

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<b>July 17, 2009 letter from San Diego County Water Authority on behalf of the Technical Advisory Committee (TAC)</b>	
<p>1. Adoption of the Order is schedules for August 12, 2009, with written comments due on August 5, 2009, and an effective date of September 1, 2009. This does not allow adequate time to resolve issued with respect to the changes from the prior permit.</p>	<p><del>At this time the Regional Board is not postponing this item, however, the status can change up until the date of the Board Meeting.</del></p> <p><b><u>This comment is no longer applicable. The tentative Order was postponed to allow further discussion between the TAC and the Regional Board.</u></b></p>
<p>2. The draft tentative Order eliminates the minimum reporting level of discharges for 500,000 gallons/day or more. This will add thousands of discharges under 500,000 gallons/day that need to be reported and approved, will overwhelm administrative and compliance capability, and will increase the cost of service.</p>	<p><b><u>The discharge of even small amounts of chlorinated water, much less than 500,000 gallons/day, can have significant adverse impacts to the biological communities.</u></b></p> <p><b><u>Depending on the discharge flow rate, small amounts of water may also cause erosion which can lead to sedimentation in the receiving water. The discharge of sediment causes and threatens to cause a condition of pollution by directly affecting waters used for beneficial uses. Settleable and suspended sediment is deleterious to benthic and aquatic organisms and may cause the formation of anaerobic conditions. Suspended sediment can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic flora by limiting the transmittance of light.</u></b></p> <p><b><u>It is especially important to obtain detailed information on larger volume hydrostatic and potable water releases to ensure that proper BMPs are employed.</u></b></p> <p>Prolonged and continuing drought conditions in the State have made water conservation a crucial consideration with respect to water supply. The discharge of millions of gallons of water by potable water distribution agencies has been a concern of the public and of this Regional Board.</p>

Item No. 13  
Supporting Document No. 26

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
	<p>After discussion with the TAC, the tentative Order has been revised to include a minimum reporting level of 1 acre-ft/day (325,850 gallons/day). A reduction in reporting levels will encourage water conservation and/or re-use and is consistent with the Governor's Proclamation on Water Shortage issued February 27, 2009.</p>
<p>3. The Notice of Intent contains open-ended requirements for certification of alternate methods of disposal or re-use. Potable water systems are already required to operate under strict Best Management Practices (BMP's) to limit water loss due to leakage, upset, and maintenance discharges. No additional regulation is needed.</p>	<p>See Response to Comment No. 2.</p> <p>This requirement was set to ensure compliance with Section 13550 of the California Water Code which states that water resources of the State shall be put to beneficial use to the fullest extent possible.</p> <p>The language in the tentative Order has been revised to be consistent with the language in Order No. R9-2002-0020, however, additional language has been included to ensure that the discharges meet the agencies conservation goals and BMPs.</p>
<p>4. The requirement to obtain approval from each MS4 operator, prior to every discharge, places unreasonable burden on water agencies. The added complexity and cost is not justified for such low risk discharges, and the process could jeopardize projects that require dewatering operations.</p>	<p><del>The tentative Order has been revised.</del></p> <p><del>See Errata Sheet.</del></p> <p><b><u>After discussion with the TAC, this requirement has been removed from the tentative Order.</u></b></p>
<p>5. Hydrostatic testing of new oil and gas facilities and reclaimed waters systems have been included in this permit. This adds unrelated groups with the potential of higher risk discharges to the permit.</p>	<p><del>Hydrostatic testing of new oil and gas facilities and reclaimed water systems is included in existing Order No. R9-2002-0020; this is not a new addition and will remain unchanged in the tentative Order unless additional information is provided that would justify removing this requirement from the tentative Order prior to the August 12, 2009 Regional Board Meeting.</del></p> <p><b><u>After discussion with the TAC, this requirement has been removed from the tentative Order.</u></b></p>
<p>6. Discharge of water into water conveyance systems is no longer</p>	<p>Water transfers are not covered under the tentative Order.</p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p>exempt under the new proposal. Water discharged into a potable water source poses no risk to the public or environment.</p>	<p>On June 13, 2008, USEPA issued regulation that excluded from NPDES permitting requirements discharges from water transfers that do not subject the water to an intervening industrial, municipal, or commercial use, so long as pollutants are not introduced by the water transfer activity itself.</p> <p>Although the State of California maintains the authority to regulate the movement of waters within its borders, the Regional Board is not including requirements for water transfers.</p> <p>The language in the tentative Order has been revised to provide further clarification. See Errata Sheet</p>
<p align="center"><b>July 27, 2009 letter from the Metropolitan Water District of Southern California</b></p>	
<p>7. Metropolitan is requesting that the August 12, 2009, scheduled adoption date for the Tentative Order be delayed. This will allow additional time for the SDRWQCB staff to work with a TAC comprised of San Diego Region water agencies representing all water agencies affected by the Tentative Order.</p>	<p>See Response to Comment No. 1.</p>
<p>8. The Tentative Order appears to eliminate the exemption from the requirements of the Monitoring and Reporting Program for discharges of less than 500,000 gallons/day. This will require reporting and approval for numerous additional discharges under 500,000 gallons/day, which could unnecessarily overwhelm administrative and compliance capabilities, for the enrolled dischargers, including Metropolitan, as well as for the SDRWQCB staff, and for the MS4 entities.</p> <p>Our concern is that this implies that any discharge quantity, including minor discharges, even those which percolate and/or evaporate prior to reaching surface water, are captured under this</p>	<p>See Response to Comment No. 2</p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
permit.	
<p>9. The Tentative Order requires that at least 30 days prior to a discharge, the discharger must "notify and receive authorization" from the local agency with jurisdiction over the MS4. However, the Order does not identify how this will be accomplished and if the MS4s have the capability and processes in place to adequately comply with this requirement. Additionally, there are no criteria for authorizing the discharge, nor is there a timeframe for MS4s to respond back to the discharger. This presents a substantial change from the existing permit that could result in significant delays and cost increases for all affected parties, and is not justified for de minimis potable water discharges.</p>	See Response to Comment No. 4
<p>10. The Fact Sheet for the Tentative Order does not provide any information regarding what (if any) historical records were reviewed that substantiate the significant changes being made to the existing General Permit.</p>	Changes have been made to the language in the tentative Order to provide further clarification.
<p>11. Adoption of the tentative Order is scheduled for August 14, 2009, with written comments due on August 5, 2009. That only provides six (6) working days for SDRWQCB staff to review all the written comments received from the stakeholders and make the necessary amendments to the tentative Order before it must be provided to the Board Members for review and adoption on August 14, 2009.</p>	Comment noted. See also response to Comment No. 1
<b>August 4, 2009 letter from the City of Del Mar</b>	
<p>12. The Draft Tentative Order eliminates the minimum reporting level of discharges for 500,000 gallons/day or more. This will add thousands of discharges under 500,000 gallons/day that need to be reported and approved, will overwhelm administrative and</p>	See Response to Comment No. 2.

