	Self	Written
1/25/2009	Victoria Wikle	Self	Written
1/26/2009	Charles Shere	Self	Written
1/26/2009	Madeleine Berke	Self	Written
1/26/2009	Nichae Blume	Self	Written
1/26/2009	Terrance Fleming	Community Clean Water Institute	Written
1/27/2009	Alan Levine	Coast Action Group	Written
1/27/2009	Kim Pistey	Self	Written
1/28/2009	Jane Nielson	Self	Written
1/28/2009	Carol Vellutini	Self	Written
1/28/2009	Richard Burt	Town of Windsor	Written
1/28/2009	William Ruppert	Self	Written
1/28/2009	Jake Mackenzie	RRWA	Written
1/28/2009	Gary Bodwin	Self	Written
1/28/2009	Leo Smith	Self	Written
1/28/2009	Janice Gilligan	Sonoma County Permit and Resource Management Department (PRMD)	Written
1/28/2009	H.R. Downs	OWL Foundation	Written
1/28/2009	Jenifer Burke	City of Santa Rosa	Written
1/29/2009	A. Atkinson	Self	Written

Date Received	Name	Organization	Method of submittal
1/29/2009	Michael Kirn	City of Healdsburg	Written
1/29/2009	Kevin Booker	SCWA	Written
1/29/2009	Walter Kruse	Sonoma County Department of Health Services (Sonoma County DPH)	Written
1/29/2009	Oak & Darcy Reinier	Self	Written
1/29/2009	Scott McGowan	California Department of Transportation (Caltrans)	Written
1/29/2009	Stephen Volker	North Coast Rivers Alliance (NCRA) and Russian River Watershed Protection Committee (RRWPC)	Written
1/29/2009	Kimberly Burr	Self	Written
1/29/2009	Craig Lichty	WaterReuse Association	Written
1/29/2009	Ann Hernday	Self	Written
1/30/2009	Catherine Ma	California Department of Public Health, Drinking Water Field Operations Branch	Written
3/26/2009	Daniel Murphy	Department of Toxic Substances Control (DTSC)	Written

General Support of Amendment (or portions of thereof)

Summary Comments 1 to 7

1. Summary comment:

Commenters express general support for the proposed Amendment. (Laguna de Santa Rosa Foundation (Laguna Foundation), City of Santa Rosa, City of Rohnert Park, City of Sebastopol, City of Healdsburg, Santa Rosa Chamber of Commerce, Russian River Watershed Association (RRWA), Russian RiverKeeper, Sonoma County Water Agency (SCWA), Town of Windsor, Sonoma County Permit and Resource Management Department (PRMD), California Department of Public Health, Drinking Water Field Operations Branch, WaterReuse Association)

Response:

Support noted.

2. Summary comment:

To the extent that this proposed Amendment strengthens protection of water quality, beneficial uses and provides increased long-term environmental benefits, commenter believes that the proposed Amendment is proper. (Burr)

Response:

Staff believes that the development and implementation of this low threat discharge control program will strengthen protection to water quality by instigating a vigorous site specific best management practices (BMP) program with inspection, monitoring and reporting components to document protection of beneficial uses of water.

3. Summary comment:

Commenters express support of the Storm Water Action Plan only, and support efforts to reduce pollution-laden storm water runoff into streams during winter rain events because storm water runoff is a major contributor to riverine contamination and lessening the effects is good news.

(OWL, RRWPC)

Response:

Comment noted.

4. Summary comment:

Commenter supports efforts to slow down the conditions that speed up the flow of pollutants into waterways.

(Zerzan)

Response:

Comment noted.

5. Summary comment:

Commenter states that planned point source discharges taking place throughout the year that are necessary for public benefit and pose a low threat to water quality should continue.

(Zerzan)

Response:

Comment noted.

6. Summary comment:

Proposal concerning planned releases assumes that resultant discharges would represent a low threat to water environments. So long as these types of discharges fully comply with NPDES permit regulations and are accompanied by vigilant monitoring, commenter does not anticipate significant problems.

(OWL)

Response:

Comment noted.

7. Summary comment:

Commenter supports the use of recycled water for irrigation. However, surface and groundwater must be protected from accidents and misuse.

(Coast Action Group)

Response:

Comment noted. It should be noted that the proposed Amendment applies only to low threat discharges to surface water. The existing Basin Plan point source waste discharge prohibitions (hereinafter point source prohibitions) do not apply to groundwater.

Opposed to Amendment (or portions of thereof)

Summary Comments 8 to 10

8. Summary comment:

Commenter is opposed to adoption of "incidental runoff" portion of the proposed Amendment. Commenter is concerned about the discharge of recycled irrigation water during low summer flows.

(Lyhne)

Response:

Opposition noted.

9. Summary comment:

Commenters are opposed to unplanned runoff, deemed "incidental" and "low threat" that contains wastewater. Commenters believe that any discharge of wastewater is, by definition, not a "low threat" event but rather one of demonstrably grave consequences,

and that treated wastewater, “recycled” water or “reclaimed” water, all contain potentially harmful contaminants. The commenters note that originally the issue of incidental runoff was going to be dealt with as a separate amendment. The proposed Amendment now relies on future implementation of best management practices (BMPs) that have not yet been developed. Commenters request that the incidental runoff portion is removed until BMPs can be fully developed.

(RRWPC, OWL)

Response:

Under the proposed Amendment, unplanned runoff of non-storm water, also termed as “incidental runoff” is only permissible if the incidental runoff event:

- is not due to negligent maintenance or poor design or infrastructure or failure to oversee the activity that resulted in the incidental runoff;
- there were no feasible alternatives to the incidental discharge event; and
- occurs while the permit holder has, and was carrying out, a management plan that identifies BMPs designed to prevent, minimize, and where appropriate, mitigate incidental runoff events.

Although we agree and acknowledge that treated effluent and recycled water may contain contaminants of concern, such as chlorine or increased nutrient levels, with the implementation of the BMPs set forth in the management plan, the occurrence of incidental runoff events will be minimized to the maximum extent practicable.

Water Code section 13360 prohibits the Regional Water Board from specifying “the design, location, type of construction or particular manner in which compliance may be had ... and the person so ordered shall be permitted to comply with the order in any lawful manner”. This means that although the proposed Amendment can set out the foreseeable means by which one might feasibly comply with the requirements of the proposed Amendment, it will not set out the particular means of compliance for each individual discharger. Rather, the municipal separate storm sewer system (MS4) permittees will develop a Storm Water Management Program/Plan (SWMP) that will include the proposed BMP program for each category of low threat discharge for which the permittee seeks an exception to the point source prohibitions. The necessary elements of the SWMP are described in the proposed revision to the Storm Water Action Plan. See Appendix B of the Staff Report for the proposed Storm Water Action Plan language.

The proposed SWMP, including BMP programs, will be available for public review as part of the Storm Water Permit for Santa Rosa, Sonoma County, and the Sonoma County Water Agency (hereinafter Santa Rosa MS4) approval process. Regional Water Board staff will review that plan and make recommendations as necessary to ensure water quality protection. Approval of the BMP program by the Regional Water Board’s Executive Officer after a duly noticed public comment period would be part of the permit conditions. If significant water quality related issues are submitted as part of the public comment process, the SWMP and accompanying BMP program would be brought to the Regional Water Board for their consideration. The application of a permittee-

developed BMP program has been a crucial part of the Regional Water Board's permitting process for years. A number of BMPs and BMP programs have already been successfully applied across the Region such as through the 401 water quality certification program, the WDR/waiver program for timber activities and as part of cleanup site permitting.

To help inform the public and the Regional Water Board, the Staff Report for the proposed Amendment was revised to describe a sample of BMP measures that could be applied under various scenarios.

10. Summary comment:

Commenters request removal of the incidental runoff portion of the proposed Amendment. Incidental runoff needs to be defined more clearly because of its unplanned nature. Current water quality status is given only cursory review and relies on future determinations. The commenters' question how one proves that a runoff event was accidental, if it is the first time it occurred in a given location, and notes that just because it's a first event, does not mean it was accidental. Commenters' question what other accidents besides broken sprinkler heads could be considered low threat.

Commenters' believe that the proposed Amendment is attempting to get a handle on over-irrigation that is currently happening. Commenters are unsure whether the proposed Amendment will address potable water runoff or only wastewater irrigation, and notes that little irrigation with recycled water currently exists in the region.

Commenters' believe that the "incidental runoff" portion of the proposed Amendment is addressing Santa Rosa's urban recycled irrigation program, a program that has yet to be established.

(Martinez, RRWPC, OWL, Vellutini, Hernday, Pistey)

Response:

Staff believes that the term "incidental discharge" as described in the draft Staff Report (page 6) and in the proposed revisions to the Storm Water Action Plan (Appendix B, page 4) is sufficiently clear and definite enough to allow for effective and timely implementation as well as for appropriate enforcement, when necessary.

As described in the draft Staff Report, incidental discharges are those unplanned low threat discharges that are unanticipated, accidental and infrequent. Examples of types of events which could be considered incidental include, but are not limited to, unexpected breaks in potable drinking water supply lines or breaks in service lines or sprinkler heads of potable or recycled irrigation systems.

The draft revised Storm Water Action Plan (Appendix B of the November 20, 2008 Staff Report) contains the following language regarding the conditions that must be met for a discharge to qualify as "incidental" runoff:

1. The incidental discharge event is not due to negligent maintenance or poor design of infrastructure, or failure to oversee the activity that resulted in incidental runoff.
2. There were no feasible alternatives to the incidental discharge event, such as retention of the incidental runoff. This condition is not satisfied if measures for capturing the incidental discharge should have been installed to prevent incidental runoff, in the exercise of reasonable engineering judgment.
3. The permit holder and/or potable/recycled water user has a management plan, approved by the Regional Water Board Executive Officer, that identifies best management practices designed to avoid, minimize, and where appropriate mitigate incidental runoff incidents. The management plan must include education/outreach, inspection, monitoring, and enforcement components.

In order to be granted an exception for any category of non-storm water low threat discharge, including incidental runoff, the SWMP would need to include a suite of BMPs designed to prevent and minimize the discharge from the identified low threat discharge category. To demonstrate that an incidental runoff event is accidental (regardless if it is a first time occurrence or not), the approved SWMP would need to include the suite of BMPs that would be implemented in the event of discharge associated with incidental runoff, and second the permittee would have to demonstrate compliance with the approved SWMP. The proposed revisions to the Storm Water Action Plan requires MS4 permittees to develop and implement a SWMP that includes BMPs to protect water quality for all the categories of low threat for which the permittee seeks an exception.

The term 'incidental runoff' applies to both recycled and potable water with different suites of BMPs applied based on the type of discharge (potable versus recycled) and the risk to water quality (e.g. proximity to a watercourse). It can occur as a result of not only broken sprinkler heads, but a number of other accidents that result in infrequent, low volume discharges, and are not the result of negligence, poor facility or infrastructure design, or failure to implement reasonable BMPs.

The proposed Amendment is not directed toward addressing any particular community's concerns. It is recognized that unpermitted discharges, such as incidental runoff, is currently occurring throughout the Region, and staff believes that the creation of a vigorous regulatory program, including implementation of an approved BMP program, routine inspections, periodic reporting, and public outreach and education, will result in an overall decrease in discharges such as incidental runoff, and an overall increase in water quality protection.

Staff recommends including "incidental runoff" as a low threat discharge category in the proposed Amendment.

Requested Changes to Proposed Amendment Language
Summary Comments 11 to 29

11. Summary comment:

Commenter requests exempting storm water and non-storm water discharges covered under an existing NPDES permit from the current prohibitions on point source discharges. Commenter states that enforcement of the current NPDES permits should be sufficient to protect water quality and beneficial uses, would avoid duplicative regulatory schemes and further the legislative intent, as expressed in Water Code section 13001, of a "unified and effective water quality control program in the state."
(Caltrans)

Response:

When the Regional Water Board adopted Resolution R1-2007-0073, *Policy Statement in the Matter of Recycled Water Use in the North Coast Region*, members of the Regional Water Board provided direction to staff regarding development of this low threat discharge amendment. The Resolution stated, in part, that the Regional Water Board would:

- Proceed with consideration of a Basin Plan amendment to allow discharges of small amounts of potable and treated recycled water and other low threat discharges during the dry-weather season, *if appropriate best management practices are implemented*, beneficial uses are protected, and the discharges do not contribute to water quality degradation or harm to aquatic life.
- Uphold the dry-weather discharge prohibition.

As part of the adoption hearing for Resolution R1-2007-0073, the Regional Water Board made it clear that revisions or alterations to the prohibition language itself would not be entertained by the Board. Rather staff was directed to develop an approach that would allow exceptions from the point source prohibitions if a BMP program was in place.

12. Summary comment:

If exempting NPDES permittees from the point source prohibitions are not possible, commenter requests exempting certain non-storm water discharges from the prohibition. These discharges, listed in Caltrans' current MS4 permit, include flows from riparian habitats or wetlands, diverted stream flows, springs, rising ground waters, and uncontaminated ground water infiltration. These discharges are exempt from the permit unless identified as sources of pollution to receiving waters. Examples of these discharges are:

- Hillside seepage from natural and cut slopes;
- Intermittent natural drainage that may pass through right-of-way drainage facilities;
- Up gradient discharges (natural and manmade) into Caltrans facilities.
- Underpasses: certain underpasses require pumping to prevent flooding during storms or due to rising groundwater.

- Other drains to reduce hydrostatic pressure against surface and subsurface structures, for example weep holes from a retaining wall.
 - Discharges by others: drinking water transport and transmission systems sometimes discharge during emergencies and maintenance operations within the right-of-way.
- (Caltrans)

Response:

An approved BMP program is a crucial element in demonstrating that a discharge will pose no more than a low threat to water quality. Each of the scenarios described above could have a suite of BMPs assigned to control the discharge to assure that the discharge met the low threat exception criteria (hereinafter exception criteria).

13. Summary comment:

The commenter states that the proposed Amendment will adversely impact Caltrans' ability to effectively drain the highway system without unscheduled and potentially costly structural modifications to evaluate, control and or treat naturally occurring non-storm water sources even if the discharges are frequently not a threat to water quality, are not within the legal control of Caltrans in most cases, and are not under Caltrans physical control and yet they pose significant challenges to provide adequate and necessary drainage of the state highway system. The proposed Amendment, requiring Caltrans to implement a general management program to eliminate or minimize non-storm water discharges into surface waters, may not be economically or technically feasible in all cases.

(Caltrans)

Response:

It is staff's intent that each MS4 permit adopted by the State or Regional Water Board which authorizes exception criteria to the point source prohibitions would contain a storm water management program/plan (hereinafter SWMP) that described the suite of BMPs that were developed by the permittee for their site specific conditions. This would include those BMPs that are currently being implemented, along with those additional requirements deemed necessary by the Regional Water Board Executive Officer to ensure that the discharge is a "low threat" to water quality.

If a discharge is deemed to be the result of a "controllable water quality factor"¹ then implementation of a BMP program would be required under the proposed Amendment to ensure that the criteria for the exception are met.

Staff realizes that this may result in increased cost to permittees for activities in the North Coast Region. The cost of complying with the existing prohibition is likely much higher; however, because of the regulatory uncertainty that exists. Given the existence

¹ Controllable water quality factors are defined as "those actions, conditions, or circumstances resulting from man's activities that may influence the quality of the waters of the State and that may be reasonably controlled" (Basin Plan page 3-1.00).

of point source prohibitions in the North Coast Region that are unlike any other in the State, such discharges would currently be considered inconsistent with the Basin Plan and could subject such discharges to potential liability.

14. Summary comment:

Exempt groundwater that contains high levels of naturally occurring pollutants from the prohibition. This assumes the groundwater is not contaminated with manmade substances and it should be exempt if it would otherwise enter the receiving water at the same rate of discharge and if it would only be *intercepted* by the MS4 facility. For example, an underpass drainage system will typically intercept groundwater, which is hydraulically connected and moving toward the down gradient waterway. The discharge of the intercepted flow directly to the waterway has no environmental consequence, since the groundwater would have entered the waterway regardless due to natural processes. However, if the extracted water would not otherwise enter the adjacent waterway, and if the constituents are of significant concern, then site-specific risks will need to be determined.

(Caltrans)

Response:

Staff cannot support the position that groundwater containing naturally high levels of pollutants that exceed water quality objectives should be “exempted” from either the existing point source prohibitions or the proposed Amendment. Staff believes it is unlikely there would be many situations, as described above, when the discharge of groundwater intercepted by the MS4 facility (considered to be a controllable water quality factor) would be at the same rate of discharge as that without the interception by the MS4 facility. Staff believes that the inclusion of BMPs designed to prevent (where possible) and minimize (to maximum extent practicable) discharges associated with our highway system could easily be described in the SWMP.

