

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE ORDER NO. R9-2005-0137

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

RESPONSES TO COMMENTS FROM INTERESTED PARTIES

In this document, “the original tentative Order” refers to tentative Order No. R9-2005-0137, and “the revised tentative Order” refers to tentative Order No. R9-2006-002.

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<i>Comments from Fallbrook Public Utility District contained in correspondence dated July 27, 2005.</i>		
1.	<p>Globally Change "Discharger" to "Permittee" Throughout the Tentative Order.</p> <p>The tentative Order and all accompanying documents (e.g., Fact Sheet, Page F-4) should reference Fallbrook only as "the Permittee," and not as "the Discharger." This would recognize Fallbrook, like the Regional Board, as a branch of government providing a valuable public service to its constituents. The term "Discharger" connotes that nothing of value is being achieved by Fallbrook's treatment system prior to discharge. Additionally, this change would be consistent with federal regulations that refer to "the permittee." See e.g., 40 C.F.R. §122.41(a).</p> <p>REQUEST. <i>Change all references to "Discharger" to "Permittee."</i></p>	<p>The Regional Board issues National Pollutant Discharge Elimination System (NPDES) requirements as waste discharge requirements pursuant to the California Water Code (CWC). "Discharge", "waste discharge" and "Discharger" are the terminology used in the Water Code. The use of the term "Discharger" in NPDES requirements is not inappropriate since CWC Section 13374 states that the term "waste discharge requirements" is the equivalent of the term "permits" as used in the Federal Clean Water Act. EPA regulations contained in Title 40 Code of Federal Regulations (40 CFR) also use the terms "discharge" and "discharger". The negative connotation associated with the term "Discharger" suggested by the commenter is subjective and is not immediately apparent.</p>

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		<p>The Regional Board recognizes the value of the public service and environmental benefits provided by the Fallbrook Public Utility District to the community of Fallbrook. However, FPUD (formerly Fallbrook Sanitation District) was organized as a special district by the community of Fallbrook for the benefit of the community and to support the community's growth. FPUD is not separate from its constituents just as the Regional Board is not separate from the people of California. Rather than have individual homeowners discharge wastewater individually, the community of Fallbrook chose to create the district for the collection, treatment and disposal of wastewater, first to Fallbrook Creek, and currently to the ocean and for recycled water use (land discharge).</p> <p>The Regional Board, however, will replace the term "Discharger" with "Fallbrook Public Utility District" or "FPUD" whenever possible. However, the term "Discharger" is retained where it is used in permit language being standardized through the State Board's permit standardization process</p>
2.	<p>Use of Scientific Notation</p> <p>Fallbrook requests that the Regional Board change the effluent limitations and performance goals reporting from scientific notation to standard numerical values. Although scientific notation is used by other permittees, such as Oceanside, this has not been used in Fallbrook's permits previously and Fallbrook would prefer standard values. Standard numeric values are easier for the general public to understand as well.</p> <p>REQUEST. Use standard numerical values instead of scientific notation.</p>	<p>The use of scientific "E" notation is retained. The primary reason scientific notation has been introduced is to specify appropriate significant figures and thus reduce ambiguity as to when an effluent limitation or performance goal is exceeded. The use of scientific notation is not unprecedented; the California Ocean Plan uses both common and scientific notation to express the majority of water quality objectives for Table B toxic constituents.</p> <p>Waste discharge requirements are complex documents and persons reading them can be reasonably expected to understand scientific notation. In order to improve</p>

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		<p>accessibility by the general public to the language of the waste discharge requirements, a footnote that explains scientific notation is added to the tables for effluent limitations and performance goals in the revised tentative Order as follows:</p> <p>“Some values in the table are presented in scientific “E” notation. In scientific “E” notation, the number following the “E” indicates the position of the decimal point in the value. Negative numbers after the “E” indicate that the value is less than 1, and positive numbers after the “E” indicate that the value is greater than 1. In this notation a value of 6.1 E-02 represents a value of 6.1×10^{-2} or 0.061, 6.1E+2 represents 6.1×10^2 or 610, and 6E+0 represents 6.1×10^0 or 6.1.”</p> <p>All of examples above have two significant figures. If an effluent limitation for a constituent were 6.1 E+00 ug/L, then a sample result of 6.14 would clearly not be considered a violation but a result of 6.16 would be a violation.</p>
3.	<p>Reasonable Potential Analysis (RPA)</p> <p>Fallbrook thanks the Regional Board's staff for using a RPA to develop effluent limits in the tentative Order. RPA procedures provide a practical statistical methodology for developing a more accurate assessment of reasonable potential (RP) to exceed water quality objectives. Although the use of RPA in this tentative Order resulted in fewer effluent limits than in Fallbrook's previous permit, it did not result in less protection for the environment. The effluent limits eliminated had no reasonable potential to be exceeded based on past performance and their inclusion would have served no useful purpose' in this tentative Order.</p> <p>However, Fallbrook does have the following comments</p>	<p>The Commenter objects to the inclusion of an effluent limitation for a constituent where the available data are 100% non-detects.</p> <p>The Commenter equates a “non-detect” result to “not present.” However, “non-detect” should be properly understood to be a value below the practical quantitation level (PQL), minimum level (ML), or method detection limit (MDL) of an analytical method, as appropriate. The PQL, ML and MDL depend on the available analytical technology. As technology improved, these have become lower.</p> <p>The RPA procedures of the Ocean Plan provides procedures in the case of 100% non-detect data. Because “non-detect” results should be interpreted</p>

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	<p>regarding some of the procedures utilized by the Regional Board in implementing its assessment of RPA, which resulted in an overly conservative assessment of reasonable potential.</p> <p>The proposed RPA, presumably based on 1999 to 2004 effluent data,¹ is overly conservative and statistically invalid because it finds RP in the case of 100% non-detects:</p> <ul style="list-style-type: none"> • The Regional Board's approach results in RP when there is no evidence that the constituent of concern is present in the effluent over a 5-year period at any concentration. Since many of the constituents for which effluent limitations are proposed were non-detected, an effluent limitation is inappropriate and should not be included. A recent trial court decision found that, where effluent monitoring demonstrated that a constituent of concern had not been detected within the past three years of monitoring prior to the Regional Board's issuance of the permit, there cannot be any reasonable potential, and where there is no reasonable potential, there can be no permit limit. See <i>City of Woodland v. RWQCB and SWRCB, Order Granting Writ of Administrative Mandamus</i>, Alameda County Superior Court, Case No. RG04-188200 at 13 (May 16, 2005). Since the State Board was also a party to the litigation (and thus bound by the trial court's decision), so too should every Regional Board around the state be bound by this decision, including the San Diego Regional Board. 	<p>depending on the detection limits of the analytical procedures, the Ocean Plan RPA procedures, in the case of 100% non-detect data, could have a result indicating no reasonable potential (Endpoint 2) or it could have an inconclusive result (Endpoint 3). An inconclusive result (Endpoint 3) does not establish reasonable potential; however, the Ocean Plan states "an existing effluent limitation for the pollutant shall remain in the permit, otherwise the permit shall include a reopener clause . . ." in the case of an inconclusive result.</p> <p>As stated on page F-17 of the Fact Sheet of Tentative Order No. R9-2005-0137, constituents with Endpoint 1 or 3 RPA results are assigned effluent limitations. The assignment of an effluent limitation does not equate to reasonable potential, only that the constituent had an RPA result of Endpoint 1 or 3.</p> <p>Notwithstanding the Ocean Plan's requirement to retain an existing effluent limitation for constituents with an Endpoint 3 RPA result, this Regional Board has decided not to include effluent limitations for constituents with Endpoint 3 results in the revised Tentative Order. Instead, effluent limitations have been replaced with non-enforceable "performance goals" for Endpoint 3 constituents as indicated in the revised Tentative Order.</p> <p>The San Diego Regional Board is not bound to the decisions contained in the unpublished Writ of Mandamus for the City of Woodland trial case cited by the Commenter although it can take such decisions into consideration. Nonetheless, the Regional Board has not found any authorities that support limiting data for RPA to data from the three years prior to permit reissuance. The Regional Board maintains that it is</p>

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		<p>appropriate to use all available information to characterize a discharge as long as the information is representative of the discharge. Where a treatment facility has undergone significant operational or physical modifications which affect effluent quality, the Regional Board has in the past limited data for RPA to the period only since the modifications were made.</p> <p>Furthermore, the Commenter's contention that "where there is no reasonable potential, there can be no permit limit" is not supported by NPDES regulations for reasonable potential analysis at 40 CFR 122.44(d). These regulations do not actually restrict inclusion of effluent limitations only to pollutants where there has been demonstrated reasonable potential. Instead 40 CFR 122.44(d) requires that if reasonable potential is demonstrated for a given pollutant, then a permitting authority must include an effluent limitation for that pollutant (i.e., the permitting authority may not omit an effluent limitation for that pollutant).</p>
4.	<p>The Regional Board's approach is contrary to the RPA process developed by the SWRCB Division of Water Quality for the amendments to the California Ocean Plan (COP). In the case of 100% non-detected data, the COP RPA process simply calls for either chronic Whole Effluent Toxicity (WET) testing or additional monitoring of the constituent of concern - not a mandatory finding of RP. The proposed tentative Order includes chronic toxicity testing, which will monitor for toxicity, even for 100% non-detected constituents. Even for endpoint 3 under the COP RPA, the permit may contain a re-opener clause to allow for inclusion of an effluent limit in lieu of maintaining an effluent limit for which reasonable potential was never demonstrated and which was not deemed to be necessary. Water Code § 13377, § 13263.6(x); 40 C.F.R. § 122.44(d).</p>	<p>The Regional Board's RPA approach is consistent with, and the same as, the Ocean Plan's RPA procedures. In the case of an inconclusive result (Endpoint 3), the Ocean Plan states "an existing effluent limitation for the pollutant shall remain in the permit, otherwise the permit shall include a reopener clause . . ." The assignment of an effluent limitation does not equate to a finding of reasonable potential, only that the constituent had a RPA result of Endpoint 1 or 3.</p> <p>The 2001 Ocean Plan established a schedule for when dischargers will be required to monitor for acute and/or chronic toxicity based on ocean outfall dilution factors. The Regional Board contends that the acute and chronic monitoring requirement schedule is unrelated to when an effluent limitation for a constituent should be</p>

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		included, which is based on RPA results.
5.	<p>The RPA procedure is already highly conservative in its estimation of a permit holder's risk of causing or contributing to an exceedance of water quality objectives. The Regional Board's selective use of effluent quality data is statistically invalid and introduces a new and unnecessary level of conservative bias into the RPA process. See Peer Reviewer Comments on COP at pages 23-37 of Final Functional Equivalent Document for COP Amendments (March 2005).</p>	<p>It is not clear what the Commenter means by "selective use of effluent quality data". In performing the RPA using the procedures of the Ocean Plan, the Regional Board used all of the same data set provided by FPUD in its NPDES requirements renewal application and which were also used by FPUD in its own RPA procedures (See Larry Walker Associates Memorandum dated August 9, 2004 to Melissa Thorme, Downey Brand LLP).</p> <p>The Regional Board's RPA approach is consistent with, and the same as, the Ocean Plan's RPA procedures. The Regional Board did not deviate from the Ocean Plan's RPA procedures nor employ a "selective use" of data; therefore, the Regional Board could not have introduced a new or unnecessary level of conservative bias into the RPA process.</p> <p>The RPA procedures used by the Regional Board are the RPA procedures adopted by the State Water Board after all of the Peer Reviewer Comments were considered by the State Water Board and after changes were incorporated into the Ocean Plan's RPA procedures in response to the Peer Reviewer comments.</p>

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6.	<p>The Regional Board's own findings conclude that "[t]he removal of effluent limitations by itself is not expected to cause a change in the physical nature of the effluent discharged and is not expected to impact beneficial uses nor cause a reduction of the water quality of the receiving water. Coupled with the inclusion of performance goals and retention of the monitoring program for constituents without effluent limitations, the existing water quality is expected to be maintained." See Fact Sheet at F-32 and F-33. Thus, it is unnecessary to retain limits for constituents without demonstrated RP.</p>	<p>The finding cited by the Commenter was made within the context of an antidegradation analysis to determine whether or not existing water quality in the receiving water is expected to be maintained if effluent limitations were replaced with performance goals when the RPA does not indicate reasonable potential (i.e.; RPA endpoint 2). However, there are other reasons why an effluent limitation should be retained such as the Ocean Plan's statement that in the case of an inconclusive RPA result "an existing effluent limitation for the pollutant shall remain in the permit, otherwise the permit shall include a re-opener clause . . ."</p>
7.	<p>If RP is not conclusively found and supported by evidence in the record, effluent limitations are not required. See <i>Communities for a Better Environment v. State Water Resources Control Board</i>, 109 Cal. App. 1089, 1094 (2003); see also <i>In the Matter of the Petitions of County Sanitation District No. 2 of Los Angeles and Bill Robinson</i>, SWRCB Order No. WQO 2003-0009 at pgs. 7-10 (holding that effluent limitations without RP should be removed notwithstanding anti-backsliding rules); <i>Woodland v. RWQCR/SWRCB, Order Granting Writ of Administrative Mandamus</i>, Alameda Cty. Superior Ct., Case No. RG04-188200 at 13 (May 16, 2005).</p> <p>REQUEST: Fallbrook requests that the Regional Board not assign numeric effluent limits to constituents without demonstrated RP or to constituents with 100% non-detects. The permit should require only continued monitoring for these constituents and a re-opener clause to allow inclusion of effluent limits once RP is conclusively demonstrated.</p>	<p>The Commenter does not properly interpret the Ocean Plan's RPA procedures in the case where effluent quality data is 100% non-detect. The Commenter assumes that 100% non-detect data corresponds to a determination of no reasonable potential whereas the Ocean Plan makes the distinction that 100% non-detect data, depending on the detection levels of specific analytical methods, can be used to make conclusions about reasonable potential.</p> <p>There are other reasons why an effluent limitation may be included or retained in NPDES requirements other than reasons strictly based on statistical RPA procedures (such as the Ocean Plan direction when RPA results are Endpoint 3). Nonetheless, in the revised Tentative Order, the Regional Board has opted not to assign effluent limitations to constituents with RPA results of Endpoint 3 and instead assigned performance goals.</p>

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8.	<p>An Impracticability Analysis Is Required Prior to the Imposition of Limits Besides Monthly and Weekly Averages</p> <p>The Fact Sheet for the permit properly states that "NPDES regulations at 40 C.F.R. 122.45(d) require that all permit limits for POTWs be expressed, unless impracticable, as both average monthly and average weekly effluent limits (AMEL and AWEL)." See Fact Sheet at F-16; 40 C.F.R. § 122.45(d)(2). However, relying upon a 1991 guidance document, the Regional Board set forth an allegedly "supporting rationale for shorter term effluent limitations such as maximum daily and instantaneous maximum water quality objectives." <i>Id.</i></p> <p>The Regional Board stated that:</p> <p>"In the TSD, USEP recommends the use of maximum daily effluent limitations The TSD states that a maximum daily limitation would be toxicologically protective of potential acute toxicity impacts."</p> <p><i>Id.</i> This analysis, based solely on informal U.S. EPA guidance, fails to meet the regulatory requirements for conducting an impracticability analysis. Furthermore, the Regional Board cannot rely upon guidance to overrule regulatory or statutory requirements, particularly where case law decided since that guidance was issued has clarified the regulatory requirements. U.S. EPA's guidance, if used in this manner by the Regional Board, transforms into an unlawful underground regulation. See <i>accord Appalachian Power v. U. S. EPA</i>, 208 F.3 d 1015, 1028 (D.C.Cir. 2000).</p> <p>Furthermore, the impracticability analysis required by 40 C.F.R. § 122.45(d)(2) must be done on <u>each individual effluent limit</u>, not as a blanket statement purporting to justify</p>	<p>The same section of the Fact Sheet cited by the Commenter states that "The WQBELs contained in this Order are based on water quality objectives contained in the California Ocean Plan that are expressed as six-month median, maximum daily, and instantaneous maximum water quality objectives." The Fact Sheet then continues and cites the TSD as providing "supporting rationale for shorter term effluent limitations."</p> <p>In USEPA correspondence dated February 3, 1998 and addressed to Mr. Glenn LaBrecque of the Connecticut Water Pollution Abatement Association, the USEPA stated ". . . it is impracticable to express water quality-based effluent limitations for toxics in POTW permits as only average weekly and average monthly limits. . . . EPA recommends that permitting authorities discuss in the permit fact sheet the basis for selecting a daily or other time period (e.g., instantaneous) for application of effluent limits. . . . In the case of toxics, the basis for choosing a maximum daily limit is EPA's guidance in the TSD or similar state permitting procedures."</p> <p>WQBELs expressed as six-month, daily and instantaneous effluent limitations are so expressed because of the Ocean Plan. The manner that water quality objectives are expressed in the Ocean Plan restricts the Regional Board to expressing effluent limitations in the same manner as the water quality objectives because the Ocean Plan does not provide procedures for calculating monthly and weekly effluent limitations from the water quality objectives. Because the water quality objectives are established to be protective of the ocean's beneficial uses and the environment, without appropriate procedures to derive monthly average and weekly-average effluent</p>