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
compliance capability, and will increase the cost of service.	
13. The Notice of Intent contains open-ended requirements for certification of alternate methods of disposal or re-use. Potable water systems are already required to operate under strict Best Management Practices (BMPs) to limit water loss due to leakage and maintenance discharges. No additional regulation is needed.	See Response to Comment No. 3
14. Hydrostatic testing of new oil and gas facilities and reclaimed water systems have been included in this permit. At this point it is not advisable that those nonpotable utilities with a higher risk to the environment be included. They should be in a separate permit category.	See Response to Comment No. 5
15. Discharge of water into water conveyance systems is no longer exempt under the new proposal. Potable water discharged into a potable water source poses no risk to the public or environment with de-chlorination and with the use of BMPs per the current regulation.	See Response to Comment No. 6
16. The testing requirements are extensive and will add considerable costs to the water system customers for discharge of water acceptable for human consumption and de-chlorinated per current BMP requirements.	<p>It is unclear as to which testing requirements the <del>discharger</del> <b>commenter</b> is referring to. Testing requirements <b>for the daily releases</b> have essentially remained unchanged from Order No. R9-2002-0020.</p> <p><b><u>This Order adds testing of the distribution system for priority pollutants to determine compliance with the California Toxics Rule (CTR).</u></b></p>
17. Adoption of the order is scheduled for August 12, 2009, with written comments due on August 5, 2009, and an effective date of September 1, 2009. This does not allow adequate time to resolve issues with respect to the changes from the prior permit and to	See Response to Comment No. 1

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
respond to both verbal and written comments.	
<b>August 5 letter from Olivenhain Municipal Water District</b>	
<p>18. <u>The Draft Order was released to interested parties on June 25, 2009 and is over 95 pages in length. This document represents a massive increase in complexity and potential costs for all water agencies in Region 9. To our knowledge there was no outreach to any of the agencies covered under the 2002 Order in advance of June 25th so our only opportunity to review the Tentative Order and evaluate its impacts on us was from June 25th to August 5th, the deadline given for comments.</u></p> <p><u>We ask that the Regional Board postpone adoption of this order for a period of at least 90 days. This amount of time will allow the relevant stakeholders to meet with RWQCB staff and develop language for the Order that will meet all of our goals in the protection of the receiving waters without causing an undue burden on the operations of public agencies.</u></p>	<p><u>See Response to Comment No. 1</u></p>
<p>19. <u>The Tentative Order does not identify any specific water of the United States or California where a beneficial use has been threatened or compliance with a water quality objective has not been met because of the discharge of potable water or where there is a reasonable potential for this to occur. For the benefit of agencies that the Tentative Order would regulate, the permit should identify those surface waters or groundwater being threatened or degraded by potable water discharges as a result of routine water operations.</u></p>	<p><u>All surface waters within the San Diego Region are potential receiving waters for discharges of Hydrostatic and/or potable water. Certain constituents potentially contained in hydrostatic test water and/or potable water discharges threaten to cause or contribute to excursions above narrative and numeric water quality objectives contained in state and federal regulations. Constituents of concern include, but are not limited to, chlorine and chlorination by-products, total dissolved solids, total suspended solids, turbidity, and erosion and sedimentation.</u></p> <p><u>The Regional Water Board is not obligated to show that a discharge has caused environmental harm before it establishes permit requirements. The Regional Water Board has described</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
	<p><u>the known potential effects of hydrostatic and potable water releases that could occur if discharged to surface waters and not properly controlled with dechlorination treatment processes and other BMPs.</u></p> <p><u>Section 13260 of Porter-Cologne specifies that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system shall file a report of waste discharge.</u></p> <p><u>“Waste” includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.</u></p>
<p>20. <u>Water Code Section 13000 states that the RWQCB must regulate activities that affect water quality ... "to attain the highest water-quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." A key element of this requirement that water quality regulations be "reasonable" is that the burden of a regulation is balanced by commensurate improvements to water quality. In the absence of any evidence that discharges of potable water during routine operations of public water systems may adversely affect water quality, the regulation of such discharges is not reasonable.</u></p>	<p><u>See Response to Comment No. 19.</u></p> <p><u>The requirements contained in the tentative Order are appropriate, reasonable, and necessary to ensure protection of the beneficial uses and water quality objectives of surface waters in the San Diego Region.</u></p>
<p>21. <u>Additionally, Water Code Section 13260 states that the RWQCB must regulate discharges ... "that could affect the quality of the waters of the state". However, there is no evidence that the small volumes of high quality potable water discharged sporadically from potable water systems either</u></p>	<p><u>The tentative Order does not prohibit the discharge of hydrostatic and/or potable water into the MS4. The tentative Order previously contained provisions to notify the owner of the MS4 prior to initiating any discharge. This requirement was included to encourage communication between the Dischargers</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>cause or have the reasonable potential to affect the quality of the waters of the state. Thus, they do not appear to require regulation under a separate NPDES permit and can continue to be discharged into MS4s as non-stormwater discharges that do not pose a threat to water quality.</u></p>	<p><u>enrolled in this Order and the owners of the MS4. Also local agencies responsible for operating the MS4 may not passively receive or discharge pollutants from third parties. After discussion with the TAC, this requirement has been removed from the tentative Order.</u></p>
<p>22. <u>we ask that the RWQCB identify any waters of the United States whose beneficial uses have been adversely impacted by the routine discharges of potable water conducted in accordance with the 2002 permit or where there is a reasonable expectation for this to occur. If the RWQCB cannot make such an identification, based on the statutes provided above, the excessively large regulatory scheme outlined in the Tentative Order is not consistent with the Water Code.</u></p>	<p><u>See Response to Comment No. 19</u></p>
<p>23. <u>Under Water/ Code Section 13225 (c), a RWQCB may not require local agencies to obtain and submit analyses of water where ... "the burden, including costs, of such reports [bears] a reasonable relationship to the need for the report and the benefits to be obtained there from". There is no evidence that such an analysis of the costs and benefits of the sampling required in the permit was conducted much less that benefits are greater than the costs. For Olivenhain MWD, we estimate that the costs of this sampling will exceed \$1 M per year in order to comply with the Draft Tentative Order.</u></p> <p><u>Has the RWQCB performed a cost benefits analysis on the costs of the massive amount of sampling required under this Tentative Order? If so, since there is no evidence of any impairment of the beneficial uses of the receiving waters under discharges allowed under the 2002 permit, how can it be shown that these benefits outweigh the costs?</u></p>	<p><u>It is unclear as to what excess analysis the commenter is referring to since the monitoring requirements for daily planned discharge events have essentially remained the same.</u></p> <p><u>The Revised tentative Order does contain requirements for the enrollees to develop an Effluent Characterization Plan to collect information to adequately analyze effluent from the enrollees distribution system for compliance with the California Toxics Rule (CTR) criteria. Preliminary data indicates there may be certain constituents in the drinking water (including TMH's and copper) that do not conform to the CTR water quality objectives.</u></p> <p><u>Based on discussions with the TAC, the cost for such an analysis would fall significantly lower that the \$1 M quoted by the commenter. Also, dischargers who obtain water from similar sources may pool resources together in the development of the plan, which would reduce cost even more,</u></p>
<p>24. <u>Section B.2 of the San Diego Region MS4 NPDES Permit</u></p>	