15. Summary comment:

Commenter states that there are cases when no other discharge options are available and that discharge could not occur if the flow is not eligible for the low-threat exception. Permittees may be able to truck or pipe flow to a publicly owned treatment works but at significant expense, and possibly with limited environmental benefits. The proposed Amendment should not result in the ban of necessary discharges, and these discharges could be assessed on a site and constituent-specific basis.

(Caltrans)

Response:

Staff concurs that a ban on “necessary” discharges is not warranted. The focus of this proposed Amendment is to develop a permitting framework that will authorize these sorts of discharges to occur. Staff also concurs that discharges should be assessed and BMPs developed and implemented based on onsite and offsite conditions and water quality constituents of concern. In fact, a critical component of this proposed Amendment is the assessment, design, and implementation of BMPs based on the

permittee's extensive knowledge of on and off site conditions, water quality conditions of concern and other localized conditions.

16. Summary comment:

Page 11 of the Staff Report indicates Caltrans MS4 permit covers all Caltrans discharges from construction sites and indicates Caltrans is not subject to the general construction permit. Caltrans MS4 permit incorporates the substantive provisions of the general construction permit by reference. The only exception is that Caltrans is not required to file Notices of Intent to comply with the general construction permit, but instead files Notices of Construction with the Regional Boards.

(Caltrans)

Response:

Comment noted.

17. Summary comment:

Commenter appreciates the opportunity to comment on the proposed Amendment and reminds the Board of the Water Code section 13240 requirement to "consult and consider the recommendations of affected state and local agencies" during the Basin Plan amendment process. Commenter is certain the Board would extend all reasonable courtesies to another state agency and look forward to working with the Board and staff to assure protection of water quality and beneficial uses.

(Caltrans)

Response:

The Regional Water Board, as part of the well established Basin Plan Amendment process, and as documented, in part, in this Response to Comments document, does "consult and consider the recommendations of affected state and local agencies" as well as a myriad of other interested stakeholders. Regional Water Board staff also looks forward to continuing to work together in protecting water quality.

18. Summary comment:

The proposed Low Threat Discharge Action Plan would impose the requirement that all such discharges "comply with applicable water quality objectives." Commenter supports the notion that, by definition, a low threat discharge must not adversely affect beneficial uses. The proposed language, however, is overly restrictive and ambiguous. It is overly restrictive in that a low volume, low threat discharge could contain a constituent at a concentration that exceeds a water quality objective but does not cause the objective to be exceeded in waters of the State. It is ambiguous in that some water quality objectives are expressed as an allowable receiving water quality change relative to ambient conditions (e.g., turbidity, temperature), which means that compliance cannot be assessed in the discharge alone.

Therefore, propose the following revision to page 3 of the proposed Low Threat Action Plan:

“The discharge shall not cause ~~comply with all applicable~~ water quality objectives to be exceeded.”

(RRWA, SCWA, City of Santa Rosa, Town of Windsor, City of Healdsburg, Calif. Dept of Public Health- Drinking Water Operations)

Response:

The proposed definition of low threat discharge includes a requirement that the discharge meet applicable water quality objectives. Staff believes setting a requirement that the discharge meet water quality objectives, as opposed to merely not causing a water quality objective to be exceeded in the receiving water is: 1) more protective of water quality; 2) easier for staff to assess as either meeting the definition of low threat or not; and 3) provides more certainty for dischargers as to what is expected in order to comply with the proposed Amendment.

In order to reduce the potential for cumulative effects and avoid an unacceptable risk of degradation of water quality, the discharge itself must be compliant with water quality objectives, as opposed to the discharge in combination with the receiving water being in compliance with water quality standards. The exception to this is for water quality objectives that apply specifically to receiving water. These “receiving water” objectives include:

- Settleable Material, which refers to “deposition of material”;
- Oil and Grease, refers to visible film or coating on surface water;
- Sediment, refers to alteration of sediment load and discharge rate to surface water;
- Turbidity, refers to increases more than 20% above naturally occurring background levels; and
- Temperature, refers to alterations of natural receiving water temperatures.

Consequently, the application of these “receiving water” objectives will be in the receiving water rather than at point of discharge.

19. Summary comment:

Commenter ask that the Board coordinate closely with staff from Department of Public Health (DPH) when developing provisions for public water supplies to insure no unnecessarily burden for responsible operation of public water systems and protection of public health. Part of that should be to incorporate the following revised language:

“*The discharge shall not cause water quality objectives to be exceeded*”.

In addition, the permits should recognize that extensive data is already collected on potable water quality which would avoid costly and redundant data collection.

(City of Healdsburg)

Response:

See response to summary comment number 19 for response to recommended language change. This proposed Amendment was prepared at the direction of the Regional Water Board to develop a regulatory program that would be consistent with the Basin Plan and yet allow those types of discharge described above that are in the public interest. Regional Water Board staff works closely with all other responsible agencies in crafting permit language to ensure development of an efficient and cost effective regulatory program for both the permittee and Regional Water Board staff.

Wherever possible, staff uses existing data from the DPH and other responsible agencies to inform their decisions. Some constituents (e.g., metals) that are monitored for human health protection to satisfy DPH requirements are analyzed with detection limits that are too high to determine whether or not the constituent exceeds water quality objectives for protection of aquatic life. In these cases, the applicant will be required to provide additional monitoring data using appropriate detection limits to assess compliance with aquatic life water quality objectives.

20. Summary comment:

Page 3 of the proposed Storm Water Action Plan, includes examples of incidental low threat non storm water discharge categories for unexpected breaks in irrigation lines or sprinkler heads. The commenter would like the example to be expanded to include irrigation overspray as follows:

“... incidental runoff of potable or recycled water from landscape irrigation due to an unexpected break in irrigation line or sprinkler head or unintended, minimal over-spray from sprinklers that escapes the use area,....”.

(City of Santa Rosa)

Response:

Staff concurs with the recommended language change as proposed. The proposed Storm Water Action Plan will be revised accordingly. Staff believes this language also adequately addresses the recommended language change submitted by PRMD. See response to summary comment 21 below.

21. Summary comment:

For clarity and consistency with the State Water Resources Control Board's (State Water Board's) draft proposed Water Recycling Policy, the County requests that the description of the example be expanded to address irrigation overspray as follows:

" ... incidental runoff of potable or recycled water from landscape irrigation due to an unexpected break in irrigation line or sprinkler head or temporary sprinkler head misalignment, ".
(PRMD)

Response:

See response to summary comment 20 above.

22. Summary comment:

Item 3, page 3 of the proposed Storm Water Action Plan states that "the permittee shall implement a general management program to eliminate or minimize non-storm water discharges into surface waters. The program shall be submitted to the Regional Water Board for approval and include implementation of BMPs, outreach and education, inspections, monitoring, reporting and enforcement provisions".

The County² operates four small community water systems (Salmon Creek, Jenner, Freestone, and Fitch Mountain). The storm drains that exist within the boundaries of these service areas exist for the purposes of County road drainage and are typically stand alone. They do not comprise an interconnected system and would not ordinarily discharge water to a significant waterway. Typically they are short runs that move water from one overland flow area or minor drainage way to another. Due to the fact that there are no curb and gutters in these outlying locations or storm drains that discharge into surface waters, the County does not believe these storm drain systems contribute to low threat discharges and should not be subject to the general management program.
(PRMD)

Response:

Water that is discharged from permitted storm water conveyance systems and does not enter surface waters is not in conflict with the existing point source prohibitions, and as such this proposed Amendment would not apply to them. However, non-storm water discharges from a permitted storm water conveyance system that enter surface waters in the North Coast Region are in violation of the existing point source prohibitions, regardless of the nature of the surface receiving water (i.e. minor, insignificant). The required management program must include a plan to eliminate non-storm water discharges wherever possible, minimize the remaining flows to the maximum extent practicable by applying an approved suite of BMPs to ensure that the discharge meets the definition of "low threat" discharge and beneficial uses of water are protected.

23. Summary comment:

The County does not implement a treated effluent reclamation program similar to the City of Santa Rosa. There are no County owned or operated domestic waste treatment plants within the NPDES boundary that provide treated effluent for reclamation in urban

² As used in this Response to Comments "County" refers to Sonoma County unless otherwise specified.

or domestic settings. So, the county seeks concurrence from the Regional Board that it is the City of Santa Rosa that must submit a general management plan to eliminate or minimize non-storm water discharges and not the County of Sonoma.

However, the County recognizes it must make a contribution towards the reduction of incidental runoff flowing into its storm drain system. This contribution is described in the new activities and Measurable Goals related to incidental runoff in the recent SWMP submitted to the Regional Board for review and approval. The SWMP describes tasks the County will implement such as:

1. Adopt any necessary changes to the County legal authority to allow effective regulation of the discharge of pollutants from landscape and lawn irrigation,
2. Cooperate with various water suppliers that have direct control over termination of water delivery,
3. Conduct dry season inspection of urban clusters on a monthly basis,
4. Generate brochures, flyers, or door hangers for public outreach,
5. Escalating enforcement that could lead to a notice of violation, publication in a daily newspaper, and an abatement hearing, and
6. Annually report the number of inspections conducted and the number and type of enforcement actions related to incidental runoff.

The County maintains that the SWMP contains the "general management program" required. If the Regional Board is expecting something else they need to more clearly define what they are looking for from the County.

(PRMD)

Response:

The issue of whether the County maintains a treated effluent reclamation program is not relevant to the proposed Amendment. The need to submit a SWMP as part of the MS4 permit process is a crucial component to qualify for the exception criteria for non-storm water discharges. If the County does not use recycled water then the SWMP would not need to include a BMP program to address incidental runoff of recycled water from County facilities. Only those activities that the County engages in would need to be addressed under the SWMP. However, other non-storm water flows (e.g. incidental runoff from irrigation systems using potable water) from County facilities would need to be addressed in the SWMP if an exception to the point source prohibitions were requested.

The Santa Rosa-Sonoma County-Sonoma County Water Agency MS4 (Santa Rosa MS4) permit that is currently out for public comment does have a description of the elements that will be required in the management program as recommended by the proposed Amendment. As part of the ongoing permit revision process, Regional Water Board staff has communicated to the permittees what the requirements will likely be in addition to those proposed in the SWMP that was submitted for review. For more information on the Santa Rosa-Sonoma County-Sonoma County Water Agency MS4 permit, see the Regional Water Board's website at:

http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/reports/rb1_monitoringrpt_2000_2006.pdf.

24. Summary comment:

The County has proposed a plan that includes a phased approach toward implementing a program to address incidental runoff. The program specifics are included in the SWMP submitted to the Regional Board. Regional Water Board staff is encouraged to coordinate the compliance schedule for this proposed Amendment with the next permit term and allow a phased approach toward implementation. This would help the County with effective planning of resources and implementation of controls to meet the requirements.

(PRMD)

Response:

The appropriate place to establish a schedule of implementation actions (e.g., compliance schedule) is in the approved SWMP. This SWMP will describe what the permittee will undertake to ensure that point source discharges from their facilities meet the exception criteria for low threat discharges and that water quality is protected.

25. Summary comment:

The proposed Amendment appears to be requiring a separate reporting program for inspections of non-storm water issues that the County will already be reporting on in the annual report. The County asks that the reporting for this program be included in the Annual Report as opposed to a separate reporting document.

(PRMD)

Response:

Submittal of the inspections reporting should be included with the Annual Reports required under the MS4 permit. Staff has no intent of requiring submittal of duplicate reports.

26. Summary comment:

The commenter states that the provision in the proposed Amendment requiring that water quality objectives be met at the point of discharge is a major concern for both recycled water and potable water systems, "because whatever water is in those systems is already highly regulated by the Regional Water Board or the Department of Public Health". The commenter is worried about potential chlorine exceedance at the point of discharge because chlorine must be kept in the potable system for public health and many recycled water systems have residual chlorine. There would likely be a small amount of chlorine in runoff. However the in most cases it would not reach surface water. The commenter is not asking to be exempt from water quality objectives. The commenter requests that the Regional Water Board work with the California Department of Public Health (DPH) and look at the water quality data for well information. Commenter requests that the studies that have already been completed satisfy the low threat discharge permit requirements.

(City of Healdsburg)

Response:

Levels of constituents, for example chlorine, that are protective of human health are not necessarily supportive of aquatic life, one of the beneficial uses of water the Regional Water Board is charged with protecting. If water containing chlorine does not reach surface water, there is no violation of the existing point source prohibitions. However, if there is potential for point source discharges, either from potable or recycled water to reach surface water, then the SMWP would need to describe the BMP program that would be applied to prevent, minimize and where necessary, mitigate to ensure the discharge meets the exception criteria for low threat discharges.

It is important to note that wherever possible, staff uses existing data from the DPH and other responsible agencies to inform their decisions. See response to summary comment 20 above for more information.

27. Summary comment:

Commenter requests Item 2, page 4 of the proposed Action Plan for Storm Water Discharges be deleted. If Item 2 is kept, Executive Officer approval would not necessarily be sufficient and thus would undermine the value of Executive Officer approval and create an ambiguous compliance standard for all parties.

(City of Santa Rosa)

Response:

To clarify the intent of the language in Item 2, page 4, of the proposed revisions to the Storm Water Action Plan, staff recommends the following language as indicated in bold be added to the Action Plan:

There were no feasible alternatives to the incidental discharge event, such as retention of the incidental runoff. This condition is not satisfied if measures for capturing the incidental discharge, **as specified in the approved SWMP**, should have been installed to prevent incidental runoff, in the exercise of reasonable engineering judgment.

28. Summary comment:

The proposed revision to the Storm Water Action Plan addresses “residential swimming pool draining”. The difference between residential and other types of swimming pools is ambiguous. Is a community-owned pool in a residential community included in the category? The city requests that “residential” be deleted as a qualifier in the context of swimming pools.

(City of Santa Rosa)

Response:

Staff concurs with the recommended revision and the reference to “residential” will be deleted from the proposed Storm Water Action Plan and from the revised Staff Report.

29. Summary comment:

Page 4 of the proposed Storm Water Action Plan states “Flows from emergency fire fighting activities” are listed as incidental low threat non-storm water discharge category. 40 CFR section 122.26(b)(2) excludes discharges from fire fighting activities from the category of illicit discharges. Therefore, such flows would seem exempt from the Basin Plan prohibition and thus should not be addressed in the Storm Water Action Plan. Likewise, mention of discharges from fire fighting activities should be removed from the Staff Report.

(City of Santa Rosa, PRMD)

Response:

Illicit versus non-illicit discharges under regulations governing NPDES permits for storm water discharges is not at issue under this proposed Amendment. The proposed Amendment addressed low threat discharges, which may consist of non-illicit discharges. Staff has revised the proposed Storm Water Action Plan (and Staff Report) to exempt emergency fire-fighting flows from the point source prohibitions. However staff request that BMPs be put in place when possible and that measures be taken during and immediately following the incident to protect water quality.

Requests to Postpone Adoption of the Proposed Amendment
Summary Comments 30 to 31

30. Summary comment:

Request to postpone voting on the proposed Amendment until such time as the term "incidental" runoff is clearly defined, quantified, and its regulation spelled out, including the penalties for violations.

(Blume, Zerzan, Charlton, Hernday, Sklenicka, Schepps)

Response:

Staff does not believe postponing the Regional Water Board’s consideration of the proposed Amendment would meet the Regional Water Board’s direction to staff to develop a program that provides exception criteria “for discharges that can be demonstrated as having a low impact on water quality and for which there are no reasonable discharge alternatives” (Initial Staff Report for 2007 Triennial Review, June 18, 2007 page 15). See response to summary comment 11 for more on incidental runoff. Staff does not recommend proceeding with the proposed Amendment without the inclusion of the “incidental” runoff category of low threat discharge.

It is Regional Water Board staff’s intent that the development and implementation of this revised program will result in the decrease of low threat discharge events in the future as a result of the routine application of the approved suite of BMPs (including from incidental runoff events) and the engagement in an active outreach and education program. As the public is made aware of the issues related to the discharge of incidental runoff (both potable and recycled) into surface waters, permittees will have more “eyes” ensuring early detection of accidental discharge events. This alone should result in a decrease in the volume of discharge associated with any one event.

