

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

Response to Comments Report

**Tentative Order No. R9 2016-0004
Tentative Order No. R9 2016-0005
Tentative Resolution No. R9-2016-0136**

***Adoption of General Waste Discharge Requirements for
Discharges from Commercial Agricultural Operations
in the San Diego Region***

November 9, 2016

Response to Comments Report
Adoption of General Waste Discharge Requirements from
Commercial Agricultural Operations in the San Diego Region

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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Response to Comments Report
Adoption of General Waste Discharge Requirements from
Commercial Agricultural Operations in the San Diego Region

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

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Introduction

This report contains the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) responses to written comments received on the following documents:

1. Tentative Order No. R9 2016-0004, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of Third-Party Group* in the San Diego Region (Third-Party General Order).
2. Tentative Order No. R9 2016-0005, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group* in the San Diego Region (Individual General Order).
3. Tentative Resolution No. R9-2016-0136, *Adoption of a Negative Declaration and Initial Study for the Adoption of General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations in the San Diego Region* (Tentative Resolution).

The Third-Party General Order, the Individual General Order (collectively referred to as Tentative General Orders), and the Tentative Resolution, including the Draft Negative Declaration (Draft Negative Declaration) and California Environmental Quality Act (CEQA) Initial Study and Checklist (Draft Initial Study), were made available for public review on June 13, 2016. An informational Public Workshop was conducted during the June 22, 2016 meeting of the San Diego Water Board. The Public Workshop provided the public and the San Diego Water Board an opportunity to receive information and discuss the requirements of the Tentative General Orders and Draft Initial Study. The public comment period ended on July 29, 2016. The Draft Negative Declaration and Draft Initial Study were distributed by the California State Clearinghouse and Planning Unit (State Clearinghouse) to selected State agencies for review. The review period commenced on June 10, 2016 and ended on July 29, 2016. The State Clearinghouse reported that no State agencies had submitted comments on the Draft Negative Declaration and Draft Initial Study by the close of the comment period on July 29, 2016.

<u>Comments were received from:</u>	<u>Page No.</u>
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City of San Diego	24
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Comments and Responses

The written comments and staff responses are in the table that follows. The comments are organized according to the person that submitted the comment. The table indicates the document to which it applies, or if it is a general comment, the San Diego Water Board's response to the comment, and any actions taken to revise the Tentative General Orders and draft CEQA documents in response to the comment.

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Best Best & Krieger (BB&K) on behalf of Rancho Guejito Corporation, dated July 29, 2016			
1	<p>Rancho Guejito's primary concern with the Tentative General Orders is the need to provide coverage for the maintenance of existing farm roads and water supply facilities. Inclusion of these maintenance activities is consistent with the Clean Water Act (CWA) and the California Environmental Quality Act (CEQA). It is also essential to the continued viable operations of farming activities across the San Diego Region.</p> <p>BB&K reads sections A-H of the Tentative General Orders, section I.B. of the Fact Sheet, and Attachment C to the Tentative General Orders as providing coverage for all discharges of waste associated with qualified Agricultural Operations, including discharges from maintenance to existing farm roads and water supply facilities. If this is not the case, please confirm that the Tentative General Orders do not cover discharges from such activities, and provide an explanation as to why.</p>	<p>As specified in section I.G of the Third-Party General Order and section I.F of the Individual General Order, each Tentative General Order regulates discharges from enrolled Agricultural Operations, including discharges from farm roads and water supply facilities that exist within the boundaries of enrolled Agricultural Operations that could affect waters of the State. The only exceptions are those discharges listed in section I.H of the Third-Party General Order and section I.G of the Individual General Order which are specifically excluded from regulation under the Tentative General Orders.</p> <p>Specifically with regards to the maintenance of existing farm roads and water supply facilities, the discharge of dredged or fill material from Agricultural Operations to waters of the State subject to regulation under CWA sections 401 and 404 are not covered under the Tentative General Orders. (See section I.H.9 of the Third-Party General Order and section I.G.9 of the Individual General Order.) A minor wording change has been made to section I.H.9 of the Third-Party General Order and section I.G.9 of the Individual General Order to specify that it is the discharge of dredged or fill material which is being excluded from coverage.</p> <p><i>Third-Party General Order section I.H.9:</i></p> <p>Discharges of dredged and <u>or</u> fill material from Agricultural Operations to waters of the State subject to regulation under CWA sections 401 and 404 and the California Water Code (Water Code).</p> <p><i>Individual General Order section I.G.9:</i></p> <p>Discharges of dredged and <u>or</u> fill material from Agricultural Operations to waters of the State subject to regulation under CWA sections 401 and 404 and the</p>	<p>Modified Third-Party General Order section I.H.9</p> <p>Modified Individual General Order section I.G.9</p>

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		California Water Code (Water Code).	
2	<p>Rancho Guejito is aware that San Diego Region Irrigated Lands Group (SDRILG) is submitting written comments on the Tentative General Orders. Rancho Guejito has been a member of the SDRILG since its formation in 2009, and will rely on SDRILG for compliance with the Tentative General Orders. Rancho Guejito fully supports SDRILG's comments and requests that the San Diego Water Board give them special weight to reflect the entity's role as a regional coordinator that both the San Diego Water Board and the farm community need to make the Tentative General Orders work. SDRILG's comments on the proposed monitoring plan are most concerning. SDRILG will be coordinating the monitoring plan for third party participants like Rancho Guejito and their concerns regarding the plan need to be addressed.</p>	<p>Comment noted. See San Diego Water Board responses to San Diego Irrigated Lands group (SDRILG) comments numbered 42 to 87.</p>	<p>None necessary</p>
3	<p>Rancho Guejito believes that the continuing education requirements are excessive. The Tentative General Orders will require Members/Dischargers to take a minimum of four hours of continuing education classes every year. This is too much of a burden for most Members/Dischargers in the San Diego Region. They are busy taking care of their businesses and managing their operations and they have other continuing education requirements that they must also fit in. We request that the San Diego Water Board consider revising this requirement to allow permittees who take continuing education for pesticide application to receive credit for this time. We further request that the San Diego Water Board reduce the continuing education requirement to two hours every two years.</p>	<p>Continuing education is an important means for providing current information regarding a variety of management practices (not only pesticide application), and water quality monitoring and reporting practices to assist Members/Dischargers with complying with the requirements in the Tentative General Orders. Members/Dischargers must understand why the management practices they are implementing are important, what the impacts will be to their specific Agricultural Operation, and how they can meet the requirements of the Tentative General Orders.</p> <p>The San Diego Water Board understands that the Members/Dischargers have many other demands on their time. The General Tentative Orders address this by allowing Members/Dischargers to use a variety of alternative formats for receiving this training, including classrooms, one-on-one training, and on-line training.</p> <p>A strong, comprehensive, and sustained educational program is crucial to the success of the Tentative General</p>	<p>Modified Third-Party General Order section VII.B.1</p> <p>Modified Individual General Order section VI.B.1</p>

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		<p>Orders. However, in further recognition of the burden placed on some Members/Dischargers created by applying education requirements uniformly, the Tentative General Orders have been modified to reduce the required number of education hours from four to two as follows (noting that the modifications also address comments numbered 31 and 57):</p> <p><i>Third-Party General Order section VII.B.1:</i></p> <p>By December 31 of each year, Members shall complete at least four <u>two</u> hours of appropriate water quality training to maintain compliance with this General Order.</p> <p><i>Individual General Order section VI.B.1:</i></p> <p>By December 31 of each year, Dischargers shall complete at least four <u>two</u> hours of appropriate water quality training to maintain compliance with this General Order.</p>	
4	<p>Rancho Guejito believes that reports should be submitted annually unless there are violations. The Tentative General Orders allow self-reporting for Third-Party Members. This is a positive step forward and will go a long way toward making the Tentative General Orders successful for both the San Diego Water Board and the agriculture community. However, the reporting requirements remain excessive. The Tentative General Orders require quarterly and annual reporting. We request that the San Diego Water Board revise the Tentative General Orders to require an annual report with the information requested in the Tentative General Orders, and quarterly reporting if violations are found by the operator or the San Diego Water Board.</p>	<p>While the Tentative General Orders require Members/Dischargers to complete a Quarterly Self-Inspection Report and an Annual Self-Assessment Report, these reports are required to be submitted annually as part of the Annual Report. (See sections VII.D.4 and VII.E.3 of the Third-Party General Order and sections VI.E.4 and VI.F.3 of the Individual General Order.)</p> <p>To provide clarity on the purpose and schedule for submission of the Quarterly-Self Inspection Reports and Annual Self-Assessment Reports the Tentative Orders have been modified as follows:</p> <p><i>Third-Party General Order section VII.E.2</i></p> <p>The purpose of the Annual Self-Assessment Report is to <u>a) evaluate whether the compliance with this General Order and the effectiveness of the WQPP</u></p>	<p>Modified Third-Party General Order, sections VII.E.2. and E.6</p> <p>Modified Individual General Order, sections VI.F.1., F.2. and F.5. and Attachment A MRP sections VII. N and O.</p>

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		<p><u>described in section VII.C, and the management practices used to control the discharge of pollutants from the Agricultural Operation are adequate, properly implemented and effective in accordance with the terms of this General Order and b) determine whether additional control measures are necessary.</u></p> <p><i>Third-Party General Order section VII.E.6:</i></p> <p><u>By June 30 of each year Third-Party Groups shall submit to the San Diego Water Board copies of the Annual Self-Assessment and Quarterly Self-Inspection Reports submitted by Members.</u></p> <p><i>Individual General Order, section VI. F.1:</i></p> <p><u>By April 30 of each year, Dischargers shall submit a completed conduct a self-assessment of the previous year. The Discharger shall document the self-assessment by completing the Annual Self-Assessment Report (Attachment J) covering January 1 through December 31 of the prior year.</u></p> <p><i>Individual General Order, section VI. F.2:</i></p> <p>The purpose of the Annual Self-Assessment Report is to <u>a) evaluate whether the compliance with this General Order and the effectiveness of the WQPP described in section VI.C, and the management practices used to control the discharge of pollutants from the Agricultural Operation are adequate, properly implemented and effective in accordance with the terms of this General Order and b) determine whether additional control measures are necessary.</u></p> <p><i>Individual General Order, section VI. F.5:</i></p> <p>Dischargers shall include the Annual Self-Assessment</p>	

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		<p>Report (<u>Attachment J</u>) and the <u>Quarterly Self-Inspection Reports (Attachment I)</u> with the Annual Surface Water and Groundwater Monitoring Report described in section VII of the MRP (Attachment A)</p> <p><i>Individual General Order Attachment A MRP section VII.N, Quarterly Self –Inspection Reports:</i></p> <p>The Annual Monitoring Report shall include Quarterly Self-Inspection Reports as required by section <u>VI. F.5</u> of this General Order.</p> <p><i>Individual General Order Attachment A MRP section VII.O, Annual Self –Assessment Reports:</i></p> <p>The Annual Monitoring Report shall include the Annual Self-Assessment Report as required by section <u>VI.F.5.</u> of this General Order</p>	
5	<p>Rancho Guejito believes that the Tentative General Orders should include a Safe Harbor for self-reported violations. The California Department of Industrial Relations Division of Occupational Safety and Health (DIOSH) has an inspection program that allows a farmer to request an inspection and if violations are found, the farmer will be required to correct them, but will not face enforcement. We request that the San Diego Water Board consider a similar program for self-reported violations. This would encourage farmers to continually improve their management practices, and to work with San Diego Water Board staff without fear of fines or other enforcement action.</p>	<p>The San Diego Water Board appreciates this recommendation but declines to amend the Tentative General Orders to include a “safe harbor”. The Water Code and the statewide <i>Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Plan</i> (NPS Policy)¹ require regional water boards to not only regulate nonpoint source discharges of waste, but also to ensure that water quality standards are met. The State Water Resources Control Board (State Water Board) <i>Water Quality Enforcement Policy</i>² (Enforcement Policy) defines a statewide enforcement process for regional water board actions that should take place in response to violations to assure compliance. The</p>	None necessary

¹ The *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Plan* (NPS Policy) is available on the State Water Resources Control Board website at http://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf (as of September 25, 2016).

² The State Water Board *Water Quality Enforcement Policy* is available on the State Water Board website at http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf (as of September 25, 2016).

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		<p>Enforcement Policy is based in part on the principle that appropriate penalties and other consequences for violations offer some assurance of equity between those who choose to comply with requirements and those who violate them.</p> <p>The Enforcement Policy outlines the enforcement actions available to the San Diego Water Board. Enforcement actions can include informal enforcement (e.g. notices of violation) as well as formal enforcement (e.g. Cleanup and Abatement Orders, Cease and Desist Orders, Administrative Civil Liability). The appropriate enforcement action is fact dependent, but both the Enforcement Policy and the San Diego Water Board <i>Water Quality Control Plan for the San Diego Basin</i> (Basin Plan) recognize the importance of progressive enforcement to achieve compliance. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources.</p> <p>The San Diego Water Board as a matter of practice considers the nature and circumstances of the violation, including the extent to which a Discharger fully reported the violation and voluntarily cooperated in returning to compliance and correcting environmental damage, in determining the appropriate enforcement response. Typically, progressive enforcement begins with simple verbal contact to apprise the Discharger of a violation. If a Discharger is cooperative, staff may opt to take no action, follow up with site visit(s) to confirm compliance and/or provide technical assistance. If violations continue, staff may escalate enforcement as necessary to achieve compliance. Appropriate and timely responses to violations of the Tentative General Orders are critical to protect waters of the State from discharges of waste associated with agricultural activity in the San Diego</p>	

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		<p>Region.</p> <p>While the San Diego Water Board declines to adopt “safe harbor” provisions, it should also be noted that the Tentative General Orders incorporate an iterative process for compliance with applicable receiving water limitations. In the event of an exceedance, Dischargers, or a Third-Party Group on their behalf, must develop a Water Quality Restoration Plan (WQRP). WQRPs provide an adaptive management framework for Dischargers to evaluate the sources of the impairment, propose solutions to correct the impairment, and to develop a schedule of implementation. Implementation of an approved WQRP would constitute compliance with the Tentative General Orders.</p>	
6	<p>Rancho Guejito believes the receiving water limitations requirements are counter-productive and should be removed. The Tentative General Orders include receiving water limitations language that is borrowed from municipal storm water permits issued under the CWA. This language has been interpreted by federal courts and the State Water Board as creating numeric discharge limits for all water quality objectives that are expressed numerically in water quality control plans, including Total Maximum Daily Loads (TMDLs). The feasibility of complying with this prohibition is currently being challenged in Orange County Superior Court. (See <i>Cities of Duarte and Huntington Park v State Water Resources Control Board</i>, Orange County Superior Court Case No. 30-2016-00833614.)</p> <p>It is inappropriate, and potentially unlawful for the San Diego Water Board to include this requirement in the Tentative General Orders without explicit findings that the restrictions are necessary, and reasonably achievable. No existing state law or policy requires the San Diego Water Board to include the proposed receiving water limitations language in the Tentative General Orders, and although both the Tentative</p>	<p>The San Diego Water Board disagrees. While the NPS Policy does not specifically mandate incorporation of receiving water limitations, it explicitly states that nonpoint source discharges “must be regulated” under waste discharge requirements (WDRs), waivers of WDRs, a basin plan prohibition, or some combination of the three regulatory tools. (NPS Policy, p. 3). The San Diego Water Board is electing to regulate discharges associated with commercial agricultural through WDRs. Water Code section 13263(a) provides that WDRs “shall implement any relevant water quality control plans that have been adopted and shall take into consideration the beneficial uses to be protected, [and] the water quality objectives reasonably required for that purpose...”</p> <p>The Tentative General Orders implement all applicable water quality control plans including the Basin Plan and protect beneficial uses through requirements to comply with receiving water limitations and discharge prohibitions as well as requirements to implement management practices. While management practices are integral to the Tentative General Orders, management practices are not</p>	None necessary