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	<p>all limits without supporting evidence, which is really no analysis at all. As such, the Regional Board must analyze each constituent for impracticability of monthly and weekly average limits in lieu of the currently proposed daily and/or instantaneous maxima limits.</p>	<p>limitations, other limits may not be protective. The Regional Board maintains that effluent limitations expressed in the same manner as the Ocean Plan water quality objectives should be retained unless the Ocean Plan is amended.</p> <p>Nonetheless, the Regional Board agrees with the rationale provided in the Technical Support Document for the majority of constituents listed under Table B of the Ocean Plan. The TSD provides technically- and scientifically-sound guidance for the protection of beneficial uses based on water quality objectives.</p>
9.	<p>In addition, case law applies this rule to all constituents, even those that have the ability to be acutely toxic. In the case of <i>City of Ames, Iowa</i>, EPA Environmental Appeals Board, NPDES Appeal No. 94-6 (Apr. 4, 1996), EPA contended that a maximum daily limit <u>for ammonia</u> may be imposed because it is impracticable to meet water quality standards by using an average weekly limit. The hearing officer determined that EPA's contention was not well founded, as it is practicable to meet water quality standards using an average weekly limit for ammonia. The decision stated that this issue of fact was relevant to the pertinent decision in that the use of the maximum daily limit in the NPDES permit may have the effect of unreasonably increasing the risk of non-compliance with a resulting substantial increase in operating costs to avoid noncompliance. The hearing officer determined, "as the regulation makes clear, the Regional Administrator does not have unlimited discretion to include daily limits; maximum daily limits may be included in a permit for a POTW only if weekly average limits are impracticable." On remand, the Regional Administrator was directed to reconsider the factual issue of whether it would be practicable to state the effluent limitations as weekly and</p>	<p>In the City of Ames case cited by the Commenter, the State of Iowa, which administers a delegated NPDES program, originally issued a permit for the City of Ames (City). When the state refused to modify the permit to address EPA Region VII objections to certain provisions of the state permit, EPA Region VII assumed NPDES permitting authority from the state and issued the City a permit.</p> <p>EPA Region VII understood that it could develop weekly average limits that would be protective of water quality standards, and therefore are practicable, and that it could have included weekly average effluent limitations in the permit it issued to the City. However, EPA Region VII instead included daily maximum limitations for ammonia and CBOD5 that were statistically equivalent to weekly average limitations because it believed daily maximum limitations were required by the State of Iowa as a condition of the state's certification of the EPA permit in accordance with CWA Section 401(a)(1).</p> <p>The City of Ames objected to the daily maximum limits and requested an evidentiary hearing which was</p>

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	<p>month averages. If it would be practicable, then such averages were to be included in the permit and the daily maximum and instantaneous limits should be removed and replaced with weekly averages. This decision is binding upon EPA Region IX, and thus its delegated state agencies. Similar state law decisions are binding upon the Regional Board. See <i>City of Los Angeles v. SWRCB and LA Regional Board</i>, Los Angeles Superior Court, Case No. 060957 at 12-13 (Apr. 4, 2001) (daily max issue not appealed by SWRCB or LA Regional Board, and therefore is binding on the Boards); <i>Burbank v. State Water Resources Control Board et al.</i>, 35 Cal.4th 613, 623, n.6 (April 4, 2005 (made final upon denial of rehearing on June 29, 2005)) ("Unchallenged on appeal and thus not affected by our decision are the trial court's rulings that . . . (3) the permits improperly imposed daily maximum limits rather than weekly or monthly averages".); <i>In the Matter of East Bay MUD</i>, State Board Order No. WQO 2002-0012 at pg. 21.</p> <p>For these reasons, any alleged authorization of daily or instantaneous maximum limitations for POTWs based on guidance contained in the TSD must fail as inconsistent with federal requirements. See Water Code § 13372 (requiring state program to be consistent with federal requirements under the CWA). As such, the Regional Board must remove all daily and instantaneous maximum final effluent limitations unless and until the Regional Board conducts an individualized analysis of each constituent and provides evidence in the record of impracticability as to each limit. See <i>supra City of Woodland v. RWQCB and SWRCB, Order Granting Writ of Administrative Mandamus</i> at 20.</p>	<p>rejected by EPA Region VII. The City then appealed the permit to the EPA Environmental Appeals Board. The Appeals Board found that EPA Region VII was incorrect in its understanding that daily maximum limitations were required as a condition of state certification of the permit. The Appeals Board also concluded that had EPA Region VII understood that the State of Iowa did not require daily maximum limits, EPA Region VII could have imposed weekly average limits instead of statistically-equivalent daily maximum limits if weekly average limits were found to be practicable, which EPA Region VII did find.</p> <p>While the City of Ames case has apparent similarities to the situation with the tentative Order for FPUD, there are significant differences. However, the central issue remains that USEPA regulations require effluent limitations for POTWs to be expressed as monthly and daily averages unless impracticable.</p> <p>The California Ocean Plan (COP) expresses water quality objectives as six-month median, maximum daily, and instantaneous maximum water quality objectives for 20 constituents and provides procedures for deriving six-month median, maximum daily, and instantaneous maximum effluent limitations from the objectives. The COP does not provide procedures for deriving monthly- and weekly-average effluent limitations from the objectives. In contrast, the State of Iowa's water quality criteria (objectives) are the national criteria recommended by USEPA which are given as Criteria Continuous Concentrations (CCC) and Criteria Maximum Concentration (CMC). Statistically equivalent weekly average and daily maximum effluent limitations can be derived from water quality objectives (criteria) given as CCC and CMC, but not from</p>

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		<p>objectives such as those in the COP.</p> <p>The COP therefore dictates that effluent limitations be expressed as six-month median, maximum daily, and instantaneous maximum effluent limitations.</p> <p>Furthermore, the COP does not provide procedures, and the Regional Board is not aware of other available technically- and statistically-sound procedures, for deriving statistically-equivalent monthly-average and weekly-average effluent limitations from the COP objectives that would satisfy the six-month median, maximum daily, and instantaneous maximum objectives simultaneously.</p> <p>The water quality objectives contained in the COP were adopted by the State Water Resources Control Board and approved by USEPA as part of the water quality standards for the Pacific Ocean. In order to accommodate the Commenter's request to include only monthly and weekly average effluent limitations, or demonstrate the need for six-month, daily and instantaneous limits through an impracticability analysis, the COP must be amended to include updated water quality objectives or effluent derivation procedures or both. The ability to amend the COP lies strictly with the State Board.</p>
10.	<p>Furthermore, some of the daily or instantaneous maximum limits included in the tentative permit may be related to objectives set for long-term human health protection (designed to provide protection for 70 years of exposure, not for acute effects). The limits for these constituents would be adequately regulated by monthly averages alone since there is no evidence that these human health-based limits are impracticable to apply as monthly or even longer (i.e., annual) averages.</p>	<p>The constituents listed under Table B of the Ocean Plan are categorized between constituents assigned objectives for the protection of marine aquatic life and constituents assigned objectives for the protection of human health.</p> <p>Daily and instantaneous effluent limitations are only included for constituents listed in the Ocean Plan under Table B with objectives for the protection of marine</p>

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	<p>The Regional Board appears to believe that the averaging periods for the objectives and the averaging periods for the effluent limits need not be identical so long as the objectives are maintained in the receiving waters. Therefore, it is irrelevant that "[the] water quality objectives contained in the California Ocean Plan [] are expressed as six-month median, maximum daily, and instantaneous maximum water quality objectives." See Fact Sheet at F-16.</p> <p><i>REQUEST. Remove all daily and instantaneous maximum effluent limitations for all constituents that have not been demonstrated with evidence in the record to be impracticable. Without such an analysis, all limits should be expressed as AMELs or AWELs.</i></p>	<p>aquatic life, contrary to the Commenter's contention. Daily and instantaneous effluent limitations are not included for constituents listed in the Ocean Plan under Table B with objectives for human health protection. Objectives for constituents under Table B for human health protection are only expressed as 30-day average objectives, and based on these, corresponding calendar-monthly average effluent limitations or performance goals were calculated and included in the tentative Order. If following the Commenter's logic stated in Comment #8, these constituents should also be assigned weekly average effluent limitations in addition to the monthly average limitations; however, the Regional Board would similarly be unable to do this because of the Ocean Plan restrictions discussed in the Regional Board's response to Comment # 8.</p> <p>The Commenter's statement that "The Regional Board appears to believe that the averaging periods for the objectives and the averaging periods for the effluent limits need not be identical so long as the objectives are maintained in the receiving waters," is incorrect. The fact that the Regional Board has historically expressed effluent limitations in the same manner as the water quality objectives of the Ocean Plan demonstrate that the Regional Board considers it highly relevant that water quality objectives contained in the California Ocean Plan are expressed as six-month median, maximum daily, and instantaneous maximum water quality objectives.</p> <p>Again, the Ocean Plan currently restricts the Regional Board to effluent limitations expressed in the same manner as the water quality objectives of the Ocean Plan.</p>

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11.	<p><u>Use of Toxicity Units.</u></p> <p>Fallbrook requests that the use of toxicity units (TUa and TUC) be replaced with point estimates for both calculating reasonable potential and for determining compliance. In its December 10, 2004 decision, the United States Court of Appeals for the D.C. Circuit stated that the use of toxicity units may be <i>inappropriate</i> for measuring variability due to an artificial inflation of the coefficient of variation. See excerpts from decision in <i>Edison Electric Institute, et al, v. EPA</i>, Case No. 96-1062 (Dec. 10, 2004) Attachment 1 at footnote 4. Point estimates have also been recommended in promulgated WET Test Methods and the US EPA WET method guidance documents. In the tentative Order, although it does not state this clearly, acute toxicity is presumably measured as percent survival in the undiluted effluent. Instead, the tentative permit should state that "The acute toxicity of the effluent [for discharge 001] shall be expressed and reported as 'Pass or Fail'" based on hypothesis testing. The problem with expressing acute toxicity as percent survival is that this requirement does not allow for consideration of whether or not a statistical difference exists from the controls. Fallbrook, therefore, requests the tentative Order require that acute toxicity testing results be reported as "Pass or Fail" based on hypothesis testing.</p> <p>REQUEST: Use point estimates for determining reasonable potential and compliance; or at least use hypothesis testing to ensure that acute toxicity results are compared to the control test and allow results to be reported as "pass" or "fail"; not percent survival.</p>	<p>The legal decision cited by the Commenter was considering the precision of Whole Effluent Toxicity tests in general, and the Commenter is not citing that legal decision in its proper scientific context. An analytical method with high precision is expected to yield results that do not deviate significantly from each other when that method is used multiple times to analyze the same sample. In the cited legal decision, the petitioners were claiming that WET tests were invalid because it had low precision based on a statistical analysis of WET test results expressed as TU values. [Point estimates of toxicity results are converted to toxicity units (TU) through a calculation, and TU values are inversely proportional to point estimates]. The court simply found that statistical analysis on TU values should not be used to make conclusions about the statistical distribution of point estimate values or the precision of WET tests. The court found that WET tests have precision comparable to other valid analytical tests based on statistical analysis of point estimates. The Commenter is applying the conclusions of the legal decision in the wrong context in the case of the tentative Order.</p> <p>The Commenter is questioning the practice of expressing WET test results as TU values calculated from point estimates. The Commenter contends that the USEPA recommends using point estimates instead of TU; however, the USEPA merely recommends that, when calculating TUs from the raw results of WET tests, the TUs should be calculated from point estimates rather than the NOEC (no observable effect concentration) or LOEC (lowest observable effect concentration) which are obtained from hypothesis testing. The USEPA actually promotes the use of TUs</p>

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		<p>in expressing toxicity results, and in the <i>Technical Support Document for Water Quality Based Toxics Control</i>, the USEPA states that “acute and chronic TUs make it easy to quantify the toxicity of an effluent and to specify water quality criteria based upon toxicity.” The USEPA’s <i>Draft National Whole Effluent Toxicity (WET) Implementation Guidance</i> (November 2004) also utilize TUs for reasonable potential analysis. In the 2001 Ocean Plan, the State Board established acute and chronic toxicity water quality objectives expressed as TUs. The USEPA and the State Water Board, rather than the Regional Board, are the appropriate agencies to address the use of TU values.</p> <p>Reasonable potential analyses, effluent limitation derivation, and compliance determination for acute toxicity and chronic toxicity in the tentative Order are in terms of TU values rather than point estimates because the water quality objectives for acute and chronic toxicity are expressed as TU values in the Ocean Plan. In so doing, the Regional Board is consistent with the legal decision cited by the Commenter because the statistical analysis performed on TU data is only used to make conclusions about other TU values and is not attempting to make conclusions about the statistical distribution of toxicity point estimates. Based on the reasonable potential analysis performed, the tentative Order includes only a performance goal (PG) for acute toxicity and not an effluent limitation.</p> <p>In the Commenter’s request, the Commenter is requesting the use of both point estimates and hypothesis testing which indicates that the Commenter is confused about the scientific significance of point estimates versus hypothesis testing. However, to accommodate the Commenter’s request to allow results</p>

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		to be reported as "pass" or "fail", the revised tentative Order will also require the Discharger to determine if the percentage of organisms surviving in 100% effluent is statistically different from the percentage of organisms surviving in the control sample when there is greater than 50% survival in 100% effluent for acute toxicity tests. However, because the acute toxicity performance goal (PG) in the tentative Order is 2.91TUa, the effluent is never expected to exceed the PG when there is greater than 50% survival in 100% effluent in an acute toxicity test. The TUa result will always be less than 1 TUa when there is greater than 50% survival in 100% effluent, and therefore not an exceedance of the PG.
12.	<p><u>Dilution and Test Organisms.</u></p> <p>The tentative Order should expressly allow for dilution of toxicity tests when either red abalone or giant kelp is the test organism. Fallbrook requests that this provision also be allowed for since it has been shown by other ocean dischargers that red abalone and giant kelp cannot be tested at 100% effluent. Past studies using sea salts for red abalone and giant kelp have introduced toxicity into the dilution water.</p> <p>REQUEST. Allow the use of red abalone and giant kelp at 60% effluent for the chronic toxicity tests.</p>	<p>The chronic toxicity effluent limitation in the tentative Order is 88 TUC. If FPUD's effluent is toxic, this limitation would be exceeded if the No Observable Effect Level is 1.13% (i.e., 1.13% effluent and 98.87% dilution water). In addition, the WET chronic procedures state that the maximum effluent concentration that should be tested is 66%. Consequently, there is never a need to test the effluent at a level anywhere near 100% effluent.</p> <p>The Discharger is responsible for ensuring that brine solutions and salts used to prepare dilution water do not introduce toxicity. Commercial brands of artificial salts recommended by the USEPA procedures that do not introduce toxicity include Forty-Fathoms and Tropic Marine.</p>
13.	<p><u>Acute Toxicity Requirements</u></p> <p>The Ocean Plan does not require the inclusion of acute toxicity in the tentative Order. When the dilution credit is</p>	The 2001 Ocean Plan established an acute toxicity water quality objective as well as a schedule for toxicity monitoring. The Regional Board understands the 2001 Ocean Plan as establishing a schedule based on

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	<p>less than 100:1, as is the case here, there is no requirement for inclusion of acute toxicity testing, or limits. It is only when the dilution factor is greater than 100:1 that the Ocean Plan provides the Regional Board with discretion to include acute toxicity testing and limits. Although the Santa Ana Regional Board included acute toxicity in the Orange County Sanitation District's NPDES permit, its plant had a dilution factor greater than 100:1. Therefore, there is no justification or authority for including acute toxicity in the Fallbrook permit.</p> <p>Acute toxicity tests are historically a technology-based monitoring tool used to standardize the measurement of the toxicity of freshwater effluent with a freshwater organism. To combine a marine organism with a water quality-based toxicity limit based on freshwater seems contrary to the original intent of the acute toxicity test. Therefore, the acute toxicity-testing requirement is unnecessary.</p> <p>The Ocean Plan also states that there are 3 acceptable ways to calculate an acute toxicity unit (TUa). However, the tentative Order requires that TUa be calculated based on hypothesis testing (control vs. 100% effluent) per U.S. EPA guidance. (See tentative Order at 33, Provision VII.K; MRP at page E-7.) The utility of hypothesis testing as a means of estimating toxicity has been contested by many groups. There is an alternative formula based on percent survival in 100% effluent that can also be used to calculate TUa. If the acute toxicity requirements are not removed, then Fallbrook requests that this other alternate formula using percent survival be allowed.</p> <p>Fallbrook can also demonstrate with past acute toxicity tests that the toxicity of its effluent can be mitigated with the control of un-ionized ammonia. See <i>also</i> Comments by City of Oceanside at pg. 7, para. 11 (July 20, 2005). If acute toxicity limits and monitoring are maintained in the permit,</p>	<p>dilution factors for when dischargers will be required to monitor for acute toxicity and chronic toxicity but not a schedule establishing when an acute toxicity or chronic toxicity effluent limitation may be included in the permit. The Commenter, however, makes the additional, and incorrect, interpretation that the schedule for monitoring is also a procedure for determining reasonable potential for when a toxicity effluent limitation is required. The need for a toxicity water quality-based effluent limitation is determined with a reasonable potential analysis.</p> <p>The 1997 Ocean Plan required the inclusion of technology-based acute toxicity effluent limitations for which compliance was determined with freshwater WET test methods. The 2001 Ocean Plan removed the requirement for technology-based acute toxicity effluent limitations and instead included a water quality objective. The need to include an acute toxicity water quality-based effluent limitation is determined through a reasonable potential analysis (RPA). Because acute toxicity effluent data using marine WET test methods were not available, the RPA was performed using the available freshwater WET test data. USEPA Region IX has informed the Regional Board that it is acceptable to perform RPA with freshwater WET test results as long as screening for the most sensitive species was done which was a requirement of FPUD's previous NPDES requirements, Order No. 2000-012.</p> <p>The three acceptable formulas of calculating acute toxicity expressed as TUa apply to specific conditions. Each of the three formulas have always been available to FPUD to use if, but only if the specific conditions for the use of the formula apply. The Commenter's request to allow the Discharger to calculate acute toxicity using an "alternate formula" and the percent survival in 100%</p>