31. Summary comment:

It seems premature to move forward with the proposed Amendment until the State Recycled Water Policy is complete. Comment period for this proposed Amendment should be extended to a few weeks after final approval of the State Policy. There is a lack of clarity between the relationship of this proposed Amendment and the State Water Recycling Policy.
(RRWPC)

Response:

The State Recycled Water Policy was adopted by the State Board on February 3, 2009 and approved by the Office of Administrative Law (OAL) on May 14, 2009. By law all regional water board plans and policies must be consistent with state plans and policies (Water Code section 13240). Staff commented on the draft State Recycled Water Policy and has not identified any inconsistencies between the adopted Policy and this proposed Amendment. See the State Water Board's website for more information on the Recycled Water Policy:

Monitoring Comments

Summary Comments 32 to 35

32. Summary comment:

Pesticides are picked up in irrigation and discharged to waterways where landscaping and agricultural use of the chemicals is undertaken. Commenter believes that if the Regional Water Board is proposing the Amendment to address the existing conflict in regional and statewide point source discharge permits, the Regional Water Board should look to vastly improving its overall monitoring of surface water throughout the basin to better understand if this is advisable.
(CAT)

Response:

Based on the results from the past five years of Surface Water Ambient Monitoring Program (SWAMP) data for the North Coast Region, very few samples showed the detection of pesticides. See the SWAMP report for more detailed information. The report is available at:

http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/reports/rb1_monitoringrpt_2000_2006.pdf

33. Summary comment:

Commenter states that the monitoring requirements are unclear and that the proposed Amendment mentions monitoring but is unclear what type of monitoring is expected and for what duration. Elaboration on the monitoring requirements for the County is needed.
(PRMD)

Response:

The monitoring and reporting requirements for the County (as well as the other co-permittees) will be a condition of the Santa Rosa MS4 Permit. Regional Water Board staff has been working with the co-permittees to discuss all aspects of the MS4 permit, including monitoring and reporting. See the Regional Water Board's web site for more information on the proposed monitoring and reporting requirements for the Santa Rosa MS4 permit:

http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/07_2009/pdf/SR-SC-SCWA/09_0050_NPDES_MS4MRP_SRSoCoSCWA_MSD.pdf

34. Summary comment:

Some of the issues that need more study are the monitoring and mitigation of storm water runoff, and the potential for the introduction of pathogens into the drinking water system from the discharge of wastewater into the Russian River and tributaries.

(Reinier)

Response:

Storm water runoff is already being discharged to the Russian River. The proposed Amendment will not result in the commencement or increase of that activity. Because of the ongoing concern about the discharge of pollutants, including pathogens, to surface water, a number of interested parties are participating in the "First Flush" monitoring program to collect data relative to the extent and scope of pollutant discharge from storm water. This information will be used to develop more protective implementation programs than exist currently. Strict pathogen criteria are already in place for protection of drinking water supplies from either storm water runoff or the discharge of wastewater.

35. Summary comment:

Water code section 13242 requires description of actions needed to maintain or recover water quality standards, a timeline for implementation, and monitoring. The BMP processes (sufficient to protect surface and groundwater), should be clarified with revised or additional (enforceable) language in the proposed Amendment.

(Coast Action Group)

Response:

The Regional Water Board does not read Water Code section 13242 as requiring "a description of actions needed to maintain or recover water quality standards..." Instead, Water Code section 13242 requires that when water quality objectives are added to the Basin Plan, the Regional Water Board is required to provide an implementation program to achieve compliance. The proposed Amendment does not propose the adoption of new water quality objective. Instead, the proposed Amendment recommends the inclusion of new or revised Action Plans. Compliance with Water Code section 13242 is, therefore, not required.

Nonetheless, the Regional Water Board staff has released a draft general Low Threat Discharge Permit that will be considered for adoption at the July Regional Water Board hearing along with the proposed Amendment. See the Regional Water Board's website for more information of the General Low Threat Discharge Permit:

This Low Threat Discharge Permit, along with the Santa Rosa MS4 Permit, and several other existing permits, will provide a means for dischargers within the region to comply with the low threat discharge exception criteria. The specific BMPs, however, will not be set forth within the general low threat permit, itself, but rather spelled out in each discharger's application for coverage, which will be reviewed by staff and approved by the Regional Water Board Executive Officer. (Please also see Response # 63 for more information on how formal BMPs will be established.)

General Comments

Summary Comments 36 to 59

36. Summary comment:

Prefer an emphasis on drought resistant landscapes for water savings over the proposed Amendment.

(RRWPC, Pistey, Hernday)

Response:

While the use of drought resistant landscaping is commendable to decrease our use of water and protect beneficial uses of water, it is outside the scope of the proposed Amendment to establish policy relative to landscaping.

37. Summary comment:

Commenter asks that the Regional Water Board confirm the proposed Measurable Goals, with modification suggested by the Regional Water Board and accepted by the County, take the place of submitting any general management plan related to the elimination or reduction of non-storm water discharges, including incidental runoff.

(PRMD)

Response:

Regional Water Board staff working on the proposed revisions to the Santa Rosa MS4 have been meeting with County staff, as well as the other co-permittees, to identify what portions of the existing or proposed programs would need to be revised to ensure that all the exception criteria described in the proposed revisions to the Storm Water Action are met.

Staff cannot provide the requested confirmation that the Measurable Goals will be able to substitute for a management plan under the exception criteria, and this type of "confirmation" would take place as part of permit re-issuance. In as much as the proposed Measurable Goals contain the required elements it may serve to provide much of the information required under the proposed Amendment.

38. Summary comment:

Commenter states that no exceptions should be granted to current regulations nor weakening of definitions, requirements, or limits with respect to disposal of treated wastewater. Regulatory agencies must continue vigorous efforts to clean up the environment and our waterways rather than be pushed to find additional ways in which to negatively impact them. Impaired water bodies must not be subjected to further impacts, and clean water bodies must be protected.

(Burr)

Response:

Regional Water Board staff by no means intends to weaken current regulations or allow impacts to surface water quality under the proposed Amendment. Staff believes that water quality protection will be increased with the adoption of the proposed Amendment and two of the implementing permits (the revised Santa Rosa MS4 permit and the proposed General Low Threat Discharge permit), as a result of initiating the prevention and minimization programs intrinsic to the proposed action plans.

39. Summary comment:

The North Coast Basin is not the same as the rest of the state. It has greater rainfall and more water draining than any other region, more undefined soil substrates and therefore less distinction between ground and surface water, it drains into the ocean along a great portion of our coast and in an area where there are more water resources to protect than in any other basin. More stringent protections are needed and the Regional Water Board is able to provide those. By seeking sameness, the Regional Water Board abrogates its responsibilities. Commenter questions why there is a North Coast region and Basin Plan if it is not designed to accommodate the specific conditions of the North Coast.

(CAT)

Response:

The Regional Water Board and staff have long recognized the unique characteristics of the Region and the quality of the Region's water. It is in recognition of this that the Regional Water Board adopted the existing point source prohibitions. The language in the Basin Plan states: "*Under this authority and in order to achieve water quality objectives, protect present and beneficial water uses, protect public health, and prevent nuisance, the Regional Water Board declares that point sources wasted discharges, except as stipulated by the Thermal Plan, the Ocean Plan, and the action plans and policies contained in the Point Sources Measure section of this Water Quality Control Plan*" are prohibited. It is in response to these very protective point source prohibitions that the Regional Water Board directed staff to develop a program that would allow low threat discharges to occur. To this end, staff has proposed criteria that would clearly articulate what conditions would need to be met to qualify as a low threat discharge. The exception criteria are described in both the proposed revisions to the Storm Water Action Plan and in the proposed Action Plan for Low Threat Discharges. Staff believes the types of discharges proposed for coverage under the proposed Action Plans are in the public interest, and if managed as described in the proposed Action Plans and in the

applicable permits, will not result in adverse impacts to the quality of the Region's waters.

40. Summary comment:

Commenter would like to express support for additional study of the effects of treated effluent, and storm water on the health and safety of the residents and wildlife downstream prior to adoption of the proposed Amendment.

(Reinier)

Response:

Comment noted. Staff believes the proposed Amendment is ready for the Regional Water Board's consideration at the July Board meeting. As part of the State Recycled Water Policy adopted in February 2009, the State Water Board mandated that regulatory requirements for recycled water be based on the best available peer-reviewed science and meet conditions established by the California Department of Public Health. The State Water Board also has convened a "blue-ribbon" scientific panel to guide future actions relating to constituents of emerging concern. Within one year of adoption of the Policy, the panel is to submit a written report describing the current state of knowledge regarding risk to public health and the environment with regard to recycled water. The panel was further tasked with answering a number of questions including which constituents to monitor for, appropriate analytical methods and detections levels, etc. The Policy also requires the report be updated every five years. Staff believes the State Water Board advisory panel is the appropriate venue to address issues of use of recycled water. See the State webpage for more information on the scientific advisory panel:

http://www.waterboards.ca.gov/water_issues/programs/water_recycling_policy/index.shtml

41. Summary comment:

Violators are not subject to losing their permits under the proposed Amendment.

(Wikle)

Response:

One of the key criteria to be eligible for the low threat exception is compliance with the applicable permit. Violations of the permit conditions would be grounds for revoking permit coverage and/or taking enforcement action.

42. Summary comment:

The proposed Amendment would eliminate any incentive for the Sonoma County Water Agency to prevent its repeated violations.

(RRWPC, Forest Unlimited)

Response:

See response to summary comment number 41 above.

43. Summary comment:

The following legal preconditions should be included by the Board in their environmental document:

- o Discussion of how this proposed Amendment meets conditions set forth in Water Code section 13242.
- o A description of actions that will take place to assure the water quality objectives will be met and that beneficial uses will be protected (should include performance standards).
- o A description of the plan for monitoring performance as a means of assuring efficacy and compliance, and a timeline for the implementation of the action and monitoring programs.

(Sonoma County Water Coalition)

Response:

The proposed Amendment does not include a new or revised water quality objective that requires an implementation program pursuant to Water Code 13242 to achieve compliance. Instead, the proposed Amendment recommends the inclusion of new or revised Action Plans. Compliance with Water Code section 13242 is, therefore, not required. Nonetheless, the Regional Water Board staff has released a draft general Low Threat Discharge Permit that will be considered for adoption at the July hearing with the proposed Amendment. This permit, along with several other existing permits, will provide a means for dischargers within the region to comply with the low threat discharge exception criteria. The specific BMPs; however, will not be set forth within the general low threat permit, itself, but rather spelled out in each discharger's application for coverage, which will be reviewed by staff and approved by the Regional Water Board Executive Officer.

For the reader's convenience, the main body of Staff Report has been revised to include examples of BMPs that were identified in the environmental analysis (Staff Report Appendix D) as being "reasonably foreseeable compliance measures". The Regional Water Board plans to monitor the implementation of the BMP and management plans in the same way that it monitors the compliance of all permits - by relying on permittee-supported self monitoring and reporting programs to implement this proposed Amendment. Regional Water Board staff will also conduct periodic inspections to verify compliance with permit conditions.

44. Summary comment:

The proposed Amendment appears to provide the necessary flexibility for permit writers to take into account project-specific factors such that only those controls necessary to protect water quality will be required. Commenter requests that the Regional Board indicate its concurrence with this interpretation.

(PRMD)

Response:

Staff concurs that only those actions needed to protect water quality (in this case meeting criteria for low threat discharges) are required.

45. Summary comment:

Overspray from irrigation to impervious surfaces should be prohibited especially for recycled water.

(Russian RiverKeeper)

Response:

Until such time as a permittee request an exception for “recycled irrigation overspray” through the development of a management plan which contains the suite of BMPs developed to prevent and minimize this type of discharge, it will continue to be prohibited. Overspray would only be granted an exception if is accidental and not an indication of negligence or lack of system maintenance.

46. Summary comment:

Irrigation should only be applied in agronomic rates (i.e. no discharge).

(Zerzan, Ruppert, Forest Unlimited Russian RiverKeeper, Coast Action Group, Nielsen)

Response:

Staff concurs.

47. Summary comment:

Citizen water “cops” should be hired to check irrigation sites unannounced on a regular basis.

(Forest Unlimited, Zerzan)

Response:

Regional Water Board staff agrees citizens are an important part of program. Staff appreciates notification of unauthorized or other types of illegal discharges and will respond to each notification.

48. Summary comment:

Program should be revised after the second year of implementation for evaluation. Include a sunset or re-opener clause and public review process to allow for future information concerning contaminants.

(Zerzan, Shere, Kaufman, Ruppert, Coast Action Group, Forest Unlimited, Nielsen, Sklenicka)

Response:

All Regional Water Board programs are adaptive and updated regularly as resources allow. At a minimum Basin Plans are reviewed every three years (i.e. Triennial Review). Staff is anticipating that the new information collected under this program will be extremely useful in evaluating the scope and impacts from the proposed Amendment. Data collected as part of this program will be presented to the Regional Water Board, and if deemed necessary changes to the program will be made based on the data collected. Future changes to the Action Plans may not be necessary, however,

as the Regional Water Board staff recommends modifications to the required BMPs or management plans in order to respond to new information gathered as a result of the program.

49. Summary comment:

Permits should have suppliers and users enter into a contract where each is responsible for portions of the system. Suppliers are responsible for water quality treatment and monitoring. Users would be responsible for irrigation practices and prevention of runoff. Should include site specific pollution prevention plans.

(RRWPC)

Response:

In the North Coast Region the major producers of recycled water are regulated under Master Reclamation Permits. Under this permit, suppliers have user agreements that define user responsibilities including implementation of Title 22 criteria as well as measures for runoff control. However, under these permits, the producers are ultimately responsible for permit compliance.

50. Summary comment:

Item 1, page 4 of the proposed Storm Water Action Plan states that incidental discharges of low threat non-storm water flows shall not be subject to the point source prohibitions provided that *"the incidental discharge event is not due to negligent maintenance or poor design of infrastructure, or failure to oversee the activity that resulted in incidental runoff."* The County requests that the Regional Board elaborate on the condition of overseeing an activity and what specific activities it would apply to. In other words, what would constitute a failure to oversee an activity that resulted in incidental runoff?"

(PRMD)

Response:

A failure to oversee an activity that resulted in the discharge of incidental runoff to surface water would be failure to implement the approved SWMP. The purpose of the SWMP is to clearly articulate the management program that will be implemented by the permittee so all parties understand their responsibilities. A record of maintenance inspections and follow-up actions will support the permittee's position that runoff was not due to negligent maintenance, poor design of the facilities, or failure to oversee the activity that resulted in the runoff.

51. Summary comment:

Commenter cites uncertainty on NPDES permit boundary and reminds the staff that the Sonoma County Board of Supervisors asked the Regional Water Board in October 2008 to justify the expansion of the county NPDES boundary as found within the state draft NPDES permit. A County-wide NPDES permit would make difficult education/outreach, inspection, monitoring, and enforcement. In the County SWMP there is a commitment to conduct dry season inspection of urban clusters on a monthly basis. Commenter seeks

confirmation that the priority commitment on reducing incidental runoff be in urban clusters regardless of the location of the permit boundary.

(PRMD)

Response:

Staff agrees that urban cluster areas would likely be a high priority in the implementation of the education/outreach, inspection, monitoring, and enforcement program as hydromodification association with urban use often increases storm water runoff and associated pollutants. The inspection and monitoring program would help verify this conclusion. The approved SWMP could also serve as a tool in establishing priorities. However, it is important to note that to qualify for the exception, the SWMP must include a program to eliminate and/or minimize non-storm water discharges into surface waters from all sources, not just high priority areas.

52. Summary comment:

How would chemicals in recycled wastewater and chemical applications on lawns interact with one another? Would they produce any harmful by-products?

(Russian River Keeper)

Response:

A response to this comment is outside the scope of this proposed Amendment. Nothing in this proposed Amendment will require the use or increased use of recycled water or lawn chemicals. However, staff is aware of the extensive concern regarding these types of interactions and their effects on water quality and public health and safety. Staff will use the information generated by the scientific advisory panel convened by the State Board as part of the State Recycled Water Policy to propose changes to this program, if necessary, as new information is made available. Staff believes that the implementation of the proposed Amendment through the revised Santa Rosa MS4 will reduce the occurrence of incidental runoff by requiring a vigorous inspection and monitoring program and application of protective BMPs.

53. Summary comment:

The term non-storm water runoff applies to over-irrigation with potable water as well as wastewater. Commenter has never heard a concern expressed before regarding potable water discharge and had been under the impression that chlorine dissipates rapidly, especially when exposed to light. What is the chlorine residual in drinking water? Commenter expressed concern about public health if this is a major issue, because of the dangers of chlorinated by products. Provide more information on this issue.

(RRWPC)

Response:

Chlorine in water has long been recognized as adversely affecting a number of beneficial uses of water, such as aquatic habitat for fish and amphibians. Chlorine exerts toxicity to aquatic life at very low concentrations. As such, permit conditions have routinely addressed this type of discharge. Trihalomethanes (a bi-product of the

chlorination process), can be found in drinking water. However the trihalomethanes readily dissipate when exposed to air.

54. Summary comment:

What conditions will be required to make sure that Antidegradation rules are enforced?
(RRWPC)

Response:

All the conditions described in the two Action Plans and in their implementing permits will be necessary to ensure compliance with the Antidegradation Policies. Staff believes that the initiation of this program will result in less, rather than more, low threat discharges in the North Coast Region as the permittees will need to document why a discharge to surface water is necessary, and indicate minimization measures, including BMPs. Many of these discharges are occurring across the region now without benefit and oversight of a permit program. Please also see the antidegradation analysis in the Staff Report and discussion in the response to summary comment 107.