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	<p>General Orders and the Fact Sheet cite the State Water Board's NPS Policy for authority to include the receiving water limitations requirement, nothing in the NPS Policy explicitly requires the language as written.</p> <p>The NPS Policy requires a tie between the management practices included in the Tentative General Orders and the water quality objectives and beneficial uses in the Basin Plan. It does not require a discharge prohibition. Specifically, the NPS Policy states that the Tentative General Orders must "address non-point source pollution in a manner that achieves and maintains water quality objectives and beneficial uses." All that this requires is findings that the management practices in the Tentative General Orders will achieve and maintain the Basin Plan objectives. There is nothing in the NPS Policy that could be reasonably interpreted as requiring an outright prohibition.</p> <p>There are good reasons why the San Diego Water Board should refrain from including the receiving water limitations language in the Tentative General Orders. For example, importing the numeric water quality objectives from the Basin Plan will interfere with development and use of recycled water for irrigation purposes. Recycled water has total dissolved solids (TDS) at levels that often exceed the Basin Plan's freshwater standards. Incidental runoff would be a violation of the Tentative General Orders. Additionally, in certain groundwater basins, the simple use of the recycled or even imported water for irrigation could be a violation because it would exceed TDS limits assigned to the underlying aquifer. Under the "cause or contribute" language in the receiving water limitations prohibition, any amount of TDS discharged to a groundwater basin or surface water could be viewed as a violation.</p> <p>The receiving water limitations requirement is tantamount to outlawing irrigation and needs to be significantly revised or removed.</p>	<p>water quality standards. Therefore, as noted in the NPS Policy, "management practice implementation [] may not be substituted for actual compliance with water quality requirements." Without receiving water limitations, the San Diego Water Board could not evaluate whether selected management practices prevent or control discharges from agricultural activity sufficiently to meet water quality standards.</p> <p>The San Diego Water Board expects timely development and implementation of the Water Quality Protection Plan (WQPP) and, if needed, a WQRP to provide the framework for Dischargers to evaluate and improve management practices as necessary to comply with receiving water limitations. <i>Cities of Duarte and Huntington Park v State Water Resources Control Board, Orange County Superior Court Case No. 30-2016-00833614</i> is wholly inapplicable to the Tentative General Orders as it challenges the appropriateness of receiving water limitations in a storm water permit issued pursuant to the CWA.</p> <p>Finally, the San Diego Water Board is not persuaded that the incorporation of receiving water limitations will interfere with the development and use of recycled water for irrigation. There are many sources of salts and nutrients in surface water and groundwater, including, but not limited to: imported water, animal waste, fertilizer, municipal water softeners, industrial wastewater, and salt water intrusion. While added salt in irrigation water may increase salt in waters of the State, the State Board has found that it is unlikely to be a significant source of salt relative to other potential sources. (WQ 2014-0090-DWQ-Corrected, finding 12). Additionally, users of recycled water are regulated under the State Water Board's <i>General WDRs for Recycled Water</i>, Order WQ 2014-0090-DWQ-Corrected or under the San Diego Water Board Order No. R9-2014-0041, Waiver No. 2,</p>	

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		<p><i>Dischargers to Land of Recycled Water.</i> These orders both limit application of recycled water to land and require enrollees to prevent significant runoff from application areas. (Id. Finding 24.a; Order No. R9-2014-0041, Waiver No. 2 § B). As such, the San Diego Water Board has concluded that the imposition of receiving water limitations in the Tentative General Orders is unlikely to impede recycled water usage because any salinity increases associated with recycled water are unlikely to impair achievement of applicable water quality standards.</p>	
7	<p>The Draft Initial Study and proposed Draft Negative Declaration are inadequate CEQA because there is evidence in the record to support a fair argument that potentially significant environmental impacts may result from the Tentative General Orders and on that basis an environmental impact report must be prepared before the Regional Board can take action on the Tentative General Orders. (Pub. Resources Code, § 21080(d); 14 C.C.R., § 15064(a).)</p> <p>First, under the heading, "Structural Management Practices," the Draft Initial Study (Draft Initial Study section G.3) states: "During inspections of Agricultural Operations in 2013, the San Diego Water Board found that 82% of the Agricultural Operations enrolled in the 2007 Waiver, and 58% of the Agricultural Operations not enrolled in the 2007 Waiver, had implemented [structural] management practices". Thus, the primary compliance methods with the Tentative General Orders' predecessor regulations have been structural management practices, meaning "management practices that involve the installation of engineering solutions (e.g., physical structures or barriers) that divert, store, and/or treat waste." (Draft Initial Study at 4.) So past compliance has typically been accomplished via physical changes in the environment. This contradicts repeated inferences in the Draft Initial Study that environmental impacts will be minimal because compliance with the Tentative General Orders can be attained via non-structural controls. (See e.g., Draft Initial</p>	<p>The San Diego Water Board disagrees. The commenter has provided no evidence to support a fair argument that the Tentative General Orders may result in a potentially significant impact.</p> <p>First, the Tentative General Orders are designed to allow maximum flexibility for Dischargers in choosing the most appropriate and cost-effective combination of management practices. The commenter relies on information from the 2013 inspections conducted by the San Diego Water Board to argue that compliance with the Tentative General Orders will require installation of structural management practices that are likely to have physical impacts on the environment. However, during the 2013 site inspections approximately 70% of the inspected agricultural operations were observed to use low flow irrigation methods such as drip and micro-spray irrigation. Installation of these types of management practices are already standard practice at Agricultural Operations in the San Diego Region due to the high price of water locally as well as the limited availability of groundwater. Further, because effective management practices need to control nonpoint discharges at its source, new systems would likely be located in areas of existing crop production where soil has previously been disturbed.</p> <p>To the extent other structural management practices may</p>	<p>Modified Draft Initial Study, Initial Study section I.G.2.b, and CEQA Environmental Checklist Section 2 – Agricultural and Forest Resources, Structural Management Practices</p>

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	<p>Study at 13 ["Furthermore, it is likely that the site-specific conditions may not require the construction of structural management practices."].)</p> <p>In fact, based on past experience, the Tentative General Orders will likely require structural management practices that cause physical changes in the environment in the majority of cases. Based on historical compliance methods, it is not speculative to evaluate how compliance with the Tentative General Orders will occur. The Draft Initial Study must analyze the reasonably foreseeable compliance methods and associated physical impacts on the environment that can be expected as a result of the Tentative General Orders. [Although lacking details, there is indication that the expected compliance methods are reasonably foreseeable. (See e.g., Draft Initial Study at 15 n.15 ["only a limited number of Agricultural Operations would likely require the construction of a sedimentation basin to comply with the General Orders"]. Only then can the true scope of the Tentative General Orders' impacts be understood by the public. To do otherwise, is an improper attempt to piecemeal evaluation of the Tentative General Orders' true impacts. (14 C.C.R., § 15063(a)(1); see <i>City of Antioch v. City Council</i> (1986) 187 Cal.App.3d 1325 [piecemeal review of development found improper].)</p> <p>Second, the Draft Initial Study appropriately concludes that the economic burden of implementing reasonably foreseeable management practices and the monitoring and reporting program may result in the cessation of agricultural activities. (Draft Initial Study at 7.) The costs of compliance will put some farmers out of business. However, the Draft Initial Study concludes that reasoning:</p> <p><i>These Agricultural Operations are likely to be small growers, commonly called hobby farms. These agricultural properties are located on parcels zoned as agricultural or residential with minimum lot sizes that</i></p>	<p>be installed (buffer strips, sedimentation basins, etc.), the San Diego Water Board considered the potential direct and indirect impacts of these practices because the Board cannot dictate the manner of compliance. The San Diego Water Board did not intend to imply that these compliance methods were expected, required, or even likely under the Tentative General Orders. In reviewing historical compliance methods, aerial photography of agricultural areas, and crop reports for the San Diego Region, the San Diego Water Board does not expect that land intensive structural management practices are likely to be installed when land is at a premium and there are cost effective compliance alternatives that can achieve similar results.</p> <p>Next, the commenter argues that the Draft Initial Study failed to consider and analyze the amount of farmland that will foreseeably be affected by the cessation of agricultural activities. To make this argument the commenter alludes to the economic impacts to "hobby farms". However, the text quoted by the commenter comes from a prior draft of the Initial Study released as a discussion aid at a CEQA scoping meeting. Based on feedback at the scoping meeting, the San Diego Water Board revised the Project to ensure that "hobby farms" were excluded from regulation under the Tentative General Orders.</p> <p>Furthermore, the San Diego Water Board is not persuaded that the cessation of agricultural activities is an impact appropriately studied under CEQA. As discussed in the proposed Draft Negative Declaration and the Draft Initial Study, impacts analyzed under CEQA must be related to a physical change in the environment. (CEQA Guidelines §§15358(b) and 15382). The commenter has speculated that the adoption of the Tentative General Orders will indirectly lead to the physical conversion of farmland to nonagricultural uses. However, the</p>	

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	<p>would prevent increased residential densities or the conversion to non-agricultural or non-residential land use. The cessation of commercial activities would not result in the land being converted to non-agricultural land use. (Draft Initial Study at 7.)</p> <p>Cessation of agricultural activities qualifies as a conversion of farmland to nonagricultural uses. Any farmland that is not used for irrigated agricultural production during a four-year period does not meet the definition of "prime farmland," "farmland of statewide importance," or "unique farmland." (Cal. Dept. of Conservation, 2015 California Farmland Conversion Report, 6; see also Draft Initial Study at 9 ["Land must have been cropped at some time during the 4 years prior to the mapping date" to qualify as Unique Farmland].) Mere cessation of agricultural activities thus converts entire categories of farmland into non-agricultural uses.</p> <p>The Draft Initial Study claims that: "Even where an individual Agricultural Operation determines that it would rather cease operating than comply with environmental regulations ... agricultural uses would likely be preserved because of land use restrictions." (Draft Initial Study at 5.) But the fact that applicable zoning may prevent a residential subdivision from being built on farmland does nothing to prevent the loss of farmland due to disuse or conversion to other uses, such as detention basins.</p> <p>The Draft Initial Study must consider and analyze the amount of farmland that will foreseeably be affected by the cessation of agricultural activities and the amount of farmland that will be converted to non-agricultural uses from the cessation. Currently, the Draft Initial Study concludes that only a few small farms would cease their agricultural activities. (Draft Initial Study at 11.) Yet, according to the Draft Initial Study, "the majority of Agricultural Operations within the jurisdictional boundaries of the San Diego Water Board are</p>	<p>commenter has provided no evidence to substantiate this claim.</p> <p>For the purposes of CEQA, substantial evidence consists of "facts, a reasonable assumption predicated upon facts, or expert opinion supported by fact". (CEQA Guidelines § 15384(b). Conclusory statements that businesses might close are not substantial evidence. (See <i>Citizen Action to Serve All Students v Thornley</i> (1990) 222 CA3d 748, 758). "Complaints, fears, and suspicions about a project's potential environmental impact [] do not constitute substantial evidence." <i>Joshua Tree Downtown Bus. All. v. City of San Bernardino</i>, 204 Cal. Rptr. 3d 464, 477 (2016) (quoting Kostka & Zischke, Practice under the Cal. Environmental Quality Act (2d ed. 2015) § 6.42, pp. 6–47–6–48). Nevertheless, the commenter's argument hinges on the assumption that the cost of compliance will put farmers out of business. As evidence, the commenter points to the classification scheme in the 2015 California Farmland Conversion Report. However, even where long-term land idling results in the reclassification "prime", "of statewide importance" or "unique" agricultural land, the resultant reclassification may not signal a loss of agricultural activity as these classes exclude many dry farming and grazing activities. The commenter also assumes, without factual support, that because the median farm size in San Diego is small, that any added operational costs will push "many" farms out of business. However, in a region that specializes in high value crops on small parcels, acreage is not equivalent to economic viability. (See 2014 San Diego County Farm Report, page 4, noting that 68% of farms in San Diego are between 1-9 acres and that San Diego has the 20th largest agricultural economy in the United States). A host of factors from climate change to labor costs ultimately influence the viability of Agricultural Operations in the San Diego Region. Moreover, all Agricultural Operations are already</p>	

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	<p>relatively small, with the median size being approximately 4 acres." (Draft Initial Study at 5.) The fact that most agricultural operators impacted by the Tentative General Orders are small is evidence that the Tentative General Orders' economic and subsequent indirect physical impacts on the environment will be significant. It is reasonably foreseeable that the many small agricultural operations will cease under the burden of the Tentative General Orders' new costs. Thus, this full economic and indirect environmental impact of the Tentative General Orders must be fully analyzed.</p>	<p>subject to water quality protection law as discharges that violate water quality objectives are illegal under existing law. Thus, while the San Diego Water Board is sensitive to the commenter's cost concerns, no specific evidence has been presented to establish that a significant number of Agricultural Operations will be forced out of business by the adoption of the Tentative General Orders.</p> <p>To provide clarity the Draft Initial Study has been modified as follows:</p> <p><i>Initial Study section I.G.2.b:</i></p> <p>i. Low flow irrigation methods such as micro-spray or drip irrigation</p> <p><i>CEQA Environmental Checklist Section 2 - Agricultural and Forest Resources, Structural Management Practices:</i></p> <p>Structural management practices will likely be installed to implement irrigation management, storm water management, nutrient management, and erosion control. <u>The most commonly used structural management practices are related to irrigation control to reduce or eliminate irrigation runoff.</u> Many Agricultural Operations have already installed relevant management practices. During inspections of Agricultural Operations in 2013, the San Diego Water Board found that 82% of the Agricultural Operations enrolled in the 2007 Waiver, and 58% of Agricultural Operations not enrolled in the 2007 Waiver had implemented management practices. Additionally, due to the high cost of water Agricultural Operations generally use low-flow irrigation practices such as micro-spray or drip irrigation. <u>Almost 70% of the Agricultural Operation in 2013 used low flow irrigation methods such as micro-spray or drip irrigation. Low flow irrigation</u></p>	