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	<p>then acute tests on effluent need to allow the control of un-ionized ammonia through pH adjustment or removal with zeolite. The RPA has already demonstrated that ammonia did not have RP and an effluent limit for ammonia was not imposed. Ammonia should be removed from or controlled in the toxicity test samples to allow the determination of whether any other constituents might result in toxicity. Using this same regulatory approach, the San Francisco Regional Board has allowed POTWs within their region to control un-ionized ammonia when testing the toxicity of effluent.</p> <p>If the acute toxicity effluent limits are not deleted from the tentative Order, then the acute toxicity test as specified in the tentative Order must be modified as stated above. If the test is not modified, then consistent compliance with the specified acute test will be difficult. If it is determined that consistent compliance with the required acute toxicity testing is unattainable, this may require Fallbrook to modify its treatment process and consider the addition of new treatment facilities. Any modifications requiring new facilities would be extremely costly to build and may impact treatment capacity.</p> <p><i>REQUEST: Fallbrook requests the removal of the acute toxicity requirements from the tentative Order due to the lack of RP and/or lack of necessity to provide environmental protection, as well as the lack of an analysis of the economic impacts of the acute toxicity monitoring requirements that are not required for this discharge. The Regional Board is required to conduct economic burden analysis under California Water Code section 13267(b)(1) and 13225(c) before imposing new monitoring/testing requirements in the tentative permit.</i></p>	<p>effluent again indicates the Commenter's confusion regarding the scientific significance of point estimates versus hypothesis testing.</p> <p>The whole effluent toxicity (WET) testing requirements of NPDES permits are for the purpose of routine monitoring of the unaltered whole effluent. Modification of effluents by removal of ammonia or chlorine for routine WET testing renders the effluent no longer "whole" and is therefore not allowed. Modification of effluent is allowable in some situations such as when a discharger is investigating the cause of toxicity through a Toxicity Reduction Evaluation. Furthermore, control of unionized ammonia in the laboratory sample for the sake of conducting a WET analysis is not the same as reducing total ammonia from the discharge which was the case for the City of Oceanside.</p> <p>It is not clear why the Commenter believes that tentative Order No. R9-2005-0137 includes acute toxicity effluent limitations when the tentative Order only includes a non-enforceable performance goal for acute toxicity. Nonetheless, the tentative Order requires acute toxicity effluent testing on a semiannual basis and chronic toxicity effluent testing on a quarterly basis which are reduced testing frequencies from the previous monthly frequency required under FPUD's previous NPDES requirements, Order No. 2000-012. The costs of conducting the toxicity monitoring bear a reasonable relationship to the need for the monitoring.</p>

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14.	<p>Revise and Justify Monitoring and Reporting Requirements in Permit.</p> <p>As a generally applicable comment, the Regional Board must justify the need and burden (including cost) for each monitoring and reporting requirement in accordance with Water Code §13267(b) and §13225(c). Monitoring requirements should be based on potential impacts of Fallbrook's discharge to the ocean. Requirements included in the permit for regional, inshore and shoreline microbiological monitoring should be removed from Fallbrook's permit since its effluent is not the cause of any impairments.</p> <p><i>REQUEST. Justify the need and burden (including cost) for each monitoring and reporting requirement in accordance with Water Code §13267(b) and §13225(c).</i></p>	<p>Section VI of the Fact Sheet for the tentative Order states the rationale for monitoring and reporting requirements. The frequencies of effluent monitoring are the minimum that would allow compliance determination and future reasonable potential analysis.</p> <p>FPUD discharges through the City of Oceanside's Oceanside Ocean Outfall (OOO) along with the City of Oceanside, Camp Pendleton, and IDEC. FPUD participates in the regional, inshore and shoreline microbiological monitoring conducted by the City of Oceanside to monitor for possible impacts of the privilege of discharging wastes through the outfall to the Pacific Ocean. FPUD's discharge to the OOO affects the velocity and buoyancy of the combined OOO discharge which in turn affects the spread of the OOO discharge plume in the receiving water. To date, no impairment of receiving waters have been observed which are directly attributable to the combined discharge from the Oceanside Ocean Outfall. Nonetheless, the Regional Board maintains the requirement for the necessary receiving water monitoring for all parties discharging through the OOO.</p>
15.	<p>Mass Limits Are Not Necessary and Should be Removed</p> <p><u>Duplicative Mass Based Limits</u></p> <p>The tentative Order and Fact Sheet fail to state that "40 C.F.R. §122.45(f)(1) requires that, <u>except under certain circumstances</u>, all permit limits, standards, or prohibitions be expressed in terms of mass units." The tentative Order and Fact Sheet ignore that one of the enumerated circumstances is "when the applicable standards and limitations are expressed in terms of other units of</p>	<p>40 C.F.R. §122.45(f)(1)(ii) states that all permit limitations, standards or prohibitions shall be expressed in terms of mass except under certain circumstances including "when applicable standards and limitations are expressed in terms of other units of measurement." This provision originates from regulations adopted by USEPA on June 7, 1979 as 40 CFR 122.15 (d) which requires effluent limitations in terms of mass except under certain circumstances including "where applicable promulgated effluent guideline limitations, standards or prohibitions are expressed in other terms</p>

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	<p>measurement" (e.g., concentration). See 40 C.F.R. §122.45(f)(1)(ii).</p> <p>Notwithstanding the fact that the standards and limits for all of the constituents are expressed in the Ocean Plan as concentration, the tentative Order includes more than just concentration limits. The tentative Order does not independently justify the need for these mass limits in addition to the concentration limits because the Regional Board is merely following a non-regulatory template provided by the State Water Resources Control Board that also includes mass limits without explanation. However, the Fact Sheet does not contain any evidence that Fallbrook is not using proper treatment or that Fallbrook is diluting or has the ability or the millions of gallons of water available to dilute its effluent.² Furthermore, no independent justification for these mass limits as proposed exists as these limits are just alternative mathematical expressions of the concentration value.³ No evidence has been provided in the tentative Order or Fact Sheet to demonstrate that mass limits are required or necessary for any water quality purpose.</p> <p><i>REQUEST. Remove all proposed mass limits because no evidence exists to demonstrate an independent justification or water quality purpose for these limits.</i></p> <p>Footnote 2: Mass limits cannot be justified as a way to prohibit dilution from being used as a method for permit compliance or in order to ensure proper operation of the plant. Such a similar requirement already exists in the federal regulations, incorporated by reference into the permit and Standard Provisions as follows: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit." See 40 C.F.R. § 122.41(e); see also tentative Order at Provision VI.A. I ., Provision</p>	<p>than mass, e.g., as concentration levels." The 1979 provision indicates that concentration was clearly one of the "other terms than mass" and that the provision was limited to technology-based effluent limitations.</p> <p>The 1979 provision underwent several modifications but achieved the language of the current 40 CFR 122.45 in revised rules promulgated by USEPA on May 19, 1980. The Federal Register Preamble for the revised rule promulgation (45 FR 33342) states "[the revised regulation] now provides permit issuers greater flexibility in using concentration limits. Whenever appropriate, permits may include a concentration limit in addition to a mass limit. Limitations expressed exclusively in terms other than mass may be used (1) when applicable effluent guideline limitations are expressed other than in mass; (2) when on a case-by-case basis the mass of the discharge cannot be related to production or other measures of operation, and dilution will not be used as a substitute for treatment; or (3) for pH or other pollutants which cannot appropriately be expressed as mass. For example, total suspended solids discharges from certain mining operations may be unrelated to measures of operation. Finally, a permit can always contain a non-mass limit in addition to a mass limit, and the permittee must comply with both."</p> <p>In the case of secondary treatment standards which are expressed as BOD (or CBOD) and TSS concentrations and technology-based effluent standards for Oil and Grease under Table A of the Ocean Plan, the Regional Board has not been able to determine a need for mass emission rate limitations that are directly related to protection of ocean waters or proper operation. Consequently, MER effluent limitations for CBOD, TSS and Oil and Grease have not</p>

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	<p>IV.A.2.h, and Standard Provisions, Attachment D, pg. D-1, Provision I.D.</p> <p>Footnote 3: A mass limit is merely a calculation of the flow multiplied by each concentration limit (and by a standardizing translation factor to pounds per day of 8.34). For example, the monthly average concentration limit for CROD is 25 mg/L. If one multiplies this number by 2.7 mgd, and the result from that calculation by 8.34, the prescribed mass limit of 563 lbs./day is derived {The tentative Order expresses this as 5.6 E +02}. Thus, the proposed mass limits are simply a function of calculation, and have no independent necessity or justification. Since concentration limits already exist and actual flow is limited in the permit to 2.7 md, the permit already contains an inherent mass cap. Therefore, the proposed mass limits are simply duplicative, and represent an abuse of discretion where not demonstrated to be necessary.</p>	<p>been included in the revised tentative Order. If information demonstrating a need for these limitations become available in the future, they will be reinstated in the permit.</p> <p>For effluent limitations and performance goals based on water quality objectives, MERs are retained in the revised tentative Order. This is appropriate because the California Ocean Plan's Implementation Provisions for Table B require that “[d]ischarge requirements shall also specify effluent limitations in terms of mass emission rate limits using the general formula: Equation 3: $\text{lbs/day} = 0.00834 \times Ce \times Q . . .$” The Ocean Plan clearly intended to also limit the discharge of toxic pollutants on a mass-loading basis. Unless the Ocean Plan is amended to remove this requirement, the Regional Board understands that it must include MER limitations for water quality-based effluent limitations or performance goals.</p> <p>The Regional Board has historically included mass-based effluent limitations in the point-source NPDES requirements it has issued. These mass-based limitations predate the State Water Board's permit standardization template, and the inclusion of mass-based limitations by the Regional Board have in no way been determined by the State Board's template, contrary to the Commenter's contention.</p>
16.	<p><u>Provide Wet Weather Flow Exception</u></p> <p>Fallbrook appreciates the use of design flow in the calculation of mass limits. However, unlike other permits recently issued by Regional Boards that do not impose mass limits during wet weather, the tentative Order imposes mass limits during both dry and wet weather.</p>	<p>If FPUD's facility is capable of complying with mass-based effluent limitations during dry-weather periods, it should also be able to comply during wet-weather periods provided that inflow and infiltration within the FPUD system is nonexcessive. Inflow and infiltration within FPUD's system is nonexcessive because wet-weather wastewater flowrates do not exceed 275</p>

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	<p>Because wet weather events can cause the mass limit to be exceeded merely due to flows above the dry weather capacity, the Regional Board should expressly exempt mass limits from applying in wet weather.</p> <p>REQUEST: If mass limits are not removed as requested above, then at the very least, the Regional Board should make the mass limits applicable in dry weather only.</p> <p>Footnote 4: See e.g., Order Nos. R4-2002-0123 at pg. 26, fn. 3 ("During wet weather storm events in which flow exceeds the design capacity, the mass discharge rate limitations shall not apply, and concentration limitations will provide the only applicable effluent limitations.") This requirement found in many permits in the Los Angeles Region has never been vetoed by U.S. EPA or challenged by any third party.</p>	<p>gallons per capita per day. Any flow contributed from nonexcessive inflow and infiltration during wet-weather can reasonably be considered to be within the design capacity of the FPUD treatment plant and are assumed to be free of pollutants and to not negatively impact the treatment processes.</p> <p>With regards to Footnote 4, one of the main reasons the Los Angeles Regional Board provided a wet-weather flow exception is to avoid effluent mass limitation violations when calculated mass emission rates are based on the product of the wet-weather flowrate and sample concentration and the sample concentration is non-detect and half the detection level is substituted instead. The original and revised tentative Orders, as well as several other recent NPDES WDRs for POTW ocean discharges issued by the San Diego Regional Board which have not been objected to by the USEPA, contain provisions that require sample concentrations, and corresponding calculated mass emission rates, to be reported as either non-detect (ND) or "detected, not quantified" (DNQ) when appropriate. Therefore, based on the reasoning stated in the Commenter's Footnote 4, a wet-weather exception is not necessary.</p>
17.	<p><u>PGs are Unnecessary.</u></p> <p>Most Regional Boards have eliminated PGs from inland discharge permits because of the increased stringency of effluent limits imposed by the State Implementation Plan (SIP) and California Toxics Rule (CTR) requirements. Fallbrook believes that justification exists to eliminate PGs from ocean discharges as well due to the increased stringency of such permits under the current system, which includes RPA and WQBELs for toxic constituents.</p>	<p>In its NPDES permit renewal application, dated August 13, 2004, FPUD included correspondence dated August 11, 2004 in which FPUD informed the Regional Board that it had conducted its own reasonable potential analysis (RPA). Based on the results of that RPA, FPUD informed the Regional Board that "17 limits only have reasonable potential statistically, as all of the District's data was non-detect." FPUD therefore requested "that these limits be included only as performance goals and that continued monitoring be</p>

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	<p>Constituents without RP in the Tentative Permit by definition are not threatening to cause or contribute to exceedances of Ocean Plan objectives, and effluent limits for constituents with no RP are, therefore, no longer justified or necessary.</p> <p>Very few recent Ocean Plan permits include PGs, in large part because of the recognition that RPA procedures are extremely conservative, and effluent quality performance goals are not needed to protect receiving waters from potential exceedances of water quality objectives. For example, Orange County Sanitation District's recent ocean discharge permit issued jointly by the Santa Ana Regional Board and U.S. EPA did not contain performance goals.</p> <p><i>REQUEST. Fallbrook requests that all PGs be removed from the permit since constituents without RP are not threatening to cause or contribute exceedances of the Ocean Plan.</i></p>	<p>required in lieu of effluent limits . . ." FPUD has therefore previously supported the use of performance goals, at least for 17 constituents, and now requests that no performance goals be included at all.</p> <p>Notwithstanding FPUD's inconsistent position on performance goals, the Regional Board retains performance goals as necessary. The Regional Board's antidegradation analysis (see Fact Sheet) for the removal of effluent limitations and increased discharge flowrate through the Oceanside Ocean Outfall, through which FPUD discharges, depend in large part on the inclusion of performance goals in the tentative Order. The inclusion of performance goals serves to maintain existing treatment levels and effluent quality and supports State and federal antidegradation policies.</p> <p>Furthermore, performance goals provide all interested parties with information regarding the expected levels of pollutants in the discharge that should not be exceeded in order to maintain the water quality objectives established in the Ocean Plan. Performance goals are not limitations or standards for the regulation of the discharge. Effluent concentrations above the performance goals will not be considered as violations of the permit but serve as red flags that indicate water quality concerns. Repeated red flags may prompt the Regional Board to reopen and amend the permit to replace performance goals for constituents of concern with effluent limitations, or the Regional Board may coordinate such actions with the next permit renewal.</p>
18.	<p><u>Radioactivity PG</u></p> <p>The tentative Order establishes performance goals for radioactivity purportedly based on Title 17, Division 1,</p>	<p>Table B of the California Ocean Plan includes an objective for radioactivity which references limits specified in Title 17, Division 1, Chapter 5, Subchapter</p>

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	<p>Chapter 5, Subchapter 4, Group 3, Article 3, Section 30253 of the California Code of Regulations. See tentative Order at 18. This referenced regulation in turn references portions of Title 10 of the Code of Federal Regulations, Part 20, sections 20.1001 through 20.2402 and Appendices A through G. See 17 C.C.R. §30253(a) Both of these regulatory references address standards for protection against radiation from activities conducted under licenses issued by Division 1, Chapter 5, Subchapter 4, Group 3, Article 3, Section 30253 of the California Code of Regulations. Neither set of regulations contains actual water quality objectives, only effluent concentrations for direct discharges from nuclear facilities (not from POTWs), and monthly average concentrations for indirect discharges to sewers. Consequently, these criteria are not directly applicable to Fallbrook's discharge. Further, even if these criteria were somehow applicable, the tentative Order and Fact Sheet do not contain adequate justification for the imposition of performance goals for radioactivity.</p> <p>In order to protect beneficial uses from radioactivity, the tentative Order includes a narrative receiving water limitation stating that radioactivity from waste cannot degrade marine life; it also includes monthly monitoring requirements. See tentative Order at Page 21, Provision V.E., and Monitoring and Reporting Program at Page E-5. These requirements are adequate to protect beneficial uses from potential radioactivity, particularly where no reasonable potential exists.</p> <p>REQUEST: The performance goal for radioactivity should be stricken.</p>	<p>4, Group 3, Section 30253 of the California Code of Regulations (CCR). Title 17 CCR does not actually contain limits but instead references Title 10, Part 20 of the Code of Federal Regulations which contains effluent limitations for the discharge of radioactive nuclides in aqueous effluent in its Appendix B, Table 2. While these are not water quality objectives, they generally do apply directly to aqueous effluents regardless of the type of source facility. The Regional Board interprets the Ocean Plan's radioactivity objective as holding all discharge of effluent that could potentially have radioactive materials to the same standards as effluents from facilities licensed in accordance with the Title 17 CCR and Title10 CFR regulations. It is appropriate to hold effluent from POTWs to the same standards because 10 CFR regulations do allow licensed facilities to dispose of radioactive materials to sanitary sewer systems.</p> <p>Table 2, Appendix B of 10 CFR 20 lists effluent limits for specific radioactive isotopes. The Regional Board understands these limits to be the limits ultimately incorporated by reference by the Ocean Plan's Table B radioactivity objective. These effluent limitations are consistent with the Program of Implementation of the Ocean Plan which states that the radioactivity objectives of Table B shall apply directly to the undiluted waste effluent.</p> <p>The Monitoring and Reporting Program of the revised tentative Order will require monitoring of the effluent for representative radioactive materials -- alpha particle, beta particle, radium-226, radium 228, and strontium-90 -- rather than require monitoring for all radionuclides. This monitoring approach is adapted from monitoring procedures required by the Department of Health</p>