55. Summary comment:

Requirements for low threat discharges are comprehensive but they don't say how cumulative impacts will be assessed. How will priorities be established to ensure multiple projects aren't in close proximity?
(RRWPC)

Response:

The establishment of a permitting program will allow Regional Water Board staff the opportunity to review permits as they are submitted. This will allow staff to have internal communications on relative activity in specific geographical areas. Without a permitting program in place, staff is not privy to the information necessary to evaluate cumulative watershed effects in even the most cursory way.

56. Summary comment:

The need to switch to drought resistant landscaping as a conservation method is not mentioned at all.
(Pistey, Hernday RRWPC)

Response:

While the use of drought resistant landscaping is commendable to decrease our use of water and protect beneficial uses of water, it is outside the scope of the proposed Amendment to establish policy relative to landscaping.

57. Summary comment:

How will the Antidegradation Policy be implemented and enforced through the Basin Plan process?
(RRWPC)

Response:

The proposed Amendment contains conditions and requirements that all discharges must meet, ensuring that dischargers meet all applicable regulatory requirements. Compliance with these requirements will be ensured the same way that the Regional Water Board enforces all of its permits – through monitoring and reporting by the discharger, with Regional Water Board staff reviewing those reports, inspecting sites, and responding to complaints. Please also see response to summary comment 107, below.

58. Summary comment:

Commenter does not believe that recycled water is adequately treated to allow irrigation where children and people with compromised immune systems could be exposed to it.
(RRWPC)

Response:

The proposed Amendment does not specifically allow the use of recycled water. That issue has been addressed by the State Recycled Water Policy and by the State Legislature. The proposed Amendment is designed, in part, to make the Regional Water Board's Basin Plan consistent with statewide permits that allow year-round discharges into surface waters, including the incidental discharge of irrigation water (potable and recycled) from municipal storm drains into surface waters. To the extent that recycled water will be used for irrigation, it should be noted that such water is highly treated to meet the statutory requirements set forth in Title 22. In addition to requirements set forth in Title 22, the State Water Board's Recycled Water Policy and its draft Landscape Irrigation Permit both contain requirements for the protection of human health.

59. Summary comment:

Based on Water Code section 13242, commenter wonders whether the implementation program is required to come forth at the same time as the proposed Amendment.
(RRWPC)

Response:

The proposed Amendment does not include a new or revised water quality objective that requires an implementation program to achieve compliance. Instead, the proposed Amendment recommends the inclusion of new or revised Action Plans. Compliance with Water Code section 13242 is, therefore, not required. Nonetheless, the Regional Water Board staff has released a draft general Low Threat Discharge Permit that will be considered for adoption at the July hearing with the proposed Amendment. Please see the Regional Water Board's website for more information on the General Low Threat Discharge Permit:

http://www.waterboards.ca.gov/northcoast/board_decisions/tentative_orders/

The General Low Threat Permit, along with several other existing permits, will provide a means for dischargers within the region to comply with the low threat discharge exception criteria. The specific BMPs; however, will not be set forth within the general low threat permit, itself, but rather spelled out in each discharger's application for coverage, which will be reviewed by staff and approved by the Regional Water Board Executive Officer after a period for public comment has expired.

Water Quality Objectives and Beneficial Use Protection
Summary Comments 60 to 74

60. Summary comment:

The use of recycled water needs to include practices and monitoring, with performance criteria that will provide a level of assurance that recycled use will not adversely affect water quality objectives or beneficial uses, and that all waste water used for irrigation will meet waste discharge requirements.

(Sonoma County Water Coalition)

Response:

Staff concurs with this comment. Additional BMPs and monitoring requirements beyond those necessary to protect waters of the State from discharges of potable water or uncontaminated groundwater will be required to protect against unplanned, incidental discharges of recycled water, which will assure that water quality is fully protected.

61. Summary comment:

The summer discharge prohibition has been in effect since the late 1970's and should continue indefinitely.

(RRWPC Members, Atkinson)

Response:

The seasonal and year-round point source prohibitions will remain unaltered under the proposed Amendment. The existing point source prohibitions language included in the Basin Plan (pages 4-1.00 – 4-2.00) allows for the inclusion of exceptions to the point source prohibitions if an action plan is included in the implementation section of the Basin Plan. This is the approach the Regional Water Board took in 1989 when they authorized the discharge of water from one class of sites by incorporating the "*Interim Action Plan for Cleanup of Groundwater Polluted with Petroleum Products and Halogenated Volatile Hydrocarbons*".

62. Summary comment:

The Biological Opinion for the Russian River Instream Flow and Restoration Project is requiring Sonoma County Water Agency to appeal to the State Board to lower summer flows in the lower Russian River by as much as one third. This was not mentioned in the proposed Amendment documents and the issue of water quality in relation to flows is a major concern. The whole water picture and how all these factors affect water quality is not being examined.

(RRWPC)

Response:

Water rights issues are outside the authority of this agency. The Regional Water Board is mandated to protect water quality and as such staff has proposed a program that will ensure that discharges that are eligible for an exception will meet all applicable water quality objectives under the stream conditions that exist at the time of discharge.

63. Summary comment:

At this time the specific BMPs to ensure beneficial uses are protected are not defined in the proposed Amendment and are deferred to a later process of permit updates. Specify how beneficial uses will be protected. This concern could be addressed by making the future BMP development process open to the public or deferring this policy until those BMPs are developed to ensure this policy meets its stated goals and does not result in significant unmitigated impacts under CEQA.

(Zerzan, Russian RiverKeeper, RRWPC)

(Photos submitted by RiverKeeper as examples for this comment are posted as part of their comment letter on the Low Threat Discharge Amendment website.)

Response:

The regional water boards are statutorily restricted from directing the method and manner of compliance with their requirements, allowing the discharger to comply with the order in any lawful manner. (Water Code section 13360) The proposed Amendment, therefore, only sets out the requirements that must be met. Each discharger will have to set out the manner in which it proposes to comply (i.e. the suite of BMPs that it proposes to implement to comply with the requirements of the Basin Plan). Both the revised Santa Rosa MS4 permit and the proposed General Low Threat Discharge permit will require the discharger to submit a management plan, setting out the proposed BMPs that are being proposed. Both permits, as proposed, have requirements that will allow the public to comment upon the proposed BMPs during a 30-day public comment period. If no significant water quality related comments are received, the Executive Officer will consider and in most cases approve the permit. If it is a controversial project, staff would take it to the Regional Water Board for consideration. As Regional Water Board staff is not able to describe the manner and method of compliance, this approach of the discharger proposing the suite of BMPs for their specific project is also more protective of water quality because it allows the consideration of appropriate BMPs based on site-specific conditions and the risk to water quality associated with different types of discharge (e.g. planned versus unplanned discharges, recycled water versus groundwater discharges). Therefore, this information is most appropriately included as part of the permit approval process. Examples of BMPs specific to different types of discharges have been provided in the CEQA analysis and have been included in the revised Staff Report for the reader's convenience.

64. Summary comment:

The proposed Amendment and related language does not go far enough to clarify the implementation policy (including BMPs) necessary to mitigate potential degradation to surface and groundwater from the proposed policy changes.

(Coast Action Group)

Response:

See response to comment 63, above. It should also be noted that this proposed Amendment does not apply to groundwater, as there are no similar point source prohibitions in the Basin Plan that apply to the discharge to groundwater.

65. Summary comment:

The potential for non-stormwater run-off containing sediment from over-irrigation to negatively impact beneficial uses is very high and Storm Water Action Plan don't seem to provide adequate protections for beneficial uses . BMPs to ensure beneficial use protection are not defined and need public participation.

(Russian RiverKeeper)

(Photos submitted by RiverKeeper as examples for this comment are posted in their comment letter on the Low Threat Amendment website)

Response:

See response to comment number 63, above. Consistent with the proposed Amendment, incidental runoff will only be exempt from the point source prohibitions if it is not due to poor design or failure to oversee the activity that resulted in the incidental runoff, which includes failure to irrigate in accordance with agronomic rates. Similarly, the permittee must have a SWMP that identifies BMPs to avoid and/or minimize incidental runoff events, including the proper application of water for irrigation to avoid runoff. This should result in less runoff events occurring in the Region in the future.

66. Summary comment:

All state laws meant to enhance, improve, maintain, and protect high quality drinking water, beneficial uses, including but not limited to the California Environmental Quality Act, the California Toxics Rule, and all federal statutory schemes meant to eliminate water pollution, must be complied with. Backsliding, compromise of scientific standards and knowledge, and further degradation of surface and groundwater cannot be allowed.

(Burr)

Response:

Staff concurs with this comment and has complied with all regulations during this Basin Plan amendment process with the intention of protecting water quality and beneficial uses. However, please note that anti-backsliding requirements only apply to the issuance of NPDES permits and do not apply to a proposed Basin Plan Amendment.

67. Summary comment:

Commenter states that current water quality objectives do not assure protection of beneficial uses. The proposed Low Threat Action Plan's ability to ensure protection of beneficial uses depends on condition number 2, "The discharge shall comply with all applicable water quality objectives." Yet many waters subject to this policy already are seriously impaired despite water quality standards, various stormwater permits and agency enforcement. In addition, some water quality objectives are either narrative or vaguely applied due to differing federal or state agency standards resulting in difficulty in determining compliance.

(Russian RiverKeeper)

Response:

Water quality objectives, both narrative and numeric, can only be achieved and beneficial uses of water protected when an effective implementation program is in place. The implementation program must be designed, implemented and monitored to assure that adequate protection is occurring. Development and implementation of a monitoring and reporting program designed to document compliance with water quality objectives is a key component of the proposed program. The intent of the proposed Amendment and implementing permits is to ensure that such a program is put in place.

68. Summary comment:

Allowance for pressure washing sidewalks and other areas into storm drains will threaten beneficial uses.

(Russian RiverKeeper)

(Photos submitted by RiverKeeper as examples for this comment are posted with the comment letters on the Low Threat Discharge Amendment website)

Response:

A crucial component of this low threat discharge program is the development of an implementation program, including installation and maintenance of BMPs, outreach and education activities, and monitoring and reporting, that will be put in place as an enforceable part of the applicable permit to ensure that a range of activities, including pressure washing of sidewalks and other areas, will not result in discharge into storm drains of water that does not meet all applicable water quality objectives, including those for sediment, oil and grease, etc.

69. Summary comment:

Commenter state that dredge spoils dewatering should only be allowed if spoils are tested for pollutants as bottom sediments in most waterways have a certain amount of organic matter and nutrients. De-watering where it can discharge to an impaired waterway should not be allowed unless it can be proven the discharge will not cause or contribute to continuing impairment.

(Russian RiverKeeper)

Response:

Staff concurs with this comment. Characterization of dredge spoils will be required prior to dewatering, as required by the proposed General Low Threat Discharge permit. As described on page 7 of the Draft Staff Report, characterization of the proposed discharge, including a demonstration that the discharge will not contain pollutants or constituents at concentrations that exceed water quality objectives, California Toxic Rule objectives, or any other standard or objective promulgated to protect water quality and beneficial uses will be a requirement to qualify for the exception criteria.

70. Summary comment:

Commenter reiterates comment submitted by California Coast Keeper Alliance on the State Water Board's Recycled Water Policy that "an MS4 cannot regulate recycled water discharges, such as from golf course or soccer fields, at least without significant additional and site specific analysis". Laguna de Santa Rosa is cited as an example. Recycled water from the Laguna Treatment Plant can have 5-10 times the amount of nutrients present in Santa Rosa Creek, so if discharges reach the creek it will significantly contribute to continuing impairment due to low summer flows. Commenter points out that Healdsburg's new wastewater treatment plant effluent contains less than 1.0mg/L of nitrogen and primarily discharges into waters that currently meet water quality objectives, but under this policy both would be viewed the same even though impacts to beneficial uses are vastly different.

(Russian RiverKeeper)

Response:

MS4 permittees seeking an exception for incidental runoff under this proposed Amendment would be required to submit a SWMP that includes a description of the structural and non-structural BMPs that would be implemented to protect water quality at locations covered by the permit. A number of factors would be taken into account in the development of these site specific BMPs, including but not limited to:

- nature of the discharge (e.g. potable versus recycled, "sediment laden" versus "turbidity free, etc"),
- nature of the receiving water (e.g. high quality, impaired), and
- proximity to surface waters.

Development of an appropriate suite of BMPs for incidental runoff of recycled water into impaired waterbodies will need to include additional measures to protect beneficial uses of water from those pollutants of concern.

71. Summary comment:

In the CWA 303(d) list of 2002, EPA argued that the Laguna be listed specifically for nutrients instead of just low dissolved oxygen and justified their decision by using a water quality objective of 1.0 mg/L for nitrogen and 0/1 mg/L for phosphate. It would seem that any recycled water or other discharge would need to meet the EPA objective to be covered under this permit as per the basin plan language above. Santa Rosa's Laguna Treatment Plant rarely, if ever, meets the EPA objectives used in the listing policy objectives, so any discharges should not be covered unless they meet the

objective or all discharges of recycled water should be prohibited under this circumstance. Other plants in the region also do not meet all water quality objective's and the policy should be clear on whether recycled water that doesn't meet the most stringent water quality objective should not be covered under this policy unless discharge is completely prevented.

(Russian RiverKeeper)

Response:

There is currently no state or federal water quality objective specifically for nitrogen or phosphate that is applicable in the North Coast Region. If a water quality objective is developed for these pollutants or if a TMDL identifies a load allocation for these constituents, then permits, including MS4 storm water management programs would require modification to ensure the new criteria are met.

72. Summary comment:

Commenter is concerned about the effect, basin-wide, of the proposed Amendment. Although the greatest water quality degradation that may result would likely occur in the southern part of the region, commenter is concerned that the potential adverse effects described by the RRWPC would be felt wherever such runoff would occur in the Basin.

(CAT)

Response:

The low threat discharge program developed by Regional Water Board staff includes the development and implementation of a control program that relies on the sequential application of: 1) prevention of a discharge; and 2) minimization of remaining discharge through the use of approved BMP programs. Staff believes the adoption of the proposed Amendment permits will protect water quality from degradation throughout the region as required under the Antidegradation Policies.

73. Summary comment:

In a comment that appears to be referring to the proposed Storm Water Action Plan, the commenter asks how the Regional Water Board can apply the point source prohibitions which have "always referred to point source discharges from sewer treatment plants and not individual sites" to storm water discharges. In that context, the commenter provides the following statements and questions: "What is unclear is how you can take these Basin Plan descriptions that clearly relate to treatment plants having NPDES permits and on site treatment systems and apply them to construction and other individual sites where the same controls clearly do not exist? (For instance treatment plants have trained, certified employees who have been extensively educated in treatment plant management and operation.) What is a "reliable" treatment system? There are few treatment systems in our area that have gone more than two years without a violation. Would they be considered "reliable"? Define "reliable" here, including the numbers and types of violations that would not be considered a problem. How do you determine "rates" and "constituents" that protect beneficial uses?

(RRWPC)

Response:

Wastewater treatment system reliability is defined on page 4-2.00 of the Basin Plan as a system that has redundancy, proper operation and maintenance, and backup storage capacity to prevent the threat of pollution or nuisance. The commenter is correct in recognizing that this point source prohibition language was written with the intent of applying primarily to municipal wastewater treatment facilities. However, the Basin Plan is not clear that this language is intended to apply only to municipal wastewater treatment facilities. The Low Threat Action Plan is needed to provide exceptions to both the point source seasonal discharge prohibition and the one-percent flow limitation for these and other types of low threat discharges.

Treatment systems for low threat discharges are less complex than municipal wastewater treatment systems, but similar reliability features may apply. An applicant under the General Low Threat Permit, will need to demonstrate that its low threat wastewater treatment system uses best available technology, has sufficient capacity to remove identified pollutants from the discharge, and that the treatment system will be properly operated and maintained. An adequately designed treatment system for low threat wastewater should be able to operate with no violations, although it is possible that some minor violation(s) could occur without threatening beneficial uses. These would be evaluated on a case-by-case basis.

All applicants seeking enrollment under General Low Threat Permit will be required to demonstrate that the discharge volume and flow rate will be minimized to the maximum extent practicable and that the discharge water will be treated to remove or reduce pollutant levels with best available technology and implementation of BMPs. Low threat discharges cannot contain any pollutant that could be discharged at concentrations that exceed applicable water quality objectives.

74. Summary comment:

The proposed Amendment contains no discussion of receiving water conditions during the discharge prohibition period or the limits that would protect beneficial uses.
(RRWPC)

Response:

The proposed Amendment requires all discharges to be compliant with applicable water quality objectives (or limits) regardless of the time of year the discharge occurs. Water quality objectives include not only numeric limitations for various constituents, but also descriptions of surface water conditions that support beneficial uses of water (narrative objectives). Under the proposed Amendment, applicable narrative and numeric objectives would be required to be met at either the point of discharge or in the receiving water dependant on how the objective language was framed. Specific language regarding receiving water conditions and applicable water quality objectives will, however, be an important element of the individual permits themselves.