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		<p><u>methods allows the growers to limit the amount of water applied to crops and minimize or prevent the discharge of irrigation return flows to surface water and groundwater or micro-sprinklers.</u></p>	
8	<p>The Draft Initial Study states that the Tentative General Orders will have no impact on aesthetics. (Draft Initial Study at 8.) However, as discussed above, this ignores the likelihood that many agricultural operations are likely to cease as a result of the compliance costs. It is reasonably foreseeable that fields once full of "cut flowers, fruit, vegetables, wine grapes, and nuts" (Draft Initial Study at 5) will be replaced with weeds and detention basins. The Draft Initial Study lacks any analysis of the aesthetic impacts associated with land fallowed (as a result of compliance costs) or converted to another use (as a result of compliance efforts) likely to be caused by the Tentative General Orders.</p> <p>There is also no evidence to support the Draft Initial Study's conclusion that the Tentative General Orders will not adversely affect scenic vistas, scenic resources and visual character of the areas impacted by the Tentative General Orders, particularly since the Draft Initial Study fails to describe where scenic vista and scenic resources are located in proximity to agricultural operations that may be impacted by the Tentative General Orders. (<i>County of Amador v. El Dorado County Water Agency</i> (1999) 76 Cal.App.4th 940, 946 [CEQA's purposes are subverted when a lead agency "omits material necessary to informed decision-making and informed public participation"].) Increased fallowing and decreased grazing can result in aesthetic impacts relating to the degradation of the visual character of the land if it is converted from verdant farmland to weed-choked, barren fields, belying the Draft Initial Study's conclusion of "less than significant effect" in this area. (Draft Initial Study at 8.) The Draft Initial Study needs to provide more information and details on the reasonably foreseeable</p>	<p>The San Diego Water Board disagrees. The Draft Negative Declaration and Draft Initial Study appropriately limited its analysis to reasonably foreseeable aesthetic impacts from installation of structural management practices. Under CEQA, if the economic effects of a project cause a physical effect, then that physical change may be significant in the same manner as any other physical change resulting from the project. (CEQA Guidelines § 15064(e)). However, the speculative possibility that agricultural lands "will be replaced with weeds and detention basins" is not substantial evidence of an aesthetic impact. As discussed in Comment No. 7, there is no evidence that the cost of compliance will put Agricultural Operations out of business. Therefore, an aesthetic impact from the cessation of agricultural activity is not a reasonably foreseeable effect from the adoption of the Tentative General Orders.</p>	None necessary

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	aesthetic impacts caused by the Tentative General Orders.		
9	<p>As previously explained, the Initial Study states: "Land must have been cropped at some time during the 4 years prior to the mapping date" to qualify as Unique Farmland. (Draft Initial Study at 9.) That is, the Draft Initial Study concedes that if agricultural operations cease for more than four years as a result of the Tentative General Orders, that land is no longer Unique Farmland. Yet, the Draft Initial Study discounts the significance of such loss, claiming that "the impact is not expected to be significant as the majority [of] farmland in the San Diego Region does not qualify as 'prime,' 'unique,' or 'farmland of statewide importance.'" (Draft Initial Study at 11.) This discussion is inadequate.</p> <p>First, there is no clear threshold in the Draft Initial Study as to how much farmland loss would be significant- unless the Draft Initial Study's position truly is that no impact to farmland is significant so long as less than 50% of the farmland in the region fails to qualify as prime, unique or farmland of statewide importance. But even assuming this is the position, the Draft Initial Study lacks any basis for such a threshold.</p> <p>Second, there is no discussion of how much farmland qualifying as prime, unique or farmland of statewide importance may be impacted by the Tentative General Orders. In fact, aside from a reference stating that "only 6% of soils" in San Diego County meet the definition of prime agricultural land (Draft Initial Study at p. 11), there is no indication as to how much land meets the definition of prime, unique or farmland of statewide importance. Furthermore, the fact that prime farmland is not prevalent in San Diego County actually cuts against the Draft Initial Study's conclusion that the impact is less than significant. The Draft Initial Study's justification that the impact will be less than significant (i.e., because the majority of farmland in the San Diego Region does not qualify as 'prime,' 'unique,' or 'farmland of statewide importance') does not support the</p>	<p>To determine significance, the San Diego Water Board evaluated whether the Tentative General Orders would convert Prime Farmland, Unique Farmland, and Farmland of Statewide importance to nonagricultural uses. This significance threshold is set forth in Appendix G to the CEQA Guidelines (Appendix G). Because the thresholds in Appendix G may not cover all the potential impacts from a project, agencies may adapt the questions as necessary. In applying the Appendix G criteria to the Tentative General Orders, the San Diego Water Board recognized that the narrow definition of "prime farmland", "unique farmland", and "farmland of statewide significance" may not be the most appropriate in the San Diego Region given the limited number of agricultural lands that meet these criteria. (In 2012, 152,510 acres in San Diego County met the definition for lands of local importance, whereas only 6,999 acres met the definition of Prime Farmland; <i>2015 Farmland Conversion Report</i>, p. 57.) As such, the San Diego Water Board also considered more broadly whether adoption of the Tentative General Orders would result in the conversion of any lands supporting agricultural activity to a nonagricultural use.</p> <p>Furthermore, the lack of specific information in the Draft Initial Study on how much land qualifies as prime, unique or farmland of statewide importance, does not give rise to a fair argument that the Project will in fact have a significant effects See e.g. <i>Gentry v. City of Murrieta</i>, 36 Cal. App. 4th 1359, 1382, (1995), as modified on denial of reh'g (Aug. 17, 1995) (negative declaration was not invalidated for lack of study on cumulative effects). Staff conducted a careful analysis of agricultural activity in the San Diego Region (see the Third-Party General Order Attachment B, section I.C) and reviewed historic compliance methods and probable compliance methods. In doing this analysis, the San Diego Water Board</p>	None Necessary

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	<p>conclusion. Considering its scarcity, the loss of any prime farmland is a potentially significant impact and must be analyzed.</p> <p>The amount of farmland that will foreseeably be affected by the cessation of agricultural activities and the amount of farmland that will be converted to non-agricultural uses from the cessation are not disclosed, much less analyzed, in the Draft Initial Study. More details are required for the public to understand how much valuable and scarce farmland will be lost as a result of Tentative General Orders compliance methods and costs. The Draft Initial Study must be revised to address these points.</p>	<p>concluded that implementation of management practices does not constitute a non-agricultural use irrespective of farmland classification.</p> <p>The commenter also raises questions about how many farms the Tentative General Orders will put out of business. However, as discussed in the response to Comment No. 7, this impact is speculative.</p>	
10	<p>The Draft Initial Study states that "reasonably foreseeable management practices are not expected to be on a scale large enough to result in significant conflict or obstruction of an applicable air quality plan, or to expose sensitive receptors to substantial pollutant concentrations." (Draft Initial Study at 18.) This conclusion is unsupported by evidence. Further, the Draft Initial Study fails to disclose applicable air quality plans or quantify the air emissions expected from the management practices that even the Draft Initial Study admits are "reasonably foreseeable." (Ibid.) The fact that toxic emissions and odors are only "short-term" (see Draft Initial Study at 18 and 19) is not evidence that the impacts will be less than significant. (See <i>Keep Our Mountains Quiet v. County of Santa Clara</i> (2015) 236 Cal.App.4th 714, 732.)</p> <p>Additionally, fallowed fields that cannot be otherwise developed (due to zoning restrictions) are likely to result in loose soil and worsened air quality conditions. Cessation of agricultural activities has been shown to result in indirect long-term air quality impacts and impacts to geology and soils due to loss of topsoil. (See, e.g., <i>Westlands Water Dist. v. U.S.</i> (E.D. Cal. 1994) 1994 U.S. Dist. LEXIS 6260, *7-8 [increased land fallowing has attendant increases in fugitive</p>	<p>An initial study is neither intended nor required to include the level of detail included in an Environmental Impact Report (EIR) (CEQA Guidelines § 15063(a)(3)). With respect to air quality, the San Diego Water Board approached the questions set forth in Appendix G by first evaluating the types of management practices that would likely be installed to comply with the Tentative General Orders, and then what construction, if any, would be necessary to install these management practices.</p> <p>The Draft Initial Study identifies the structural management practices commonly used to reduce irrigation and storm water runoff. While the San Diego Water Board agrees with the commenter that the effect from installation of management practices need not be long-term nor permanent to be significant, duration of the effect is still relevant when evaluating whether an environmental impact is significant. (See <i>Running Fence Corp. v Superior Court</i> (1975) 51 CA3d 400, 416.) Management practices are expected to be installed in previously disturbed areas using equipment and heavy machinery standard in crop production. For example, installation of storm water runoff controls (e.g. straw wattles, silt fencing, straw bales) requires a pickup truck</p>	None necessary

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	<p>dust emissions]; <i>Westlands Water Dist. v. United States</i> (E.D. Cal. 1994) 1994 U.S. Dist. LEXIS 6276, *52 [finding lack of water for farmland could result in soil erosion and depletion of quality soil]; Sharratt et al., <i>Loss of Soil and PM10 from Agricultural Fields Associated With High Winds on the Columbia Plateau</i> (2006) 32 Earth Surf. Process, Landforms, 621-630 [fallowing leads to increased levels of soil erosion]; <i>Soil Erosion: A Food and Environmental Threat</i> (2006) 8 Environment, Development and Sustainability 119-137, 124 (2006) [leaving cropland unplanted exposes soil to erosion; soil erosion in the United States costs billions of dollars in loss of productivity].) The amount of fugitive dust emissions and loss of topsoil resulting from cessation of agricultural activities needs to be analyzed.</p>	<p>and basic tools such as power tools and shovels. Similarly, installation of mulch on exposed slopes can be done with basic power tools, and in some cases may require the use of hydroseeder, also standard equipment in commercial agriculture. (<i>Natural Resource Conservation Service, California</i>, pages 684, 561, 562). Given that the installation of management practices is consistent with existing agricultural activities, the San Diego Water Board determined that compliance with the Tentative General Orders would not result in a change to baseline environmental conditions with respect to air quality.</p> <p>The commenter has also submitted evidence pertaining to the relationship between fallowed fields and air quality impacts. However, as discussed in the response to Comment No. 7, there is no evidence that the economic impact of the adoption of the Tentative General Orders will directly or indirectly lead to an increase in fallowed fields.</p>	
11	<p>As elsewhere in the Draft Initial Study, the Biological Resources analysis consists of bare conclusions, unsupported by substantial evidence. For example, the discussion of issues (c), (e), and (f) explains: "Reasonably foreseeable management practices are not expected to be on a scale large enough that would result in direct removal of filling of riparian habitat, wetlands, or any sensitive natural communities or conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance." (Draft Initial Study at 20.) This discussion fails to disclose any local policies or ordinances protecting biological resources or explain how no impact will occur. As discussed above, based on previous compliance practices, it is reasonably foreseeable that the Tentative General Orders will result in physical changes in the environment. Without adequate disclosure and analysis of the reasonably foreseeable compliance methods and</p>	<p>The San Diego Water Board disagrees. The San Diego Water Board concluded that reasonably foreseeable management practices would not result in the filling of riparian habitat, wetland, or sensitive natural communities or conflict with local policies or ordinances, because the installation of management practices is expected to occur on established (i.e. disturbed) agricultural lands as discussed in Comment No. 7. To the extent management practices could be installed on land that is not currently used for the production of crops, the Tentative General Orders do not relieve enrolled Dischargers from obtaining and complying with applicable local, state, and federal law, including but not limited to: the CWA, the California Water Code, the California Fish and Game Code, the California Endangered Species Act, the federal Endangered Species Act, and the local Species Conservation Plans. The San Diego Water Board has</p>	<p>Modified Draft Initial Study, CEQA Environmental Checklist Section 4 – Biological</p> <p>Added Third-Party General Order section I.GG</p> <p>Added Individual General Order section I.FF</p>

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	<p>impacts, the Draft Initial Study lacks any basis to conclude that the Tentative General Orders will not impact wetlands, conflict with local policies or ordinances protecting biological resources, or conflict with a conservation plan.</p> <p>The discussion of issues (a), (b), and (d) also lack adequate analysis and support for the less than significant impact conclusion. (See Draft Initial Study at 21.) The discussion fails to disclose the presence of any species identified as candidate, sensitive, or special status species that exist and could be impacted by the Tentative General Orders. The Draft Initial Study also fails to disclose the presence of any riparian habitat or other sensitive natural communities that exist and could be impacted by the Tentative General Orders. Although the Draft Initial Study asserts that impacts will be less than significant, the conclusion is not supported. For example, the Draft Initial Study admits that structural controls, "such as vegetated swales or buffer strips, could increase the diversity or number of species," but forecloses further analysis by baldly asserting that this is assuredly "beneficial." Without understanding which species currently exist and how the increased diversity or number of species will impact existing species (including potentially special status species), it is inadequate for the Draft Initial Study to conclude that the Tentative General Orders' reasonably foreseeable physical changes in the environment are "beneficial." If special status species exist in areas where Tentative General Orders impacts will occur, an increase in the number or diversity of other species is reasonably likely to impact the special species, whether native or not.</p> <p>The Draft Initial Study's concession that the Tentative General Orders may result in reduced stream flows and that the "reduction or elimination of irrigation return flows could result in a barrier to the migration or movement of animals ... by eliminating habitat dependent on those flows" (Draft Initial Study at 21) is further evidence that species will be impacted. But without adequate analysis of which species exist and</p>	<p>determined that no substantial adverse impacts to wetlands are likely to occur provided that the Members/Dischargers comply with conditions imposed through the federal CWA section 404/401 permitting and water quality certification process, under WDRs issued pursuant to the California Water Code, requirements imposed by California Department of Fish and Wildlife (CDFW) pursuant to the Fish and Game Code, and any requirements imposed by local grading ordinances. It also worth noting, that compliance with the 404/401 permitting scheme will require additional CEQA analysis when a specific dredged or fill project is proposed.</p> <p>Additionally, both San Diego and Riverside Counties have regional habitat conservation programs (the <i>Multiple Species Conservation Program</i> and the <i>Multiple Species Habitat Conservation Plan</i> respectively) are designed to ensure the long-term survival of sensitive plant and animal species as well as native vegetation. Under these programs, the role of agriculture in affecting habitat and rare, endangered, and threatened species was thoroughly considered. Under these programs, development projects or operational expansions in natural areas that are important for sensitive plant and animal species and/or native vegetation may require additional approvals and mitigation.</p> <p>The Draft Negative Declaration has been revised to clarify that additional CEQA may be required if an Agricultural Operation must obtain a 404 permit/401 certification for dredged and fill activities under the General WDRs thereby rendering any potential impacts to these resources to less than significant.</p> <p>The Draft Initial Study has been revised to clarify 404 permit/401 certification for dredged and fill activities: <i>Draft Initial Study, CEQA Environmental Checklist,</i></p>	