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		Services for drinking water.
19.	<p><u>Clarify the Status of Performance Goals</u></p> <p>If maintained in the tentative Order, the following sentence should be added to the tentative Order in Provision IV.B.3., or at least as a footnote to Table 9: "The listed effluent performance goals are not enforceable effluent limitations or standards." This language is necessary to ensure protection from enforcement of these performance goals under Water Code § 13385 or via citizen suits.</p> <p>REQUEST. Make the requested addition to the tentative Order.</p>	<p>Performance goals are not limitations or standards for the regulation of the discharge. Effluent concentrations above the performance goals will not be considered as violations of the permit but serve as red flags that indicate water quality concerns. Repeated red flags may prompt the Regional Board to reopen and amend the permit to replace performance goals for constituents of concern with effluent limitations, or the Regional Board may coordinate such actions with the next permit renewal.</p> <p>The revised tentative Order now includes the sentence requested to be added in both Provision 1V.B.3 and in the Fact Sheet. The Fact Sheet now also includes additional discussion regarding performance goals.</p>
20.	<p>Upsets, Accidental Discharges, and Sanitary Sewer Overflows (SSOs)</p> <p>The permit should include the following exceptions to any prohibitions that could be construed as relating to upsets, accidental discharges, or SSOs. See accord SFRWQCB Order No. R2-2004-0014 at pgs. 9-12; 40 C.F.R. § 122.41(n). In order to provide equal protection under the law and ensure that Fallbrook is not regulated more severely than other similarly situated permit holders in the State of California regulated under the Water Code or in the nation regulated under the Clean Water Act, Fallbrook requests the following language be added at Page 10 of the Permit:</p>	<p>The “Enforcement Consideration” provisions requested by the Commenter are not included in the revised tentative Order. Requested Provision III.C.1.a would apply to “any enforcement action” whereas California Water Code Sections 13327 only apply to civil liability. There is also an underlying question about the appropriateness of including such a provision within the permit since it places requirements on the Regional Board within waste discharge requirements for FPUD. Instead, the list of factors to be considered in accordance with CWC Section 13327 could be incorporated in the State Water Board’s Enforcement Policy upon request from the Commenter. Alternatively, the factors listed in requested Provision III.C.1.a could</p>

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	<p>"III. C. Implementation and Enforcement of Discharge Prohibitions</p> <p>1. <i>Enforcement Considerations.</i></p> <ul style="list-style-type: none"> a. In any enforcement action, the Board will consider the Permittee's efforts in containing, controlling, and cleaning up the discharge or SSO. The Board will also consider the Permittee's efforts in sewer rehabilitation as well as implementation of a sanitary sewer management program or infiltration/inflow ("I/I") correction program. These considerations are part of the factors required by Section 13327 of the California Water Code. b. The Permittee shall make every practicable effort to contain accidental discharges and SSOs, and to prevent non-compliant wastewater from entering storm drains and surface water bodies. c. The Discharge Prohibitions are not violated under either of the following: <ul style="list-style-type: none"> 1) If the SSO does not enter a surface water body, or 2) If the Permittee contains the SSO within the storm drain system pipes and recovers and cleans up the spilled wastewater. 3) However, these incidents of SSOs shall be reported to the Board as SSOS. <p>2. <i>Discharges Caused By Severe Natural Conditions.</i> Enforcement actions maybe taken against the Permittee for any discharge unless the Permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:</p>	<p>probably be more appropriately stated in a Finding or the Fact Sheet; however, this is unnecessary and is not done in the revised tentative Order.</p> <p>Requested Provisions III.C.1.b and III.C.1.c are also not included in the revised tentative Order because, if included, they would weaken or contradict the prohibitions listed under Discharge Prohibitions III.B of the tentative Order, the Basin Plan prohibitions, and prohibitions and provisions of the Municipal Stormwater Permit for San Diego County (Order No. 2001-01). Furthermore, requested Provision III.C.3 presumes that an SSO would only be a violation if it results in a discharge to a natural surface water body; however, USEPA Region 9 has commented to the Regional Board that it is not appropriate to include blanket statements within permits that attempt to predetermine violations of the Clean Water Act or NPDES permit (see USEPA comments to tentative Order Nos. R9-2005-0136 and R9-2005-0137 dated August 3, 2005 available at http://www.waterboards.ca.gov/sandiego/rb9board/Aug05/item%2011/Supporting%20Doc%206.pdf)</p> <p>Requested Provisions III.C.2 and III.C.3 for Discharges Caused By Severe Natural Conditions and Discharges Caused by Other Factors, respectively, are also not included in the revised tentative Order. These requested provisions are slight modifications of proposed affirmative defense provisions in regulations proposed by USEPA to address SSOs which accompanied a proposed technology-based limitation prohibiting SSO discharges to waters of the US. USEPA has retracted its proposed SSO regulations and has not provided other regulations for affirmative defenses for SSOs. Therefore, the Regional Board is</p>

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	<ul style="list-style-type: none"> a. The discharge was caused by severe natural conditions, such as hurricanes, tornadoes, flooding, earthquakes, landslides, tsunamis, or other similar conditions; b. There were no reasonably feasible alternatives for the discharge, such as onsite retention of untreated wastewater, reduction of I/I, and the use of adequate backup equipment; c. The Permittee submitted a claim to the Board's staff within 10 working days of the date of the discharge that the discharge meets the conditions of this provision. Additional information to substantiate such claim shall be submitted upon the request of Board staff; and d. The Permittee took all reasonable steps to stop, and mitigate the impact of the discharge within 24 hours after the Permittee became aware of the discharge. <p>3. <i>Discharges Caused by Other Factors.</i> The Permittee may establish an affirmative defense to an action brought for non-compliance if the Permittee establishes through properly signed, contemporaneous operating logs, or other relevant evidence that:</p> <ul style="list-style-type: none"> a. The Permittee can identify the cause or likely cause of the discharge event; b. The discharge was exceptional, unintentional, temporary and caused by factors beyond the reasonable control of the Permittee; c. The discharge could not have been prevented by the exercise of reasonable control, such as proper management, operation and maintenance, adequate treatment facilities or collection system facilities or components, or preventative maintenance. 	<p>not inclined to include affirmative defense language in the revise tentative Order that is not based on regulations promulgated by USEPA or specifically authorized in the Clean Water Act or the California Water Code.</p>

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	<p>d. The Permittee submitted a claim to the Board's staff within 10 working days of the date of the discharge that the discharge meets the conditions of this provision. Additional information to substantiate such claim shall be submitted upon the request of Board staff; and</p> <p>e. The Permittee took all reasonable steps to stop, and mitigate the impact of the discharge as soon as the Permittee became aware of the discharge.</p> <p>4. <i>Burden of Proof.</i> In any enforcement proceeding, the Permittee has the burden to prove that the criteria in this section have been met."</p>	
21.	<p>Page 1, Table 3 - The proposed effective date of August 10, 2005 is inaccurate. The tentative Order improperly specifies an immediate effective date, when the proper date is 50 days after the hearing date of August 10, 2005, or September 29th. See NPDES Memorandum of Agreement between the U.S. Environmental Protection Agency and the California State Water Resources Control Board at 22, section I.F.2.a. (Sept. 22, 1989)(NPDES permits adopted by the Regional Board "shall become effective on the 50th day after the date of adoption, if EPA has made no objection to the permit; if there has been significant public comment"). Therefore, the Regional Board should correct the permit to include a 50-day delay in the effective date, and then correct the expiration date to be 5 years from the effective date.</p>	<p>The NPDES Memorandum of Agreement (MOA) between US EPA and the State Water Board allows a NPDES waste discharge requirements to become effective on the date of adoption by the State or Regional Boards under certain conditions including when no objections from US EPA and no significant public comment are received. Otherwise, the MOA states that the effective day would be 50 days after adoption. It should be noted that 40 CFR 124.15 authorizes that a permit can be effective on the date of adoption under certain conditions, otherwise 40 CFR 124.15 states that the permit is effective 30 days after adoption is noticed.</p> <p>Prior to issuing the original tentative Order for public comment, the Regional Board addressed many concerns raised by FPUD in its renewal application and previous communications to the Regional Board in order to facilitate the public comment period. The original tentative Order was issued for public comment with the proposed effective date being the same as the proposed adoption date under the assumption that no objections from US EPA or significant public comment</p>

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		<p>would be arise. Therefore, the proposed effective date was not improperly set by the Regional Board.</p> <p>In light of the significant comments submitted by FPUD with regards to the original tentative Order, the Regional Board is proposing an effective date of June 1, 2006 if the tentative Order is adopted on April 12, 2006.</p>
22.	<p>Page 5, Finding II. B., line 17 - Change "which is covered under separate waste discharge requirements" to "which is covered under separate <u>water recycling</u> requirements."</p>	<p>No change is necessary. Order No. 91-39 are waste discharge requirements and was not issued as water recycling requirements.</p>
23.	<p>Page 5, Finding II. C. - Add the following clarifying language: "by the U.S. Environmental Protection Agency (USEPA) and <u>state law under Chapter 4</u> and Chapter 5.5, Division 7 of the ..."</p> <p>Further, the permit template, which the Regional Board appears to be using has the following clause at the end of the sentence: "<u>for discharges that are not subject to regulation under CWA section 402</u>." This language should be re-inserted for clarification.</p>	<p>Based on the State Water Board's advice, the phrase "state law under Chapter 4" is not inserted in the Finding because the reference to Chapter 5.5 is sufficient. Chapter 5.5 states that the other provisions of the Porter-Cologne Act apply to the extent that they are consistent with the Clean Water Act etc.</p> <p>The clause "for discharges that are not subject to regulation under CWA section 402" is not re-inserted because Article 4 Chapter 4 of the CWC applies to all discharges to waters of the State and not just to discharges that are not subject to regulation under CWA section 402. It should be noted that, while the tentative Order regulates FPUD's POTW discharge to waters of the State that are also waters of US for purposes of the federal CWA, FPUD is also regulated under separate waste discharge requirements, pursuant only to Article 4, Chapter 4 of the CWC, for its discharges to waters of the State that are not waters of the US.</p>
24.	<p>Page 6, Finding II. C. - Change spelling "Distcharger" to "Discharger"</p>	<p>The correction is made in the revised tentative Order.</p>

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25.	<p>Page 6, Finding II. E. - The Regional Board states that the action to adopt an NPDES permit is exempt from the California Environmental Quality Act (Public Resources Code §21100 et seq.) in accordance with Water Code Section 13389. This finding should be revised to reflect that Water Code Section 13389 only exempts the issuance of NPDES permits from the provisions of "Public Resources Code, <u>Chapter 3</u>, Division 13," not the entire Act.</p>	<p>The requested change is made in the revised tentative Order.</p>
26.	<p>Page 6, Finding II. G. - This finding is not consistent with state and federal law requirements. WQBELs are only required "where there has been demonstrated reasonable potential." The inclusion and use of "proposed state criteria" violates state law requirements under the Water Code and the Administrative Procedures Act. Further, this paragraph should clarify that the state policy for interpreting narrative criteria is "required under 40 C.F.R. §131.11(a)(2)."⁶ For these reasons, the following changes should be made to this paragraph:</p> <p>"Section 122.44(d) of 40 CFR required that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality objectives to protect beneficial uses of the receiving water <u>where there has been demonstrated reasonable potential</u>. Where numeric water quality objectives have not been established, 40 CFR 122.44(d) specifies that WQBELs may be established using USEPA criteria guidance under CWA section 304(a), <u>proposed State criteria</u>, or a State policy interpreting narrative criteria, <u>as required under 40 CFR 131.11(a)(2)</u>, supplemented with other relevant information, or an indicator parameter."</p> <p>Footnote 6: It should be noted for the record that the Regional Board is required to have NUMERIC water quality objectives for all toxic</p>	<p>40 CFR 122.44(d) does not actually restrict inclusion of effluent limitations only to pollutants "where there has been demonstrated reasonable potential." Instead 40 CFR 122.44(d) requires that if reasonable potential is demonstrated for a given pollutant, then a permitting authority must include an effluent limitation for that pollutant (i.e., the permitting authority may not omit an effluent limitation for that pollutant).</p> <p>40 CFR 122.44(d)(1)(vi)(A) allows the use of proposed state Criterion and CWC Section 13370(c) allows the Regional Board to enact the Clean Water Act and its implementing regulations.</p> <p>40 CFR Part 131.11(a)(2) states "Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be included as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR part 35)." The required information are included in the California Ocean Plan. The revised tentative Order is modified to</p>

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	pollutants. 33 USC Section 1313(c)(2)(B). Therefore, the use of a narrative objective for toxic pollutants is invalid and contrary to requirements of the Clean Water Act.	<p>include the requested reference to 40 CFR Part 131.11(a)(2) .</p> <p>While 33 USC Section 1313(c)(2)(B) (see Commenter's Footnote 6) requires numeric objectives, it also acknowledges that numeric criteria may not be available for some pollutants, and in such cases allows the State to adopt criteria based on biological monitoring or assessment methods for establishing and measuring water quality criteria for toxic.</p>
27.	Page 7, Finding II. H., last paragraph - Discussion of State Water Board Resolution No. 88-63 (the Sources of Drinking Water Policy) should be removed. The Ocean is not designated with a municipal or domestic supply (MUN) use.	This Finding is deleted in the revised tentative Order.
28.	Page 8, Finding II.I. - It is incorrect to state that State Water Board Resolution No. 68-16 "incorporates the requirements of the federal antidegradation policy" since that policy came much later in time. To ensure accuracy, this part of the sentence should be changed to read: " <u>has been deemed to be consistent with</u> incorporates the requirements of the federal antidegradation policy."	Appendix E to Chapter 8 of the State Water Board's Administrative Procedures Manual provides a State Water Board guidance document regarding antidegradation dated March 1997. That guidance states "The SWRCB has interpreted Resolution No. 68-16 to incorporate the federal antidegradation policy where applicable -- See SWRCB Order No. WQ 86-17." Therefore, changes to Finding II.I are not necessary.
29.	Page 8, Finding II. K. - In order to be consistent with state law requirements, the second sentence of this finding should be revised to state: "Sections <u>13225(c), 13267(b),</u> and 13383 of the CWC authorize the Regional Water Boards to require technical and monitoring reports <u>so long as the need for and evidence in support of these requirements are provided.</u> "	Finding II.K of the original tentative Order has been slightly modified and renumbered as Finding II.N in the revised tentative Order and is substantially unchanged. The finding is from the State Water Board's permit standardization template, and does not include the changes suggested by the Commenter.