Best Management Practices
Summary Comments 75 to 80

75. Summary comment:

What plans does the Regional Water Board have to staff this program, as it will require a fair amount of work to develop BMPs and then ensure their implementation and for on-going inspection and enforcement?

(Russian RiverKeeper, RRWPC)

Response:

The permittee, not Regional Water Board staff, will be required to develop, implement and maintain the BMP program, and ensure its implementation through inspections and reporting. Regional Water Board staff will rely on permittee-supported self monitoring and reporting programs to implement this proposed Amendment. Regional Water Board staff will conduct periodic inspections to verify compliance with permit conditions. This approach is consistent with other Regional Water Board regulatory programs. Staff does not envision that extensive staff time will be required to get permittees enrolled in the program after submittal of a complete application package. As both the dischargers and Regional Water Board staff become more familiar with the program, the time needed to both submit a complete application package and subsequent enrollment by Regional Water Board staff should decrease.

76. Summary comment:

Commenter points out that the proposed Storm Water Action Plan uses the term “greatest extent possible” to describe the level to which pollutants have to be minimized prior to any discharge rather than to the “maximum extent practicable” as required of storm water permittees.

(Russian RiverKeeper)

Response:

Staff appreciates the input on this oversight. The term “maximum extent practicable” should have been used in this instance and the change has been made to the version of the proposed Storm Water Action Plan that the Regional Water Board will consider at the hearing.

77. Summary comment:

The proposed Amendment requires unwritten BMPs to be met. Commenter wonders if the BMPs will address excessive discharge with potable water as well as wastewater and if the rules will be applied to all irrigation sites or just certain ones? If the proposed Amendment applies to only certain properties, and/or certain kinds of water, then that needs to be clearly spelled out and the potential impacts identified.

(RRWPC)

Response:

The BMP program will be detailed as part of each applicable permit, which will be subject to public review as part of the enrollment process. Types of low threat water, as described in Table 1 of the November 20, 2008 Staff Report (page 3), refers to discharges of potable, recycled, surface water or groundwater. The permit conditions will apply to discharges from all sites within the permit area.

78. Summary comment:

City of Santa Rosa pollutant off-set trading should not be considered until Storm Water MS4 Permit and BMPs are in place.
(Forrest Unlimited)

Response:

This issue is not within the scope of the proposed Amendment.

79. Summary comment:

Cities should be held responsible for the timely implementation of BMPs to control runoff.
(RRWPC)

Response:

Staff concurs with this comment. In order to qualify for a low threat discharge exception under this proposed Amendment, permittees will be responsible for the timely implementation of BMPs as described in their management plans approved by the Executive Officer after closure to the formal public comment period.

80. Summary comment:

The commenter emphasizes the importance of ensuring that the assumptions regarding the effectiveness of the BMPs, the nature of pollutants relevant to the proposed Amendment and other pollution prevention strategies are confirmed. The commenter also wishes to ensure that compliance with Chapters 6.5 and 6.8 of the Health and Safety Code are an element, implicit or explicit, of the proposed Amendment. The proposed Amendment suggests that pollutants from projects such as draining of foundations, footings and crawl spaces are likely to be insignificant, and that such contaminant loads might be reduced to insignificance by separating flows and removing suspended sediments. It is the commenter's experience that pesticides are frequently significant, due to poor application practices or practices that resulted in high concentration of structural pesticides. While some pesticide residuals adhere to suspended sediments and would be subject to removal by filtering or setting, but some structural pesticides dissolve readily in water and would not be removed by settling.

The Amendment suggests that pollutants from the dewatering of dredge spoils are likely to be insignificant. This would depend largely on the source of dredge spoiling, which can often be contaminated with hazardous substances. Should any of the releases be associated with a level of contaminants that would make the discharge of a hazardous

waste or substance, provisions of Chapter 6.5 and/or 6.8 of the Health and Safety Code might apply, and would need to be considered in specific discharges or accounted for in the blanket determination of low threat.

(DTSC)

Response:

A critical element of the proposed Amendment includes the criteria that all non-storm water low threat discharges authorized under the proposed Amendment must meet water quality objectives. Another important element is that discharge authorized under the proposed Amendment be prevented to the maximum extent practicable with minimization measures applied to the remaining discharge. As with all sources of non-storm low threat discharge, dredge soils and discharge from foundations would have to be characterized to ensure that no pollutants were present that would result in exceedence of water quality objectives. Before discharges would be authorized under the proposed Amendment, a management plan that described the suite of BMPs that would implemented to ensure that prevention and minimization measures were effectively applied. It is also important to note that there is broad suite of BMPs that are routinely implemented that are widely recognized as being effective water quality control practices.

Recycled/Wastewater Comments
Summary comments 81 to 94

81. Summary comment:

The City of Santa Rosa has an aggressive water recycling program that is already in effect during the summer months. Even with the recycled water program some must be discharged. Storing all recycled water for the City is economically unfeasible.

(City of Santa Rosa)

Response:

Comment noted. Regional Water Board staff would also note however that all discharges of pollutants to waters of the State require compliance with a prohibition, WDR or waiver, while discharge of pollutants to waters of the U.S. require a federal CWA permit (e.g. NPDES).

82. Summary comment:

The commenter requests that any changes with regard to surface water be made in such a manner so as to not discourage water recycling because water recycling is consistent with the California Legislature's goal of increased water reuse.

(City of Santa Rosa)

Response:

Staff believes that the proposed Amendment is neutral as to the use of recycled water, and treats it similarly to the discharge of other types of low threat discharges, including potable and groundwater. The proposed Amendment will create a program that will allow activities (and associated low threat discharges) to occur in the Region that are in

the public interest and for which a regulatory oversight program is put in place to ensure that no adverse impacts to beneficial uses of water occur.

It should be noted however, that the Legislature has established a goal of recycling one million acre-feet of water by 2010 (Water Code section 13577). The Legislature declared that the people of the State have a “primary interest” in the development of recycled water facilities, and that the State should “take all possible steps” to encourage the development of such facilities in order to meet the State’s water needs (Water Code sections 13510, 13512.). The State and Regional Water Boards are therefore directed to ensure that these mandates are followed. For example, the State Water Board adopted the Recycled Water Policy in February 2009. The nine Regional Water Boards must abide by the direction set forth in this Policy with a goal to “move towards sustainable management of surface waters and groundwater, together with enhanced water conservation, water reuse and the use of stormwater”.

83. Summary comment:

Does the word “water” in the staff report refer to potable or recycled water? Commenter believes that the term should include both.

(Town of Windsor)

Response:

The term refers to both potable and recycled water.

84. Summary comment:

What is the meaning of “low threat” discharge? Define this term.

(Berke, Bodwin)

Response:

As described in the draft Staff Report (pages 2-3), exception to the point source prohibitions would apply only to discharges that meet all the following requirements:

- Are of low threat to water quality;
- Are covered under a point source discharge permit (either Waste Discharge Requirements (WDRs) or a National Pollutant Discharge Elimination System (NPDES) permit);
- Are from point sources (non-point source discharges are not subject to the point source prohibitions).

The draft Staff Report further states that for a discharge to be considered “low threat” the following criteria apply:

- Short-term and/or periodic in nature.
- Minimized volume, discharge rate and pollutant load to the greatest extent possible by use of BMPs and other disposal alternatives to protect beneficial uses.
- Meets all water quality objectives.
- The discharge does not cause adverse effects on the beneficial uses of the receiving water or cause nuisance conditions.

85. Summary comment:

How will the Regional Board monitor procedures to assure that people using recycled water in Santa Rosa are following the Recycled Water User's Guide when the program commences?

(RRWPC, submitted re: the Recycled Water Resolution)

Response:

Staff would rely on self-monitoring reports and compliance inspections. However, recycled water users function under an agreement with the master water recycler. The recycled water use agreement is between the master water recycler and the recycled water user and must clearly identify the requirements that the recycled water user must meet. Both the recycled water user and the master water recycler must regularly perform inspections of the recycled water use sites to look for signs of runoff. The Regional Water Board requires the master water recycler to address any and all violations that occur at recycled water use sites and holds the master water recycler responsible for compliance with all permit requirements.

86. Summary comment:

In summer, creeks are low and slow and cannot assimilate wastewater discharges. Because this is the time of greatest recreational use and greatest vulnerability to toxins, no runoff of any kind should be allowed.

(Velutini, RRWPC Members, Lyhne, Atkinson)

Response:

Under the proposed, staff is recommending the development of a Storm Water Management Program (SWMP) that will describe the prevention and minimization measures (BMPs) that will be implemented to protect water quality from discharge events (including summer time runoff). Staff is aware that summer time runoff is occurring in the Region with potential impacts to water quality. It is with this knowledge that staff has recommended that the Regional Water Board consider this low threat discharge program to help reduce these ongoing impacts to water quality. It may be impossible to eliminate all summertime runoff, but the proposed Amendment will establish stricter requirements with the goal of eliminating as much summertime runoff as possible and to reduce the water quality impacts of any remaining runoff.

87. Summary comment:

Disposal of treated wastewater whether it is through irrigation, direct discharge to rivers, or over spraying of land is disposal. Wastewater is comprised of treated sewage and other highly polluted liquids, solids, and chemicals that find their way down toilets, sinks, and drains most of which then pass through treatment facilities.

(Burr)

Response:

Comment noted.

88. Summary comment:

Wastewater is clearly not safe potable water and it is the main way, and often times the only way, in which many pollutants enter the environment, the groundwater, and the surface waters. In a study of 19 water facilities, 11 pharmaceuticals were detected on a frequent basis, several point to the potential for risk, especially for the fetus and those with severely compromised health.

(Burr)

Articles submitted by K. Burr with the above comment:

U.S. EPA: A Failure on Chemicals, Audit Finds, Milwaukee Journal Sentinel, published January 26, 2009

Environmental Emergence of Triclosan, White Paper Compiled by Emerging Contaminants Workgroup of the Santa Clara Basin Watershed Management Initiative, January 2006

Senators Rip EPA Over Lack of Knowledge on Drugs in Water, Martha Mendoza, April 29, 2008

Top 11 Compounds in U.S. Drinking Water, Rowan Hopper, New Scientist, January 12, 2009

(The submitted articles referred to above, can be viewed on the webpage for the amendment under the list of comments submitted.)

Response:

Comment noted.

89. Summary comment:

Commenter questions how to determine whether wastewater or the applications of soil amendments, fertilizers, pesticides, etc. are causing high nutrient loads if wastewater is applied to the landscape.

(RRWPC)

Response:

The State Legislature and State Water Board have already established their intent that all possible steps are undertaken to encourage recycled water use in the State. The proposed Amendment provides the Regional Water Board with a means to regulate these discharges to ensure that they are reduced to the maximum extent practicable, controlled in a manner that will be protective of water quality, and enforced upon when violations do occur.

90. Summary comment:

How would unexpected summer rain exacerbate the nutrient problem if it comes soon after a wastewater application and flows into low flowing creeks, heated by the dry hot sun?

(RRWPC)

Response:

Discharges covered under this proposed Amendment must meet the definition of low threat, which includes a provision that the discharge must meet water quality objectives. In addition, a rainfall event during the dry season won't necessarily result in a discharge of recycled water into a creek due to the low antecedent soil moisture that would likely be present in the unirrigated area adjacent to creek.

91. Summary comment:

Setbacks from creeks, streets, stormdrains and other conveyances, need to be required for wastewater irrigation; greater setbacks need to be defined for impaired creeks (600 feet by some commenters is suggested as appropriate as with AB 885) or require additional site specific analysis in a public process if irrigation or other incidental discharges are to be covered under this policy.

(Wikle, RRWPC, Kaufman, Shere, Coast Action Group, Bodwin, Atkinson, Ruppert, Nielsen, Forest Unlimited, Russian RiverKeeper)

Response:

Regional Water Board staff supports the use of setbacks as a management measure. However, setbacks are only one type of BMP that can be used to prevent the discharge of incidental runoff. It will be up to municipalities to propose a suite of BMPs in their individual management plans. Other suites of BMPs may be more effective, based on site conditions.

92. Summary comment:

Wastewater water quality monitoring needs to occur near the site and at the time of application. This would insure that high water quality will be maintained.

(Kaufman, Coast Action Group, Shere, Forest Unlimited, Reinier, CAT, Zerzan, Nielsen, Olson, Ruppert)

Response:

In order for a permittee to receive an exception for an category of low threat discharge (including incidental runoff of recycled water) a number of criteria would need to be met including that "low threat discharges" meet applicable water quality objectives (either at the point of discharge or in the receiving water depending on the nature of the objective language). The approved SWMP would also need to describe how the discharge would be prevented to the maximum extent practicable and how the remaining discharge would be minimized. Given this framework, staff is not sure what value onsite monitoring of irrigation water would provide.

93. Summary comment:

Irrigation with wastewater (which contains many unregulated toxins) should not be allowed at all on sites where pesticides, herbicides, fertilizers and other soil additives are applied.

(Wikle, RRWPC, Kaufman, Shere, Olson, Bodwin, Atkinson, Forest Unlimited, Russian RiverKeeper, CAT, Nielsen)

Response:

Irrigation with recycled water is already occurring on these sites. It should be noted that potable water can cause the same issues as recycled water when it comes to runoff carrying fertilizers, pesticides, etc to surface waters. Staff believes that via the SWMP and implementation of BMPs, there will be a reduction in the amount of runoff occurring in the Region.

94. Summary comment:

Real consequences (such as withholding wastewater irrigation from violators of irrigation rules for at least a year) should be implemented for multiple violations of wastewater irrigation rules.

(Zerzan, Ruppert, Kaufman, Forest Unlimited, Coast Action Group, Kaufman, Bodwin, Shere)

Response:

Staff concurs. This program will only work if implementation of prevention and minimization measures are diligently applied by the permittee and enforced by the Regional Water Board. Permittees who use or distributed recycled irrigation water need to have an effective enforcement program of their own to ensure that users of the irrigation water are in conformance with the Storm Water Action Plan and the Santa Rosa MS4 permit.

Incidental Runoff Comments
Summary Comments 95 to 109

95. Summary comment:

Adoption of the proposed Amendment opens the door for extensive legal arguments around the definition of "incidental". It provides more opportunities to spin the truth as to what comprises "incidental" runoff, since usually no one is present to witness the incident. It takes away the possibility of citizen lawsuits in this matter.

(RRWPC)

Response:

Comment noted. Incidental runoff is not an exact term; however, in most cases Regional Water Board staff can distinguish between incidences where discharges are intentional, frequent and/or negligent and those that are accidental and infrequent. In addition, staff expect that MS4 permittees will establish specific BMPs that may include automatic sprinkler shut-off valves or irrigation setbacks to streams to reduce the potential of runoff from irrigation activities. The establishment of a clear and concise BMP program will make it easier for Regional Water Board staff to make compliance determinations.

96. Summary comment:

What is the difference between “incidental” and “infrequent” runoff? Remove those terms from the proposed Amendment or define the terms.

(Berke, Bodwin, RRWPC)

Response:

Under the proposed Storm Water Action Plan, a low threat discharge can be intentional (planned) or incidental (unanticipated, accidental, and infrequent). Intentional discharges are expected to have a lower risk of containing pollutants or causing other water quality problems such as erosion, because they are subject to planning to prevent and minimize the discharge of pollutants and to control the rate, volume and timing of the discharge. Due to the unplanned nature of incidental discharges, this category of non-storm water discharges poses a slightly greater risk to water quality due to the potential for higher levels of pollutants and less opportunity to control the rate, volume, and timing of the discharge. The proposed Amendment requires each municipal storm water permittee to develop a program that includes BMPs, inspections and monitoring. The intent of the program is to decrease the number of incidental low threat discharge events by requiring a vigorous program of inspections, maintenance, reporting, and public outreach and education.

97. Summary comment:

Develop prevention measures for incidental runoff before approving the proposed Amendment.

(Freeman, Lundquist).

Response:

Focusing on the prevention of discharges to surface water (including incidental runoff) is the main component of the exception criteria recommended in the proposed Amendment. Evidence that discharge cannot be entirely prevented would need to be documented in the SWMP developed by the MS4 permittee and approved by the Regional Water Board Executive Officer, following a public comment period before such a discharge would be authorized.

98. Summary comment:

Commenter states that relaxation of rules governing runoff of polluted irrigation or overspray is not indicated at this time and that stronger rules protective of water quality and more aggressive enforcement is warranted.

(Burr)

Response:

Staff agrees in part with this comment. There is no intention to relax the existing regulations; rather the proposed low threat discharge control program is designed to decrease the incidents of runoff and/or overspray of irrigation water by requiring a BMP implementation program, including inspections, monitoring, reporting and an outreach and education program. Staff believes that at this time, the development of a low threat discharge program that addresses incidental runoff of recycled irrigation water by designing prevention, minimization and mitigation measures, will be more effective in

protecting water quality than an aggressive enforcement program without any exemption provided for low threat discharges. Staff believes that permittees should place their emphasis on prevention and minimization measures, outreach and education programs. A focus on enforcement would be very time consuming for the Regional Water Board and staff and would detract from other Board priorities like development of the Laguna TMDL. However it also important to reaffirm that if the conditions of the implementing permits are not complied with, staff will recommend enforcement in accordance with the State's Enforcement Policy.