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	<p>how they will be impacted, the public is left unaware of the Tentative General Orders' true effects on the environment, in violation of CEQA.</p> <p>Additionally, because typical management practices include "catch basins and detention ponds" (Draft Initial Study at 4), it is reasonably foreseeable that the Tentative General Orders will have significant effects in riparian areas or sensitive habitats. These impacts need to be disclosed and analyzed.</p>	<p><i>Section 4 – Biological Resources:</i></p> <p><u>Prior to implementing any management practice that will result in the permanent loss of wetlands, conduct a delineation of affected wetland areas to determine the acreage of loss in accordance with current U.S. Army Corps of Engineers (USACE) methods. For compliance with the federal Clean Water Act section 404 permit and WDRs protecting state waters from unauthorized fill, compensate for the permanent loss (fill) of wetlands and ensure no net loss of habitat functions and values. Compensation ratios will be determined through coordination with the San Diego Water Board and USACE as part of the permitting process. Such process will include additional compliance with CEQA, as necessary. Compensation may be a combination of mitigation bank credits and restoration/creation of habitat.</u></p> <p>The Draft Initial Study and the Tentative General Orders have been revised as follows to clarify that compliance with the Tentative General Orders does not authorize a “take” under the California or Federal Endangered Species Acts:</p> <p>Draft Initial Study, CEQA Environmental Checklist, Section 4 – Biological Resources:</p> <p><u>The Project Area is covered by Western Riverside County Multi-Species Habitat Conservation Plan, 2004 (MSHCP), being implemented by the Western Riverside County Regional Conservation Agency (RCA) as well the San Diego County Multiple Species Conservation Program (MSCP). The purpose of the MSHCP is to protect 146 native plant and animal species and preserve their habitat. Similarly, the purpose of the MSCP is to ensure the long-term survival of sensitive plant and animal species and protect the native vegetation communities found</u></p>	

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		<p><u>throughout San Diego County. Implementation of the General Orders is not expected not preclude acquisition of conservation lands under the MSHCP nor the MSCP. Neither the MSHCP or the MSCP bar agricultural production or expansion. Many agricultural lands are already exempted and mitigated for under these two programs (See e.g., Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan section 11.3.2 Take Authorization for Existing Agricultural Operation, 11.3.5 Expansion of Existing Agricultural Operations; See also, San Diego County's Biological Mitigation Ordinance section 86.503). Development projects or operational expansions in natural areas that are important for sensitive plant and animal species and/or native vegetation may require additional approvals and mitigation under both the MSCHP and the MSCP. Where discretionary approvals are required additional environmental review and mitigation may be required thereby rendering any potential impacts to these resources less than significant.</u></p> <p><i>Third-Party General Order section I.GG:</i></p> <p><u>This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any action authorized under this Order, the Member shall obtain authorization for an incidental take prior to construction or operation of the project. The Member shall be responsible for meeting all requirements of the applicable Endangered Species</u></p>	

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		<p><u>Act.</u></p> <p><i>Individual General Order section I.FF:</i></p> <p><u>This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any action authorized under this Order, the Discharger shall obtain authorization for an incidental take prior to construction or operation of the project. The Discharger shall be responsible for meeting all requirements of the applicable Endangered Species Act.</u></p>	
12	<p>The Draft Initial Study lacks adequate disclosure and analysis of the Tentative General Orders' impacts on cultural resources. The single-paragraph discussion states that no impacts will occur "[a]t most sites." (Draft Initial Study at 22.) This raises the question as to which sites are not "most sites." Unfortunately, the Draft Initial Study does not disclose the answer to this question and fails to provide any further analysis. Considering detention basins are a reasonably foreseeable result of the Tentative General Orders, it is reasonably foreseeable that excavation will be required and cultural resources may be impacted by the Tentative General Orders. Thus, further analysis and disclosure of the Tentative General Orders' impacts is necessary.</p>	<p>The San Diego Water Board disagrees. Installation of reasonably foreseeable management practices is likely to occur on established agricultural lands because the control of nonpoint source discharges are most effective when management practices address the source of the discharge, i.e. those areas used to grow the crops, which have already been disturbed. Although installation of some management practices may require limited trenching or digging, resultant impacts would be consistent with baseline conditions because they are similar to impacts associated with grading, sowing, and tilling for crop cultivation. Further, the installation of detention basins, while permissible under the Tentative General Orders, is not considered to be a reasonably foreseeable management practice because detention basins are only typically used, if needed, for nurseries and greenhouses which occupy a relatively small amount of agricultural lands in the San Diego Region.</p>	None Necessary
13	<p>The analysis of greenhouse gas (GHG) emissions concludes that the Tentative General Orders will not conflict with any</p>	<p>The San Diego Water Board disagrees. While soil cultivation can contribute to GHG such as methane,</p>	None necessary

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	<p>applicable plan, policy or regulation of any agency adopted for the purpose of reducing the emissions of GHG. (Draft Initial Study at 25.) But the Draft Initial Study fails to disclose which plans, policies or regulations are applicable to the Tentative General Orders and its impacts. It is not possible to understand the Tentative General Orders' consistency with applicable plans without knowing which plans are applicable. (<i>County of Amador v. El Dorado County Water Agency</i> (1999) 76 Cal.App.4th 940, 946 [CEQA's purposes are subverted when a lead agency "omits material necessary to informed decision-making and informed public participation"].)</p> <p>And, as with the Air Quality discussion, the Draft Initial Study's reliance on the short-term nature of GHG emission impacts is insufficient to justify the conclusion that the Tentative General Order's impact is less than significant. (See <i>Keep Our Mountains Quiet v. County of Santa Clara</i> (2015) 236 Cal.App.4th 714, 732.)</p>	<p>nitrogen dioxide, and carbon dioxide, the Tentative General Orders are expected to improve baseline GHG emissions associated with agricultural activity through improved fertilizer and irrigation management practices. The main source of GHG from agriculture is the emission of nitrous oxide (N₂O) from soils treated with nitrogen-based fertilizers to aid in growing crops and grazing livestock. Tailoring fertilizer and manure applications to satisfy crop nitrogen demands, so that less nitrogen is left behind in the soil, can reduce N₂O emissions while building soil carbon stocks. Nitrous oxide emitted from soils is particularly significant, because it has a heat-trapping greenhouse effect that is approximately 310 times greater than that of carbon dioxide (CO₂). Efficient use of irrigation water will similarly reduce nitrogen losses and lead to less GHG by making the soil profile less conducive to producing N₂O and minimizing CO₂ emissions from energy used for pumping while maintaining high yields and crop-residue production. (Parton, William J., Stephen J. Del Grosso, Ernie Marx, and Amy L. Swan. "Agriculture's Role in Cutting Greenhouse Gas Emissions." <i>Issues in Science and Technology</i> 27, no. 4 (Summer 2011); see also California Ag Water Stewardship Initiative's On Farm Practices, Irrigation Management and Soil Management, available at http://agwaterstewards.org/practices/irrigation_management/)</p> <p>Further, the requirements in the Tentative General Orders are not expected to conflict with greenhouse reduction plans, policies, and regulations. Assembly Bill 32 requires California to reduce its GHG emissions to 1990 levels by 2020, and the recently adopted SB 32 requires 40% reduction below 1990 levels by 2030. To implement Assembly Bill 32 the California Air Resources Board developed a Scoping Plan to achieve emissions goals.</p>	

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		<p>Under this Scoping Plan, agricultural reductions remain voluntary. Similarly, the Tentative General Orders are not expected to affect local GHG reduction plans. The Riverside County's Climate Action Plan (Riverside CAP) was adopted on December 9, 2015. The Riverside CAP contains no GHG reduction measures for agriculture. The County of San Diego's Climate Action Plan is expected to be adopted in 2017 but agriculture and forestry together only represent an estimated one percent of GHG emissions in San Diego County. (<i>2013 San Diego County Updated Greenhouse Gas Inventory Executive Summary</i>, p. 3).</p> <p>Finally, the Tentative General Orders do not relieve Dischargers from obtaining applicable permits (e.g. Title V permits under the Clean Air Act and agricultural equipment permits). As such, the adoption and implementation of the Tentative General Orders is not expected to conflict with achievement of any present or future GHG targets.</p>	
City of San Diego, dated July 29, 2016			
14	<p>The City of San Diego (City) is pleased with the inclusion of the Bacteria TMDL in the Tentative General Orders and wants to ensure the monitoring and implementation of the requirements are effective. We have detailed our comments to strengthen the TMDL requirements.</p>	<p>The San Diego Water Board has noted the comment.</p>	<p>None necessary</p>
15	<p>To provide documentation to support a statement that no discharge occurred during the monitoring period, the City requests the following modification to Attachment A section II.H of the Tentative General Orders:</p> <p>For any monitoring period in which no discharge occurred, the monitoring report shall include a statement certifying that no discharge occurred during the monitoring period and provide documentation <u>showing</u></p>	<p>The San Diego Water Board agrees that the Tentative General Orders should be modified to require documentation to support any statement that monitoring of receiving waters was not performed due to a lack of sufficient water.</p> <p>The San Diego Water Board has modified the Tentative General Orders as follows (noting that the modifications also address Comments numbered 29, 33, 73, and 76):</p>	<p>Modified Third-Party General Order Attachment A MRP sections II.H, III.B.2.c, and IV.B.2.d</p> <p>Modified Individual General</p>

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	<p><u>lack of runoff as required in [Attachment A] sections III.B.2.c and IV.B.2.d.</u></p>	<p><i>Third-Party General Order Attachment A MRP section II.H:</i></p> <p>For any monitoring period in which no discharge occurred <u>there is insufficient water to collect water samples at a given monitoring location</u>, the monitoring report shall include a statement certifying that no discharge occurred during the monitoring period <u>observation and adequate documentation to support the statement.</u></p> <p><i>Third-Party General Order Attachment A MRP section III.B.2.c:</i></p> <p>Dry season samples shall be after the site has applied pesticides or fertilizers and are conducted during an irrigation event. If there is <u>insufficient water to collect samples</u> no runoff at the monitoring site, the observation shall be documented with photos showing the occurrence of irrigation and the lack of runoff at the monitoring site.</p> <p><i>Third-Party General Order Attachment A MRP section IV.B.2.d:</i></p> <p>Dry season samples shall be after the site has applied pesticides or fertilizers and are conducted during an irrigation event. If there is <u>insufficient water to collect samples</u> no runoff at the monitoring site, then the observation shall be documented with photos showing the occurrence of irrigation and the lack of runoff at the monitoring site.</p> <p><i>Individual General Order Attachment A MRP section II.H:</i></p> <p>For any monitoring period in which no discharge occurred <u>there is insufficient water to collect water samples at a given monitoring location</u>, the monitoring report shall include a statement certifying that no</p>	<p>Order Attachment A MRP sections II.H and III.B.2.c</p>

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		<p>discharge occurred during the monitoring period observation and adequate documentation to support the statement.</p> <p><i>Individual General Order Attachment A MRP section III.B.2.c:</i></p> <p>Dry season samples shall be after the site has applied pesticides or fertilizers and are conducted during an irrigation event. If there is insufficient water to collect samples no runoff at the monitoring site, the observation shall be documented with photos showing the occurrence of irrigation and the lack of runoff at the monitoring site.</p>	
16	<p>To clarify regarding the frequency of sampling and consistent with other WDRs, the City requests with the following modification to Attachment A section III.B.2.c of Tentative General Orders:</p> <p><u>A sample should be collected and analyzed at each site during one qualifying storm event.</u> If there is no runoff at the monitoring site, then the observation shall be documented with photos showing the occurrence of irrigation and the lack of runoff at the monitoring site.</p>	<p>The San Diego Water Board disagrees. Attachment A MRP Section III.B.2.b of the Tentative General Orders already contains language similar to the language requested by the City clarifying the timing of wet season sampling events.</p>	None necessary
17	<p>To clarify the frequency of sampling and consistent with other WDRs, the City requests the following modification to Attachment A section III.B.2.c of Tentative General Orders:</p> <p>Dry season samples shall be collected <u>once</u> after the site has applied pesticides or fertilizers and during an irrigation event. If there is no runoff at the monitoring site, then the observation shall be documented with photos showing the occurrence of irrigation and the lack of runoff at the monitoring site. <u>A site shall be monitored on a regular basis in the dry season (at a minimum monthly) to determine if discharge is occurring.</u></p>	<p>The San Diego Water Board does not agree that the proposed modification would improve the Tentative General Orders. As written, the Tentative General Orders give Members/Dischargers sufficient direction regarding the frequency and timing of dry weather sampling without being overly prescriptive.</p> <p>Comment No. 15 also addresses this section of the Tentative General Orders.</p>	None necessary
18	To require agricultural operators to reduce their bacteria	The Tentative General Orders are consistent with the	None necessary

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	<p>loads according to the Load Allocations (LAs) on page E-7, the City requests that the language on page E-7 and E-8 of the Tentative General Orders be revised to be consistent with the Bacteria TMDL Basin Plan Amendment (page A46), which states that, if individual or general WDRs are developed and issued to controllable nonpoint sources, the WDRs should incorporate “Effluent limitations that are consistent with the requirements and assumptions of the nonpoint source LAs. Effluent limitations should be expressed as numeric effluent limitations, if feasible and/or as a [Best Management Program (BMP)] program.” Monitoring alone is insufficient to ensure that agricultural sources will reduce their bacteria loads. These sources should be subject to effluent limitations in the Tentative General Orders.</p>	<p>assumptions and requirements of the Bacteria TMDL. The Bacteria TMDL encourages but does not mandate numeric effluent limitations where doing so would be infeasible. The San Diego Water Board has found that it is infeasible to set effluent limitations for nonpoint sources of pollution such as for those discharges typical of Agricultural Operations. In a permit for a traditional point-source facility, the San Diego Water Board would set a water quality-based effluent limitation (consistent with the assumptions and requirements of the TMDL) to be met at the discharge point and require monitoring of the discharge to verify that the effluent limitation is being met. In a landscape-based nonpoint source program such as the Tentative General Orders, monitoring the numerous and sometimes indeterminate set of agricultural operation discharge points for compliance with an effluent limitation is an impractical, prohibitively costly, and often ineffective method for compliance determination and the Nonpoint Source Policy accordingly does not mandate such monitoring. Instead, the Tentative General Orders require that Members/Dischargers control the diffuse sources of pollution from Agricultural Operations through management practices implementation, assessment, and adaptive management rather than by setting effluent limitations for discharges at multiple and often indeterminate discharge points. The San Diego Water Board expects that development and enforcement of the Tentative General Orders will be sufficiently protective of water quality to implement the agricultural load allocations in the Bacteria TMDL.</p> <p>In order to comply with the receiving water limitations, the terms of the Tentative General Orders (Third-Party General Order section V.B.8, and Individual General Order section IV.A.B.8) require Members/Dischargers to 1) implement management practices that prevent or reduce discharges of waste that are causing or</p>	