**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>(Order R9-2007 -0001) specifically exempts water line flushing "unless a Copermittee or the Regional Board identifies the discharge category as a significant source of pollutants to the waters of the U.S." The rationale for this 'section is firmly grounded in Federal Law in 40 CFR 122.26(d)(2)(iv)(B)(1).</u></p> <p><u>Has the RWQCB or any Copermittee to the San Diego MS4 Permit made any such determination? Since the water in question here is potable and by its very nature does not contain any such pollutants, it would seem unlikely that such a determination could be made.</u></p>	<p><u>See Response to Comment No. 21.</u></p>
<p>25. <u>On July 31,2009, the California Commission on State Mandates ruled on a Test Claim regarding the Los Angeles RWQCB Oder 01-182 which is related to the MS4 permit for LA county. In this ruling, the Commission approved staffs Proposed Statement of Decision including a conclusion that all of the stormwater permit requirements raised by the claimants are new programs and/or higher levels of service resulting from the State's exercise of discretion (i.e., State mandates).</u></p> <p><u>The legal record in this case is voluminous (nearly 4000 pages) and the claims that were upheld by the Commission relied specifically on the provisions of 40 CFR 122 .26(d)( 2) in the areas where the Los Angeles RWQCB imposed requirements that were not specifically required under Federal law. In the case of the Draft Tentative Order, the San Diego RWQCB is attempting to impose massive water sampling and monitoring requirements for discharges that are <i>specifically-exempted</i> from regulation under Federal law which would clearly fall into the category of an Unfunded Mandate which is not allowed by law in California.</u></p>	<p><u>Article XIII B, Section 6 of the California Constitution requires subvention of funds to reimburse local governments for state-mandated programs in specified situations. The process for establishing that a requirement is subject to reimbursement as an unfunded state mandate involves the filing by a local agency of a Test Claim with the Commission on State Mandates. There are several exceptions and limitations to the subvention requirements that provide bases for the Commission to determine that one or more provisions in a Test Claim are not subject to subvention. Article XIII B, Section 6 provides, "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service." Implementing statutes clarify that no subvention of funds is required if: (1) the mandate imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation (Govt. Code, § 17556, subd. (c)); or (2) the local agency proposed the mandate (id., subd. (a)); or (3) the local agency has the authority to levy service charges, fees, or assessments sufficient to pay (id., subd. (d)).</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
	<p><u>Numerous judicial decisions have further defined limitations on the requirements for subvention of funds. Specifically, subvention is only required if expenditure of tax monies is required, and not if the costs can be reallocated or paid for with fees. (County of Los Angeles v. Commission on State Mandates (2003) 110 Cal.App.4th 1176; Redevelopment Agency v. Commission on State Mandates (1997) 55 Cal.App.4th 976.) In addition, reimbursement to local agencies is required only for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not entitled to subvention. County of Los Angeles v. State of California (1987) 43 Cal.3d 46. The fact that a requirement may single out local governments is not dispositive; where local agencies are required to perform the same functions as private industry, no subvention is required. City of Richmond v. Commission on State Mandates (1998) 64 Cal.App.4th 1190.</u></p> <p><u>Even if a provision in a permit is ultimately found to be an unfunded state mandate, the Regional Board is not prohibited from adopting such a provision. Permittees would have to file a Test Claim to challenged permit provisions and the Commission on State Mandates. The Commission will determine whether provisions in a permit constitute reimbursable state mandates and any such determination may be challenged through the judicial process. There also exists a Commission process for determining appropriate reimbursement of state mandates. If a determination that a provision constitutes an unfunded state mandate is upheld, the State likely would decide whether to reimburse the local agency for the program or the Regional Board could decide to withdraw a provision from a permit.</u></p> <p><u>The Commission did in fact recently issue a Final Statement of Decision in a storm water permit Test Claim filed by the County of Los Angeles and several additional co-permittee test claimants. (Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21 (Los</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
	<p><u>Angeles Regional Water Quality Control Board Order No. 01-182 (July 31, 2009) (County of Los Angeles Test Claim).</u> In the Commission’s Statement of Decision, the Commission found that <u>all but one of the challenged provisions issued by the Los Angeles Water Board in its MS4 permit did not qualify as unfunded state mandates as they did “not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution because the claimants have fee authority (under Cal. Const. article XI, § 7) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.” (County of Los Angeles Test Claim, Statement of Decision, p. 2.)</u> The Commission did find that the requirement to install trash receptacles at transit stops was a reimbursable state mandate as to the copermittees challenging the provision because the copermittees did not have fee authority to levy fees to pay for the installation and maintenance. The Regional Transit Authority was not a test claimant. The recent Commission decision in the Los Angeles Test Claim does not prevent the Regional Board from adopting the permit provisions as drafted.</p>
<p>26. <u>In several areas of the Tentative Order potable water is referred to as "waste" or "effluent". We object to this characterization as misleading and inaccurate as potable water is arguably the highest quality water that could be found anywhere in the region. These terms are probably left over terms from RWQCB Orders that deal with wastewater systems and should be modified to reflect the fact that dechlorinated potable water poses no threat to any receiving water.</u></p>	<p><u>The discharges of hydrostatic and potable water are considered a waste as defined in Section 13050 of the Porter-Cologne Water Quality Control Act. The Regional Water Board disagrees that potable water is the highest quality water that could be found anywhere in the region. See Response to Comments No’s 2 and 23 for a description of the pollutants in hydrostatic and potable water that could cause excursions of water quality standards.</u></p> <p><u>Surface water quality numerical objectives for protection of aquatic life are in many cases more stringent than that needed for protection of human health. Furthermore, water released from potable water supply distribution systems often does not meet public health standards and thus must be removed from the system as a waste. In addition, the release of highly treated potable water such as that which occurs due to a water line rupture or water released from the system to conduct</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
	<p><u>maintenance on the system, for discharge to surface waters without any beneficial use is a waste.</u></p> <p><u>After discussion with the TAC, however, the Tentative Order has been revised.</u></p>
<p>27. <u>The Draft Tentative Order eliminates the exemption from reporting for discharges of less than 500,000 gallons that was included in the 2002 Order. Elimination of the minimum discharge volume for reporting will result in thousands of additional discharges that must be reported, overwhelming current community water system administrative and compliance capability, and substantially increasing the costs of compliance and water service.</u></p>	<p><u>See Response to Comment No. 2</u></p>
<p>28. <u>The Notice of Intent (NOI) contains no guidance with respect to alternate methods of disposal or re-use that must be evaluated and rejected, or acceptable reasons sufficient to justify discharges of potable water as required by state and federal public health and safety laws. At the same time, each permittee must certify under penalty of perjury that a sufficient analysis of alternatives to the legally mandated potable water discharges have been evaluated and properly rejected. Given the emphasis placed on conservation by the District, a certification that a thorough evaluation of alternatives to discharge of potable water has been conducted prior to discharge is unnecessary to further water conservation, and will not substantially improve water quality.</u></p>	<p><u>Alternative methods of disposal include, but are not limited to, use of water for irrigation, soil compaction, dust control, groundwater recharge, etc.</u></p>
<p>29. <u>Although RWQCB staff have indicated that they were open to removing this section, Section 11(D) contains a provision that requires discharges to obtain approval from MS4 operators that would receive discharges as a condition of this permit. OMWD spans several MS4 jurisdictions and this sort of requirement will result in an additional burden being placed on OMWD without any basis in the protection of water quality.</u></p>	<p><u>See Response to Comment No. 4</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>We ask that this section, along with other references to this that are included in the Notice of Intent form be stricken as RWQCB staff had indicated previously.</u></p>	
<p>30. <u>The NOI form requests a map of all discharge points. It is impracticable for an agency that covers a wide area with hundreds of miles of pipelines and tens of thousands of water services, hydrants, blow offs, air releases, and other facilities, all of which could be a discharge point, to provide a map that would be of any beneficial use. If desired, the District could provide digital copies of our Geographic Information System data to the RWQCB on the condition that these records not be made available to the public.</u></p>	<p><u>The tentative Order has been revised to request a map of the agencies jurisdiction/ overall areas where discharges could occur.</u></p> <p><u>See Revised Tentative Order.</u></p>
<p>31. <u>On Page E-17 the Order requires some specific monitoring and reporting for emergency discharges. This section includes requirements for providing the number of discharges within 1000 feet of an emergency discharge in the last 12 months. It seems that the RWQCB is trying to assess the condition of the potable distribution systems by the collection of this data. Such information is not relevant to the water quality impacts of these discharges and the cost and complexity of collecting this information will not actually improve any receiving waters.</u></p>	<p><u>The tentative Order has been revised.</u></p> <p><u>See Revised Tentative Order.</u></p>
<p>32. <u>We would ask that any discharges from oil and/or gas systems or any other system that is not part of the municipal water system be deleted from this Order as these are a very different class of discharges and should be regulated separately.</u></p>	<p><u>See Response to Comment No. 5</u></p>
<p>33. <u>Finally, the characterization of potable water given in the third paragraph of Section I on page 5 is wholly inaccurate. Other than chlorine, which is controlled using the Best Management</u></p>	<p><u>The tentative Order has been revised.</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>Practices (BMPs) in place under the current permit, the constituents of concern outlined in this paragraph are all well below Basin Plan standards in potable water. The BMPs that have been in place for 7 years now and have effectively controlled the impact of chlorine and dechlorination of water during routine releases is now part of the every day habits of water operators across the county. Erosion control is similarly part of the normal course of business.</u></p>	<p><u>See Revised Tentative Order.</u></p>
<p><u>August 5 letter from Eastern Municipal Water District</u></p>	
<p>34. <u>Page 7, Section D, 4th paragraph: "Therefore, at least 30 days prior to initiating a hydrostatic or potable water discharge to a MS4, the Discharger shall notify and received authorization from the appropriate local agency with jurisdiction over the MS4."</u></p> <p><u>EMWD does not understand the need to have a 30-day notification for potable discharge. Situations requiring dewatering of potable pipelines and/or tanks often must be done rapidly. A five (5) day notification seems more reasonable for notification to the MS4 prior to initiating discharge.</u></p>	<p><u>See Response to Comment No. 2</u></p>
<p>35. <u>Page 15 and 16, Section IV., paragraph B., G., &amp; I.: The causes or exceedances of water quality objectives, Basin Plan, or water quality standards (designated beneficial uses and water quality objectives developed to protect beneficial uses) is prohibited.</u></p> <p><u>According to MWD's Skinner Water Filtration Plant, potable water being delivered to local water agencies can exceed 500 mg/L Total Dissolved Solids (TOS). Therefore, potable water in the hydrologic areas of Deluz, Auld, Pechanga and Wilson can exceed the water quality objectives of 500 mg/L TDS for</u></p>	<p><u>The discharge of hydrostatic and/or potable water may cause short term excursions of the TDS water quality objective in certain hydrologic subareas depending on the volume of water released and the volume of receiving water available for mixing. The Basin Plan Water Quality Objectives are not to be exceeded more that 10% of the time. Because of the short term and infrequent nature of hydrostatic and potable water discharges, the Regional Water Board does not anticipate that the Water Quality Objectives for TDS would be exceeded more than 10 % of the time over a one year period as a result of the discharge.</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>potable discharges. No provisions have been given for source water exceedance within these areas when potable water is discharged. Therefore, EMWD requests that discharges in excess of the TDS limit that are due to the quality of the water supply sources utilized in the service area be exempt from this requirement.</u></p>	
<p><b><u>August 5 letter from Padre Dam Municipal Water District</u></b></p>	
<p>36. <u>We request an extension of time of at least 90 days so the RWQCB staff can continue to work with the Technical Advisory Committee (TAC)</u></p>	<p><u>See Response to Comment No. 18</u></p>
<p>37. <u>Requiring a permit on threshold discharges below 500,000 gallons is unreasonable, unnecessary and impractical.</u></p>	<p><u>See Response to Comment No. 2</u></p>
<p>38. <u>The Notice of Intent (NOI) contains open-ended requirements for certification of alternative methods of disposal and re-use.</u></p>	<p><u>See Response to Comments No.'s 2 and 3</u></p>
<p>39. <u>The requirement to obtain approval from each MS4 operator, prior to every discharge, places unreasonable burden on water agencies.</u></p>	<p><u>See Response to Comment No. 4</u></p>
<p>40. <u>Hydrostatic testing of new oil and gas facilities and reclaimed water systems have been included in this permit. This adds unrelated groups with the potential of higher risk discharges to the permit.</u></p>	<p><u>See Response to Comment No. 5</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p>41. <u>Discharge of water into water conveyance systems is no longer exempt under the new proposal. Water discharges into a potable water source poses no risk to the public or environment.</u></p>	<p><u>See Response to Comment No. 6</u></p>
<p>42. <u>Extensive monitoring and reporting regarding the quality of potable water for a wide range of constituents is already conducted under public health and safety laws regulations.</u></p>	<p><u>The California Department of Public Health and the Regional Boards play an important, yet distinct and separate, roles in the regulation of waters of the state.</u></p> <p><u>The California Safe Drinking Water Act (CA SDWA) authorizes the state's Department of Health Services (DHS) to protect the public from contaminants in drinking water by establishing maximum contaminants levels (MCLs) that are at least as stringent as those developed by the U.S. EPA, as required by the federal SDWA.</u></p> <p><u>The Regional Boards implement the provisions of the Federal Clean Water Act and the California Water Code. Each regional board has established water quality objectives in water quality control plans to ensure the reasonable protection of beneficial uses and the prevention of nuisance</u></p> <p><u>Although regulation for human health criteria may overlap, criteria for fish and aquatic life is not regulated by the Department of Public Health and thus falls within the jurisdiction of the regional board. Aquatic life criteria are intended to assure that toxic pollutants are not present in concentrations or amounts that would cause acute or chronic adverse impacts on organisms in the receiving waters. In many instances the aquatic life criteria is more stringent than the MCL's for human health.</u></p>
<p>43. <u>In its current form, the tentative Order has no minimum discharge volume for which the excessive monitoring requirements are not required.</u></p>	<p><u>The tentative Order has been revised.</u></p>