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30.	<p>Page 8. Finding II. L., and Pages 21-22, Provision VI.</p> <p>A.1. 2. -The Regional Board should only include the federal Standard Provisions, as applicable, and remove the special or duplicative standard provisions included by the Regional Board. Inclusion of both creates the real possibility of duplication and contrary requirements. Duplication is problematic for permit holders as an allegation could be made that more than one provision of the permit was violated when, in actuality, two provisions essentially require the same thing. For this reason, the Regional Board should ensure that no "standard" or other provisions are duplicated.</p>	<p>Attachment D is taken directly from State Water Board's permit standardization template in its entirety. According to the State Water Board, Attachment D includes all Federal Standard Provisions and have been reviewed by the Office of Chief Counsel of the State Water Board <u>together with provisions of the California Water Code</u>. This attachment has been renamed "Standard Provisions" instead of "Federal Standard Provisions" as recommended by the State Water Board.</p> <p>The Regional Board has reviewed the Standard Provisions in Attachment D and the Regional Board Standard Provisions of Provision VI.A.2 and concluded that there is no duplication of provisions.</p>
31.	<p>Page 8. Finding II. M. - This section should clarify that notice was given of "its intent to prescribe an NPDES permit and waste discharge requirements for the discharge..."</p>	<p>Finding II.M of the original tentative Order has been renumbered as Finding II.P in the revised tentative Order and is otherwise unchanged. The finding is from the State Water Board's permit standardization template, and does not include the changes suggested by the commenter.</p>

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32.	<p>Page 9 - There is no delineation between unenforceable findings and portions of the enforceable order. This is another downfall of the State Water Board's permit template that has not been corrected. Use of a mandatory permitting template that has not been subject to public notice and comment is unfair and likely unlawful.</p>	<p>A statement has been added between Section II and Section III of the revised tentative Order to delineate between the unenforceable findings and enforceable portions of the Order.</p> <p>The Regional Board in general supports the State Water Board's efforts to standardize the format, content, and certain language of waste discharge requirements issued by the various Regional Boards in order to promote statewide consistency. This move towards standardization is partly in response to comments received by the Regional Boards in the past that WDRs issued by the Regional Boards are not always consistent between Regional Boards. To the extent that the commenter objects to the process by which standardization is being undertaken by the State Water Board, the commenter should address the matter to the State Water Board.</p>
33.	<p>Pages 9-10, Provision III. Discharge Prohibitions - There are no justifications or evidence supporting the necessity of each of these prohibition provisions within the tentative Order or the Fact Sheet. This provision, as with all others, must be justified with evidence in the record as being applicable to Fallbrook's discharge, or be deleted.</p>	<p>California Water Code Section 13243 provides that the Regional Board, in a water quality control plan, may specify certain conditions where the discharge of wastes or certain types of wastes that could affect the quality of waters of the state is prohibited. Inclusion of the Basin Plan prohibitions in the tentative Order implements the requirements of the Basin Plan.</p> <p>The Basin Plan prohibitions included in the original tentative Order are a subset of the complete set of Basin Plan prohibitions. Certain prohibitions did not apply to FPUD's discharge and were not included. The Basin Plan prohibitions of the original tentative Order are retained in the revised tentative Order. The Fact Sheet of the revised tentative Order has been modified</p>

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		to include an explanation that only Basin Plan prohibitions that apply to FPUD's discharge are included.
34.	<p>Page 10, Provision III. F. - This provision is inconsistent with the standard provisions at pages D-2 and D-3, which authorize bypass under certain conditions and no just during upset conditions. In addition, this prohibition should authorize diversion around certain portions of the treatment system for maintenance and operational reasons so long as the effluent limitations are met. Permits in the San Francisco Bay Region routinely contain this language, and this language is consistent with state law, which allows the Regional Board to set effluent limitations, but not to specify the manner in which the permit holder must achieve those limits. See Water Code</p> <p>§ 13360(a). For these reasons, Fallbrook requests that the following changes to this provision:</p> <p>"F. The bypassing of untreated wastes containing concentrations of pollutants in excess of those in Tables A or B of the Ocean Plan is prohibited, except for under allowable bypass or upset conditions as described in Attachment D of this Order, Standard Provisions I.G. and H. <u>The discharge of blended wastewater, that is biologically treated wastewater blended with wastewater that has been diverted around biological treatment units or advanced treatment units is allowable when the discharge complies with the effluent limitations contained in this Order.</u> Furthermore the Permittee shall operate the facility as designed and in accordance with the O & M manual developed for the facility."</p>	<p>This provision is modified in the revised tentative Order to accurately reflect Prohibition III.H.4 of the 2001 California Ocean Plan. The modified prohibition, as well as the Ocean Plan prohibition, prohibits the discharge of untreated wastes that has bypassed all treatment processes, unless excepted in accordance with Ocean Plan Provision III.I. Discharges subject to this prohibition would include the discharge to the ocean of raw municipal wastewater that has not undergone any treatment through any of the treatment plant processes, and sanitary sewer overflows to the ocean. The Bypass and Upset provisions contained in Attachment D are not relevant to the modified prohibition.</p> <p>While the issue of blended wastewater may be relevant to the modified prohibition, the Regional Board refrains from addressing the issue of blending within NPDES waste discharge requirements until after USEPA promulgates rules regarding this issue. USEPA retracted its November 2003 proposed Blending Policy, and in its place, has proposed "EPA Policy on Permit Requirements for Peak Wet Weather Discharges from Wastewater Treatment Plants Serving Sanitary Sewer Collection Systems" in December 2005. The proposed EPA policy would require that all wastewater receive at least primary treatment prior to diversion around biological treatment units and would not allow recombination of untreated wastewater streams with properly treated wastewater. Furthermore, diversion</p>

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		and recombination would only be allowed under the proposed policy when flows exceed the design capacity of the treatment plant under certain conditions.
35.	<p>Pages 10-11, Provision IV. A. Discharge Specifications - Many of these requirements duplicate the Receiving Water Limitations included later in the tentative Order. As stated previously, duplication of requirements is problematic for permit holders as an allegation could be made that more than one provision of the permit was violated when, in actuality, two provisions essentially require the same thing. For these reasons, this section should be deleted as duplicative and unnecessary.</p>	<p>Provisions IV.A are discharge specifications that apply directly to the discharge, taken from the Ocean Plan's Program of Implementation, for the purpose of implementing the receiving water's water quality objectives. The provisions restrict some materials and substances from being present in the effluent.</p> <p>Provisions V.A-D are water quality objectives which shall not be caused to be violated by the discharge, taken from the California Ocean Plan. These provisions emphasizes that no adverse impact to receiving waters should result from the discharge of waste.</p> <p>While the two sets of provisions may appear to be duplicative, they are not duplicative when considered closely. Both sets of provisions have the same goal of protecting receiving waters, but are not identical.</p>
36.	<p>Page 11, Provision IV.A.5. - The tentative Order and Fact Sheet contain no evidence that Fallbrook's discharge is a "waste" or that its treated effluent "contains pathogenic organisms or viruses." For this reason, the wording should be changed to read "<u>Waste Effluent</u> that may contains pathogenic organisms or viruses..."</p>	<p>FPUD's discharge, while meeting the definition of recycled water under CWC Section 13050 as long as it is available for direct beneficial use, also meets the definition of waste under CWC Section 13050 and the California Ocean Plan definition. The tentative Order, which are waste discharge requirements, regulate the discharge of wastes.</p> <p>Nonetheless, the Regional Board modified Provision IV.A.5 in the revise tentative Order to read "A discharge that may contain pathogenic organisms or viruses . . . "</p>

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37.	<p>Page 11, Provision IV.B. - Part of this provision states that "Scientific notation, with some exceptions, is used to express the effluent limitations and performance goals to prevent ambiguity." Fallbrook repeats its request above that the Regional Board change the effluent limitations and performance goals reporting from scientific notation to standard numerical values. Although scientific notation is used by other permittees, such as Oceanside, this has not been used in Fallbrook's permits previously and Fallbrook would prefer standard values. Standard values (e.g., 10.25 mg/L) are no more or less ambiguous than scientific notation and are easier for the public to understand.</p>	<p>The example "standard value" given by the commenter (10.25 mg/L) may not be ambiguous; however, many other examples of "standard values" are ambiguous, confusing, or cumbersome. For example, it is not clear whether a sample result of 174.0 ug/L is a violation of an effluent limit of 170 ug/L. Also the use of "standard values" leads to the use of a confusing combination of measurement units (such as grams, milligrams, micrograms, nanograms and picograms within the same table of effluent limitations) in order to avoid cumbersome values with multiple leading zeros (eg. 0.32 pg/L to avoid 0.00032 ng/L or 0.00000032 ug/L or 0.0000000032 mg/L).</p> <p>The use of scientific notation is retained. (See also response to Comment #2)</p>
38.	<p>Page 12, Table 7, Secondary Treatment Effluent Limitations - The regulations requiring technology-based effluent limits do not require mass limits. See 40 C.F.R. Part 133. Furthermore, given the permit's proposed flow cap (see Provision IV.A.6.), mass limits are inherent in the permit and explicit mass limits are unnecessary particularly since these limits are not set to meet any water quality objective or protect any beneficial use. These limits are most likely the result of inclusion in the State Water Board's permit template, which as stated above has many problems that have not yet been vetted by the public or regulated community. For these reasons, mass limits should be removed from Table 7.</p>	<p>Please see response to Comment #15.</p>
39.	<p>Pages 12-18, Table 8, Effluent Limitations based on California Ocean Plan 2001- For the reasons stated in the general comments above, automatic and duplicative mass</p>	<p>Please see response to Comment #15.</p>

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	limits, which have not been independently justified as necessary in order to meet water quality standards (which are set based on concentration alone), should be removed. 33 U.S.C. § 1311(b); 40 C.F.R. § 122.45(f).	
40.	Pages 18-19, Table 9, Performance Goals - For the reasons stated in the general comments above, the inclusion of performance goals is unnecessary. Fallbrook's effluent quality will not change if the performance goals are removed. See accord Fact Sheet at F-33. Thus, performance goals serve no regulatory purpose and should be removed.	Performance goals are retained in the permit. (See response to Comment #17)
41.	Page 19, Provision V. - The tentative Order states that "the discharge, by itself or jointly with any other discharges, shall not cause violation of the following water quality objectives." This tentative Order only regulates Fallbrook's discharge, not any other discharges. Therefore the clause ", by itself or jointly with any other discharges," should be removed from this sentence.	The clause "by itself or jointly with any other discharges" is deleted in the revised tentative Order. In making the determination of the cause of a violation of water quality objectives, the Regional Board will consider all relevant factors and available information.
42.	Pages 19-21, Provisions V. A.-D. - Many of these Receiving Water Limitations exactly or essentially duplicate requirements contained in Provision IV.A. Such duplication should be avoided and only one requirement should be included for each receiving water limitation.	See response to Comment #35.
43.	Page 21, Provision VI. A.1. - Because some of the standard provisions do not apply to POTWs, this sentence should read: "The Permittee shall comply with all applicable Standard Provisions . . ."	Provision VI.A.1 refers to Standard Provisions contained in Attachment D. At the time of its issuance, the original tentative Order reflected the State Water Board's permit standardization template that was available. The revised tentative Order now reflects the most current State Water Board permit standardization template which removes provisions not applicable to POTWs.

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		See also responses to Comments #1 and #30.
44.	Page 22, Provision VI.A.2.d. - Change "r E-rating" to "re-rating" and "For r E-ratings" to "For re-ratings"	The corrections have been made to the revised tentative Order.
45.	<p>Page 23, Provision VI. A.2.k., and Page VI. C.1.b. - Effluent standards and prohibitions for toxic pollutants established under Section 307(a) of the CWA do not apply to POTWs. Instead, section 307(b) applies to create the pretreatment program to be implemented by POTWs. Because the cited section is inapplicable, these paragraphs should be deleted. Furthermore, these two provisions are contradictory because one states that inclusion is automatic while the other states that the permit will be reopened. Deletion of both sections will cure the inconsistency.</p>	The Regional Board acknowledges that Provision VI.A.2.k and Provision VI.C.1.b are contradictory. Both of these provisions have been deleted from the revised tentative Order as not necessary.
46.	<p>Page 24, Provision VI. C.1.c., e., f., g., and h. - Each of these paragraphs includes the following: "may be r E-opened." This should read: "may be reopened."</p>	The corrections have been made to the revised tentative Order.
47.	<p>Pages 24-29, Provision VI. C.2. - For all studies, monitoring and reporting requirements that go beyond the requirements of 40 C.F.R. § 122.48 and § 122.44(i), the Regional Board must comply with Water Code section 13225(c) and 13267(b) by completing the required burden analysis (including cost) and providing evidence to support the need for these requirements.</p>	40 CFR Sections 122.48 and 122.44(i) pertain to requirements to monitor the effluent discharged. However, the requirements under Provision VI.C.2 (Treatment Plant Capacity, Spill Prevention and Response Plans, Spill Reporting Requirements, Sludge Disposal Requirements, Pretreatment Program, Urban Runoff Diversion Program) implement, among others, 40 CFR 122.41(e) [Proper Operation and Maintenance], 40 CFR 122.41(h) [Duty to Provide Information], 40 CFR 122.41(l) [Reporting Requirements], 40 CFR 503 [Standards for the Use or Disposal of Sewage Sludge], and 40 CFR 403 [Pretreatment regulations].

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		See also response to Comment #50.
48.	<p>Page 27, Provision VI. C.2.d.2) - This paragraph includes the word "sludg E-only" when it should read "sludge-only." The Regional Board should also consider using the term "biosolids" in lieu of sludge as this is currently the USEPA preferred term.</p>	<p>The term "sludge" is retained in the revised tentative Order because this is the term used in 40 CFR regulations and in Title 23 of the California Code of Regulations. The term "biosolids" in brackets is added where the term "sludge" occurs in support of USEPA's preferred terminology.</p>
49.	<p>Page 28, Provision VI. C. 2. e. - This Pretreatment Program provision says that the Discharger shall conduct a semi-annual Industrial Waste Survey (IWS) and priority pollutant Scan of treated effluent. In Order 2000-12, the scan was performed annually and virtually no constituents were detected. The semi-annual language was removed from the San Elijo permit (see Errata Sheet for Order No. R9-2005-0100 at pg. 7, para.12) and should be removed from this permit as well.</p> <p>In addition, "no later than February 1 and August 1 of each year" should be replaced with "December 10. 2009" as was required in San Elijo permit (see Errata Sheet for Order No. R92005-0100 at pg. 7, para.12), or at least should be consistent with NPDES annual report date of March 1.</p>	<p>The frequency requirement for conducting the pretreatment program IWS and priority pollutant scan has been modified to annually in the revised tentative Order, the same frequency as in Order No. 2000-012. The due date for submitting the annual IWS report is set to March 1 in the revised tentative Order.</p>
50.	<p>Page 29, Provision VII. C.2.f - Urban Runoff Diversion Program - Fallbrook requests that the Regional Board remove this provision from the draft permit as was done in the San Elijo JPA (see Errata Sheet for Order No. R9-2005-0100 at pg. 7, para.13) and City of Escondido WWTP NPDES permits.</p> <p>If not removed, then this provision should be amended to recognize that diverted dry weather urban runoff may contain metals and other contaminants. Diverting this runoff</p>	<p>Dry-weather urban runoff diverted to a wastewater treatment plant can be detrimental to the biological processes in a wastewater treatment plant conducting secondary treatment by causing hydraulic overloading and/or toxicity due to metals and other pollutants that may be in the urban runoff. Diversion of urban runoff to a treatment plant puts the primary function of the treatment plant – that of treating municipal wastewater – at risk. While the Regional Board acknowledges that</p>

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	<p>water through Fallbrook's treatment process creates a net environmental benefit by removing up to 80% of these metals that would otherwise flow into local waters. However, this permit does not recognize these potential influent loads and provide offsetting credit in the mass or concentration limits to account for the removal of higher pollutant loading than would occur if it were not for any potential diversions. For this reason, Fallbrook requests that, if this provision is maintained, the permit be amended to recognize the value of this program and amend Fallbrook's effluent limits during any time that this program is being undertaken. Otherwise, Fallbrook could be punished and in violation of its effluent limits for agreeing to undertake this environmental improvement activity. At the very least, Fallbrook requests that the new permit carry a provision allowing development of urban runoff related discharge credits for approval by the Executive Officer with a commitment by the Regional Board staff to include an approved credit system in a permit re-opener.</p>	<p>diversion clearly has environmental and public health benefits, diversion of urban runoff to a wastewater treatment plant is not the most desirable long-term solution to urban runoff pollution. Neither NPDES permits for individual wastewater treatment plants nor municipal stormwater permits require a wastewater treatment plant to treat urban runoff. This Regional Board, through its municipal stormwater permits, maintains that best management practices and source control are the most desirable means to address urban runoff pollution.</p> <p>Nonetheless, the Urban Runoff Diversion Program requirement has been deleted in the revised tentative Order. Upon further consideration, the Regional Board recognized that 1) the responsibility already rests with the treatment plant operator to ensure that urban runoff flows diverted to the treatment plant do not negatively impact the treatment processes of the plant and that 2) the standard provision requirement for proper operation and maintenance already encompass this responsibility.</p>
51.	<p>Page 29, Provisions VII. A. and B - The definitions included here for Average Monthly Effluent Limitation (AMEL) and Average Weekly Effluent Limitation (AWEL) are inconsistent with the definitions included in Appendix A on page A-1. Furthermore, the compliance determination language proposed herein improperly prejudices where an exceedance equates to non-compliance and how many days of non-compliance will be found. This prejudgment is improper particularly when the Mandatory Minimum Penalties (MMP) program does not find every exceedance to be a "violation" and does not find 31 or 7 "violations" from 31 or 7 days of exceedances, but merely one violation. See Water Code § 13385(i); State Water Resources</p>	<p>Provisions VII.A and B are Compliance Determination provisions, not definitions. These provisions are consistent with the definitions in Appendix A. The provisions outline the manner by which all instances of non-compliance will be identified, but not the amount of penalty to be assessed. Depending on the type of penalty being proposed for assessment (i.e., discretionary ACLs vs. MMPs) and the circumstances of the non-compliance, the number of non-compliance can be collapsed to a smaller number of violations (e.g., for MMPs, violations within a 30-day period due to a POTW single operational upset may be collapsed to one violation). The procedures for assessing ACLs and</p>

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	<p>Control Board, Water Quality Enforcement Policy at 22(Feb. 19, 2002); see also SWRCB SB709 Questions & Answers Document at 15, Q.39 (April 17, 2001)(if "the discharger has violated a monthly average effluent limitation, the Regional Board should consider that one violation."). Further, the date of the sample generally only indicates a violation on the date of the data collection and other evidence is required to demonstrate that violations occurred on more than one day. See SWRCB SB709 Questions & Answers Document at 13, Q.35 (April 17, 2001). For these reasons, the first sentence of these two paragraphs should be amended as follows:</p> <p>"If the average of daily discharges over a calendar month exceeds the AMEL for a given parameter, an alleged violation will be flagged and the <u>Permittee</u> will be considered out of compliance for <u>each day of that month</u> for that parameter (<u>resulting in 31 days of non-compliance in a 31 day month</u>)."</p> <p>"If the average of daily discharges over a calendar week (Sunday through Saturday) exceeds the AWEL for a given parameter, an alleged violation will be flagged and the <u>Permittee</u> will be considered out of compliance for <u>each day of that week</u> for that parameter, <u>resulting in 7 days of non-compliance</u>."</p>	<p>MMPs are not contained in the tentative Order.</p> <p>The contention that violations can only occur on days when a sample is taken disregards the concept of representative random sampling which allows monitoring frequencies to be less than daily and further ignores statistical principles regarding averages. The commenter is referred to USEPA Memorandum "Issuance of Guidance Interpreting Single Operational Upset" dated September 27, 1989 for documentation that the exceedance of a monthly average limitation counts as a violation on each day of that calendar month unless there are other relevant factors.</p> <p>No changes to Provisions VII.A and B are necessary.</p>
52.	<p>Page 30, Provision VII. D. and E. - References in these paragraphs to "a violation will be flagged" should state "an alleged violation will be flagged" to be consistent with Provision VII, paragraphs A. through C. In addition, non-compliance should be only found once per day. Both the CWA and the CWC are set up to find violations on a "per day" basis. See e.g., 33 U.S.C. § 1319; Water Code § 13350(e)(1) ("for each day the violation occurs"); Water Code § 13385(b)(1) ("for each day in which the violation occurs"); SWRCB SB709 Questions & Answers Document</p>	<p>The phrase "a violation will be flagged" has been changed to "an alleged violation will be flagged" in the revised tentative Order.</p> <p>See also response to Comment #51.</p>