99. Summary comment:

Urban runoff is a major contributor to the contamination of streams, reservoirs, and groundwater.

(PEER)

Response:

Comment noted. Part of the revision to the proposed Storm Water Action Plan will require municipal storm water MS4 permittees to implement an iterative BMP program to decrease the pollutant load in storm water runoff over time until water quality objectives are achieved. See revision to the proposed Storm Water Action Plan, Appendix B of the July 1, 2009 Staff Report

100. Summary comment:

Commenter states that the Sonoma County Water Agency is seeking to get lowered minimum flows downstream of the Hacienda Bridge and wonders how incidental runoff would affected that "project. Commenters ask that the issue be addressed for not only "normal" rain years but also dry and back to back critically dry years. It is conceivable that in very dry years only wastewater will be used for irrigation and the cumulative impacts of runoff could be devastating.

(Bell, RRWPC)

Response:

To qualify for the exception criteria all discharges, incidental and otherwise, would be required to meet applicable water quality objectives either at the point of discharge or in the surface water, depending on how the objective is framed. See response to summary comment 18 for more on water quality objectives.

Another crucial part of the recommended low threat discharge program is the documentation that all reasonable means of prevention of runoff have been implemented by the permittee. Staff envisions that the incidences of incidental discharges will decrease with the successful implementation of the low threat program.

101. Summary comment:

Staff Report, page 1-2, states that low threat discharges could exceed one-percent of the receiving stream's flow during the discharge season. In context, the full implication of this statement was unclear to the commenter. Which discharges are referred to here? Would this amount be in addition to other one-percent discharges? It is unclear

what discharge amounts are expected under the “Low Threat Action Plan”, especially the part on “incidental runoff” since we know of no one-percent limit during the summer discharge prohibition period, when most of the irrigation runoff would occur. Could this refer to pre-planned releases only? Does this mean that any individual discharge could amount to up to one-percent of the flow? Where are the cumulative impacts of numerous incidental discharges addressed?

(RRWPC)

Response:

All discharges that meet the exception criteria for low threat discharges, both planned and incidental, would be eligible for an exception to the one-percent receiving water flow limitation. In some instances, low threat discharges may result in flows greater than one-percent of the receiving water. This would likely be the case in situations when a discharge of groundwater from well development is discharged to a low flow or dry tributary.

With the adoption of a low threat discharge program, Regional Water Board staff will be in a better position to prevent multiple low threat discharges to any particular stream or tributary during the same period of time. Staff is not proposing the inclusion of a discharge amount in the Action Plans as the intent of the program is to prevent discharge to the maximum extent practicable to prevent the risk of cumulative impacts. If numerous incidental discharges of recycled runoff were occurring into a watercourse in exceedance of the one-percent flow limitation, Regional Water Board staff would pursue corrective/enforcement actions as the Storm Water Action Plan requires the discharge be managed in conformance with the MS4 permit, not cause adverse impacts on beneficial uses of water, eliminated to the maximum extent practicable and the remaining discharge as required under the SWMP. Staff believes this program will result in a decrease of low threat discharges, including incidental runoff of recycled water, as the program is implemented and outreach and education programs are established by the permittee.

102. Summary comment:

It is stated that exceptions to the one-percent prohibition might be allowed if exception criteria are met. Commenter assumes that the winter limits are being referred to, since they are not aware of any one-percent allowances from May 15 to Oct. 1. Reference is made to Item 5, Page 4-1 in the Basin Plan where it describes exception to the one-percent limit. Does this section apply to “incidental runoff”? Would discharge amounts in the discharge season be deducted from Santa Rosa’s daily limit?

The one percent limit in the Basin Plan clearly applies to the discharge season from Oct. 1 to May 15. It states that, “There shall be no discharge of waste during the period May 15 through September 30” (P. 4-2.00). Are there now some circumstances when discharges will be allowed during this prohibition period? Will the Regional Water Board then be altering the statement in the Basin Plan quoted above to state that under some circumstances a discharge would be allowed during the discharge prohibition period? If that is the intent, then it is really no longer a discharge prohibition period and current

language sets up an ambiguity that is very confusing. Commenter understands that the Regional Water Board is referring to this as “exceptions to the seasonal discharge prohibition”, and says that it is not a prohibition if exceptions are allowed and that the word “prohibition” is a very strong word and means the act of forbidding something.
(RRWPC)

Response:

Staff concurs with this comment. The intent of this proposed Amendment is to establish a regulatory permitting program that would provide exception criteria for low threat discharges of water that are in compliance with all applicable water quality objectives. The Basin Plan allows for the possibility of establishing exceptions to the point source prohibitions. The Basin Plan (Page 4-1.00) states “the Regional Water Board declares that point source waste discharges, *except as stipulated by the Thermal Plan, the Ocean Plan, and the action plans and policies contained in the Point Source Measures section of the Water Quality Control Plan ...*” are prohibited. In fact, there are already exceptions to the point source prohibitions in the Basin Plan. Thus an absolute prohibition is currently not in effect in the North Coast Region. It seems that the commenter is reading the prohibition language very rigidly in this case. The one percent limit does not apply in the summer; however, the requirements that must be met to obtain an exception to the one-percent prohibition are essentially subsumed within the requirements for the point source discharge prohibition. This means that if the discharger meets the requirements set forth in the Action Plans to obtain an exception to the point source prohibition, there would automatically be an assumption that the requirements to exceed the one-percent flow restriction would be met. Ultimately, what this means is that at all times water quality objectives and beneficial uses must be protected. Staff will, therefore, be considering the same issues whether it is providing an exception to the point source prohibition and the one-percent prohibition during the winter, or just an exception to the point source prohibition during the summer.

103. Summary comment:

It is our impression that the one-percent reference has always referred to point source discharges from sewer treatment plants and not individual sites, which are the subject of the proposed Amendment. Could it be there is a transfer of meaning here indicating that any discharge flowing into a storm drain regulated by a Storm Water NPDES permit, can also apply to summer discharges that utilize the same drainages? This appears to sidestep the original intent of this process, which was to address winter runoff flows. Does a one-percent limit now apply to storm drain discharges? How many discharge points exist? Would they each be able to exceed one-percent? Would the one-percent be based on the Hacienda Gauge, as the Treatment Plant is? If not, how would the one-percent be measured for storm drain discharges? Please clarify this issue.

Commenter finds that the meaning of Page 2 of the Staff Report is ambiguous when it states, “*The proposed Low Threat Action Plan would also allow for exceptions to the one-percent prohibition for low threat discharges if a discharge meets the Basin Plan criteria for exceptions to the one-percent prohibition....These criteria include, in part,*

that the treatment facility is reliable, the discharge is limited to rates and constituents which protect the beneficial uses of water, and that alternatives to the discharge were analyzed.” Commenter questions how one can take Basin Plan descriptions that clearly relate to treatment plants having NPDES permits and on site treatment systems and apply them to construction and other individual sites where the same controls clearly do not exist? (Commenter gives the example that treatment plants have trained, certified employees who have been extensively educated in treatment plant management and operation.)

(RRWPC)

Response:

Please see response to summary comment number 102, above. Although it has not been applied as such, the one-percent discharge prohibition arguably applies to discharges from a regulated MS4. As such, it is necessary to provide an exemption from the one-percent prohibition for all discharges from those regulated systems. Such an exemption will not be provided, however, unless the discharges are in conformance with an approved management plan. If a discharge qualifies for the exemption from the point source prohibitions, it will also be considered to meet the requirements for an exception to the one-percent prohibition, as the requirements under each are very similar. For example, the requirements for the exception to the one-percent prohibition set forth in the Basin Plan (at p. 4-2.00), include requirements that the wastewater treatment facility be reliable and that the discharge be limited to that increment of wastewater which remains after reasonable alternative for reclamation have been addressed. These requirements are met by the requirement in the proposed Storm Water Action Plan that requires the implementation of BMPs to eliminate or minimize discharges to the maximum extent practicable.

104. Summary comment:

Are Antidegradation requirements going to be fulfilled through the MS4 permit or the general permit?

(RRWPC)

Response:

The Antidegradation requirements will be fulfilled under both the General Low Threat Discharge Permit and the revised Santa Rosa MS4 permit as well as through the proposed Amendment. Please refer to the individual antidegradation sections of the reports for each project for more specific information. The Antidegradation section for the proposed Amendment can be found in Section IV (pages 22 to 25) of the draft Staff Report. Please also see response to summary comment 106, below.

105. Summary comment:

Define a maximum numeric amount (gallon) for incidental runoff and establish incidental runoff limits.

(Kaufman, RRWPC, Zerzan, Shere, Ruppert, Forest Unlimited, Wikle, Coast Action Group)

Response:

Staff does not concur that a gallon limit needs to be applied. The focus of the low threat discharge program is on prevention first, minimization as a second step which would include implementation of a BMP program, and mitigation as a last step in the event the “incidental” discharge did result in adverse impacts to the beneficial uses of water.

106. Summary comment:

What is the relationship between the Basin Plan, the General Permit, the MS4 Permit, Title 22, and Antidegradation Policy in regard to the issue of incidental runoff?
(RRWPC)

Response:

The Basin Plan sets forth the beneficial uses and the water quality objectives that must be met to ensure the protection of those beneficial uses. In addition, it also includes “Implementation Plans,” including the Waste Discharge Prohibition that prohibits point source waste discharges year-round in all north coast waterways, except for the Mad, Russian and Eel Rivers, which allow discharges from May 15th through September 30th, when the waste discharge flow is less than one percent of the receiving water’s flow. Although historical documents indicate that this prohibition was meant to apply to discharges from wastewater treatment facilities, it arguably applies to all point source discharges, including non-stormwater discharges from the MS4, such as incidental runoff and discharges that would require coverage under the general low threat permit.

The Staff Report for the proposed Amendment considered issues of antidegradation that are associated with exempting low threat discharges, including incidental runoff, from the point source prohibitions. That discussion noted that these discharges are currently already occurring and that the proposed Amendment would provide a regulatory mechanism to control such discharges. By having such a regulatory mechanism and tightening control over low threat discharges, there is a strong argument that the Regional Water Board would decrease the number of low threat discharges and the pollutants contained in those remaining discharges by requiring the consideration of alternatives to surface water discharges and the implementation of BMPs, including those to prevent or avoid any discharges. The Staff Report did note, however, that even if it could be argued that such discharges may individually or cumulatively cause degradation, such discharges were consistent with the state and federal anti-degradation policies because they are:

- 1) necessary to accommodate important economic and social development and are consistent with the maximum benefit to the people of the state;
- 2) able to meet water quality objectives, and, therefore, will not unreasonably affect present and anticipated beneficial uses of such water or cause pollution or nuisance; and
- 3) the highest water quality consistent with the maximum benefit to the people of the state will be maintained by requiring compliance with the highest statutory and regulatory requirements, including consideration of alternatives to surface water discharges and the implementation of best management practices.

In terms of incidental runoff, this includes proper design, maintenance and upkeep of irrigation facilities to avoid incidental runoff events, and procedures in place for addressing incidental runoff events to avoid the discharge from entering surface waters.

If the proposed Amendment is approved, it will exempt from the Basin Plan waste discharge and one-percent prohibitions, discharges that meet the criteria to be compliance with the implementing NPDES permit and the proposed General Low Threat Discharge Permit. The proposed General Low Threat Permit and the proposed Santa Rosa MS4 permit are two regional options for NPDES coverage. State Board permitting options to authorize low threat discharges include the statewide Caltrans MS4 permit, permit for construction sites over one acre and permits for industrial activities. Incidental runoff, however, would only be covered under the MS4 permits and not the General Low Threat Permit, which exclusively addresses “planned discharges,” such as dewatering of construction sites. To be covered under an MS4 permit, the permittees will have to provide to the Executive Officer a SWMP that describes how certain categories of non-stormwater discharges will be addressed, specifically how they will be eliminated or reduced with the implementation of specific BMPs. Once approved by the Executive Officer, the non-storm water discharges in the SWMP would not be in violation of the MS4 permit or point source prohibitions, as long as the MS4 permittee implements the proposed BMPs as set forth in the SWMP.

107. Summary comment:

Currently, the Clean Water Act, the Porter-Cologne Act, and the Antidegradation Policy provide the legal authority to stop over-irrigation from happening without a basin plan amendment. The proposed Amendment is not needed to enforce clean water law, but rather to eliminate the possibility of citizen lawsuits when excessive irrigation runoff occurs.

(RRWPC)

Response:

Staff disagrees with this comment. The purpose of the proposed Amendment is not to eliminate the possibility of citizen lawsuits against dischargers. The purpose of the proposed Amendment, as stated in the Staff Report dated November 20, 2008, is to address the conflict between conditions in existing regional and statewide point source discharge permits that allow year-round low threat discharges and the existing point source prohibitions in the Basin Plan which do not. Citizen lawsuits in some cases could still occur, but would be extremely unlikely, due to the many requirements that will be implemented to assure protection of water quality under the proposed Amendment and revised Santa Rosa MS4 permit. Two of the alternatives to the proposed Amendment that staff evaluated were stricter enforcement of the point source and one-percent prohibitions instead of providing any type of exception and the “no project alternative,” which consists of continuing to have the Basin Plan prohibitions in place, but not are occurring but making this an enforcement priority. Staff determined that these were not the “preferred” alternatives. The first approach was too intensive of staff resources, was a reactive rather than proactive approach, and was not consistent with existing state permits and policy. The second approach was also rejected, in part,

because the Regional Water Board would lose the opportunity to control such discharges by requiring permits and the implementation of preventive and mitigation measures to control flow and pollutant levels. See draft Staff Report, Appendix D, pages 10- 17 for complete alternatives analysis.

108. Summary comment:

The Regional Water Board has newly proposed Storm Water Plan/NPDES language (MS4 Permit) for the City of Santa Rosa and Sonoma County. Approval and implementation of this permit (with updated BMPs) should occur prior to allowing expansion of use of recycled wastewater using any low threat discharge criteria as proposed in this Amendment.

(Coast Action Group)

Response:

Comment noted. Please see response to summary comments 9 and 10, above for more on the approval process for BMPs.

109. Summary Comment:

Incidental runoff has the unintended consequence of allowing lawn chemicals to run off into waterways. Commenter wonders if this was during the formulation of the proposed Amendment. Commenter recommends prohibiting wastewater irrigation on land that has been treated with pesticides. Commenter also questions how chemicals in reused wastewater and chemical applications on lawns interact with one another.

(Article submitted with this comment: Winter, 2008 issue of "The Drift", published by Californians for Alternative to Toxics (page 4).

See Low Threat Discharge Amendment website for link to full article)

(RRWPC)

Response:

Staff appreciates the submitted article and understands the general issue being raised. The intent of the proposed Amendment is to reduce incidental runoff and to require improved management of incidental runoff by requiring MS4 permittees to develop a management program (or SWMP) that includes BMPs. Regional Water Board staff expects that the management programs will identify the potential for runoff of chemicals applied to lawns and identify BMPs designed to address this issue. The management programs will be subject to public comment and Regional Water Board Executive Officer approval.

Laguna de Santa Rosa
Summary Comments 110 to 112

110. Summary comment:

The Laguna is listed as impaired for nitrogen, phosphorus, dissolved oxygen, temperature, and sediment. Runoff may cause nutrient rich waters to enter the Laguna

and further impair its water quality. This in turn can exacerbate Ludwigia growth, the exotic plant causing havoc in the Laguna area and a vector for West Nile Virus (Forest Unlimited, Shane, RRWPC, Atkinson).

Response:

Comment noted.

111. Summary comment:

The cumulative impacts of numerous runoff events can be devastating to the Laguna waterways and downstream beneficial recreation use. The proposed Amendment should not be authorized until nutrient loads in the Laguna are identified as well as an analysis of the impacts of irrigation runoff.

(RRWPC, Emery)

Response:

The proposed Amendment includes additional rigorous requirements (or exception criteria) to ensure discharges associated with the proposed Amendment do not result in adverse impacts to the beneficial uses of water. One of the additional requirements includes implementation of a management program to reduce runoff to storm drains and to reduce the pollutant load in the runoff that does discharge to the storm drain. The program will result in regulating activities which were not addressed previously through the MS4 permitting program. If the Laguna TMDL identified specific pollutant sources and assigned load allocations, the applicable permits (e.g. MS4 permit) would need to be revised to be compliant with the adopted TMDL.