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		<p>contributing to exceedances of water quality standards; and 2) when effectiveness evaluation or reporting, monitoring data, or inspections indicate that the implemented management practices have not been effective in preventing the discharges from causing or contributing to exceedances of water quality standards, the Member/Discharger must implement improved management practices as soon as practicable. Moreover, the Bacteria TMDL assumes the receiving water limitations (based on the numeric targets) are met in the receiving waters if controllable nonpoint sources, like agriculture, have met their load allocations. (Bacteria TMDL, A45)</p> <p>The requirement to implement effective management practices, the monitoring program which will evaluate the effectiveness of the implemented management practices, and the implementation of the WQRP, if needed, implements the requirements of the Bacteria TMDL and will reduce bacteria in agricultural operation discharges to meet applicable water quality standards. Where applicable water quality standards are not met, Members/Dischargers out of compliance with the Tentative General Orders would be required to come into compliance or cease discharges.</p>	
County of San Diego (County), July 29, 2016			
19	<p>The County of San County (County) strongly supports the proposed approach of regulating the commercial agricultural community through a general waste discharge permit instead of the now expired agricultural waiver. The Tentative General Orders provide a solid framework for regulating the agricultural industry that will ultimately contribute to improved water quality in our region. In particular, the County is encouraged to see that agricultural operations will have the option to enroll either as a member of a Third-Party Group or individually. We also support the use of these Tentative</p>	<p>The San Diego Water Board has noted the comment.</p>	<p>None necessary</p>

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	<p>General Orders to serve as a non-TMDL solution to addressing water quality impairments where agriculture has been identified as a contributing source.</p>		
20	<p>The Tentative General Orders regulate discharges from Agricultural Operations that have intent to make a profit. One of the criteria the San Diego Water Board uses for this determination is whether the owner or operator of an Agricultural Operation holds a <i>current</i> Operator Identification Number/Permit Number from a local County Agricultural Commissioner for pesticide use reporting.</p> <p>The County of San Diego requests this criterion be clarified to state:</p> <p>"The owner or operator of an Agricultural Operation is <i>required</i> to obtain an Operator Identification Number/Restricted Materials Permit Number for reporting pesticide use to the respective County Agricultural Commissioner."</p> <p>The suggested language more accurately describes the Agricultural Operations that would be required to enroll. As currently written, the criterion is contingent upon compliance with applicable pesticide laws and regulations.</p> <p>Additionally, to ensure all Agricultural Operations within the San Diego Region with intent to make a profit are covered under the Tentative General Orders, the County recommends the inclusion of the following additional criteria be included:</p> <ul style="list-style-type: none"> The owner or operator of the Agricultural Operation is registered with the California Department of Food and Agriculture Organic Program. The owner or operator of the Agricultural Operation holds a Certified Producer's Certificate from the respective County Agricultural Commissioner. The owner or operator of the Agricultural Operation 	<p>For the reasons stated by the County, the San Diego Water Board has modified section I.G.3 of the Third-Party General Order and section I.F.3 of the Individual General Order as follows (noting that the modifications also address Comment No. 45):</p> <p><i>Third-Party General Order section I.G.3:</i></p> <p>The owner or operator holds a current <u>is required to obtain an</u> Operator Identification Number/Permit Number from a local County Agricultural Commissioner for pesticide use reporting.</p> <p><i>Individual General Order section I.F.3:</i></p> <p>The owner or operator holds a current <u>is required to obtain an</u> Operator Identification Number/Permit Number from a local County Agricultural Commissioner for pesticide use reporting.</p> <p><i>Third-Party General Order Attachment B (Fact Sheet) section I.A.3.c:</i></p> <p>The owner or operator holds a current <u>is required to obtain an</u> Operator Identification Number/Permit Number from a local County Agricultural Commissioner for pesticide use reporting.</p> <p><i>Individual General Order Attachment B (Fact Sheet) section I.A.2.c:</i></p> <p>The owner or operator holds a current <u>is required to obtain an</u> Operator Identification Number/Permit Number from a local County Agricultural Commissioner for pesticide use reporting.</p> <p>The San Diego Water Board disagrees that it is necessary to add the suggested additional criteria at this time. As</p>	<p>Modified Third-Party General Order section I.G.3</p> <p>Modified Individual General Order section I.F.3</p> <p>Modified Third-Party General Order Attachment B (Fact Sheet), section I.A.3.c</p> <p>Modified Individual General Order Attachment B (Fact Sheet), section I.A.2.c</p> <p>Modified Third Party General Order and Individual Order Attachment C (Abbreviations and Definitions).</p>

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	holds a nursery license (Type 1, 2, or 4) with the California Department of Food and Agriculture.	currently written, the Tentative General Orders require enrollment of those Agricultural Operations that operate with the intent to make a profit.	
21	The Tentative General Orders do not provide coverage for discharges from Agricultural Operations where all growing operations are conducted within buildings or in completely enclosed areas with no potential to discharge waste to waters of the State. The County of San Diego supports this important exemption for Agricultural Operations meeting these criteria. As currently written, the Tentative General Orders require Agricultural Operations to file a Notice of Intent (NOI) in order to receive a Notice of Exclusion (NOEX). The County of San Diego requests the Tentative General Orders provide a simplified parallel process for eligible Agricultural Operations to obtain a NOEX without submitting an NOI. Additionally, we request clarification about whether businesses such as greenhouses, which may have roof runoff, but all growing operations are conducted within enclosed areas, would qualify for this exemption.	As currently written, the Tentative General Orders do not require a Notice of Intent (NOI) for Agricultural Operations where all growing operations are conducted within buildings or in completely enclosed areas with no potential to discharge waste to waters of the State. For clarification, this exemption applies to businesses such as greenhouses, which may have roof runoff, but where all growing operations are conducted within enclosed areas, provided that the roof runoff consists only of storm water.	None necessary
22	The linkage between the TMDL requirements, the WQPP, and the WQRP are unclear. Further, it is not clear how compliance with TMDL requirements will be determined. For example, for the Rainbow Creek Nutrient TMDL, growers are required to implement the <i>Rainbow Creek Nutrient Reduction Management Plan</i> (NRMP), but it is not clearly stated that the control measures in the NRMP should be incorporated into the WQPP and/or WQRP. As a result, agricultural dischargers in TMDL waterbodies may end up implementing multiple plans for the same constituents (e.g. if benchmark exceedances occur for constituents covered by a TMDL). It would be clearer if the WQPP and WQRP were required to incorporate any applicable TMDL requirements so that all control measures growers must implement are in a single place, and it is clear that implementing the WQPP and WQRP constitute	The San Diego Water Board has modified the Tentative General Order as follows to provide clarification that TMDL requirements are to be included in WQPPs: <i>Third-Party General Order section VII.C.6.m (previously section VII.C.6.l):</i> A detailed description of each current and proposed management practice, including its purpose, operational status, and a time schedule for construction and implementation, if the management practice is not currently in use. This includes but is not limited to management practices related to irrigation efficiency and management, pesticide management, nutrient management, salinity management, and sediment and erosion control to achieve compliance with this General Order. <u>This also includes management practices required to</u>	Modified Third-Party General Order section VII.C.6.m (previously section VII.C.6.l) Modified Individual General Order section VI.C.6.l (previously section VI.C.6.k)

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	compliance with the TMDL requirements.	<p><u>address applicable TMDLs, including by not limited to management practices identified in the Rainbow Creek Nutrient Management Plan.</u> The time schedule shall reflect the shortest practicable time required to perform each task and shall include a final date for construction and implementation. The schedule may not be longer than that which is reasonably necessary to achieve compliance with the receiving water limitations contained in section VI of this General Order.</p> <p><i>Individual General Order section VI.C.6.l (previously section VI.C.6.k):</i></p> <p>A detailed description of each current and proposed management practice, including its purpose, operational status, and a time schedule for construction and implementation, if the management practice is not currently in use. This includes but is not limited to management practices related to irrigation efficiency and management, pesticide management, nutrient management, salinity management, and sediment and erosion control to achieve compliance with this General Order. <u>This also includes management practices required to address applicable TMDLs, including by not limited to management practices identified in the Rainbow Creek Nutrient Management Plan.</u> The time schedule shall reflect the shortest practicable time required to perform each task and shall include a final date for construction and implementation. The schedule may not be longer than that which is reasonably necessary to achieve compliance with the receiving water limitations contained in section V of this General Order.</p>	
23	The County requests that the Tentative General Orders contain an explicit reopener provision to incorporate TMDL	The San Diego Water Board has modified the Tentative General Orders to explicitly state that the Tentative	Modified Third-Party General

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	<p>amendments, new TMDLs, or TMDL alternatives that are approved in the future. Since the Tentative General Orders do not currently include an expiration date, it is important that they contain a mechanism to incorporate amendments to existing TMDLs as well as future TMDLs or TMDL alternatives. The incorporation of newly adopted TMDLs should also be required to be considered in the WQPP and WQRP modifications.</p>	<p>General Orders may be reopened to incorporate future TMDL amendments, new TMDLs, or TMDL alternatives:</p> <p><i>Third-Party General Order section IX.B:</i></p> <p>Reopener Provisions</p> <p>This General Order may be modified, revoked and reissued, or terminated for cause including, but not limited to the following:</p> <ol style="list-style-type: none"> 1. Violation of any terms or conditions of this General Order. 2. Obtaining this General Order by misrepresentation or failure to disclose fully all relevant facts. 3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge. 4. <u>Adoption of TMDL amendment, new TMDL, or TMDL alternative.</u> <p><i>Individual General Order section VII.B:</i></p> <p>Reopener Provisions</p> <p>This General Order may be modified, revoked and reissued, or terminated for cause including, but not limited to the following:</p> <ol style="list-style-type: none"> 1. Violation of any terms or conditions of this General Order. 2. Obtaining this General Order by misrepresentation or failure to disclose fully all relevant facts. 3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge. 4. <u>Adoption of TMDL amendment, new TMDL, or</u> 	<p>Order section IX.B</p> <p>Modified Individual General Order section VII.B</p>

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		<u>TMDL alternative.</u>	
24	As currently written, the WQPP due upon NOI submittal must include a schedule for operations and maintenance of control measures to meet all receiving water limitations regardless of whether or not exceedances of the limitations have occurred (section VII.C.6.m of the Third-Party General Order and section VI.C.6.l of the Individual General Order). It may not be appropriate to ask agricultural dischargers to determine future practices and a schedule for their implementation until it is deemed that additional management is necessary to meet water quality standards. The County of San Diego requests that specific control measures and a schedule for implementation only be required to be provided in the WQRP after a benchmark exceedance is triggered by monitoring results.	<p>The schedule for the implementation of additional management practices in the WQPP is specific to those identified at the time the WQPP is prepared. The purpose of including the schedule is to document the Member's/ Discharger's acknowledgement that additional management practices are needed and commitment to implement the additional practices.</p> <p>The WQRP must include the identification of additional management practices to address the specific exceedances of a water quality benchmark and the schedule for implementation.</p>	None necessary
25	The scaled operation map submittal requirements outlined in Third-Party General Order section VII.C.6.k are excessive as compared to other regions. The County requests that the operation map requirements be reduced to the minimum required to assess compliance with Order requirements. For example, only operations on-site should be required to be mapped, not off-site areas where the operator/land owner likely does not have control of the activities.	<p>The purpose of the scaled operation map is to identify the location of on-site operations, to support the selection and location of management practices to prevent or minimize the potential of pollution as a result of those operations, and to support the selection of monitoring locations. While the Member/Discharger may not have control of off-site activities, certain off-site characteristics (e.g., the location of nearby waterbodies, the location of nearby drinking water wells, the location of adjacent agricultural activities) should be considered when selecting monitoring locations.</p> <p>In order to clarify the scale of the map and the level of detail for off-site characteristics, the San Diego Water Board has modified the Tentative General Orders as follows (noting that the modifications also address Comment No. 61):</p> <p style="text-align: center;"><i>Third-Party General Order section VII.C.6.k:</i></p> <p style="text-align: center;"><u>A scaled topographic Site Location Map extending one mile past the property boundary of the</u></p>	<p>Modified Third-Party General Order section VII.C.6.k</p> <p>Added Third-Party General Order section VII.C.6.l</p> <p>Modified Individual General Order section VI.C.6.j</p> <p>Added Individual General Order section VI.C.6.k</p>

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		<p><u>Agricultural Operation and depicting the following:</u></p> <ul style="list-style-type: none"> i. <u>Property boundaries, roads, structures, and drainage structures.</u> ii. <u>Irrigation wells, domestic water supply wells, springs, and other surface water bodies listed in public records or otherwise known to the Member to be in the map area.</u> iii. Growing areas. iv. Compost and manure management areas including storage and disposal sites. v. Chemical storage areas. vi. Topographic lines. vii. Major pipes or other structures through which through which irrigation runoff, storm water runoff and non-storm water runoff from the Agricultural Operation is discharged to surface waters, if applicable. viii. The location and types of management practices employed at the Agricultural Operation. ix. The location of proposed surface water and groundwater monitoring stations. <p><i>Third-Party General Order section VII.C.6.1 (added section):</i></p> <p><u>A scaled Site Plan depicting the following:</u></p> <ul style="list-style-type: none"> i. <u>Property boundaries, roads, structures, and drainage structures.</u> ii. <u>Irrigation wells, domestic water supply wells, springs, surface water bodies, and storm water and non-storm water conveyance</u> 	

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		<p><u>systems located within the property boundary.</u></p> <p>iii. <u>Approximate location of growing areas.</u></p> <p>iv. <u>Compost and manure management areas including storage and disposal sites.</u></p> <p>v. <u>Chemical storage areas.</u></p> <p>vi. <u>Surface water flow directions and general topographic slope direction.</u></p> <p>vii. <u>The location and types of management practices employed.</u></p> <p>viii. <u>Groundwater wells used for domestic supply.</u></p> <p><i>Individual General Order section VI.C.6.j:</i></p> <p><u>A scaled topographic Site Location Map extending one mile past beyond the property boundary of the Agricultural Operation and depicting the following:</u></p> <p>i. <u>Property boundaries, roads, structures, and drainage structures.</u></p> <p>ii. <u>Irrigation wells, domestic water supply wells, springs, and other surface water bodies listed in public records or otherwise known to the Discharger to be in the map area.</u></p> <p>iii. Growing areas.</p> <p>iv. Compost and manure management areas including storage and disposal sites.</p> <p>v. Chemical storage areas.</p> <p>vi. Topographic lines.</p> <p>vii. Major pipes or other structures through which through which irrigation runoff, storm water runoff and non-storm water runoff from the</p>	