**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<b>August 5 letter from Irvine Ranch Water District</b>	
<p>44. <u>The Findings should clearly state that this Order does not grant regulatory entities the authority to obligate IRWD to accept non-sewage wastewater into its sewer system.</u></p> <p><u>There is increasing regulatory pressure to discharge non-sewage waters into the sewer system to take advantage of the regulatory control and treatment of the water, resulting in that discharge into the sewer is the first option of choice with discharges into the MS4 system the discharge of last resort. IRWD's sewer system was designed to collect and treat residential, commercial and industrial wastewaters not hydrostatic test and potable wastewaters at the flow rates and volumes that would be discharged.</u></p>	<p><u>Comment noted. The Regional Water Board cannot specify the method of compliance. Discharging to the sewer system is only one alternative disposal option. Others include treatment, use as irrigation, soil compaction, dust control, and groundwater recharge.</u></p>
<p>45. <u>IRWD concurs with the need to coordinate discharges to the MS4 system with the agency responsible for the MS4 system. The language in Section D describes procedures more appropriate to project related discharges where the timing of the discharge can be determined well in advance. However, the vast majority of the discharges into the MS4 system are operations and maintenance which occur daily and often in response to water quality issues. IRWD can coordinate with the MS4 responsible agency on scheduled project related discharges, because projects are scheduled well in advance.</u></p> <p><u>The Order needs to recognize the urgency associated with response to water quality issues within the domestic water system and recognize that the majority of the discharges that occur under the conditions of the Order are routine responses consistent with standard operations and maintenance practices.</u></p>	<p><u>The tentative Order has been revised.</u></p> <p><u>See Revised Tentative Order.</u></p>
<p>46. <u>IRWD is concerned that the Standard Provision for Enforcement is incomplete. Since the Order is an NPDES</u></p>	<p><u>It is not appropriate to include all of the enforcement options and</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>Permit, the Order should contain the criteria and penalties associated with federal law and regulation.</u></p>	<p><u>penalties available to the Regional Water Board. These are contained in the California Water Code.</u></p>
<p>47. <u>The Monitoring and Reporting Program requires establishment of monitoring locations for each discharge. While such a requirement is reasonable for project related discharges, it is unreasonable for short term discharges, such as hydrant flushing, occurring throughout the day. IRWD suggest that the word “each” be deleted, which will allow the development of a monitoring program that is based on a sample of the discharges.</u></p> <p><u>Based on its monitoring history, IRWD questions the need to monitor for total dissolved solids and pH in potable water discharges under this permit, because potable water need to meet the higher standards for domestic use. IRWD considers a quarterly characterization of total dissolved solids and pH to be sufficient to meet this requirement and offers to provide that information.</u></p>	<p><u>The language has been modified.</u></p> <p><u>See Revised Tentative Order.</u></p> <p><u>The requirements for total dissolved solids and pH have been carried over from Order No. R9-2002-0020</u></p>
<p>48. <u>IRWD wishes to confirm that Receiving Water Requirements apply directly to discharges into the receiving water only. Most of IRWD’s discharges are into the MS4 system, which combine with other flows and ultimately discharge into receiving waters. Indirect discharges are not subject to receiving water requirements.</u></p> <p><u>Considering discharges near receiving water, IRWD is concerned whether receiving criteria should apply and has the following recommendation. If the discharge is less than 100 feet from the receiving water, receiving water criteria apply. If the point of discharge into the MS4 system is greater than 100 feet from the receiving water, a compliance statement explaining why no visual monitoring was</u></p>	<p><u>Your interpretation is correct. Receiving water requirements apply to discharges that are directly into a receiving water. The language has been revised to provide further clarification.</u></p> <p><u>See Revised Tentative Order.</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<u>conducted should be adequate.</u>	
49. <u>IRWD wishes to confirm that water system failures, such as a vehicle hitting a fire hydrant, are not emergency discharges. However, any water that is discharged as a result of the repair of a system failure, such as lowering the water level in a storage reservoir to prevent a failure of the reservoir, would be considered an emergency discharge. Therefore, system failures need not be reported, but emergency discharges that satisfy flow, sedimentation/ erosion or nuisance requirements would be reported.</u>	<u>At the request of the TAC the language in the Revised Errata has been modified from “Emergency Discharges” to “Unplanned Discharges. Any unplanned discharge (including a vehicle hitting a fire hydrant) would need to be reported.</u>
50. <u>The proposed Order contains an emergency discharge minimum limit of 100,000 gallons per day, while the previous monitoring limit was 500,000 gallons per day. IRWD request the justification that supports the recommendation to lower the monitoring threshold from 500,000 gallons per day to 100,000 gallons per day.</u>	<u>See Response to Comment No. 2.</u> <u>The discharge amount for emergency (unplanned) discharges has been revised to be consistent with other reporting requirements.</u>
51. <u>IRWD is concerned that the Fact Sheet Eligibility Criterion A.5 could have a serious effect on daily operations and maintenance activities.</u>  <u>The requirement, as written, places an unreasonable burden on operations and maintenance personnel to certify that alternative methods of disposal were considered and that no alternative method of disposal existed.</u>	<u>This requirement was set in place to comply with Section 13550 of the Water Code which states that water resources of the State shall be put to beneficial use to the fullest extent possible.</u>
<u>August 7 letter from Helix Water District</u>	
52. <u>Helix request that the California Regional Water Quality Control Board postpone the adoption of the subject Order to</u>	