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	<p>at 16, Q.41 (April 17, 2001) ("an exceedance of a single effluent limitation based on instantaneous maximums or hourly averages should be counted as no more than one violation per day"). Requiring each sample to be subject to being deemed a violation and incurring a potential penalty discourages more frequent sampling and unnecessarily punishes desirable behavior (e.g., frequent or continuance monitoring). For this reason, the last sentence of each of these paragraphs should be removed.</p>	
53.	<p>Page 30, Provision VII. F. - The definition of Six-month Median Effluent Limitation is inconsistent with the definition at pg. A-5. Further, for the reasons provided above, the Regional Board should not prejudge the days of violation. For this reason, the first sentence should be amended to read ". . . will be considered to be out of compliance for <u>each day</u> of that 180-day period for that parameter."</p>	<p>The Regional Board disagrees that Provision VII.F is inconsistent with the definition on page A-5 in the original tentative Order. The definition of the six-month median effluent limitation in the original tentative Order is derived from the Implementation section of the California Ocean Plan.</p> <p>The Regional Board agrees that this provision should be consistent with other Compliance Determination and Enforcement provisions such as for the average monthly effluent limitation. Provision VII.F has been modified in the revised tentative Order to be based on calendar six-month periods (i.e., January-June and July-December). If the effluent discharge median during a calendar six-month period exceeds the six-month median effluent limitation, the discharger will be considered out of compliance for each day of the calendar six-month period (e.g., 184 days of non-compliance for the July-December period). As modified in the revised tentative Order, Provision VII.F will be consistent with Provisions VII.A and VII.B. The definition of the six-month median effluent limitation on page A-5 is also modified in the revised tentative Order to be consistent with Provision VII.F. For similar reasons stated in the response to Comment #51, the Regional Board disagrees that Provision VII.F would</p>

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		<p>prejudge the days of violation with the modified definition of the six-month median effluent limitation.</p> <p>The Regional Board acknowledges that the modifications in the revised tentative Order related to the six-month median effluent limitation are not consistent with the Ocean Plan which states that the six-month median is the moving median of daily values for any 180-day period. While the Regional Board strives to implement the intent of the Ocean Plan directly whenever possible, there is an over-riding need for consistency in compliance determination such that a deviation from the Ocean Plan is warranted in the case of the six-month median effluent limitation. However, as in the case of the average monthly average effluent limitation versus a 30-day running average effluent limitation, the Regional Board expects that the modified definition of the six-month median effluent limitation in the revised tentative Order will provide a similar level of compliance incentive as a running 180-day median effluent limitation.</p>
54.	Page 30, Provision VII. G. - If mass limits are removed as requested, this paragraph can also be removed.	The provision is retained. Also see responses to Comments #15, 16 and 59.
55.	Page 31, Provision VII. I. - The first paragraph is missing the number 1. It should read "1. Sampling Reporting Protocols."	The correction has been made to the revised tentative Order.
56.	Page 31, Provision VII. I.2.a. - This heading should read "Single Constituent," not "Singl E-Constituent."	The correction has been made to the revised tentative Order.
57.	Page 32, Provision VII. I.3. Pollutant Minimization Program - The requirement for completion and	Provision VII. I.3 of the tentative Order requires the Discharger to develop and conduct a Pollutant

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	<p><i>implementation</i> of a Pollution Prevention Plan (PPP) is contrary to the terms of Water Code § 13263.3(k). See <i>accord In the Matter of Tosco Refining</i>, State Board Tentative Permit No. 2001-06 at Page 40 (March 17, 2001). For this reason, Fallbrook requests that the word "implementation" be removed from paragraph 3.a. related to PPPs.</p> <p>The requirement to develop <u>and conduct</u> a Pollution Minimization Plan (PMP) is contrary to the terms of Water Code §13263.3(k). See <i>In the Matter of Tosco Refining</i>; State Board Order No. 2001-06 at Page 40 (March 17, 2001). For this reason, Fallbrook requests that the words "and conduct" be removed from paragraphs 3.b.1) and 2) related to PMPs.</p>	<p>Minimization Program (PMP) to reduce all sources of a pollutant when there is an effluent limitation for that constituent and effluent analytical results are "non-detect" (ND) or "detected not quantified" (DNQ) and do not conclusively indicate that the effluent limitation is not exceeded. The proposed provision also merely states that completion and implementation of a Pollution Prevention Plan (PPP) pursuant to CWC Section 13263.3 (d) will fulfill the requirement of the provision for a PMP. However, the tentative Order does not require the Discharger to complete and implement a PPP per se.</p> <p>A PMP and PPP are not the same although there is some similarity and overlap. The proposed requirement for a PMP is not based on CWC Section 13263.3 but rather is based on the need to ensure that effluent limitations are not exceeded, and the quality of receiving waters is not impacted, even when available analytical technology cannot provide conclusive data. On the other hand, a PPP may be required, pursuant to CWC Section 13263.3(d)(1), when the discharger is a chronic violator, when the discharger contributes or may contribute to the creation of a toxic hot spot, when pollution prevention is necessary to achieve a water quality objective, or when the discharger is subject to a cease and desist order or time schedule order. The required elements of a PMP as identified in the 2001 California Ocean Plan are also more limited than the required elements of a PPP as identified in CWC Section 13263.3(d)(3).</p> <p>Because requiring a PMP is not the same as requiring a PPP pursuant to CWC Section 13263.3 for reasons stated above, the Commenter's contention that CWC 13263.3(k) applies is not relevant.</p>

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		The language used in Provision VII.I.3 is taken directly from the 2001 California Ocean Plan; however, the provision language is incomplete and does not include the required elements of a PMP identified in the Ocean Plan. The revised tentative Order has been modified to include the required PMP elements.
58.	<p>Page 35, Provision VII. N. and O. - Again, the Regional Board is including language that prejudges the existence of a "violation." Not every act done contrary to the terms of the permit will be deemed a "violation." Defenses do exist to protect permittees when certain actions occur that cause the permit not to be followed (e.g., upset, bypass, acts of God, acts of a third party, etc.). See accord 40 C.F.R. §122.41(m) and (n); Water Code §13350(c) and §13385(j). For this reason, these paragraphs should be removed. If not removed, then the language should be amended to read "may be is a violation of ..."</p>	These provisions have been removed at the request of USEPA Region IX, see Comment #131. (see also Comment #51).
59.	<p>Page 35, Provision VII. P. - If mass limits are maintained, this paragraph should clarify that if Q exceeds the dry weather design capacity of 2.7 mgd due to wet weather storm events, the mass limits in the permit do not apply.</p>	If mass limits are retained in the tentative Order, it is not clear why it would be necessary to make an exception for flow exceeding the dry-weather design capacity of a treatment plant. Except in the case of non-detect sample results, a concentration from a representative sample multiplied by the actual flowrate would indicate the mass discharged to the receiving water regardless of wet- or dry-weather conditions. Compliance Determination Provision VII.G of the tentative Order addresses reporting of mass emission rates in the case of sample analytical results below detection or quantitation levels.

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60.	<p>Pages 37-38, Endnotes - The endnotes should be converted to footnotes and placed on the same or next page from where the footnote occurs. It is not user friendly to have to flip through the permit to try to find endnotes containing information that may affect a compliance determination.</p>	<p>The endnotes have been converted to table footnotes at the end of each table in the revised tentative Order.</p>
61.	<p>Page 37, Endnote 3 - Change ". . . flow rate of <u>22.9</u> MGD." to read "2.7 MGD."</p>	<p>The correction has been made to the revised tentative Order.</p>
62.	<p>Page 37, Endnote 6 - The second sentence must be removed. This prospective incorporation by reference acts to modify the Ocean Plan to prospectively incorporating by reference changes in radiation standards is "of dubious validity." See Cal. Ass'n of Nursing Homes, etc. v. Williams, 4 Cal. App. 3d 800, 814 (1970); Office of Administrative Law File No. 00-0317-15 at 6; 1 C.C.R. §20(c)(4). By doing so, the Regional Board abdicates its responsibility to consider the factors contained in Water Code sections 13241 and to develop an implementation plan for these incorporated objectives as required under Water Code section 13242. This analysis was required when the prospective incorporation language is used, and then each time a new or more stringent MCL is newly incorporated.</p> <p>The use of the prospective, incorporation-by-reference violates the requirement that affected state and local agencies be consulted with and their concerns be considered, the applicable public notice and participation requirements of the Water Code, and the requirement that changes must be approved by the State Board before those changes become effective. See Water Code §§13240, 13244, and 13245.</p> <p>Deferral of these obligations to another agency is inappropriate and unlawful because radioactivity standards</p>	<p>The radioactivity limits of the Ocean Plan, although listed under "Table B Water Quality Objectives", are not actually applied to the receiving water. The Implementation Provisions for Table B of the Ocean Plan state that those limits "shall apply directly to the undiluted waste effluent."</p> <p>The issue of "prospective incorporation by reference" for the radioactivity objective has been considered by the State Water Board during the adoption process for the 2001 Ocean Plan (see State Water Board response to Comment 6.5 in the Functional Equivalent Document for the 2001 Ocean Plan).</p>

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	<p>are not adopted with the intent and understanding that they will be used for any other purpose. NPDES permit holders are not routinely notified of potential changes to radiation standards to provide them with an opportunity to review and comment on proposed changes, and these standards do not comply with the explicit Water Code or CEQA requirements for adoption of Basin Plans and water quality objectives.⁷ Therefore, the Regional Board cannot delegate its Basin Planning powers,⁸ and cannot rely on another agency's hearings as an adequate substitute for its own mandatory water quality objective-setting procedures.</p> <p>Footnotes:</p> <p>⁷Since radiation standards are not being adopted as "water quality objectives" under the Water Code, the CEQA analysis does not extend to potential impacts of applying these numbers as water quality objectives to all waters of the State.</p> <p>⁸The Regional Board's delegation powers only allow delegation of certain activities and only to the Board's Executive Officer. See Water Code § 13223(a). Delegation of basin planning activities to DHS is not authorized.</p>	
63.	Page 37, Endnote 8 - Correct all instances of "E-" to be "e-".	The corrections have been made in the revised tentative Order.
64.	<p>Pages 37-38, Endnotes 7-13 - Reasonable potential analyses should be performed on each of the different sub-constituents or congeners to the extent such data exists, instead of the combined sum or many different constituents. For example, most of the congeners of TCDD equivalents are never seen in municipal wastewater. Therefore, including effluent limits to cover these congeners without reasonable potential violates rules that effluent limits are only required where reasonable potential is demonstrated. See 40 C.F.R. § 122.44(d)(1); <i>Communities for a Better Environment v.</i></p>	Reasonable potential analysis procedures based on quantitative statistical procedures of the California Ocean Plan were used in determining reasonable potential for the constituents listed under Table B of the Ocean Plan. Those procedures can be used to determine reasonable potential for constituents with a numeric water quality objective. In the case of non-chlorinated phenolics, chlorinated phenolics, chlordanes, halomethanes, PAHs, PCBS, and TCDD equivalents, Table B of the Ocean Plan stipulates a

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	<p><i>State Water Resources Control Board (2003) 109 Cal. App. 4th 1089, 1094, rehg. den., 2003 Cal.App. LEXIS 1082 (1st. Dist. June 27, 2003), cert. den., 2003 Cal. LEXIS 7251 (Sept. 24, 2003.).</i></p>	<p>water quality objective for sum of the constituents in a group but not for individual constituents that comprise the group. Therefore reasonable potential for each constituent within a group cannot be determined individually but reasonable potential for the group may be determined.</p> <p>40 CFR 122.44(d) does not actually restrict inclusion of effluent limitations only to pollutants "where reasonable potential is demonstrated." Instead 40 CFR 122.44(d) requires that if reasonable potential is demonstrated for a given pollutant, then a permitting authority must include an effluent limitation for that pollutant (i.e., the permitting authority may not omit an effluent limitation for that pollutant).</p>
65.	<p>Page F-3, Attachment F., I., Table 1- In the item regarding "Authorized Persons to Sign and Submit Reports," please delete - "<u>Darrel Hale, Consultant/Chief Plant Operator (760_728-1125)</u>" and change - "David Deem, <u>Assistant</u> Chief Plant Operator, (7600 728-1125", to read - "David Deem, Chief Plant Operator, (760) 728-1125"</p>	<p>The corrections and changes have been made in the revised tentative Order.</p>
66.	<p>Page F-4 - Why is there included a discussion of "waste brine"? This should be removed.</p>	<p>Reference to a waste brine discharger has been deleted in the revised tentative Order.</p>
67.	<p>Page F-5, Section II. A., first paragraph, second full sentence - Delete entire sentence "All WTP1 not used by . . . Treatment Plant site."</p>	<p>It is not apparent why deletion of the sentence is requested by the commenter unless the commenter does not understand how Fallbrook Public Utility District distributes recycled water or the commenter feels the description is not necessary. The cited sentence makes the distinction between effluent that is distributed within the Fallbrook area and effluent that is subsequently sent through the FPUD's land outfall for use as recycled by Caltrans in Oceanside. No change</p>

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		to the sentence is necessary.
68.	<p>Page F-5, Section II. A., first paragraph, fourth sentence</p> <p>- Change to read, "All treated wastewater from WTP1 that is not distributed as recycled water, hereinafter referred to as effluent, is eventually discharged to the Pacific Ocean. A 16-inch diameter ductile iron, gravity flow land outfall pipeline (FLO) which conveys the effluent approximately 18 miles from Fallbrook to the Oceanside Ocean Outfall (000) at the City of Oceanside's La Salina Wastewater Treatment Plant site."</p>	It is not apparent to why modification of the sentence is requested by the commenter unless the commenter does not understand how Fallbrook Public Utility District distributes recycled water or the commenter feels the description is not necessary. No change to the sentence is necessary.
69.	<p>Page F-5, third paragraph - Change "thre E- year" to "three year"</p>	The correction is made in the revised tentative Order.
70.	<p>Page F-6, second full paragraph - Change "maintenanc E-type" to "maintenance-type"</p>	The correction is made in the revised tentative Order.
71.	<p>Page F-9, Section II. D. - Change "\$33,0000." to "\$33,000."</p>	The correction is made in the revised tentative Order.
72.	<p>Page F-10, Section III. B. - The Regional Board states that the action to adopt an NPDES permit is exempt from the California Environmental Quality Act (Public Resources Code §21100 et seq.) in accordance with Water Code Section 13389. This finding should be revised to reflect that Water Code Section 13389 only exempts the issuance of NPDES permits "from the provisions of <u>Chapter 3</u> of the California Environmental Quality Act. . .," not the entire Act.</p>	The requested change has been made in the revised tentative Order.
73.	<p>Page F-16, Section III. .C. 3. - The Paragraph states "In the MRP for this Order, the effluent is required to be monitored for toxic constituents and parameters using a 24-hour composite sample or grab sample, but not both." It also</p>	Table 4 of the Monitoring and Reporting Program of the tentative Order clearly identifies whether a constituent is to be monitored with a grab or composite sample. The Fact Sheet then reiterates Provisions III.C.3.g and h of

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	<p>states "compliance with maximum daily limits is determined only with composite samples while compliance with instantaneous max limitations is determined only with grab samples." This section is extremely confusing. Page E-5, Table 4, states which type of sample to take for each constituent, yet there are daily max limits (Table 8Page 12) and instantaneous limits as well. No one should be required to take a composite and a grab sample for the same constituent. Also, it is confusing on many of the organic constituents as to whether to take a grab or composite sample.</p> <p>Another issue is the requirement to test for "Phenolic Compounds" yet the permit does not state specifically which Phenolic compounds must be monitored. Further, a number of the organic constituents in the permit are, for example, analyzed by EPA Method 625. Some of the sample types are supposed to be analyzed as grab samples and others as composites, yet the constituents are to be analyzed under EPA Method 625. This might work to make Fallbrook pay for both an EPA 625 grab sample analysis and an EPA 625 composite sample, and would double the cost. The permit should explicitly state which method to use or require the sample type to be either grab or composite to avoid confusion by the permittee. These and other issues like this need to be addressed prior to finalization of this permit.</p>	<p>the Ocean Plan which stipulate that compliance with daily maximum limits is to be determined with composite samples while compliance with instantaneous max limitations is determined with grab samples. These statements clearly indicate that analytical results from a composite sample cannot be compared to the instantaneous limit nor can analytical results from a grab sample be compared to the daily maximum limit for compliance determination purposes. Generally, this Regional Board's NPDES permits have not required constituents to be monitored with both a grab and a composite sample.</p> <p>The Commenter presumes that one method will be appropriate for the analysis of all organic constituents; however, this is not always true depending on several factors including the need to choose methods with the appropriate minimum levels. For example, the GC-MS method (e.g., USEPA Method 625) is the only method listed under Appendix II of the Ocean Plan as having an appropriate minimum level for the analysis of benzidine; however, Appendix II of the Ocean Plan does not list the GC-MS method as a method with an appropriate minimum level for the analysis of pesticides. Consequently, the discharger would have had to run a GC method and a GC-MS method to analyze for pesticides and benzidine, respectively, regardless of whether the effluent had been required to be sampled by composite or grab samples.</p> <p>The revised tentative Order will include table footnotes specifying which specific phenolic compounds must be monitored for in the effluent.</p>