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		<p>Agricultural Operation is discharged to surface waters, if applicable.</p> <p>viii. The location and types of management practices employed at the Agricultural Operation.</p> <p>ix. The location of proposed surface water and groundwater monitoring stations.</p> <p><i>Individual General Order section VI.C.6.k:</i></p> <p><u>A scaled Site Plan depicting the following:</u></p> <ul style="list-style-type: none"> i. <u>Property boundaries, roads, structures, and drainage structures.</u> ii. <u>Irrigation wells, domestic water supply wells, springs, surface water bodies, and storm water and non-storm water conveyance systems located within the property boundary.</u> iii. <u>Approximate location of growing areas.</u> iv. <u>Compost and manure management areas including storage and disposal sites.</u> v. <u>Chemical storage areas.</u> vi. <u>Surface water flow directions and general topographic slope direction.</u> vii. <u>The location and types of management practices employed.</u> viii. <u>The location of groundwater wells used for domestic supply.</u> 	
26	The detailed visual monitoring program and schedule for evaluating management practices provided in Third-Party General Order section VII.C.6.n appear duplicative when farmers are required to perform both quarterly self-inspections and annual self-assessments. Please remove the	The requirement to include a detailed description of the visual observation monitoring program in the WQPP is intended to ensure that a reliable and consistent approach is used to conduct the visual inspections and that the frequency of performing visual inspections is appropriate	Modified Third-Party General Order section VII.C.6.o Modified

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	<p>requirement for the visual monitoring program as part of the WQPP.</p>	<p>given site-specific considerations. While a Member/Discharger may determine that visual inspections should be performed more frequently, they must be performed at least quarterly as part of the Quarterly Self-Inspection Report.</p> <p>While visual observation monitoring is a component of the Quarterly Self-Inspection Report, it is not a requirement of the Annual Self-Assessment Report (except to the extent that the Quarterly Self-Inspection Reports are attached to the Annual Self-Assessment Report as required by section VII.D.4. of the Third-Party General Order and section VI.E.4 of the Individual General Order.</p> <p>To clarify this, the San Diego Water Board has modified the Tentative General Orders as follows:</p> <p><i>Third-Party General Order section VII.C.6.o:</i></p> <p>A detailed visual <u>observation</u> monitoring program and schedule <u>as required by section VII.D of this General Order and schedule</u> for evaluating <u>whether management practices are adequate, properly implemented and the effectiveness of each current or proposed management practice.</u></p> <p><i>Individual General Order section VI.C.6.n:</i></p> <p>A detailed visual <u>observation</u> monitoring program and schedule <u>as required by section VI.E of this General Order and schedule</u> for evaluating <u>whether management practices are adequate, properly implemented and the effectiveness of each current or proposed management practice.</u></p>	<p>Individual General Order section VI.C.6.n</p>
27	<p>The schedule for development of the WQRP is too short (90 days). The County recommends it be made longer to allow growers sufficient time to complete the following steps: 1) obtain and evaluate the laboratory results; 2) determine if agriculture is the source of the exceedance; and 3) identify</p>	<p>While the San Diego Water Board agrees that implementation of the WQRP may take more than 90 days, the San Diego Water Board believes that 90 days should be sufficient to develop a WQRP for most situations. The San Diego Water Board may permit</p>	<p>None necessary</p>

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	appropriate management measures, if needed.	<p>additional time as warranted (section VIII.B.2 of the Third-Party General Order and section VI.D.2 of the Individual General Order).</p> <p>As drafted, the Tentative General Orders already address the County's comment: 1) a WQRP is required to be developed after an exceedance of a water quality benchmark has been identified based on laboratory results or a determination of threatened degradation has been made (section VIII.B.2 of the Third-Party General Order and section VI.D.2 of the Individual General Order); 2) the location of monitoring stations should be selected to eliminate sources of pollution from other agricultural activities (Attachment A, MRP section III.B.1 of the Third-Party General Order and Attachment A, MRP section III.B.1. of the Individual General Order); and 3) a WQRP is a detailed plan to identify the source(s) of exceedance(s) and to reduce or eliminate the pollution from the source(s) once identified (section VIII.B of the Third-Party General Order and section VI.D of the Individual General Order).</p>	
28	WQRPs should also be allowed to group pollutants with similar management practices into one plan and/or add additional pollutants exceeding benchmarks into an existing WQRP if they have similar management practices. The County requests modifications to the language regarding the development of WQRPs to allow flexibility to incorporate new control measures into existing plans and develop one plan to cover all similar benchmark exceedances.	The Tentative General Orders do not prohibit Third-Party Groups or Dischargers from developing a new WQRP or revising an existing WQRP to address more than one water quality impairment.	None necessary

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29	The County requests the following clarifications to the quarterly assessment requirements. In the Monitoring and Reporting Program (MRP; Attachment A) section III.B.2.c there are specifications about when dry weather monitoring should occur that are problematic in operating a regional monitoring program. When those that have control over timing of irrigation are doing the assessment, it is more appropriate for the requirement that quarterly assessments be done during irrigation events.	See response to Comment No. 15.	See response to Comment No. 15
30	The requirement in the Third-Party General Order section VII.E.4 for the listing of non-compliance and specific information about each incident is not clearly stated and references to compliance are scattered throughout the Third-Party General Order and not explained in Attachment J: <i>Annual Self-Assessment Report</i> , or the instructions that accompany the report template. The County requests the Third-Party General Order be modified to clarify the compliance requirements and consolidate them into one place for clarity on what is required to be assessed and reported. This will make the requirements more understandable and easier to access for Agricultural Operations.	Attachment J of the Tentative General Orders has been modified to more clearly identify what information regarding non-compliance should be reported as part of the Annual Self-Assessment Report. Part J of Attachment J – Annual Self-Inspection Report to the General Orders have been modified as follows <i>Third-Party General Order Attachment J, Part I (formerly part J):</i> Provide a listing of each incident of noncompliance during the annual monitoring period and, for each incident of noncompliance, <u>provide the cause, the period of non-compliance including the exact dates of non-compliance and times</u> , and if the noncompliance has not been corrected, <u>the anticipated time it is expected to continue and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.</u> <u>Incidents of noncompliance include but are not limited to</u> 1) failure to pay annual WDR fees (Order No. R9 2016-0004, section III.J), 2) failure to comply with waste discharge prohibitions (Order No. R9 2016-0004, section IV), 3) failure to comply with waste discharge specifications (Order No. R9 2016-0004, section V), 4), failure to obtain the required two-hours of yearly water quality education (Order No. R9 2016-0004, section VII.B), 5) failure to conduct Quarterly Self-Inspection (Order No. R9 2016-0004,	Modified Third-Party General Order Attachment J Modified Individual General Order Attachment J

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		<p><u>section VII.D), 6) a single monitoring result that exceeds either the narrative or numeric water quality objective for a Water Quality Benchmark (Order No. R9 2016-0004, section VI and MRP section VII), and 7) the exceedance of a Water Quality Benchmark that triggers the development of a Water Quality Restoration Plan (WQRP), and failure to submit and implement a WQRP (Order No. R9 2016-0004, section VIII.B and Order No. R9 2016-0004 MRP section VII and Table A-4).</u></p> <p><i>Individual General Order Attachment J, Part I (formerly part J):</i></p> <p>Provide a listing of each incident of noncompliance during the annual monitoring period and, for each incident of noncompliance, <u>provide the cause, the period of non-compliance including the exact dates of non-compliance and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. Incidents of noncompliance include but are not limited to</u>1) failure to pay annual WDR fees (Order No. R9 2016-0005, section II.J), 2) failure to comply with waste discharge prohibitions (Order No. R9 2016-0005, section III), 3) failure to comply with waste discharge specifications (Order No. R9 2016-0005, section IV), 4) failure to obtain the required two-hours of yearly water quality education (Order No. R9 2016-0005, section VI.B), 5) failure to conduct Quarterly Self-Inspection (Order No. R9 2016-0005, section VI.E), 6) a single monitoring result that exceeds either the narrative or numeric water quality objective for a Water Quality Benchmark (Order No. R9 2016-0005, section V and MRP section VII), and 7) <u>the exceedance of a Water Quality Benchmark that triggers the development of a Water Quality</u></p>	

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		<u>Restoration Plan (WQRP), and failure to submit and implement a WQRP (Order No. R9 2016-0005, section VI.D and MRP section VII and Table A-2).</u>	
31	The Order requires four hours of education per year, which is more than some other regions. The education requirements should be reduced to two hours per year for consistency with other regions.	See response to Comment No. 3.	See response to Comment No. 3
32	Tracking and managing multiple proofs of contact with various agencies (the same ones that are likely to provide education opportunities and will be documented under the training requirements) is an unnecessary burden for both Agricultural Operators and the Third-Party Group. If a Third-Party Group produces newsletters or other communications or passes along information from other agencies, a single copy of these communications included in the Third-Party Group's annual report should be sufficient. On-farm meetings or consultations that are specific to a particular operation should be required to be documented, but any additional documentation is unnecessary.	<p>The San Diego Water Board agrees that tracking and managing proofs of contact with organizations such as local Farm Bureaus, the University of California Cooperative Extension (UCEE), the National Resource Conservation Service (NRCS), the Resource Conservation Districts (NCD), or other comparable organizations (section VII.B.2 of the Third-Party General Order and section VI.B.2 of the Individual General Order), could be burdensome. For this reason, the San Diego Water Board has modified the Tentative General Orders to remove the requirements for regular contact and proof of regular contact documentation. A statement to the Attachment A Fact Sheet of the Tentative General Orders has been added pointing out that Members/Dischargers can keep current on agricultural water quality issues and recommended management practices by maintaining regular contact with the local Farm Bureau, UCCE, NRCS, and/or regional RCDs. The Tentative General Orders are modified as follows:</p> <p>Third-Party General Order, section VII.B.2 is deleted: Members shall maintain regular contact with the local Farm Bureau, UCCE, NRCS, and/or regional RCDs to be informed on any known water quality problems and the management practices that are available to address these problems.</p> <p><i>Third-Party General Order, Attachment J is modified</i></p>	<p>Deleted Third-Party General Order section VII.B.2.</p> <p>Modified Third-Party General Order Attachment J, Part F.</p> <p>Modified Third-Party General Order Attachment A, Fact Sheet section VII.B.</p> <p>Deleted Individual General Order section VI.B.2</p> <p>Modified Individual General Order Attachment J, Part F.</p> <p>Modified Individual General Order Attachment A, Fact Sheet</p>

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		<p>Annual Self- Assessment Form, section F. Association Communication Requirement is deleted.</p> <p><i>Third-Party General Order, Attachment A, Fact Sheet section VII. B is modified to include the following:</i> <u>Members can also maintain regular contact with the local Farm Bureau, UCCE, NRCS, and/or regional RCDs to be informed on any known water quality problems and the management practices that are available to address those problems.</u></p> <p><i>Individual General Order, section VI.B.2 is deleted:</i> Dischargers shall maintain regular contact with the local Farm Bureau, UCCE, NRCS, and/or regional RCDs to be informed on any known water quality problems and the management practices that are available to address those problems.</p> <p><i>Individual General Order, Attachment J is modified</i> Annual Self- Assessment Form, section F. Association Communication Requirement is deleted.</p> <p><i>Individual General Order, Attachment A, Fact Sheet section VI. B is modified to include the following:</i> <u>Dischargers can also maintain regular contact with the local Farm Bureau, UCCE, NRCS, and/or regional RCDs to be informed on any known water quality problems and the management practices that are available to address those problems.</u></p>	<p>section VI.B.</p>
33	<p>Sections III.B.2.b and c of the Third-Party General Order are overly prescriptive in regards to the timing of monitoring events. Part b lists specifications for wet weather monitoring and since samples shall be collected within the first 24 hours</p>	<p>See response to Comment No. 15.</p>	<p>See response to Comment No. 15</p>

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	<p>of a storm with a minimum of 0.5" of rainfall, the added requirement that a "no runoff" determination also include evidence that irrigation was occurring should be removed. The purpose of wet weather sampling is to evaluate the impacts of storm water runoff and farmers are not going to be irrigating within such close proximity to a significant rain event. Part c requirements for dry weather monitoring are only appropriate for on-farm/edge-of-field monitoring. When assessing contributions from a number of farms at numerous monitoring sites, timing of sample collection to ensure pesticide and fertilizer application and during irrigation is a logistical impossibility to coordinate for a group monitoring program. An alternative approach is recommended under the quarterly assessment comments of this letter; where the timing of the assessment is based on these specifications.</p>		
34	<p>The U.S. Environmental Protection Agency (USEPA) has recommended a change to the preferred bacterial indicators for inland surface waters from enterococcus to both enterococcus and <i>E. coli</i>. Consider using both enterococcus and <i>E. coli</i> as the bacterial indicators for freshwater and enterococcus as the bacterial indicator for saline waters.</p>	<p>The San Diego Water Board is familiar with USEPA's recommendation and it should be noted that the Basin Plan has not yet amended the Basin Plan to incorporate the new USEPA criteria. Therefore, monitoring is still required for total coliform and fecal coliform bacteria levels that are specified in existing water quality standards in the Basin Pan and Ocean Plan.</p>	None necessary
35	<p>There is an extensive list of required analyses in Table A-3 as part of the bioassessment monitoring requirements. Please clarify how bioassessment monitoring data will be used by Agricultural Operations to improve their management decisions to protect water quality.</p>	<p>Bioassessment monitoring provides a direct measure of the biological condition of a waterbody based on the living organisms at a given location. To achieve this, communities of organisms such as invertebrates (e.g., insects, crustaceans), fish, algae, and plants living in the waterbody at designated monitoring stations are examined to quantify their numbers and species (community data). The summarized community data provides key information about the biological condition of the aquatic ecosystem, which is directly and closely linked to beneficial uses of the waterbody.</p> <p>As described in section I.D.2.b.iii of Attachment B to the Tentative General Orders, the California Stream Condition</p>	<p>Modified Third-Party General Order Attachment B (Fact Sheet), section IX.B</p> <p>Modified Individual General Order Attachment B (Fact Sheet), section VII.B</p>