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<u>allow stakeholders input in creating an Order that meets the goal of protecting the receiving waters of our region without causing an undue burden on the operations of public agencies.</u>	<u>See Response to Comment No. 18</u>
53. <u>In 2002, water agencies responded to Order No. R9-2002-0020, NPDES No. CAG679001, by developing Best Management Practices (BMPs) and utilizing Best Available Technologies (BATs) to ensure the operation of our systems did not negatively impact receiving waters. To date, we are unaware of any instances where receiving waters in our region have been impacted as a result of our operations.</u>	<u>Comment Noted.</u>
54. <u>The Helix Water District did not receive any mailings regarding the Order as states in your Revised Executive Officers Summary Report, and first learned of the Order on July 1, 3009</u>	<u>The draft Order was mailed to all enrollees of Order No. R9-2002-0020, including Helix Water District, on August 5, 2009.</u>
55. <u>On Thursday, August 6, 2009, CRWQCB staff released the current draft of the Order which contains many significant changes. We feel four days is insufficient time to review these changes, provide thoughtful comments, and produce an Order that is mutually acceptable.</u>	<u>See Response to Comment No. 18</u>
<u>August 10 letter from Sweetwater Authority</u>	
56. <u>Some major items remain that have been resolved are the elimination of the mandatory approval of the MS4 operator prior to allowing a drain to occur and the discussion regarding discharges under the one acre-foot/day (325,850 gallons/day) would be exempt from the monitoring and reporting criteria.</u>	<u>Comment Noted.</u>
57. <u>However, other concerns of the tentative Order that have not</u>	