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74.	Page F-17, first paragraph - Change "r E-valuated" to "re-evaluated"	The correction is made in the revised tentative Order.
75.	Page F-17, second paragraph - Change "irequires" to "requires"	The correction is made in the revised tentative Order.
76.	<p>Page F-17, second paragraph - Fallbrook wants to ensure that the Regional Board is using the most recent data for chlorine residual when determining reasonable potential. Based on the change in monitoring point, no reasonable potential should be found and the limit for chlorine residual should be removed from the permit.</p>	<p>In conducting the reasonable potential analysis (RPA) for the original tentative Order, the Regional Board used data summarized in electronic format (Excel) and submitted by FPUD as part of its NPDES permit renewal application, as requested by the Regional Board. From that submitted data summary, the Regional Board only used data collected since April 2003 after the change in monitoring point; the result of that analysis was Endpoint 1. However, upon review of the data submitted, it was determined that FPUD only submitted monthly averages for chlorine residual in its effluent when it should have submitted daily values since chlorine residual was monitored daily.</p> <p>After considering the Commenter's comments, the Regional Board requested and obtained a summary of daily effluent chlorine residual values from FPUD. Using the daily values, a RPA was conducted again resulting in an RPA result of Endpoint 2 for chlorine residual (i.e., no reasonable potential). Based on this RPA result, the revised tentative Order includes a chlorine residual performance goal, instead of an effluent limitation, and a reduced monitoring frequency.</p>

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77.	<p>Page F-17, third paragraph - The Fact Sheet states that instead of numeric effluent limitations, a "narrative limit statement to comply with all Ocean Plan objectives requirements is provided." This narrative limit is inappropriate. If no effluent limit is required because of a lack of reasonable potential, then no limit is required - not even a narrative one. Without reasonable potential, no regulation of these constituents is necessary and only continued monitoring is authorized.</p>	<p>Discharge Prohibition C of the tentative Order states "the discharge of waste shall not cause violation of water quality objectives for ocean waters established by Chapter II of the Ocean Plan." The Regional Board has determined that this provision is not necessary, and it has been deleted in the revised tentative Order.</p>
78.	<p>Page F-18, first full paragraph -The Fact Sheet states that "[c]onventional pollutants were not part of the reasonable potential analysis." However, federal regulations do not exclude these pollutants from the reasonable potential analysis and neither should the Regional Board. In fact, federal regulations require such an analysis for "either conventional, nonconventional, or toxic pollutants." 40 C.F.R. §122.44(d)(1)(ii). Therefore, the Regional Board's exclusion of these constituents from the RPA violated federal rules. This RPA must be completed before these effluent limits are imposed.</p>	<p>40 CFR 401.16 defines conventional pollutants as BOD, TSS, fecal coliform bacteria, oil and grease, and pH. Secondary treatment standards for effluent discharged from a POTW are promulgated by USEPA for BOD (or CBOD), TSS and pH. In addition, for discharges from POTWs to the ocean, the California Ocean Plan sets effluent limitations for Grease and Oil, Settleable Solids, and Turbidity, pollutant parameters generally considered as conventional pollutants. These effluent limitations for conventional pollutants are technology-based standards which define minimum treatment levels.</p> <p>40 CFR 122.44(d)(1) requires the inclusion of requirements in addition to or more stringent than promulgated effluent standards (e.g., technology-based effluent limitations) which may be necessary to achieve water quality standards. The need for such additional or more stringent requirements for a constituent is determined by the Regional Board using a quantitative statistical procedure when numeric water quality objectives are defined for a constituent and effluent data are available. The April 2005 amendment to the 2001 California Ocean Plan defines the statistical procedure to be used for discharges to the Pacific</p>

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		<p>Ocean; the US EPA recommends a similar statistical procedure in its <i>Technical Support Document for Water Quality-based Toxics Control</i> guidance document.</p> <p>There are no numeric water quality objectives for BOD, CBOD, TSS, oil and grease, pH, settleable solids, and turbidity for the Pacific Ocean; therefore, reasonable potential for these constituents cannot be determined using the quantitative statistical procedures of the California Ocean Plan even if it was required, which it is not. The technology-based effluent limitations promulgated by the US EPA or adopted in the Ocean Plan are appropriately included in the tentative Order without a reasonable potential analysis.</p> <p>In the case of fecal coliform, effluent limitations have not been included in the tentative Order, although the California Ocean Plan includes numeric water quality objectives for fecal coliform, because effluent data is not available to conduct a quantitative reasonable potential analysis. However, receiving water monitoring data does not indicate exceedance of the fecal coliform water quality objectives that could be attributed to FPUD's discharge. In the future, if effluent fecal coliform data is available, a fecal coliform effluent limitation may be included based on results of a reasonable potential analysis. It should be noted that fecal coliform, like other bacterial pollutant indicators, is a non-conservative pollutant subject to die-off rates determined by different environmental factors that are not yet well-understood, such as amount of UV radiation and temperature. Bacterial die-off rates would have to be considered in conducting reasonable potential analysis for fecal coliform and other bacterial indicators.</p> <p>The revised tentative Order has been modified to</p>

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		explain why reasonable potential analysis was not conducted for conventional pollutants.
79.	Page F-19, first full paragraph - Change "sit E-specific" to "site-specific"	The correction is made in the revised tentative Order.
80.	Page F-20 - Paragraph a. says the previous permit did not have a limit for, and thus was not required to be monitored for, heptachlor epoxide. This is incorrect. Permit No. 2000-12 at pg. 17 included a limit for heptachlor, which included endnote 14, which stated that Heptaclor was the sum of heptachlor and heptachlor epoxide. The wording should be changed to accurately reflect requirements of Order No. 2000-12.	The correction is made in the revised tentative Order.
81.	Page F-21, Section b., third paragraph. - Change "sit E-specific" to "site-specific"	The correction is made in the revised tentative Order.
82.	Page F-28, Section IV. E. - Change "Mass emissions have been derived based on a flow of 22.9 MGD. . ." to read "2.7 MGD."	The correction is made in the revised tentative Order.
83.	Page F-30, Section 1., first line - Change "CRF" to "C.F.R."	The correction is made in the revised tentative Order.

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84.	<p>Page F-30, Section 1. - For the reasons provided above, remove sentence, which states: "As explained in the Compliance Determination section of this Order, a violation of the AMEL or the AWEL would result in a violation for each day of the calendar month or calendar week" since under the MMP program, this is not the case. Alternatively, change "would result in a violation" to "may result in <u>finding an alleged violation.</u>"</p>	See response to comment #51.
85.	Page F-30, last line - Change "Th" to "The"	The correction is made in the revised tentative Order.
86.	<p>Page F-34, Section C. - The first paragraph says that sampling for Acute and Chronic Toxicity samples need to be collected at M-003. This should read <u>M-002</u>, as M-003 is Oceanside's sampling point.</p>	The correction is made in the revised tentative Order.
87.	<p>Pages F-34 to F-39 - This section prescribes new monitoring requirements, but fails to contain an analysis as required under Water Code sections 13267(b) and 13325(c). Without such analyses, these monitoring requirements should not be prescribed.</p>	<p>See responses to Comments # 121, 122, and 123. The cited Water Code Section 13325(c) does not exist.</p>
88.	<p>Page F-37, Section 1.b. - Change "orang E-peel" to "orange-peel" and "on E-millimeter" to "one-millimeter."</p>	The corrections are made in the revised tentative Order.
89.	<p>Page F-38, Section 4, Kelp Bed Monitoring - Fallbrook requests removal of this requirement. The wastewater plume does not extend to kelp bed areas. Kelp beds exist only several miles from the outfall and are located above the shoaling depth of the plume. Please remove this unnecessary monitoring requirement from the NPDES permit.</p>	<p>This section has been retained in the revised tentative Order. See also response to Comments #121.</p>

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90.	Page F-38, Section 5 - Per Fallbrook's other comments related to this requirement, this section should be changed so that it references Year 4 or a SCCWRP Study year, not both.	The modification is made in the revised tentative Order.
91.	Page F-38, Sections 6, 7, and 8 - Remove these sections on Plume Tracking, Urban Runoff, and Determination of Compliance with Water Quality Objectives as these were not required in the recent San Elijo permit. See <i>accord</i> San Elijo Errata Sheet at pg. 31, paras. 65, 67-69. Further, there is an extra period (.) at end of paragraph in Section 6.	These sections have been removed in the revised tentative Order. See also responses to Comments #122 and 123.
92.	Page F-39. Section VII. B.1. - Change "R E-opener" and "r E-opened" to "Re-opener" and "reopened"	The correction is made in the revised tentative Order.
93.	Page F-40, Section VII. B.2. g. and h. - Remove these sections as was done in the errata sheet revisions made to San Elijo and City of Escondido NPDES permits recently adopted by the Regional Board.	These sections have been deleted in the revised tentative Order.
94.	Page A-1 - Change "CWA 402(c)" to "CWA 402(o)" to accurately reflect the statutory provision relating to antibacksliding.	The correction is made in the revised tentative Order.
95.	Page A-1 - Amend the definition of Beneficial Uses as follows: "... that <u>may be have been designated in order to</u> protected against quality degradation. <u>These uses may</u> include..."	The definition for "beneficial uses" is taken from CWC Section 13050. No change is necessary.

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96.	<p>Page A-2 - In the definition of Certifying Official, remove all paragraphs except those related to public agencies as irrelevant. If not removed, change "vic E-president" to "vice-president."</p>	<p>The definition has been removed in the revised Tentative Order.</p>
97.	<p>Page A-3 - Change Degredation to Degradation. In addition, the reference to "waste field" is unclear and should be clarified or defined.</p>	<p>The correction has been made in the revised Tentative Order.</p> <p>The definition is taken directly from the California Ocean Plan. In the context of the Ocean Plan, "waste field" is an alternate terminology for the plume created by the discharge of wastes into the ocean.</p>
98.	<p>Page A-5 - The definition of Six-month Median Effluent Limitation as a moving median is inconsistent with other effluent limitations that are imposed based on calendar weeks or months. To be consistent and to prevent "double-counting" of alleged violations that could potentially span more than one moving six-month period, this definition should be as a "six month calendar period"</p>	<p>Please see response to Comment #51.</p>
99.	<p>Page A-5 - In the definition of Toxic Pollutant, change "diseas E-causing" to "disease-causing", and in the definition of Toxic Reduction Evaluation, change "sit E-specific" to "site-specific"</p>	<p>The corrections have been made in the revised Tentative Order.</p>
100.	<p>Page A-6 - The definition of Water Quality Objectives should clarify that the objectives are "established <u>within</u> a <u>water quality control plan</u>."</p>	<p>The definition for "water quality objectives" is taken from CWC Section 13050. No change is necessary.</p>

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101.	<p>Appendix D, Federal Standard Provisions - References to the California Water Code are not appropriate if this is "Federal Standard Provisions." Furthermore, in some instances, the text references the California Water Code (see e.g., Page D-1, Section I.A. 1.), but no citation is provided to the statutory authority in the Water Code to support this provision. In other places (see e.g., Page D-10, Section VI.A.), the citation to the Water Code is incorrect because the requirements (e.g., fine amounts) are not the same under the Clean Water Act.</p>	<p>Attachment D is taken directly from State Water Board's permit standardization template in its entirety. According to the State Water Board, Attachment D includes all Federal Standard Provisions and have been reviewed by the Office of Chief Counsel of the State Water Board <u>together with provisions of the California Water Code</u>. This attachment has been renamed "Standard Provisions" instead of "Federal Standard Provisions" as recommended by the State Water Board.</p>
102.	<p>Page D-2, Section I.F.3. - The words "and photograph" are not included in the federal regulations and should be removed.</p>	<p>This provision is taken directly from State Water Board's permit standardization template. No change is necessary.</p>
103.	<p>Page D-3, Section I.G.5.b. - The reference should be to "Reporting V.E.2.a. below"</p>	<p>The State Board permit standardization template revised this provision to "... notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (<u>24-hour notice</u>)" which is taken directly in the revised tentative Order.</p>
104.	<p>Page D-3, Section I.H.1. - The reference should be to "paragraph I.H.2."</p>	<p>The State Board permit standardization template revised this provision to "... if the requirements of <u>paragraph H.2 of this section Standard Provisions – Permit Compliance I.H.2 below</u> are met" which is taken directly in the revised tentative Order.</p>
105.	<p>Page D-6, Section V.B.2.a. and b. - Remove these two paragraphs because only paragraph c. related to public agencies is relevant. If not removed, change "vic E-president" to "vicepresident" in paragraph a.</p>	<p>The State Board permit standardization template revised this provision and recommended only including the signatory that is relevant to the Discharger. Provisions V.B.2 a and b have been deleted and Provision V.B.2. c has been renumbered as V.B.2 in the revised tentative Order.</p>

Comment #	Comment	Staff Response
106.	Page D-6, Section V.B.3. - The reference to paragraph (b) is incorrect, it should be paragraph "(2.)".	The State Board permit standardization template revised this provision as ". . . shall be signed by a person described in paragraph (2.) of this provision Standard Provisions – Reporting V.B.2 above " which is taken directly in the revised tentative Order.
107.	Page D-8. Section V.E. 3. There are two incorrect items - "abov E-required" should be "above required" and "cas E-by-case" should be "case-by-case"	The corrections are made in the revised tentative Order.
108.	Page D-9, Section V.H. - Incorrect references to "Reporting E.3, E.4., and E.5" should be "Reporting - V.C., D., and E." and later reference to "Reporting V.E." should be "Reporting V.E.2."	The State Board permit standardization template revised this provision as ". . . not reported under Standard Provisions E.3, E.4, and E.5 V.C, V.D, and V.E above at the time . . ." which is taken directly in the revised tentative Order.
109.	Page D-11, Section VII. A. - This section related to "Non-Municipal Facilities" should be removed as inapplicable to Fallbrook. See accord Errata Sheet for Order No. R9-2005-0100 at pg. 8, para. 22. Otherwise, the permit must reference that the <u>Standard Provisions apply only as applicable.</u>	The State Board permit standardization template revised Section VII.A and recommended that only sections that apply to the Discharge be included. Provision VII.A of the revised tentative Order has been revised to include only those provisions applicable to POTWs.

Comment #	Comment	Staff Response
110.	<p>Page E-3, Table 1- This table includes six (6) surf zone stations and six (6) near shore stations and four (4) offshore monitoring stations and three (3) biological transects. This seems excessive and is far more than other dischargers are required to sample. (see Errata Sheet for Order No. R9-2005-0100 at pg. 9, para. 25). The Regional Board must perform the burden analysis required under Water Code sections 13267(b) and 13325(c) before imposing this many monitoring station requirements.</p>	<p>There are seven (7) offshore stations included in the tentative Order and not four (4).</p> <p>Order No. R9-2005-0100 for the discharge from the San Elijo Ocean Outfall (SEOO) includes seven (7) surf zone stations, seven (7) near shore stations, seven (7) offshore stations, and three (3) biological transects. The total discharge through the SEOO is less than the total discharge through the Oceanside Ocean Outfall (OOO) through which FPUD discharges. FPUD historically does not conduct its own receiving water monitoring but rather relies on results obtained by the City of Oceanside which has the same receiving water monitoring requirements as FPUD. It is therefore not apparent how the monitoring station requirements in the tentative Order for FPUD are "excessive" and "far more than other dischargers are required to sample."</p>
111.	<p>Page E-5, Table 3 - Fallbrook questions the need for BOD monitoring when CBOD monitoring will be done and that is the constituent regulated in the permit. Fallbrook requests that the BOD monitoring requirement be removed as unnecessary.</p>	<p>The BOD monitoring requirement is retained in the revised tentative Order. While there is no BOD effluent limitation, it is still appropriate to monitor effluent BOD to provide additional information about the effluent such as the levels of other oxygen-demanding constituents in the effluent.</p>

Comment #	Comment	Staff Response
112.	<p>Page E-7, Table 5 - The requirement to monitor acute toxicity is not consistent with Ocean Plan requirements, which do not require monitoring where dilution is less than 100:1. Furthermore, Fallbrook has no RP for acute toxicity. The one hit located in Fallbrook's data was not representative since this sample was not taken at sample point M-002 prior to mixture with the City of Oceanside's effluent, rather it was taken at WTP1 sample point M-001, and chlorine residual was the likely cause of this single exceedance. For these reasons, as well as the others provided herein, Fallbrook requests that the acute toxicity limit and monitoring requirements be removed. See accord Errata Sheet for Order No. R9-2005-0100 at pg. 12, para. 27 (no requirement for acute toxicity monitoring).</p>	<p>The original tentative Order did not include an acute toxicity effluent limitation.</p> <p>A requirement to monitor for acute toxicity on a quarterly basis is retained in the revised tentative Order whereas FPUD's previous NPDES requirements, Order No. 2000-012, required monthly monitoring. The results of the Regional Board's antidegradation analysis is contingent in part on retaining an acute toxicity monitoring requirement. Furthermore, retaining the monitoring requirement will ensure that representative acute toxicity data will be available to conduct Reasonable Potential Analysis for the next NPDES permit renewal cycle.</p>
113.	<p>Page E-9, second paragraph - The last sentence states that "The monitoring program may be modified by the Executive Officer at any time" However, the Regional Board's delegation powers only allow delegation of certain activities and only to the Board's Executive Officer. See Water Code § 13223(a). Delegation of activities related to modifications of waste discharge requirements to the Executive Office is not authorized. Since the waste discharge requirements include the MRP, this sentence and any others stating similar things about Executive Officer modifications should be stricken. See <i>accord San Francisco BayKeeper, et al v. SFRWQCB</i>, Order Granting Petition for Writ of Mandate and Statement of Decision, San Francisco Superior Court, Consolidated Case No. 500527 (Nov. 2003)(holding that the ability to make changes to a permit that will modify or enhance the substantive requirements of the permit cannot be delegated to the Executive Officer).</p>	<p>The sentence cited in the comment has been deleted in the revised tentative Order.</p>