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		<p>Index (CSCI) tool is used to assign an Indicator of Biological Integrity (IBI) score to the area assessed, with possible scores being Very Good, Good, Fair, Poor, and Very Poor.</p> <p>For streams or stream reaches that are determined to be in Very Good or Good biological condition, the bioassessment information can be used by Third-Party Group and Members to determine the level of protection that is expected to maintain and improve the existing biological condition. For streams or stream reaches that are determined to be in Fair, Poor, or Very Poor biological condition, the bioassessment information can be used to determine the level of protection that is needed to restore the biological condition.</p> <p>The Causal Analysis/Diagnosis Decision Information System (CADDIS), an on-line decision support system supported by the USEPA, can also be used by technically qualified biologists to help identify the specific causes (stressors) responsible for degraded biological conditions in streams and rivers that have been classified as impacted by the IBI score. CADDIS is available on-line on the USEPA website at http://www.epa.gov/caddis. The framework is largely based on five steps of stressor identification using a weight of evidence approach to either diagnose or refute a stressor. Additional information regarding the use of CADDIS is available in a Southern California Coastal Water Research Project (SCCWRP) report entitled <i>Casual Assessment Evaluation and Guidance for California, Technical Report 750-April 2015</i>. The report is available on the SCCWRP website at http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/750_CausalAssessmentGuidance041515wCov.pdf</p> <p>Section IX.B of Attachment B (Fact Sheet) of the Third-Party General Order and section VII.B of Attachment B</p>	

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		(Fact Sheet) of Individual General Order have been modified to include the above response.	
36	If a property exceeds the MCL for nitrate, the Tentative General Orders call for notification and annual sampling. Annual sampling may be insufficient to capture seasonal variation in the impacted aquifer. Please consider requiring more frequent sampling if necessary, while allowing for sampling frequencies to be reduced based on results.	Annual monitoring of groundwater for nitrate is consistent with other similar agricultural waste discharge requirements in California. ³ Should annual monitoring prove to be insufficient, the San Diego Water Board may increase the frequency of groundwater monitoring (Attachment A, section III.C.4 of the Third-Party General Order and Attachment A, section III.C.4 of the Individual General Order).	None necessary
37	If Agricultural Operations are shown to be impacting drinking water wells, it is unclear whether or how an Agricultural Operation would be required to respond and/or change practices. Please clarify.	<p>Attachment A section III.C.b.ii.(a) of the Third-Party General Order and Attachment A section III.C.b.ii.(a) of the Individual General Order require that within 24 hours of receipt of a laboratory test result indicating a nitrate concentration in excess of the MCL, the Member/Discharger must notify the San Diego Water Board and the applicable County Health Department to determine if additional actions are needed. These actions may include taking the well out of service and providing an alternate source of drinking water, or installing filters to treat the water prior to use for domestic purposes based on the County Health Department's direction.</p> <p>Attachment A section III.C.b.ii.(b) of the Third-Party General Order and Attachment A section III.C.b.ii.(b) of the Individual General Order also require that the Discharger /Member, or Third-Party Group on the Member's behalf, shall immediately notify all individuals using the water supply well for a drinking source of the nitrate test results and actions to be taken. Where the</p>	<p>Modified Third-Party General Order Attachment A section III.C.1.b.ii.(b)</p> <p>Modified Third-Party General Order sections VIII.B and Attachment A MRP section VII.H.3.</p> <p>Modified Individual General Order Attachment A section III.C.1.b.ii.(b)</p>

³ See Waste Discharge Requirements General Order No. R5-2012-0116 issued by the Central Valley Regional Water Quality Control Board for Growers within the Eastern San Joaquin River Watershed that are Members of a Third-Party Group and the Conditional Waiver of Waste Discharge Requirements Order No. R3-2012-0011 and the accompanying Monitoring and Reporting Program Orders Nos. R3-2012-0011-01, R3-2012-0011-02, and R3-2012-0011-03,1 and the accompanying Resolution No. R3-2012-0012 issued by the Central Coast Regional Water Quality Control Board for discharges from irrigated agricultural lands in the Central Coast region.

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		<p>Discharger/Member is not the property owner, the San Diego Water Board will notify the users promptly. A footnote has been added to Attachment A section III.C.1.ii.(b) of the Third-Party General Order and Attachment A section III.C.1.ii.(b) of the Individual General Order as follows:</p> <p><i>Third-Party General Order Attachment A section III.C.1.ii.(b) (added footnote 6):</i></p> <p>The notification should include the information provided in the <u>State Water Board's Nitrate MCL Exceedance template</u>, which can be found at http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Notices.shtml.</p> <p><i>Individual General Order Attachment A section III.C.1.ii.(b) (added footnote 5):</i></p> <p>The notification should include the information provided in the <u>State Water Board's Nitrate MCL Exceedance template</u>, which can be found at http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Notices.shtml.</p> <p>Attachment A, MRP section VII.G.3 of the Third-Party General Order and Attachment A, MRP section VII.H.3 of the Individual Order require Third-Party Groups/Dischargers to prepare a WQRP if groundwater quality data indicate an exceedance of the applicable nitrate benchmark of 36 mg/L as nitrite. The WQRP must identify management practices currently being implemented and additional or improved management practices that will be implemented by Members/Dischargers to prevent or minimize the discharge of any waste that is causing or contributing to the exceedance of the nitrate water quality benchmark or a trend of water quality degradation. Improved practices may include but not be limited to development and</p>	<p>Modified Individual General Order sections VI.D and Attachment A MRP section VII.H.3.</p>

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		<p>implementation of a nutrient management plan to reduce nitrogen loading to groundwater if appropriate.</p> <p>To provide clarity on when an exceedance of the nitrate benchmark of 36 mg/L as nitrite triggers the requirement for a WQRP the Tentative General Orders have been modified as follows:</p> <p><i>Third-Party General Order section VIII. B.</i></p> <p>If a Surface Water Quality Benchmark described in section VII, <u>Table A.4</u> of the MRP (Attachment A) is exceeded, Third-Party-Groups must promptly notify the San Diego Water Board and thereafter prepare a WQRP in consultation with its Members suspected of causing or contributing to the exceedance. The WQRP must contain the information described in section VIII.B.3 below. For the purposes of this General Order, an exceedance occurs when <u>a) a sampling result for a constituent at a single surface water monitoring location exceeds the monitoring benchmark more than three out of four times for the same constituent or b) a groundwater sampling result exceeds the nitrate benchmark in accordance with section III.C.b of the MRP (Attachment A) of this General Order.</u> The San Diego Water Board may also require Third-Party Groups to prepare a WQRP if a trend of degradation of water quality is identified that threatens a beneficial use in receiving waters affected by its Member's Agricultural Operation(s).</p> <p><i>Third-Party General Order MRP section VII. H.3</i></p> <p>Identification of all exceedances of the applicable nitrate benchmark of 36 mg/L as NO₃ at any water supply well monitoring location. If groundwater</p>	

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		<p>quality monitoring data indicate an exceedances of the nitrate benchmark <u>in accordance with section III.C.b of this MRP</u>, Third-Party Groups shall prepare and submit a Water Quality Restoration Plan (WQRP) pursuant to section VIII.B of this General Order.</p> <p><i>Individual General Order section VI. D.</i></p> <p>If a monitoring Water Quality <u>Benchmark</u> described in section VII, <u>Table A.2</u> of the MRP (Attachment A) is exceeded, Dischargers must promptly notify the San Diego Water Board and thereafter prepare a WQRP containing the information described in section VI.D.3 below. For the purposes of this General Order, an exceedance occurs when <u>a) a sampling result for a constituent at a single surface water monitoring location exceeds the applicable Surface Water Quality Benchmarks</u> monitoring benchmark more than three out of four times for the same constituent <u>or b) a groundwater sampling result exceeds the nitrate benchmark in accordance with section III.C.b of the MRP (Attachment A) of this General Order.</u> The San Diego Water Board may also require Dischargers to prepare a WQRP if a trend of degradation of water quality is identified that threatens a beneficial use in receiving waters affected by the Discharger's Agricultural Operation.</p> <p><i>Individual General Order MRP section VII. H.3</i></p> <p>Identification of all exceedances of the applicable nitrate benchmark of 36 mg/L as NO₃ at any water supply well monitoring location. If groundwater quality monitoring data indicate an exceedances of the nitrate benchmark <u>in accordance with section III.C.b of this MRP</u>, Third-Party Groups shall prepare</p>	

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		and submit a Water Quality Restoration Plan (WQRP) pursuant to section VIII.B of this General Order.	
38	To increase transparency with stakeholders, the County requests that the potential enforcement actions implied in section VII.F of the Tentative General Orders be listed. Clarification of these potential enforcement actions will provide a level playing field for all potential dischargers and a higher level of assurance that appropriate follow up actions will be implemented in the event of non-compliance.	See response to Comment No. 5.	See response to Comment No. 5
Mr. Rami Mina, dated June 27, 2016			
39	In terms of the specifics of the latest Tentative General Orders, small growers would have been glad to comply with the Individual General Order if the annual Tentative General Order fees were waived. Third-Party Group Member annual Tentative General Order fees are lower than the annual Tentative General Order fees for individuals, hence based on cost and extra responsibility, why would anyone choose the individual option?	<p>Water Code section 13260 requires each person who discharges waste or proposes to discharge waste that could affect the quality of the waters of the State to file a report of waste discharge with the appropriate regional water board and to pay an annual fee set by the State Water Board. The collected fees are deposited in the Waste Discharge Permit Fund (WDPF). Water Code section 13260 requires the State Water Board to adopt, by emergency regulations, an annual schedule of fees for persons discharging waste to the waters of the State. Water Code Section 13260 further requires the State Water Board to adjust the annual fees each fiscal year to conform to the revenue levels set forth in the Budget Act.</p> <p>The State Water Board's Division of Administrative Services – Fee Branch has the responsibility for setting annual fees for the Water Quality Program, which includes all agricultural regulatory programs. The annual fee schedule for WDRs and waivers of WDRs for discharges from agricultural lands (including irrigated and non-irrigated lands) is set forth in CCR title 23, division 3, chapter 9, section 2200.6. The San Diego Water Board does not have the authority to waive these fees except</p>	None necessary

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		<p>under limited circumstances stipulated in the fee schedule.</p> <p>The Individual General Order was developed to serve as general WDRs for waste discharges from Agricultural Operations that are not covered by the Third-Party General Order. Thus, owners and operators of an Agricultural Operation may opt for coverage under either Tentative General Order, given their preference. Owners and operators who enroll under Individual General Order are subject to its terms and conditions in their individual capacity.</p>	
40	<p>It seems to me your goal is to improve the quality of our watersheds rather than collect fees. In fact, the federal government is assisting us financially by allowing generous write-offs and subsidizing expenses such as crop insurance and others. Thus one government agency is attempting to reduce our financial burden while another in increasing it, without water quality improvement.</p>	<p>As discussed in Attachment B (Fact Sheet) sections I.C and I.D to the Tentative General Orders, water quality data has shown that agricultural activities have negatively impacted water quality in the San Diego Region. It is the purpose of the Tentative General Orders to prevent further degradation and to restore the affected water bodies.</p> <p>While there are costs associated with enrolling under and implementing the Tentative General Orders, the San Diego Water Board has consistently considered and looked for opportunities to reduce those costs during the development of the Tentative General Orders. Additional information regarding the anticipated costs of compliance may be found in Fact Sheet section I.G of Attachment B to the Tentative General Orders.</p>	None necessary
41	<p>As you know from our grove data I previously shared with you, my situation is fairly typical of many small growers in the area. Highlights follow:</p> <ul style="list-style-type: none"> • In the 10 years our 5 acre grove has been in operation, we had one year of profits and 9 years of losses. Even if tax write-offs are considered, we annually experience net losses of ~\$3600. • We must use good agricultural practices. i.e. apply 	<p>As stated in the response to Comment No. 40, the San Diego Water Board has consistently considered and looked for opportunities to reduce the costs associated with complying with the Tentative General Orders. As discussed in Attachment B (Fact Sheet) section I.G.7 of the Third-Party General Order and Attachment B (Fact Sheet) section I.G.7 of the Individual General Order, the San Diego Water Board believes that the annual cost of compliance for a 4 acre parcel (the median sized</p>	None necessary

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	<p>the optimum amount of fertilizers and water to reduce cost and minimize waste which also results in decreased contamination of surrounding watersheds.</p> <ul style="list-style-type: none"> Water and labor costs are increasing, while avocado prices are decreasing due to south American imports. <p>I and many of my fellow small avocado growers are seriously considering turning our water off and exiting the business. Many of small avocado growers in the northern portion of the San Diego Water Board's jurisdictional boundaries have already done so because their water cost is significantly higher than ours. Grove managers and growers are worried that this may be the proverbial straw that broke the camel's back.</p> <p>If the proposed Tentative General Orders are approved as proposed, I personally cannot comply and my only alternative will be to exit the business. I'm sure many of my fellow growers will be doing the same if they have not already done so. It would be a shame if our beautiful green Southern California region is converted into brown brush.</p>	<p>Agricultural Operation in San Diego County) may be as low as \$18 for those growers who opt to enroll as a Member of a Third-Party Group. The costs may be even lower for those growers who have already taken measures to prevent or minimize the discharge of waste from their Agricultural Operations to surface water and/or groundwater.</p> <p>Additional information regarding the anticipated cost of compliance and the assumptions used to develop those costs may be found in Attachment B (Fact Sheet) section I.G.7 of the Tentative General Orders.</p>	
San Diego Region Irrigated Lands Group (SDRILG), dated July 29, 2016			
42	<p>Our first comment is that it was our observation under the <i>2007 Conditional Waiver of Waste Discharge Requirements for Discharges from Agricultural and Nursery Operations</i> (Agricultural Waiver) well under one-half of the qualifying farm operations in the region were compelled to join a monitoring group. With that history we think it should be acknowledged that the Third-Party Groups may face challenges in meeting the expectations and requirements of the Third-Party General Order. The Third-Party Groups will have no capacity or reach beyond their combined Member base.</p>	<p>The San Diego Water Board supports the Third-Party approach to regulating agricultural discharges, as permitted by the NPS Policy and the Third-Party General Order. It is in the interest of the San Diego Water Board to maximize enrollment of Agricultural Operations in the Third-Party General Order through approved Third- Party Groups. From a resource perspective, Third-Party Groups allow the San Diego Water Board to leverage limited regulatory staff by acting as intermediaries between the San Diego Water Board and the Agricultural Operations, freeing San Diego Water Board resources to focus on problem areas or actors. Third-Party Groups frequently have the expertise to provide technical assistance and training to growers at a scale that cannot be matched by</p>	None necessary