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>been fully addressed are:</u></p> <ul style="list-style-type: none"> <li>* <u>Receiving Water Limitations</u></li> <li>* <u>Monitoring and Reporting Criteria</u></li> <li>* <u>Reporting of conservation goals for discharges</u></li> <li>* <u>Hydrostatic testing of new oil and gas facilities and reclaimed water systems.</u></li> </ul>	<p><u>Comment Noted.</u></p>
<p>58. <u>Sweetwater Authority is aware of the positive efforts that staff has have made in the time available; however, as the tentative Order reads now, it is restrictive in how we would carry out our daily operations, it limits our ability to operate, and will cause undue hardship on water purveyors and their customers.</u></p>	<p><u>Comment Noted.</u></p>
<p><u>August 12 letter from Carlsbad Municipal Water District</u></p>	
<p>59. <u>The draft tentative Order eliminates the minimum reporting level of discharges for 500,000 gallons/day or more. This will add thousands of discharges under 500,000 gallons/day that need to be reported and approved, will overwhelm administrative and compliance capability, and will increase the cost of service.</u></p>	<p><u>See Response to Comment No. 2</u></p>
<p>60. <u>The Notice of Intent contains open-ended requirements for certification of alternate methods of disposal or re-use. Potable water systems are already required to operate under strict Best Management Practices (BMP's) to limit water loss due to leakage, upset, and maintenance discharges. No additional regulation is needed.</u></p>	<p><u>See Response to Comment No. 2 and 3</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
61. <u>The requirement to obtain approval from each MS4 operator, prior to every discharge, places unreasonable burden on water agencies. The added complexity and cost is not justified for such low risk discharges, and the process could jeopardize projects that require dewatering operations.</u>	<u>See Response to Comment No. 4</u>
62. <u>Hydrostatic testing of new oil and gas facilities and reclaimed waters systems have been included in this permit. This adds unrelated groups with the potential of higher risk discharges to the permit.</u>	<u>See Response to Comment No. 5</u>
63. <u>Discharge of water into water conveyance systems is no longer exempt under the new proposal. Water discharged into a potable water source poses no risk to the public or environment.</u>	<u>See Response to Comment No. 6</u>
64. <u>Adoption of the Order is scheduled for August 12, 2009, with an effective date of September 1, 2009. This does not allow adequate time to resolve issues with respect to the changes from the prior permit.</u>	<u>See Response to Comment No. 54</u>
<u>12/7/2009 Email from Metropolitan Water District of Southern California</u>	
65. <u>The purpose of this e-mail is to request that you delay the adoption hearing on subject permit, and schedule a formal workshop early next year to discuss the revised tentative permit and the changes that staff has made.</u>	<u>This permit is 2 years expired. At this time the Regional Board is not postponing adoption of the tentative Order.</u> <u>A public notice for this item was made on June 28, 2009. Copies of the tentative Order were sent to all enrollees and know interested parties on June 25, 2009. An Errata Sheet was mailed</u>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>Our review of the latest version of the permit indicates that there are many changes and new provisions that warrant a dialogue with stakeholders in a workshop format before this goes forward for an adoption hearing.</u></p>	<p><u>to all enrollees and know interested parties on August 5, 2009. Based on comments received to date and numerous discussions with the TAC, additional changes have been made to the tentative Order. Many of the revisions suggested by the dischargers have been incorporated into the latest version of the draft Order. All other remaining items are not considered to be significant changes and therefore an additional 45-day public review period is not required.</u></p>
<p><u>12/7/2009 Comments from TAC Meeting with Regional Board Staff</u></p>	
<p>66. <u>Section II.A Eligibility Criteria</u> <u>This section should be reworded so that eligibility is based on compliance with conditions of this Order.</u></p>	<p><u>Regional Board staff agrees and will make the recommended changes to the Tentative Order</u></p>
<p>67. <u>Section III.B Discharge Description</u> <u>The word “surface” should be added before the word “water”</u></p>	<p><u>The tentative Order has been revised.</u></p>
<p>68. <u>Section IV. G &amp; H.</u> <u>The word “waste” should be replaced with “hydrostatic test water and/or potable water”</u></p>	<p><u>The tentative Order has been revised.</u></p>
<p>69. <u>Section V.A Effluent Limitations</u> <u>pH doesn’t change throughout the distribution system, can this limitation be removed since the ph is measured at the treatment plant.</u></p>	<p><u>The pH can change due to the dechlorination process; therefore, the limitation shall remain.</u></p>
<p>70. <u>Section V.B Discharge Flow Volume</u></p>	<p><u>See Responses to Comment No.’s 2 and 87.</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<u>Need further clarification on Conservation/Management Plan and why it is being requested.</u>	
71. <u>Section VI.A Surface Water Limitations</u>	<u>The TAC is uncomfortable with listing out all of the applicable water quality plans and policies because it could set them up for 3<sup>rd</sup> party lawsuits. This language was developed to apply to all NPDES discharges and is not being modified.</u>
72. <u>Section VII.A.1</u>  <u>Add the word “applicable” before “Standard Provisions”</u>	<u>The tentative Order has been revised.</u>
73. <u>Section VII.h</u>  <u>This language is not consistent with Standard Provisions Section V.E</u>	<u>Comment Noted.</u>
74. <u>Section VII.i</u>  <u>Records retention time is not consistent with Federal Regulations (The Order requires 5 yrs vs 3 in the Federal Regulations)</u>	<u>The Regional Water Board requires 5 years, which is more stringent than the State Board standard provisions for NPDES permits.</u>
75. <u>Section VII.C.3 Best Management Practices</u>  <u>Remove reference to raw water</u>	<u>The tentative Order has been revised.</u>



**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p>76. <u>Section VII.C.7</u></p> <p><u>This does not apply to the discharge and should be removed</u></p>	<p><u>The tentative Order has been revised.</u></p>
<p>77. <u>Section VII.C.8 Regional Monitoring Program</u></p> <p><u>Changes to the Monitoring and Reporting Program (MRP) should only be made after proper notification to stakeholders and by the Regional Board and not the Executive Officer.</u></p> <p><u>Language should be added to notify and include all enrollees and interested persons prior to making any changes to the MRP.</u></p>	<p><u>The tentative Order has been revised.</u></p>
<p>78. <u>Attachment A – Definitions</u></p> <p><u>Add the definition of “project”</u></p>	<p><u>A project means an activity resulting in a discharge to surface waters in the same vicinity and over a specified time period. For example, release of water from a 1-mile wide pipeline at various locations along the pipeline over a 3-day period is considered a single project.</u></p>
<p>79. <u>Attachment E- Monitoring and Reporting Program</u></p> <p><u>Section I. E</u></p> <p><u>Should be reworded to say:</u></p> <p><u>“When appropriate flow measurement devices are used, the flow measurement devices and methods shall be consistent with .....”</u></p>	<p><u>The tentative Order has been revised.</u></p>
<p>80. <u>Attachment E – Monitoring and Reporting Program</u></p> <p><u>Section I.F</u></p> <p><u>This section should specify it only applies if laboratory services</u></p>	<p><u>The tentative Order has been revised.</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<u>are used</u>	
<p>81. <u>Attachment E – Effluent Monitoring Requirements</u>  <u>IV.B Treatment Systems Status</u>  <u>This should be removed since this permit doesn't allow any treatment</u></p>	<u>The tentative Order has been revised.</u>
<p>82. <u>Attachment E- Monitoring and Reporting Program</u>  <u>Table E-1 Effluent Monitoring</u>  <u>Provide further clarification</u></p>	<u>The tentative Order has been revised to provide further clarification.</u>
<p>83. <u>Attachment E- Monitoring and Reporting Program</u>  <u>IV.D.3</u>  <u>Does not seem applicable, recommend removing</u></p>	<u>The tentative Order has been revised.</u>
<p>84. <u>Attachment E- Monitoring and Reporting Program</u>  <u>Section X.A</u>  <u>Doesn't specify this only for discharges over 1 acre-ft/day</u></p>	<u>The tentative Order has been revised.</u>
<p>85. <u>Attachment E- Monitoring and Reporting Program</u>  <u>Section IX.E.3</u>  <u>Would prefer to do monitoring on a fiscal year vs calendar year</u></p>	<u>The tentative Order has been revised.</u>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p>86. <u>Attachment F – Fact Sheet</u></p> <p><u>Section I.A</u></p> <p><u>Remove references to newly constructed non-drinking water pipelines, tanks, and vessels</u></p>	<p><u>The tentative Oder has been revised.</u></p>
<p><u>12/8/2009 Email from Eastern Municipal Water District</u></p>	
<p>87. <u>Page 17, V., B.- Each Discharger shall implement best management practices to minimize discharge flow rates to reduce erosion and sedimentation impacts from the discharges and conserve water. Each Discharger shall prepare a conservation/management plan, which shall be made available to the Regional Board upon request.</u></p> <p><u>The term "conservation/management plan" is vague, and needs to be address or the sentence removed. Is this conservation/management plan for the water systems to reduce discharges or BMPs to control erosion/sediment impact of discharges?</u></p>	<p><u>After discussion with the TAC, it is the Regional Boards understanding that each water agency has created a Conservation/Management Plan. The intent of this language is to incorporate the existing plans into the BMP requirements for each enrollee. This language will be removed from the Effluent Limitations section and incorporated into the section that discusses BMP's.</u></p>
<p>88. <u>Page E-3-E4, VIII.A Receiving Water Monitoring – The term “turbidity” should be replaced with “water clarity” so that the term is not confused with the sampling/testing procedure but rather an observation.</u></p>	<p><u>The tentative Order has been revised.</u></p>
<p><u>12/8/2009 Letter from San Diego County Water Authority on behalf of the TAC</u></p>	