112. Summary comment:

Commenter is concerned about the nutrient pollution causing the Ludwigia problem in the Laguna. Will Rohnert Park be held accountable not only for irrigation runoff with wastewater, but also water if this amendment goes through? What will be done to control that? What is with the status of the TMDL for nutrients in the Laguna? How will this issue be addressed through the TMDL process (i.e., justifying "incidental" runoff in light of this dire problem?).

The commenter wonders why there was no mention of this document in the Staff Report. The document was mostly paid for by the City of Santa Rosa as part of a legal settlement from about irrigation runoff in the Laguna. No where in the Staff Report for the proposed Amendment does it say that current water quality standards controlling discharge is either protective of beneficial uses or water quality.

First Document submitted with this comment:

Final Ludwigia Report published by the Laguna Foundation in 2007.

Second Document submitted with this comment:

"The Altered Laguna: A Conceptual Model for Watershed Stewardship" and was authored by the Laguna Foundation, Tetra Tech, Inc. and Philip Williams & Associates, Ltd.

Photo submitted: Stony Point Road bridge just south of Rohnert Park Expressway, in 2008. Ludwigia fills about 90% of the channel.

The study and pictures referred to above can be viewed on the Regional Water Board web page for the Low Threat Discharge Amendment.
(RRWPC)

Response:

The Laguna TMDL will address nutrients on a watershed scale. The conceptual model in the reference report has formed the basis for the TMDL analysis. Rohnert Park and other regulated municipalities will be held accountable for irrigation runoff. The proposed Amendment is intended to bring the Basin Plan into alignment with the State Recycled Water Policy and establish clear controls for incidental runoff. See also response to comment 111.

Chemicals of Concern (CEC) Comments
Summary Comments 113 through 123

113. Summary comment:

Commenter is concerned that unregulated chemicals will be released during rain conditions.

(Smith)

Response:

Comment noted. The required implementation of storm water BMPs will assist in protecting waters during rain conditions from all nature of pollutants.

114. Summary comment:

Treated wastewater, “recycled” water or “reclaimed” water, contain potentially harmful contaminants. This material is more accurately known as partially treated sewage because of the impressive number of known and suspected pollutants contained in it. Sewage treatment plants that employ modern cleaning technologies, e.g. reverse osmosis, micro and nano filtration, prolonged UV exposure etc., can remove most pollutants from water, some plants even remove volatiles. But the overwhelming bulk of effluent considered by the document to be “incidental” runoff would supply an unfair burden of dangerous contaminants to the Russian River and/or its tributaries.

(OWL, RRWPC)

Response:

Recycled water is and has been utilized in the State for many years for irrigation and other uses. In addition, the issue of chemicals of concern (CECs) goes beyond recycled water, as they also may be present in non-recycled water. The State Water Board has recently adopted a Recycled Water Policy, which will promote the use of recycled water for landscape irrigation. This proposed Amendment will make the Basin

Plan consistent with that policy. The issue of whether recycled water will be used for landscape irrigation in California has, therefore, already been determined by the State Board, and the Regional Water Board must be consistent with that policy.

To date, Regional Water Board staff is not aware of any significant problems resulting from CECs in recycled water utilized for landscape irrigation. However, Regional Water Board staff recognizes that the current information regarding CECs is incomplete. As the comment letter recognizes, CECs are not an issue unique to recycled water, and have been found in a number of waterways at low levels, and currently are not typically removed during the treatment of wastewater. There is still much that is unknown regarding CECs and currently we do not have sufficient information to understand completely the effects of emerging contaminants on human health and the environment.

As mentioned earlier, the State Water Board has implemented a research program to address these issues, as part of the Water Recycled Policy adopted in February 2009. A scientific advisory³ panel has been established. The advisory panel is charged with analyzing the CEC issues, to ensure that the best available science would be incorporated into the Water Boards' approach to regulating CECs. The advisory panel will evaluate issues associated with CECs in order to assess any potential risks to human health and the environment. The panel has a significant mandate and a large scope that does not preclude it from making recommendations regarding source controls to manage CECs identified as potential risks to human health and the environment. The advisory panel is not constrained and may recommend such measures as source controls to keep CECs out of wastewater, if appropriate. Once the advisory panel makes its final recommendations, the State and Regional Water Boards will be looking to see if any revisions to the Board's policies are in need of revision.

Although permits for wastewater treatment plants do not currently contain effluent limitations for these chemicals, permits adopted by the North Coast Regional Water Board do contain provisions that require preliminary efforts to address these pollutants, including source control requirements. Source control efforts by many dischargers have included public outreach and education efforts to encourage the public not to discharge these types of pollutants into the sewer system and to develop drug take back programs. Finally, all surface water discharge permits also contain requirements for acute and chronic toxicity tests to assess effects of treated wastewater on aquatic organisms. These tests by their nature assess the effects of whatever constituents are in the wastewater.

115. Summary comment:

Commenter is concerned about potential to discharge pharmaceuticals into water through irrigation with wastewater, a known source of drug residues. Discharge of toxic chemicals by the pathways affected by the proposed amendment are not completely proven largely due to the lack of adequate monitoring and scientific study. Enough

³ More information on the scientific advisory panel tasked by the State Water Board with addressing CECs can be found at <http://www.sccwrp.org/view.php?id=574>

evidence exists that the Regional Board needs to keep these impacts in mind when writing or rewriting the Basin Plan and other regulations. Commenter's concern centers around the contribution of pollutants to the tremendous and accelerating loss of fish in our region, their impacts to recreational users of our rivers and streams, their link to the decline of coastal estuaries and the organisms dependent on them and, ultimately, the further degradation to the water quality of our region by toxic chemicals that could arise from this ill-thought out amendment.

(CAT)

Response:

See response to comment number, 114 above.

116. Summary Comment:

Several commenters have substantial concerns about the proposed Amendment's reliance on wastewater to conserve scarce water resources because they could contain any number of unidentified pollutants such as pharmaceutical and personal care products and pollutants such as nutrients and salts that could cause problems, for people as well as wildlife and plants, especially in low stream flows. Emerging contaminants are not well understood, and their potential cumulative effects are unknown. Research into their effects is ongoing, and studies have shown their existence in our waters.

(Kaufman, Zerzan, Wikle, Berke, Kaufman, Forest Unlimited, NCRA, Pistey, Bodwin, RRWPC, Emery, Hernday, Vellutini, Charlton, OWL, Burr, Sklenicka)

Response:

See response to comment number 114, above.

117. Summary Comment:

Commenter is concerned that DNA coded for antibiotic resistance has been found in wastewater effluent and in fresh water streams. "There is little question now that inadequate sewage treatment has played a role in weakening the efficacy of antibiotic drugs. The alarming rise of multi-drug resistant (MDR) MRSA, *Clostridium difficile* and MDR Salmonella are now considered to be exacerbated by MDR genetic material contained in wastewater." These antibiotic resistant pathogens that can pass through a treatment system have not yet been addressed by the amendment.

(OWL, Forest Unlimited, Zerzan)

Response:

Regional Water Board staff will inquire with the State Water Board as to the possibility of the scientific advisory panel (developed under the Recycled Water Policy and discussed above under comment number 114) evaluating the risk that recycled water may contain pathogens and genes that carry antibiotic resistance as part of their assignment.

118. Summary Comment:

How does this policy protect threatened and endangered species in light of unknown and unregulated chemicals in the wastewater?

Article submitted with this comment: G. Mace of UK Institute of Zoology, Robert Watson from the World Bank, and Peter Raven of the Missouri Botanical Garden state, in the publication, "Nature", Aug. 3, 2008:

See Low Threat Discharge Amendment website for full article)
(RRWPC)

Response:

The Basin Plan identifies rare and endangered species as a specific beneficial use of waters of the region, and Regional Water Board staff regularly consults with representatives of the state and federal wildlife agencies responsible for protection of rare, threatened and endangered species.

119. Summary Comment:

Endocrine disruptors can be found in many chemicals and these can cause the feminization of male reproductive organs in a variety of species. Incidents of cancer and autism are rising. The commenters' believe that the State should test for endocrine disruptors and hormones in wastewater and that the policy should be suspended in areas testing positive for these constituents.

First article submitted with this comment: December, 2008: Chemtrust: "*Effects of Pollutants on the Reproductive Health of Male Vertebrate Wildlife: Males Under Threat*" (page 4).

Second article submitted with this comment: December, 2008: March, 2008: AP Study on drugs in water supplies: (AP story by Jeff Donn, Martha Mendoza, and Justin Pritchard).

See Low Threat Discharge Amendment website for link to full articles.)
(Forest Unlimited, RRWPC, Pistey, Velutini, Olson, Wikle)

Response:

See response to comment 114. The scientific advisory panel, mentioned above, is charged with analyzing the CEC issues, to ensure that the best available science would be incorporated into the State and Regional Water Boards' approach to regulating and monitoring for CECs. However, until the panel releases their recommendations in the next few months, Regional Water Board staff will set the requirements for the permitted discharges. Note that this will include requirements that the permittee perform water quality monitoring. After the advisory panel makes its recommendations, staff will look at what has been recommended and the CEC monitoring will likely be made to be consistent with the panel's recommendations.

120. Summary Comment:

How might irrigated lands be affected by global warming? Would any chemical changes take place that could impact affected species?

Article submitted with this comment: August 3, 2008: “National Survey Reveals Biodiversity Crisis – Scientific Experts Believe We Are in Midst of Fastest Mass Extinction in Earth’s History”: “The American Museum of Natural History and Louis Harris and Associates, Inc., in conjunction with the opening of the Museum’s new Hall of Biodiversity, developed a nationwide survey titled Biodiversity in the Next Millennium.”

See Low Threat Discharge Amendment website for link to full article.
(RRWPC)

Response:

Any response to this question would be speculative. At this time, staff are not aware of any information that would lead us to believe that chemical changes would occur in recycled water as a result of global warming.

121. Summary Comment:

The big issue is whether endocrine disruptors are ending up in the sediments and being reintroduced into the water column and whether these pollutants are situated in the estuary and ocean as well.

Article submitted with this comment: Feb. 17, 2008: LA Times: “Study finds human medicines altering marine biology”, by Kenneth R. Weiss.

See Low Threat Amendment website for link to full article. (RRWPC)

Response:

See response to comment number 114, above.

California Environmental Quality Act Comments
Summary Comments 122 to 135

122. Summary comment:

The Environmental Analysis does not explain how the Board and its staff will ensure compliance with each of the myriad mitigation measures and requirements included in the Draft Report and Environmental Analysis. Commenter questions how review of unplanned discharges (“non-storm water flows) to ensure they are not caused by negligence. How will the Board ensure compliance with all of the relevant non-storm water discharge requirements will be met by each discharger? The amount of time necessary to individually review each permit to ensure compliance with all of the mitigation measures and requirements appears to undercut the putative cost advantage that the Recommended Alternative had over the other proposed Alternatives.

(NCRA, RRWPC)

Response:

The Regional Water Board will ensure compliance with the Basin Plan similarly to the way it ensures compliance of other permits – through self monitoring and reporting by the discharger and inspections by the Regional Water Board. Regional Water Board staff will also conduct periodic inspections to verify compliance with permit conditions. This approach is consistent with other Regional Water Board regulatory programs. Staff does not envision that extensive staff time will be required to get permittees enrolled in the program after submittal of a complete application package. As both the dischargers and Regional Water Board staff become more familiar with the program, the time needed to both submit a complete application package and subsequent enrollment by Regional Water Board staff should decrease.

In terms of how the Regional Water Board will be able to determine whether or not a discharge of incidental runoff is the result of negligence, or poor design or maintenance, the Regional Water Board will be able to review whether or not the discharger was implementing the approved management plan. The management plan must set out specific suite of BMPs that will be implemented by the permittee to avoid, minimize and mitigate the impacts of incidental runoff. To demonstrate that an incidental runoff event is accidental, and not the result of negligence, poor design, or maintenance, the discharger would need to show that it implemented the suite of BMPs approved in the management plan. A record of maintenance inspections and follow-up actions will support the permittee's position that runoff was not due to negligent maintenance, poor design of the facilities, or failure to oversee the activity that resulted in the runoff.

123. Summary comment:

The commenter states that the determination that Land Use and Planning Impact 9(b) will be less than significant is also not properly explained. Currently, point source prohibitions prohibit all discharges for part of the year, and drastically limit discharge the remainder of the year. Appendix C states that the original focus of the point source prohibitions was on discharges from municipal wastewater treatment facilities. Commenter notes that page 8 of the Staff Report states that "the point source and one-percent prohibitions are intended to protect water quality and beneficial uses of the waterbodies in the North Coast Region." Pollution has a larger impact on rivers and streams during the summer, when flows are low. It is very difficult to see how the proposed Amendment would not conflict with any applicable regulation adopted for the purpose of avoiding or mitigating an environmental effect given that, as discussed above, there is no guarantee that water quality will actually be protected. The commenter requests expanding the analysis of why the proposed Amendment will not conflict with the point-source prohibitions currently in place.

(NCRA, RRWPC)

Response:

The purpose of the proposed Amendment is to provide an exemption to the point source prohibition for discharges that are considered low threat in order to address the conflict that currently exists between conditions in existing regional and statewide point source

discharge permits that allow year-round low threat discharges, and the existing point source prohibitions, which do not. The net result of this change is anticipated to be more protective of water quality. Discharges that could not be permitted because they were inconsistent with the prohibitions will now be able to be regulated, requiring the discharger to consider options to discharge to surface waters, characterize the water to ensure it meets water quality standards, and to implement BMPs. This is consistent with the Basin Plan, whose main purpose is to protect water quality and beneficial uses. It is also consistent with the point source prohibition was intended to apply to municipal wastewater discharges. (See Appendix C for historical background of point source prohibitions.) Prohibiting the discharge of low threat potable or recycled water, such as that associated with reservoir and pipeline maintenance, construction dewatering or incidental runoff from landscape irrigation, was not the intention of the original prohibition. As these types of discharges are low threat when they are covered by a NPDES permit, meet water quality objectives, and BMPs are put in place to protect water quality standards, they are not inconsistent with the point source prohibition, which was intended to protect the water quality and beneficial uses from discharges from municipal wastewater treatment facilities, especially during low flow periods during the summer. As was noted at the time of adoption of the Interim Plan for the North Coast Basin I-B, “the terms of the point source prohibitions are currently being met by all or a majority of the potential dischargers or can be met by all with methods that are available under the current ‘state of the art’”. There was no intention of eliminating all discharges during the point source discharge period.

124. Summary comment:

Under CEQA, the proposed Amendment must be consistent with the Antidegradation language in the Basin Plan. Consistency analysis must be considered in the process of mitigation of potential impacts, providing a complete and full project description for legal consistency analysis.

(Coast Action Group)

Response:

Comment noted. The antidegradation analysis is consistent with all legal requirements.

125. Summary comment:

Given that water quality standards currently do not exist for many emerging contaminants, it is impossible to say with confidence that simply ensuring that wastewater meets water quality standards will prevent adverse impacts on human and ecological health. Unfortunately, the CEQA analysis seemed to be predicated on the faulty assumption that preventing such adverse impacts is possible.

(NCRA, RRWPC)

Response: Recycled water is being and has been utilized in the State for many years for irrigation and other uses. To date, Regional Water Board staff is not aware of any significant problems resulting from emerging contaminants in recycled water utilized for landscape irrigation. However, Regional Water Board staff recognizes that the current information regarding emerging contaminants is incomplete. As the comment letter

recognizes, emerging contaminants are not an issue unique to recycled water, and have been found in a number of waterways at low levels, and currently are not typically removed during the treatment of wastewater. There is still much that is unknown regarding emerging contaminants and currently we do not have sufficient information to understand completely the effects of emerging contaminants on human health and the environment. The State Water Board has implemented a research program to address these issues, as part of the Water Recycled Policy adopted in February 2009. A scientific advisory panel has been established, and is charged with analyzing the issues surrounding emerging contaminants. Under CEQA, it is not necessary to address effects that are speculative and uncertain. CEQA Guidelines section 15145 allows a lead agency to find, after thorough investigation, that a particular impact is too speculative for evaluation.

126. Summary comment:

There is no way for the public to judge if the environmental analysis is adequate because we don't yet know how beneficial uses will be protected.

(Zerzan, Forest Unlimited).

Response:

The regional water boards are statutorily restricted from directing the method and manner of compliance with their requirements, allowing the discharger to comply with the order in any lawful manner. (Water Code § 13360.) The proposed Amendment, therefore, only sets out the requirements that must be met. Each discharger will have to set out the manner in which it proposes to comply (i.e. the suite of BMPs that it proposes to implement to comply with the requirements of the Basin Plan). The proposed BMP plans will undergo a 30-day public comment period. If no significant water quality related comments are received, the Executive Officer will consider and in most cases approve the permit. If it is a controversial project, staff would take it to the Regional Water Board for consideration. This approach of having the discharger propose the suite of BMPs for their specific project is also more protective of water quality because it allows the consideration of appropriate BMPs based on site-specific conditions and the risk to water quality associated with different types of discharge (e.g. planned versus unplanned discharges, recycled water versus groundwater discharges). Therefore, this information is most appropriately included as part of the permit approval process. Examples of BMPs specific to different types of discharges were provided in the CEQA analysis and have been included in the main body of the revised Staff Report for the reader's convenience.