Comment #	Comment	Staff Response
114.	<p>Pages E-9-E-14 - This section prescribes new monitoring requirements, but fails to contain an analysis as required under Water Code sections 13267(b) and 13325(c). Without such analyses, these monitoring requirements should not be prescribed.</p>	<p>In the revised tentative Order, the new monitoring requirements referred to in the comment have been deleted or restored to the requirements contained in FPUD's previous NPDES requirements, Order No. 2000-012. See responses to Comments #115, 116, 117, 118, 122, and 123.</p>
115.	<p>Page E-9, Section A.1. - In accordance with the change made in San Elijo's permit, please add to the phrase "at a minimum frequency of one time per week <u>from May 1 through October 31</u> and at a minimum frequency of once <u>every other week from November 1 through April 30 of each year</u>." See accord Errata Sheet for San Elijo Order No. R9-2005-0100 at pgs. 12-13, para. 30.</p>	<p>In November 2003, this Regional Board amended FPUD's previous NPDES requirements, Order No. 2000-012, to increase the frequency of bacterial monitoring at the surf zone stations of the Oceanside Ocean Outfall to weekly throughout the year because of significant water recreation that occurs year-round. This increased frequency is retained in the revised tentative Order.</p>
116.	<p>Page E-9, Section A. 4. - This section states that Fallbrook must conduct a survey to determine if discharges from Fallbrook's facilities are the source of the contamination if the enterococcus density of 24 organisms per 100 ml for a 30-day period of 12 organisms per 100 ml for a 6month period is exceeded. This section is vague as it fails to specify what constitutes a survey. A source analysis survey could be very costly and the result may demonstrate that Fallbrook may not be the cause. For this reason, the Regional Board must perform the analysis required under Water Code sections 13267(b) and 13325(c) before imposing this requirement.</p>	<p>This requirement is based on implementation provisions of the 2001 California Ocean Plan. The requirement is modified in the revised tentative Order to replace the term "survey" with "sanitary survey" which is used in the Ocean Plan. Because the Regional Board is implementing the requirements of the Ocean Plan, the appropriate agency to address those requirements of the Ocean Plan or seek relief from those requirements is the State Water Board.</p>

Comment #	Comment	Staff Response
117.	<p>Page E-10, Section C. Tables 7 and 8- The MRP requirements are much more intensive in R92005-0137 than in 2000-12, even though there were no indications of permit exceedances. The pH sampling frequency was modified from annually to monthly. Fallbrook requests a justification for this change, particularly given the guidance from the State Board to provide relief for monitoring where no non-compliance due to the mandatory monitoring surcharge being imposed on permit holders in this state. For these reasons, Fallbrook requests that the requirements of these tables be changed to <u>quarterly</u>, instead of monthly. Alternatively, Fallbrook requests the reduced monitoring requirements for portions of the year as in San Elijo's permit. See accord Errata Sheet for San Elijo Order No. R9-2005-0100 at pgs. I4-15, para. 34.</p>	<p>The Near Shore and Off Shore Water Quality monitoring requirements have been modified in the revised tentative Order to include reduced intensive monitoring requirements that are identical to the requirements adopted by the Regional Board in the City of Oceanside NPDES requirements Order No. R9-2005-0136. These revised requirements are identical to the Near Shore and Off Shore monitoring requirements contained in FPUD's previous NPDES requirements, Order No. 2000-012, with the exception of the Off Shore intensive monitoring requirements for temperature and pH.</p> <p>The requirement to monitor temperature at the surface, mid-depth and bottom depth have been replaced with a Conductivity, Temperature, and Depth (CTD) monitoring requirement at 1 meter intervals which provides necessary and more useful receiving water information for conducting initial dilution modeling for the ocean outfall. The intensive monitoring for pH was modified to monthly from annually to provide pH data at the same frequency as other parameters that were required to be monitored monthly.</p>
118.	<p>Page E-11, Table 9 - Currently, the Minimum Frequency says Year 4. Fallbrook suggests that a footnote be added to provide that Year 4 could be substituted with a SCCWRP Bight study year. Page E-13 currently says the SCCWRP Study is in year 5. Fallbrook does not want to duplicate efforts two years in a row, as it is very costly. Therefore, Fallbrook requests this change.</p>	<p>The requested changes are made in the revised tentative Order.</p>
119.	<p>Page E-12, first paragraph - Change "on E-quarter" to "one-quarter"</p>	<p>The correction is made in the revised tentative Order.</p>

Comment #	Comment	Staff Response
120.	Page E-12, VI. G., third paragraph, third line - Change second use of the word "aerial" to "areal"	The correction is made in the revised tentative Order.
121.	<p>Page E-12, Section G., Kelp Bed Monitoring - Fallbrook requests removal of this requirement. The wastewater plume does not extend to kelp bed areas. Kelp beds exist only at points several miles from the outfall and are located above the shoaling depth of the plume. Please remove this unnecessary monitoring requirement from the NPDES permit.</p>	<p>The kelp bed monitoring requirement is retained. The North Carlsbad and Agua Hedionda kelp beds are significant kelp beds located reasonably close to areas where the plume from the Oceanside Ocean Outfall may spread as suggested by preliminary plume tracking data. Furthermore, the significance of the plume shoaling depth in determining impacts to the kelp bed from the plume is not immediately apparent to the Regional Board because the plume is a buoyant plume at least most of the year, giant kelp extend from the sea floor to the surface, and the North Carlsbad kelp bed have been observed at down to 50 foot depth. The Regional Board is also not aware of any study that conclusively demonstrates that the discharge to the ocean from FPUD could not contribute to any impacts on these kelp beds. A plume tracking study was proposed in the tentative Order to determine the plume trajectory; however, this proposed requirement is also one not supported by FPUD (see comment #123).</p> <p>40 CFR Section 123.123(d)(2) of Subpart M- Ocean Discharge Criteria requires that all permits that authorize the discharge of pollutants from a point source into the ocean "(s)pecify a monitoring program, which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of the bioaccumulative and/or persistent impact on aquatic life of the discharge." The goal of the proposed requirement for Kelp Bed Monitoring is consistent with the federal provision.</p>

Comment #	Comment	Staff Response
		<p>The Regional Board intends to revisit the need for improved receiving water monitoring in the near future and will reconsider the kelp bed monitoring requirement. Recently, the Southern California Coastal Water Research Project (SCCWRP) provided the Regional Board guidelines for improving monitoring programs for the Region's ocean dischargers. The Regional Board will use these guidelines to make appropriate modifications to the receiving water monitoring programs.</p>
122.	<p>Page E-13, Sections I. and K. - Remove these sections as was done in the errata sheet revisions made to San Elijo and City of Escondido NPDES permits recently adopted by the Regional Board. See Errata Sheet for San Elijo Order No. R9-2005-0100 at pg. 17, paras. 38 and 39.</p>	<p>40 CFR Section 123.123(d)(2) of Subpart M- Ocean Discharge Criteria requires that all permits that authorize the discharge of pollutants from a point source into the ocean "(s)pecify a monitoring program, which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of the bioaccumulative and/or persistent impact on aquatic life of the discharge." The goal of the proposed requirement for Plume Tracking Study is consistent with the federal provision. Nonetheless, the requirement for Plume Tracking Studies has been removed from the revised tentative Order. The Regional Board intends to revisit the need for improved receiving water monitoring in the near future. Recently, the Southern California Coastal Water Research Project (SCCWRP) provided the Regional Board guidelines for improving monitoring programs for the Region's ocean dischargers. The Regional Board will use these guidelines to make appropriate modifications to the receiving water monitoring programs.</p> <p>The Urban Runoff Diversion Program requirement has been deleted in the revised tentative Order. Upon</p>

Comment #	Comment	Staff Response
		further consideration, the Regional Board recognized that 1) the responsibility already rests with the treatment plant operator to ensure that urban runoff flows diverted to the treatment plant do not negatively impact the treatment processes of the plant and that 2) the standard provision requirement for proper operation and maintenance already encompass this responsibility. (See also response to Comment # 50).
123.	<p>Page E-13, Section J. - This section requires Fallbrook to explore the use of other methods besides 40 C.F.R. Part 136. However, the methods in this regulation are required to be used under federal regulations. See 40 C.F.R. § 122.41(j)(4). Dischargers are not required to come up with new methods, and the State Implementation Policy recognizes the limitations of detection by stating that limits are not violated unless both the limit and the ML are exceeded. For this reason, and because the State has funds from mandatory monitoring surcharge and the obligation to use those funds to conduct general water quality monitoring, this requirement should be removed from the permit.</p>	<p>The EPA Regional Administrator or Regional Board Executive Officer may approve the use of alternative methods; therefore, methods not listed under 40 CFR Part 136 are not automatically disqualified from use.</p> <p>The proposed requirement is with regards to monitoring and investigating the ocean receiving waters, not the effluent, and the California Ocean Plan applies rather than the State Implementation Policy. CWC Section 13267 authorizes the Regional Board to direct dischargers to furnish information necessary for investigating the quality of waters of the State that may be impacted by the discharger's discharge. The existence of SWAMP funds does not negate this authority available to the Regional Board.</p> <p>Furthermore, 40 CFR Section 123.123(d)(2) of Subpart M- Ocean Discharge Criteria requires that all permits that authorize the discharge of pollutants from a point source into the ocean "(s)pecify a monitoring program, which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of the bioaccumulative and/or persistent impact on aquatic life of the discharge." The goal of the proposed requirement for Determination of Compliance with Water Quality Objectives is consistent with the federal provision.</p>

Comment #	Comment	Staff Response
		Nonetheless, the requirement for Determination of Compliance with Water Quality Objectives has been removed from the revised tentative Order. The Regional Board intends to revisit the need for improved receiving water monitoring in the near future. Recently, the Southern California Coastal Water Research Project (SCCWRP) provided the Regional Board guidelines for improving monitoring programs for the Region's ocean dischargers. The Regional Board will use these guidelines to make appropriate modifications to the receiving water monitoring programs.
124.	Page E- 15, Section B. 4. Minimum Levels - If permittees are expected to use MLs or their equivalent, then the permit should be clear that a limit is not violated except where above both the limit and the ML. See <i>accord State Implementation Policy</i> .	Compliance Determination Provision VII.I.2 of the tentative Order already address this concern.
125.	Page E-17, Section C. - The MRP should reflect that once notification is given to submit selfmonitoring reports electronically, Fallbrook need no longer send in paper copies.	At this time, it is not certain what the paper documentation requirements will be when the internet-based reporting system is implemented although reduction of paperwork is one of the goals of the new system. For this reason, no changes are made to the revised tentative order in response to this request.
126.	Page E-17, Section C. 3. - Change "pr E-printed" to "pre-printed"	The correction has been made in the revised tentative Order.
127.	Page E-18, Endnotes - The endnotes should be converted to footnotes and placed on the same or next page from where the footnote occurs. It is not user friendly to have to flip through the permit to try to find endnotes containing information that may affect a compliance determination.	The endnotes have been converted to table footnotes in the revised tentative Order.

Comment #	Comment	Staff Response
128.	Page G-1- In the item related to <u>Port Diameter</u> , change "five-E-inch" to "five-inch" and "10 four-inch" to "10 four-inch".	The corrections are made in the revised tentative Order.
<i>Comments received from USEPA Region IX contained in letter dated August 3, 2005</i>		
129.	<p>We have reviewed the tentative orders for the Fallbrook Public Utilities District, Wastewater Treatment Plant No. 1 (tentative Order No. R9-2005-0137, NPDES Permit No. CA0108031) and the City of Oceanside, San Luis Rey and La Salina Wastewater Treatment Plants (tentative Order No. R9-2005-0136, NPDES Permit No. CA0107433). We believe that various changes are necessary to ensure that the permits properly regulate the permittees' sewage collection systems in accordance with Clean Water Act and NPDES requirements. Our primary areas of concern are the Board's treatment of collection system requirements and provisions VII.N. and VII.O. in the Compliance Determination sections of the draft permits.</p>	Comment noted.
130.	<p>Collection Systems:</p> <p>In the Findings sections of the draft permits, the Regional Board properly defines the permitted facilities to include the permittees' sanitary sewage collection systems as well as the treatment plants and outfalls. In the Special Provisions sections of the draft permits, though, the collection systems are excluded from a number of important requirements. However, collection systems are part of the POTW and subject to Standard Federal NPDES provisions such as those requiring proper operation and maintenance (40 CFR 122.41(e)) and reporting of noncompliance (40 CFR 122.41(l)(6) and (7)). Consequently, paragraphs VI.C.2.b. and c. of the draft Fallbrook permit and paragraphs VI.C.2.c. and d. of the draft Oceanside permit (in which the</p>	<p>The Regional Board has held the position that the sewage collection system is covered by the NPDES regulations implemented in waste discharge requirements issued to entities that own and operate wastewater treatment plants and disposal facilities when the same entity owns and operates the sewage collection system. In the tentative Order, the Regional Board intended the sewage collection system to be subject to the more general Standard Federal NPDES provisions such as those requiring proper operation and maintenance and reporting of noncompliance while including special provisions that only applied to the wastewater treatment plant and disposal facilities and spills other than sanitary sewer overflows.</p>

Comment #	Comment	Staff Response
	<p>collection systems are excluded from requirements to develop spill prevention and response plans and to report sanitary sewer overflows (SSOs) are not consistent with NPDES requirements.</p> <p>It appears that the exclusions were made to eliminate overlap with the Board's general non-NPDES Waste Discharge Requirement 96-04 for wastewater collection systems. Although there may be other ways for the Board to correct the deficiency in the draft permits, one clear resolution would be for the Board to incorporate the WDR 96-04 spill reporting and spill prevention and response plan requirements into the NPDES permits. Lastly, the fact sheets and findings sections of the permits should be changed to reflect the modifications requested above and clarify that the permitted facilities include the collection systems.</p>	<p>The Regional Board's Order No. 96-04, General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies, apply to publicly-owned sewage collection agencies. Order No. 96-04 prohibits all sanitary sewer overflows (SSOs) and includes requires sewage collection agencies to develop SSO prevention and response plans and to report SSOs. Order No. 96-04 is not an NPDES permit.</p> <p>The Regional Board recognizes that the Special Provisions of the tentative Order create an appearance of excluding the sewage collection system from coverage under the NPDES permit and causes confusion; therefore, the Regional Board will modify the tentative Order to correct this situation. The requirements to develop spill prevention and response plans for spills is not included in the revised tentative Order. Removal of that special provision still requires the Discharger to comply with the standard federal provision for proper operation and maintenance. The revised tentative Order will also incorporate the Monitoring and Reporting Program of Order No. 96-04 by reference to complement the special provision of the tentative Order for spill reporting.</p>
131.	<p>Compliance Determination:</p> <p>In the Compliance Determination section of the draft permits, Paragraph VII.O. read in conjunction with Paragraph VII.N. suggests that only violations of the permits' Surface Water Discharge Prohibitions are Clean Water Act violations, i.e., that discharges to land do not violate the Clean Water Act. These provisions should be deleted for several reasons. First, the blanket assertion that discharges to land do not (or cannot) be violations of the Clean Water Act is incorrect. For example, discharges</p>	<p>The Regional Board agrees with the comment. The Regional Board, on advice of Regional Board counsel, has concluded that it is appropriate to delete Compliance Determination Provisions VII.N and VII.O of the tentative Order. These provisions are not included in the revised tentative Order.</p>

Comment #	Comment	Staff Response
	<p>to land may result from noncompliance with permit provisions that require the permittee to properly operate and maintain the Publicly Owned Treatment Works (provisions that are required as part of the federal approval of California's program to administer the Clean Water Act under State law). Second, as a practical matter, given the Clean Water Act's admonition to provide for, encourage, and assist public participation in the enforcement of any standard or effluent limitation established by a State under the Clean Water Act, the justification of the purported exclusion in Paragraph VII.O. (to remove the permittees' potential liability from third party lawsuits) is not appropriate. Third, determinations about whether a discharge violates the Clean Water Act and/or a permit are appropriately made on a case by case basis. Further, under Clean Water Act section 309, the State cannot limit EPA's enforcement authority regarding NPDES permits. Again, please change the Fact Sheet to accord with the permit changes.</p>	
132.	<p>Finally, the undefined term "surface water" is used in several permit provisions. To be consistent with the Clean Water Act, the term "surface water" should be changed to "Waters of the United States."</p>	<p>The Regional Board agrees with the comment. The revised tentative Order will include a definition of "surface water" which includes "waters of the United States" as used in the federal Clean Water Act (40 CFR 122.2).</p>