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p>89. <u>The TAC received the latest draft of the tentative order on December 2, 2009....Upon detailed review, there were significant differences between the document discussed in September and the December draft.</u></p> <p><u>Major items include:</u></p> <p><u>Requirements of an Effluent Characterization Plan, with potentially significant new monitoring requirements</u></p> <p><u>Requirement for the development of a Conservation Plan.</u></p> <p><u>The Document contains many references to sewer and sludge disposal which does not apply to our industry and is confusing the permittees.</u></p> <p><u>Changes to the monitoring plan can be made at any time with no stakeholder involvement.</u></p>	<p><u>An Effluent Characterization Plan is required to collect information to adequately analyze effluent from the Enrollees distribution system for compliance with the California Toxics Rule (CTR) criteria. Preliminary data indicates there may be certain constituents (including THMs and metals, specifically copper) in the drinking water that do not conform to the CTR water quality objectives.</u></p> <p><u>See Response to Comment No. 66</u></p> <p><u>The commenter is referring to the Standard Provisions (Attachment D) of the Tentative Order. According to 40 CFR Section 122.41, these conditions apply to all NPDES permits and shall be incorporated into the permits either expressly or by reference. These Standard Provisions are included in all of the Regions NPDES permit regardless of discharge type.</u></p> <p><u>The tentative Order has been revised.</u></p>
<p>90. <u>Members of the TAC feel it is impossible to resolve the remaining issues prior to the action to adopt at the December 16, 2009 Regional Water Quality Control meeting. The Board has failed to provide a full 30-day public review and comment period required for the latest draft of the tentative order.</u></p>	<p><u>A public notice for this item was made on June 28, 2009. Copies of the tentative Order were sent to all enrollees and know interested parties on June 25, 2009. An Errata Sheet was mailed to all enrollees and know interested parties on August 5, 2009. Based on comments received to date and numerous discussions</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
	<u>with the TAC, additional changes have been made to the tentative Order. Many of the revisions suggested by the dischargers have been incorporated into the latest version of the draft Order. All other remaining items are not considered to be significant changes and therefore an additional 45-day public review period is not required.</u>
91. <u>The Water Authority request delaying adoption of the Draft Tentative Order so Board staff and the TAC can continue working towards acceptable solutions.</u>	<u>This permit is 2 years expired. At this time the Regional Board is not postponing adoption of the tentative Order.</u>
<u>12/8/2009 Letter from Olivenhain Municipal Water District</u>	
92. <u>The Draft Order was originally released to the interested parties on June 25, 2009. After a series of meetings with the RWQCB staff in which good progress was made to a cooperative permitting process, we were informed that the adoption of the Order would be postponed for several months. To our surprise, the Order returned to the Agenda without notification to members of the TAC. We received copies of the new, heavily modified Order only on December 2, giving us a short 6 days to review and comment. This is an unacceptable short review period.</u>  <u>We ask that the Regional Board postpone adoption of this order for a period of at least 90 days.</u>	<u>See Responses to Comments No's 90 and 91.</u>
93. <u>The Tentative Order does not identify any specific water of the United States or California where a beneficial use has been threatened or compliance with a water quality objective has not been met because of the discharge of potable water or where there is a reasonable potential for this to occur. For the benefit of agencies that the Tentative Order would regulate, the permit should identify those surface waters or</u>	<u>See Response to Comment No. 19.</u>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>groundwater being threatened or degraded by potable water discharges as a result of routine water operations.</u></p>	
<p>94. <u>Water Code Section 13000 states that the RWQCB must regulate activities that affect water quality ... "to attain the highest water-quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." A key element of this requirement that water quality regulations be "reasonable" is that the burden of a regulation is balanced by commensurate improvements to water quality. In the absence of any evidence that discharges of potable water during routine operations of public water systems may adversely affect water quality, the regulation of such discharges is not reasonable.</u></p>	<p><u>See Responses to Comments No.'s 19 and 20.</u></p>
<p>95. <u>Additionally, Water Code Section 13260 states that the RWQCB must regulate discharges ... "that could affect the quality of the waters of the state". However, there is no evidence that the small volumes of high quality potable water discharged sporadically from potable water systems either cause or have the reasonable potential to affect the quality of the waters of the state. Thus, they do not appear to require regulation under a separate NPDES permit and can continue to be discharged into MS4s as non-stormwater discharges that do not pose a threat to water quality.</u></p>	<p><u>See Response to Comment No. 21.</u></p>
<p>96. <u>Under Water/ Code Section 13225 (c), a RWQCB may not require local agencies to obtain and submit analyses of water where ... "the burden, including costs, of such reports [bears] a reasonable relationship to the need for the report and the benefits to be obtained there from". There is no evidence that such an analysis of the costs and benefits of the sampling</u></p>	<p><u>See Response to Comment No. 23.</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p><u>required in the permit was conducted much less that benefits are greater than the costs. For Olivenhain MWD, we estimate that the costs of this sampling will exceed \$1 M per year in order to comply with the Draft Tentative Order.</u></p> <p><u>Has the RWQCB performed a cost benefits analysis on the costs of the massive amount of sampling required under this Tentative Order? If so, since there is no evidence of any impairment of the beneficial uses of the receiving waters under discharges allowed under the 2002 permit, how can it be shown that these benefits outweigh the costs?</u></p>	
<p>97. <u>Section B.2 of the San Diego Region MS4 NPDES Permit (Order R9-2007 -0001) specifically exempts water line flushing "unless a Copermittee or the Regional Board identifies the discharge category as a significant source of pollutants to the waters of the U.S." The rationale for this 'section is firmly grounded in Federal Law in 40 CFR 122.26(d)(2)(iv)(B)(1).</u></p> <p><u>Has the RWQCB or any Copermittee to the San Diego MS4 Permit made any such determination? Since the water in question here is potable and by its very nature does not contain any such pollutants, it would seem unlikely that such a determination could be made.</u></p>	<p><u>See Response to Comment No. 21.</u></p>
<p>98. <u>In several areas of the Tentative Order potable water is referred to as "waste" or "effluent". We object to this characterization as misleading and inaccurate as potable water is arguably the highest quality water that could be found anywhere in the region. These terms are probably left over terms from RWQCB Orders that deal with wastewater systems and should be modified to reflect the fact that dechlorinated potable water poses no threat to any receiving water.</u></p>	<p><u>See Response to Comment No. 26.</u></p>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<b>12/8/2009 Letter from Metropolitan Water District of Southern California</b>	
<p>99. <u>We have reviewed the latest version of the Draft Tentative Order No. R9-200-0094 and request that you delay the adoption hearing scheduled for December 16<sup>th</sup>.</u></p> <p><u>Sufficient time for review of the latest version of the Tentative Order was not provided to the affected water purveyors. A 30 day comment period has not been provided and until these latest versions, we had not received any status update on the permit since September 2009.</u></p>	<p><u>See Responses to Comments No's 90 and 91.</u></p>
<p>100. <u>Unreasonable New Requirements for Being Jointly Liable for Other Dischargers Water Quality Excursions</u></p> <p><u>In the revised Tentative Order under Receiving Water Limitations-Surface Water Limitations, a catch-all requirements is included that the discharge shall not by itself or jointly with other discharges, cause an excursion above any applicable water quality standards, including but not limited to all applicable provisions contained in the Basin Plan, SWRCB Plan for water quality control, SWRCB Board policies, and Priority Pollutant criteria – NTR and CTR.</u></p> <p><u>This language needs to be removed from the Tentative Order.</u></p>	<p><u>See Response to Comment No. 71.</u></p>
<p>101. <u>Unjustified Reduction in Volume Threshold Exemption Allowed in Existing Permit.</u></p> <p><u>The revised Tentative Order reduces the exemption provisions from 500,000 gallon/day to 325,800 gallons/day.</u></p>	<p><u>See Response to Comment No. 2.</u></p>