127. Summary comment:

The commenter urges that the proposed Amendment expressly allow for public participation during development and approval of the yet to be defined specific BMPs as they will be the most important part of the proposed Amendment.

(Russian RiverKeeper)

Response:

The proposed Low Threat General Permit includes a requirement for a 30-day public comment period for all requests for enrollment. When a MS4 discharger requests an exception to the prohibitions for certain low threat discharges and submits the required SWMP describing the specific BMP program, the package will be made available for public review and comment. If no significant water quality related comments are received, the Executive Officer will, in most cases, approve the permit. If it is a controversial project, staff would take it to the Regional Water Board for consideration.

128. Summary comment:

We request that the Regional Board further define how impacts from these potential discharges will present only a “low threat” and to disclose the scientific evidence on which this determination is based.

(CAT)

Response:

To be considered “low threat” all discharges will be required to meet water quality objectives and not cause an adverse effect on the beneficial uses of receiving waters or nuisance conditions. In addition, the discharges will generally be short-term or periodic in nature and the volume, rate, and the pollutant load of the discharge must be minimized to the greatest extent possible by the use of BMPs and other disposal alternatives.

The threshold of significance by which the Regional Water Board generally considers an impact to be significant is whether it meets water quality objectives. When water quality objectives are met, beneficial uses are presumed to be protected. Here, by limiting discharges under this proposed Amendment to those that meet the requirements set forth in the proposed Amendment, including meeting water quality objectives, the Regional Water Board can conclude, based upon substantial evidence, that such dischargers will not have anything more than a potentially low threat to surface waters.

129. Summary comment:

It is plainly unreasonable to equate maintenance of water quality with maintenance of water quality *standards*, when so many of the components of the discharges in question are not even subject to *any* water quality standards. Moreover, the biological assessments BMP does not proactively protect against adverse effects on species, rather, it would only address such effects *after* they had already occurred.

(NCRA, RRWPC)

Response:

Although there currently are no water quality objectives for specific emerging contaminants, there is a water quality objective for toxicity in the Basin Plan that requires all waters be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal or aquatic life. This objective protects aquatic resources from any potential adverse

impacts from known or unknown contaminants that may have a toxic effect on biological resources. Therefore, even though there may not be specific criteria for emerging contaminants, by enforcement of its toxicity objective, the Regional Water Board has an ability to protect water quality from known and unknown contaminants.

130. Summary comment:

The commenter claims that the determination in Hazards and Hazardous Materials Impact 7(b) that the potential impact is less than significant is not supported by the evidence because it contains a number of references to “as-yet-defined” mitigation measures. Commenter would like clarification of specific measures to be included in the Regional Water Board’s General Low Threat Discharge Permit, if measures in that permit are to be relied on as a mitigation strategy.

(NCRA, RRWPC)

Response:

The proposed Amendment recommends that for a discharge to be considered low threat and be exempted from the Basin Plan seasonal and year-round point source discharge prohibition and discharge flow limitations, it must meet all water quality objectives. It will be up to the potential discharger to prove that the proposed discharge meets that requirement and the rest of the criteria in the proposed Amendment. No additional mitigation is required to protect water quality from the discharge of contaminated groundwater.

To ensure that hazardous materials are not inadvertently discharged with any permitted low threat discharges, section VII.C.6.b.xiii of the proposed low threat general permit, which will be heard at the same board meeting as the proposed Amendment, has a general mitigation measure that addresses hazardous materials. In addition, the BMP plan that must be submitted with each enrollment under the general low threat permit needs to identify how hazardous materials will be prevented from being discharged with the low threat discharge. Such BMPs could include the installation of monitoring wells between the contaminated site and the point from which groundwater will be pumped or additional monitoring of the discharge to ensure that it does not contain any contaminants. For the purposes of the proposed Amendment, however, it is sufficient for protection of the public and the environment from the release of hazardous materials into the environment associated with implementation of the proposed Amendment to require that all discharges be required to meet water quality objectives.

131. Summary comment:

Commenter believes that it is impossible to demonstrate discharges of emerging contaminants will not have adverse impacts on water quality or biological resources because not enough is known about them and what we do know suggests they do cause adverse effects. Maintenance of water quality is not the same as maintenance of water quality standards because so many of the components of the discharges in question are not subject to water quality standards, and BMPs do not proactively protect against adverse effects on species, but only after the effects occur. Commenter would like explanation for the conclusion that it is possible to mitigate the impact of known and

unknown chemicals on biological resources when some of the impacts are not yet known to science, and evidence is clear that these chemicals will have harmful effect on biological resources.

(NCRA, RRWPC)

Response:

The Regional Water Board has identified the reasonably foreseeable direct and indirect impacts of the proposed Amendment, and the reasonably foreseeable means that the Amendment will be complied with. It is not required, however, to address effects that are speculative and uncertain, such as the effect of CECs on aquatic species. CEQA Guidelines section 15145 allows a lead agency to find, after thorough investigation, that a particular impact is too speculative for evaluation. Here, the impacts of emerging contaminants on biological resources are too speculative. The state of knowledge regarding emerging contaminants is incomplete and to address this, the State Water Board has put together an expert advisory panel to analyze issues related to emerging contaminants to ensure that the best available science is incorporated into the Water Boards' approach to regulating emerging contaminants. At this point, there is too much that is not known about the effects of these constituents on humans and the environment, and furthermore on sampling, analysis methods, and assessment levels, all of which are precursors to incorporating specific limits in permits, beyond the general toxicity testing already required. As more information is developed, however, the State Water Board will likely take the lead in developing any regulations necessary to protect human health and the environment.

There has been widespread use of recycled water for landscape irrigation within the North Coast Region without any known adverse effects. Under the low threat discharge amendment, this would continue, but with improved management practices and controls. Although there currently are no water quality objectives for specific emerging contaminants, there is a water quality objective for toxicity in the Basin Plan that requires all waters be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal or aquatic life. This objective will help protect aquatic resources from any potential adverse impacts from known or unknown contaminants that may have a toxic effect on biological resources.

Currently, emergent contaminants may make their way to surface water or ground water via the discharge of treated wastewater to surface waters and to land. In addition, a number of municipalities within the North Coast Region currently provide recycled water for landscape irrigation. The current baseline for CEQA purposes, therefore, already includes some level of exposure of aquatic species to emerging contaminants. Because the proposed project provides for greater scrutiny and control over low threat discharges, including the use of recycled water for landscape, it is likely that there will be less incidental discharges associated with recycled water irrigation, and less recycled water in surface waters. Even if the effects of emerging contaminants are not known, the permitting process will provide criteria that will protect surface waters by providing greater oversight over the use of landscape irrigation water generally.

132. Summary comment:

The commenter disagrees that potential impacts identified in Water Quality Impacts sections 8(a), (e) and (f) are less than significant. In regards to section 8(a), related to whether the project would violate any water quality standards or waste discharge requirements, the Commenter claims there is no discussion of why the discharge of emerging contaminants is not a violation of the Porter-Cologne Water Quality Control Act, especially given that almost all water contains some small amount of pollutants.
(NCRA, RRWPC)

Response:

Staff did not include a discussion of why the discharge of emerging contaminants is not in violation of the Porter-Cologne Water Quality Act because, as discussed in the response above, such impacts are too speculative. Section 8(a) specifically questions whether the project would violate any water quality standards or waste discharge requirements, and as described in the discussion within the Staff Report and the CEQA checklist, the projects would not violate water quality standards or waste discharge requirements.

Even though there may be small amounts of pollutants in all waterbodies, the Porter-Cologne Water Quality Act does not, unlike the Clean Water Act, require a permit for all discharges of waste. It is only required for discharges of waste that could affect the quality of the waters of the State. (Water Code section 13260.) In comparison, section 301 of the Clean Water Act finds the discharge of any pollutant by any person to be unlawful, unless in compliance with specific requirements. The Porter-Cologne Water Quality Act requires those who may discharge waste that could affect water quality to file a report of waste discharge with the appropriate regional water board.

133. Summary comment:

In regards to section 8(e), the Commenter disagrees that the proposed Amendment will not provide substantial additional sources of polluted runoff because 1) no one knows how polluted the wastewater is because we currently know so little about the emerging contaminants in it; and 2) there has been no quantification of existing sources of unauthorized discharges or future low impact discharges, so it is impossible to say whether additional runoff will occur. In regards to 8(f), the commenter contends that the proposed Amendment contemplates increased use of wastewater and that this increased discharge of partially-treated wastewater containing unidentified emerging compounds will degrade water quality.
(NCRA, RRWPC)

Response:

As described in the previous responses, potential significant impacts to water quality from emerging contaminants are too speculative for the Regional Water Board to consider. In addition, although there has been little effort to characterize the emerging contaminants in wastewater, we have reason to believe that the emerging contaminants within the wastewater have not changed, and will likely not substantially change from

what is currently within wastewater. The current baseline of the contaminants within the wastewater is, therefore, not significantly changing and there will not be substantial additional sources beyond what have consistently been in wastewater.

Similarly, although it has been difficult to quantify the existing unauthorized sources or future sources of low impact discharges, there is no reason to believe that the approval of the proposed Amendment will have any substantial effect on the number of sources. The driving forces behind these discharges are often vital community development activities, such as construction and water supply development and maintenance, which are triggered by economics and growth within the communities. Providing clear regulatory guidance for these discharges will not create additional discharges; the incentive for discharging comes from within the communities themselves.

The Regional Water Board staff disagrees that the proposed Amendment will provide incentive for additional water recycling projects. As described in the paragraph responding to the commenter's general comments, the State Water Board has already cleared barriers to the use of recycled water for irrigating landscape, and has mandated Regional Water Boards to approve permits for recycled water use where the proposed water recycler has met certain requirements. What the proposed Amendment provides is a manner to regulate these low threat discharges, which was missing before because of the inconsistency of these discharges with the Basin Plan point source prohibition and flow limitations. By regulating these low threat discharges, the Regional Water Board can improve water quality by requiring potential dischargers to consider alternatives to the discharge (thus potentially reducing the number and volume of discharges that occur), by requiring BMPs be in place prior to the discharge, and by having overall greater knowledge of and control over such discharges. Because these discharges will be required to comply with all water quality objectives, in addition to the other requirements set forth in the proposed revision to the Storm Water Action Plan (Appendix B of the Staff Report), it would not have a substantial effect on water quality even if there were additional low threat discharges because such discharges would be managed so as to provide greater protection to water quality.

134. Summary comment:

The mandatory findings of significance are unsupported. The first, general, finding is insufficient because 1) no attempt is made to quantify existing unauthorized discharges or to predict the volume of future discharges, so the Board's reliance on the existence of these unpermitted discharges is misplaced and 2) it is impossible to be certain that the discharge of the unknown chemicals present in the partially-treated wastewater will not have an adverse effect on the environment, so there is no guarantee the discharges are "low impact."

(NCRA, RRWPC)

Response:

The Regional Water Board staff did not need to quantify existing unauthorized discharges or predict the volume of future discharges in order to be able to conclude that the project, as mitigated, would not have a significant effect on any of the resources

identified in the first mandatory finding of significance. All of the discharges will have to meet water quality objectives before they can be eligible for an exception from the Basin Plan point source discharge prohibition and flow limitation and the discharge cannot adversely affect beneficial uses of the receiving water or cause a condition of nuisance. None of these discharges will, therefore, have a significant impact on the environment, and it is not necessary to conclude that some of the discharges will no longer occur illegally in order to conclude such. The baseline, for purposes of CEQA, includes some discharges that may be eligible to be considered low threat occurring without oversight, and possibly without the use of BMPs. However, elimination of an equivalent amount of unauthorized discharges is not necessary to conclude that the low threat discharges that will be permitted under the proposed Low Threat Discharge Action Plan language will have less than a significant impact on the environment. Each discharge individually will be required to meet water quality objectives. Similarly, setting out the requirements for permitting such discharges and enforcing against those that do not seek permit coverage and an exception from the Basin Plan, will eliminate at least some of the illegal discharges currently occurring.

In addition, it is not necessary to quantify existing non-storm water discharges that reach receiving waters through the municipal storm water system and compare them to a future prediction of future discharges in order to show that the proposed Amendment will not have a significant effect on those resources identified in the first mandatory finding of significance. As described below in the answer to the secondary mandatory finding of significance, the Regional Water Board staff does not believe that the proposed project will have an effect on the use of recycled water. The State Water Board has already mandated that Regional Water Boards permit recycled water usage for landscape irrigation if certain minimal criteria are met; therefore recycled water use will increase independent of the actions by the Regional Water Board, who are bound by policies set by the State for water quality control.

The concerns identified by the commenter regarding unknown chemical contaminants would be present regardless of whether landscaping was being irrigated by potable or recycled water. As the commenter previously identified, emerging contaminants are not fully removed by the wastewater treatment technology currently employed by dischargers in the North Coast Region, and they have been identified in a number of our nation's waters. Non-storm water discharge from landscape irrigation is part of the current baseline, currently allowed under MS4 permits, although in conflict with the current Basin Plan language, and we do not believe that the amount of irrigation, whether with potable or recycled water, will change as a result of the approval of the proposed project.

135. Summary comment:

The analysis of cumulative impacts is inadequate. The conclusion that the cumulative impacts are less than significant is deficient for two reasons. First, the proposed Amendment contemplates an increase use of wastewater by municipalities in Sonoma County. Second, the analysis fails to analyze cumulative impacts. CEQA requires the consideration of reasonably foreseeable cumulative impacts, and it is clearly

foreseeable that, as a result of the proposed Amendment, municipalities and other organizations across Sonoma will begin emitting Low Threat Discharges. Commenter requests that the Regional Board attempt to quantify these discharges and analyze the cumulative impact that these unregulated chemicals pose to the North Coast waters.

Response:

There is nothing in the proposed Amendment that “clearly contemplates an increased use of wastewater by municipalities in Sonoma County.” The State Recycled Water Policy is moving forward water recycling projects and the use of recycled water independent of this proposed Amendment. Although the proposed Amendment makes the Regional Water Board’s Basin Plan consistent with statewide permits and policies, including the Recycled Water Policy, it does not intend to promote or explicitly encourage recycled water use. The Staff Report recognizes that irrigation, whether with potable or recycled water, may result in incidental discharges, both of which may be problematic for water quality. Staff believes that is both unnecessary and impossible to quantify existing unauthorized discharges from incidental runoff. The proposed Amendment contains requirements that will result in requiring more oversight of landscape irrigation practices, whether with recycled or potable water. This oversight will lessen the numbers of events and the volume of water involved in incidental discharges. Municipalities and others will not start discharging or increasing the amounts or types of discharges identified in the Staff Report merely because they now can; as explained previously these discharges are driven by economic and development requirements, such as the construction and maintenance of wells, pipelines, and reservoirs. By necessity, discharges associated with these types of activities were taking place regularly, outside of the Regional Water Board’s regulatory oversight.

Glossary of Terms and Acronyms

Basin Plan	Water Quality Control Plan for the North Coast Region
BMP(s)	Best Management Practices
CAT	Californians for Alternatives to Toxics
CEQA	California Environmental Quality Act
CEC	Chemicals of Concern
CWA	Clean Water Act
DPH	California Department of Public Health
EPA	U.S. Environmental Protection Agency
Gen. Low Threat Permit	General NPDES Permit/Waste Discharge Requirements for Discharges of Groundwater to Surface Water Related to Construction and Subsurface Seepage Dewatering Activities in the North Coast Region (Order No. 93-61).
MS4	Municipal Separate Storm Sewer System (permit)
MEP	Maximum Extent Practicable
NPDES	National Pollutant Discharge Elimination System Permit
OAL	Office of Administrative Law
OWL	Open Space Water Resource Protection Land Use Foundation
PEER	Public Employees for Environmental Responsibility
Point Source Discharge	Point sources are discrete conveyances (such as pipes or man-made ditches)
PRMD	Sonoma County Permit & Resource Management Department

Proposed Amendment	Low Threat Discharge Amendment or Proposed Amendment to the Water Quality Control Plan for the North Coast Region to Establish Exception Criteria to the Point Source Waste Discharge Prohibitions by Revising the Action Plan for Storm Water Discharges and Adding a New Action Plan for Low Threat Discharges
RRWA	Russian River Watershed Association
RRWPC	Russian River Watershed Protection Committee
RRCSD	Russian River County Sanitation District
SCWA	Sonoma County Water Agency
State Water Board	State Water Resource Control Board
SWMP	Storm Water Management Program (or Plan)
TMDL	Total Maximum Daily Load
WDR	Waste Discharge Requirements (permit)
Water Code	Porter Cologne Water Quality Control Act
WQOs	Water Quality Objectives