**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p>102. <u>Unnecessary New Provision for Providing an Effluent Characterization Plan</u></p> <p><u>An updated Reasonable Potential Analysis should be performed first instead of imposing this new Effluent Characterization Work Plan requirement.</u></p> <p><u>This requirement is unnecessary and overly burdensome for both the dischargers and the Regional Board staff. The Work Plan requirement should be removed from the Tentative Order.</u></p>	<p><u>See Response to Comment No. 89.</u></p>
<p>103. <u>Duplication of Existing Regulations by Requiring Development of a Conservation/Management Plan</u></p> <p><u>Water conservation is regulated by the Department of Water Resources, so it does not make sense to impose another regulatory layer by including such requirement in this permit. We are requesting removal of this provision.</u></p>	<p><u>See Response to Comment No. 87.</u></p>
<p>104. <u>EO Summary Report to the Board Does Not Accurately Reflect All Significant Changes from the Existing Permit</u></p> <p><u>The EO Summary Report to the Board for this agenda item does not list all the changes made in the Tentative Order, and only list three areas where the Tentative Order differs from the existing Order; therefore it does not accurately communicate the extent of the changes and the new provisions.</u></p>	<p><u>Comment Noted.</u></p>
<p>105. <u>There are also several inconsistencies between the</u></p>	

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<u>Tentative Order and Fact Sheet, and other clarifications that must be made before the Tentative Order can be adopted.</u>	<u>Comment Noted.</u>
<u>12/8/2009 Letter from Vista Irrigation District</u>	
106. <u>The District requests that the Regional Board heed the appeals of the SDCWA, on behalf of the TAC, to delay adoption of the RTO and return to its commitment to work collaboratively with the TAC to develop an RTO that will serve as a model of rulemaking that will serve the public interest.</u>	<u>Comment Noted.</u>
<u>12/8/2009 Letter from Otay Water District</u>	
107. <u>The TAC received that latest draft of the tentative order on December 2, 2009 and met the following day to review and develop comments to provide to the Board. Upon detailed review, there were significant differences between the document discussed in September and the December Draft</u>  <u>The Board failed to provide the full 30-day public review and comment period required for the latest draft tentative order.</u>	<u>See Response to Comments No's 90 and 91.</u>
108. <u>The Otay Water District requests delaying adoption of the Draft Tentative Order so Board staff and the TAC can continue working towards acceptable solutions.</u>	<u>See Response to Comments No's 90 and 91.</u>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<b><u>12/8/2009 Letter from the City of Carlsbad</u></b>	
109. <u>The Carlsbad Municipal Water District is in agreement with SDCWA and also requests that the Board delay adoption of the tentative order until the “Major items of concern” outline in the letter from Mr. Eaton can be addressed by the TAC with the Board to continue working towards acceptable solutions.</u>	<u>See Response to Comments No’s 90 and 91.</u>
<b><u>12/8/2009 Letter from Vallecitos Water District</u></b>	
110. <u>On December 3rd, the VWD’s representative met with the TAC to review and comment on the draft order that was provided on November 25th and December 2nd. Upon detailed review, there were significant differences between the document last discussed in September and the current document the Board is considering for adoption.</u>  <u>The Board has not given a 30-day public review and comment period for the latest draft tentative Order.</u>	<u>See Response to Comments No’s 90 and 91.</u>
111. <u>Changes continued to be made between the November 25th draft and the December 2nd draft further limiting the ability to review and provide comments by December 8, 2009, formal comment deadline.</u>	<u>Comments Noted.</u>
112. <u>The new drafts contain significant new monitoring requirements and the development of an Effluent Characterization Plan.</u>	<u>See Response to Comment No. 89.</u>
113. <u>The executive Officer has the authority to modify the Monitoring Program of the Order without stakeholders</u>	<u>The tentative Order has been revised.</u>

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE ORDER NO R9-2009-0094, NPDES No. CAG679001**

<b>GENERAL COMMENTS &amp; MAJOR CONCERNS</b>	<b>REGIONAL BOARD RESPONSES</b>
<u>input. In the earlier drafts the Board had this authority.</u>	
114. <u>The document still contains many references to sewer and sludge disposal which does not apply to our industry and complicates trying to interpret the intent of the permit.</u>	<u>See Response to Comment No. 89.</u>
115. <u>The tentative Order now requires development of a conservation plan.</u>	<u>See Response to Comment No. 87.</u>
116. <u>The Vallecitos Water District requests a delay in adoption of the Draft Tentative Order so Board staff and the TAC can continue working toward acceptable solutions.</u>	<u>See Response to Comment No. 91.</u>