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		<p>the San Diego Water Board resources, and in many cases Third-Party Groups already have existing relationships with Agricultural Operations.</p> <p>Following adoption of the Tentative General Orders, the San Diego Water Board intends to implement outreach efforts to educate growers on the enrollment requirements of the Tentative General Orders and to closely coordinate such efforts with qualifying Third- Party Group representatives. The San Diego Water Board recognizes that an effective enforcement program is needed to achieve full enrollment and compliance with the adopted General Orders and to eliminate any economic advantage to those who elect not to comply with the enrollment requirements of the adopted General Orders.</p> <p>The San Diego Water Board follows the State Enforcement Policy and uses progressive levels of enforcement, as necessary, to assure compliance in all water quality programs. See Response to Comment No. 5.</p>	
43	<p>The second comment is in regards to wholesale nurseries. In the San Diego Region wholesale nurseries are under two layers of regulation. Nurseries are subject to a schedule of fees and periodic inspections by the Co-permittees under Municipal Separate Storm System (MS4) Permit. Additionally, wholesale nurseries will be included for compliance with the Third-Party General Order. We believe the Third-Party General Order will protect the waters of the region and wholesale nurseries should be relieved of their obligation of fees and inspections under the MS4 Permit when they can show their respective co-permittee that they are Members of a Third-Party Group and in compliance with the obligations in the Third-Party General Order.</p>	<p>The San Diego Water Board has no authority to relieve nurseries of their obligation to pay fees to the owners and operators of MS4 systems (referred to as Copermittees) receiving discharges from nurseries. While section II.E.5.c of the Regional MS4 Permit requires Copermittees to conduct inspections to ensure compliance with applicable local laws and the requirements of the MS4 Permit, the MS4 Permit does not require Copermittees to collect fees from wholesale nurseries to conduct these inspections.</p> <p>The San Diego Water Board does not agree that the Copermittees must be relieved of the requirement to inspect wholesale nurseries that are enrolled in the Tentative General Orders and discharge to an MS4. The Regional MS4 Permit includes specific inspection requirements that are not required by the Tentative General Orders, and the</p>	None necessary

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		information obtained during the inspections is needed to assist the Copermittees with ensuring their compliance with the MS4 Permit.	
44	<i>Third-Party General Order section I.D</i> - It is stated here that a property owner could be held responsible for failure by a tenant to comply with the Tentative General Order. We are concerned that the prospect for transferring compliance responsibility to the property owner as a result of an operator's failure would have a dampening effect on the availability of leased land for farming.	The property owner has the ultimate responsibility for the condition of the land and wastes discharged at the property. The State Water Board addressed the issue of landowner liability in a series of orders during the 1980s dealing with review of regional water board decisions on who is responsible for cleanups (for example see Order No. WQ 86-11, <i>In the Matter of the Petition of Southern California Edison Company for Review of Order No. 6-86-5 of the California Regional Water Quality Control Board, Lahontan Regional Board</i>). If the lessee (tenant) fails to control the discharge or comply with the Tentative General Orders, the San Diego Water Board has the discretion to place responsibility on the landowner. While most property owners may not enroll under the Tentative General Orders, naming the property owner in the WDRs serves to put landlords on notice that an agricultural tenant's activities may be a potential source of liability.	None necessary
45	<i>Third-Party General Order section I.G.3</i> - The following addition (shown as underline) is suggested by the SDRILG to include those operators who have failed to obtain an Operation Identification Number though required by law: The owner or operator of the Agricultural Operation holds <u>or is required to hold</u> a current Operator Identification Number/Permit from a local County Agricultural Commissioner for pesticide use reporting.	See response to Comment No. 20.	See response to Comment No. 20
46	<i>Third-Party General Order section I.O</i> - While it is understood that this Third-Party General Order does not address dischargers who are not participating in a Third-Party Group, we think it would be appropriate to mention here that a second order exists. If a discharger only referenced this order they would be made aware that not being a Member of an approved Third-Party Group requires individual	Section I.A of the Third-Party General Order states the following: <i>This General Order serves as Tentative General Orders for waste discharges from Agricultural Operations unless the discharges are covered by other applicable Tentative General Orders for</i>	None necessary

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	compliance.	<p><i>Individual Agricultural Operations.</i>¹</p> <p>Footnote 1 provides the reference for the Individual General Order.</p>	
47	<p><i>Third-Party General Order section III.B.1</i> - It is stated here that Members have 180 days from the effective date of the Third-Party General Order in order to submit a completed NOI, which will come through the Third-Party Group. The 180 day timeframe will be very difficult to meet. From the effective date of the Third-Party General Order, the Third-Party Group must first apply for and receive a Notice of Applicability (NOA) from the San Diego Water Board before any work can begin. The Third-Party Group must then launch the enormous task of enrolling Members and assisting Members to complete their individual WQPPs. Creating electronically transmittable WQPPs will require the development of custom software. In this same timeframe the Third-Party Group is required to submit its Monitoring Program Plan. At best, we believe it will take 270 days for the Third-Party Group to be in a position to submit the NOI's for its Members.</p>	<p>The San Diego Water Board agrees that 180 days may not provide sufficient time for Third-Party Groups to seek San Diego Water Board approval prior to developing their membership and assisting their Members with developing WQPPs. The San Diego Water Board has made the following modifications to the Third-Party General Order (noting that the modifications also address Comment No. 65):</p> <p><i>Third-Party General Order section III.B.1:</i></p> <p>Existing Dischargers without active coverage in other applicable general or individual Tentative General Orders shall submit a completed NOI (Attachment G) to enroll under this General Order no later than the 480 270 days following the effective date of this General Order.</p> <p><i>Third-Party General Order section VIII.C.1:</i></p> <p>Within 480 270 days of receipt of the NOA, Third-Party Groups shall submit a Surface Water and Groundwater Monitoring Program Plan (Monitoring Program Plan), as described in section VI of the MRP (Attachment A), to the San Diego Water Board for review and approval. Third-Party Groups must implement the Monitoring Program Plan within 90 days of approval.</p> <p><i>Third-Party General Order Attachment A, MRP section VI:</i></p> <p>Third-Party Groups shall prepare and submit a detailed Surface Water and Groundwater Monitoring Program Plan (Monitoring Program Plan) to implement the surface water and groundwater (if applicable) monitoring requirements specified in this MRP. The</p>	<p>Modified Third-Party General Order sections III.B.1 and VIII.C.1 and Attachment A MRP section VI</p> <p>Modified Individual General Order section II.B.1</p>

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		<p>Monitoring Program Plan is required under section VIII.C.1 of this General Order and shall be submitted 480 270 days after receipt of the NOA.</p> <p>The deadline for existing Agricultural Operations to enroll in the Individual General Order (section II.B.2) has also been increased to 270 days following adoption of the Individual General Order. No additional time is needed to develop a Monitoring Program Plan for those enrolling in the Individual General Order because Individual enrollees need only develop a Monitoring Program Plan specific to their Agricultural Operation. The Individual General Order has been modified as follows:</p> <p><i>Individual General Order section II.B.1:</i></p> <p>Existing Dischargers without active coverage in other applicable general or individual WDRs shall submit a completed NOI (Attachment G) to enroll under this General Order no later than 480 <u>270</u> days following the effective date of this General Order.</p>	
48	<p><i>Third-Party General Order section III.C.1 - We are concerned about the requirement that the Members' WQPP must be sent to the San Diego Water Board. Information within WQPPs will contain intellectual property, trade secrets, and proprietary information, much of which has no correlation or nexus to the San Diego Water Board's authority to regulate water quality. Prior to any request for the entire WQPP, the San Diego Water Board should make a finding showing the necessity of the data and information required to be submitted and how such data is related to water quality. Such information must remain confidential. The Porter-Cologne Act explicitly provides protection to Members for intellectual property, trade secrets, and proprietary information that may be within a WQPP, monitoring report, or technical submittal:</i></p> <p><i>"When requested by the person furnishing a report, the</i></p>	<p>Although the San Diego Water Board recognizes that Members/Dischargers have concerns regarding the privacy of information provided in WQPPs, the WQPPs are required to contain only generalized information and do not run counter to competitive advantage or trade secret concerns. Moreover, the existing exemptions to the Water Code (see Water Code section 13267, subd. (b)(2)) and to the Public Records Act (see Government Code section 6254, subd. (k); and Evidence Code section 1060), which allow withholding of information deemed trade secrets and secret processes, are sufficient to protect the most sensitive information submitted.</p> <p>In order to establish a process by which a Member/Discharger may assert that all or a portion of the WQPP or other report is exempt from public disclosure, the San Diego Water Board has modified the Tentative</p>	<p>Added Third-Party General Order section IX.D.5</p> <p>Added Individual General Order section VII.D.5</p>

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	<p><i>portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report (Water Code section 13267(b)(2)).</i></p> <p>Thus, the San Diego Water Board must acknowledge that farm specific information, including pesticide application, irrigation practices, mapping, crop rotations, best management practices, etc. are intellectual property, trade secrets, and proprietary information that must remain confidential.</p> <p>Keeping information within WQPPs on farms rather than submitting them to the San Diego Water Board does not hinder the San Diego Water Board's ability to regulate water quality nor will it prevent the San Diego Water Board from obtaining information it deems necessary. Water Code section 13267 specifically provides the San Diego Water Board with the authority to "investigate the quality of any waters of the state within its region." (Water Code section 13267(a)). In doing so, the statute further provides the San Diego Water Board with the authority to require "any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge ... (to) furnish, ... technical or monitoring program reports which the regional board requires."</p> <p>Our suggestion is to have the Member submit the WQPP to the Third-Party Group for verification of completion and task the Third-Party Group with acknowledging in the NOI that the WQPP is complete and in possession of the Member and available for inspection should an investigation be launched.</p>	<p>General Orders as follows (noting that the modifications also address Comment No. 58):</p> <p><i>Third-Party General Order section IX.D.5:</i></p> <p><u>All reports prepared and submitted to the San Diego Water Board in accordance with the terms of this General Order will be made available for public inspection at the offices of the San Diego Water Board, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including the Public Records Act, Water Code section 13267(b)(2), and the California Food and Agriculture Code. If the Third-Party Group or a Member of the Third-Party Group asserts that all or a portion of a report is subject to an exemption from public disclosure, it must clearly indicate on the cover of the report that it asserts that all or a portion of the report is exempt from public disclosure. The complete report must be submitted with those portions that are asserted to be exempt in redacted form, along with separately-bound unredacted pages (to be maintained separately by San Diego Water Board). The Member/Third-Party Group shall identify the basis for the exemption. If the San Diego Water Board cannot identify a reasonable basis for treating the information as exempt from disclosure, the Executive Officer will notify the Member/Third-Party Group that the information will be placed in the public file unless the San Diego Water Board receives, within 10 calendar days, a satisfactory explanation supporting the claimed exemption. Data on waste discharges, water quality, meteorology, geology, and hydrogeology shall not be considered confidential. NOIs, WQPPs, and WQRPs shall generally not be considered exempt from disclosure.</u></p>	

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		<p><i>Individual General Order section VII.D.5:</i></p> <p><u>All reports prepared and submitted to the San Diego Water Board in accordance with the terms of this General Order will be made available for public inspection at the offices of the San Diego Water Board, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including the Public Records Act, Water Code section 13267(b)(2), and the California Food and Agriculture Code. If the Discharger asserts that all or a portion of a report is subject to an exemption from public disclosure, it must clearly indicate on the cover of the report that it asserts that all or a portion of the report is exempt from public disclosure. The complete report must be submitted with those portions that are asserted to be exempt in redacted form, along with separately-bound unredacted pages (to be maintained separately by San Diego Water Board). The Discharger shall identify the basis for the exemption. If the San Diego Water Board cannot identify a reasonable basis for treating the information as exempt from disclosure, the Executive Officer will notify the Discharger that the information will be placed in the public file unless the San Diego Water Board receives, within 10 calendar days, a satisfactory explanation supporting the claimed exemption. Data on waste discharges, water quality, meteorology, geology, and hydrogeology shall not be considered confidential. NOIs, WQPPs, and WQRPs shall generally not be considered exempt from disclosure.</u></p>	
49	<p><i>Third-Party General Order section III.C.2 – References XII.C. Should be VII.C.</i></p>	<p>The San Diego Water Board has revised the Third-Party General Order as requested.</p>	<p>Modified Third-Party General</p>

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			Order section III.C.2
50	<p><i>Third-Party General Order section III.C.3</i> - We acknowledge that the State Water Board gives the San Diego Water Board authority to set a one-time application fee. Though it is a repeat of State statute, the mention here that fees don't apply to those who were Members of a group before June 30, 2008, seems inappropriate to be placed in the Order in that the San Diego Water Board didn't even require Membership in a group until well after that date. Making it appear relief from the fee was possible is misleading.</p> <p>The imposition of an application fee by the San Diego Water Board would be a disincentive for participation. In essence, Members are being asked to be funders of the oversight of the Third-Party General Order. It should be the responsibility of the San Diego Water Board to petition the State Water Board for sufficient funding to carry out the Third-Party General Order. We strongly believe this is an inappropriate transfer of responsibility. Members will face the costs of administering their Third-Party Group plus the ongoing cost of monitoring and WQPP enactment. It is imperative that the San Diego Water Board set aside the imposition of an application fee.</p>	<p>Each person subject to WDRs must submit an annual fee to the State Board. The State Water Board's Division of Administrative Services – Fee Branch has the responsibility for setting annual fees for the Water Quality Program, which includes all agricultural regulatory programs. (See response to Comment No. 39 for additional background information.)</p> <p>The fee schedule for WDRs and waivers of WDRs for discharges from agricultural lands is set forth in CCR title 23, division 3, chapter 9, section 2200.6. The San Diego Water Board does not have the authority to waive these fees except under limited circumstances stipulated in section 2206.6(b) which provides: "b. Upon approval by the Regional Board to join a group subject to waste discharge requirements or waivers of waste discharge requirements for discharges from agricultural lands, including irrigated lands, the discharger shall submit to the State Water Board an application fee, unless such fee is not required by the Regional Board. The application fee is a one-time fee of \$200 for dischargers that have received a written request to submit an application or report of waste discharge, and \$50 for all other dischargers. This application fee shall not apply to dischargers who were members of a group on or before June 30, 2008."</p> <p>The San Diego Water Board agrees that waiving the one-time application fee for approved Members of Third-Party Groups who submit a timely NOI for enrollment under the Third-Party General Order by the deadlines specified in section III.B will provide an incentive for compliance and participation in the Third-Party Groups. However, the one-time application fee should be retained for Members of Third-Party Groups who do not submit timely NOI applications by the deadlines specified in the Third-Party</p>	<p>Modified Third-Party General Order section III.C.3</p> <p>Modified Draft Initial Study, CEQA Environmental Checklist, Section 2 – Agricultural and Forest Resources, Anticipated Costs, WDR Fees</p>

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		<p>General Order.</p> <p>Based on these considerations the San Diego Water Board has modified the Third-Party General Order as follows:</p> <p><i>Third-Party General Order section III.C.3:</i></p> <p>One-time application fee made payable to "SWRCB" in accordance with CCR title 23, division 3, chapter 9, section 2200.6(b). <u>The one-time application fee is waived for approved Members of Third-Party Groups who submit a timely NOI for enrollment by the deadlines specified in section III.B of this General Order. This application fee does not apply to dischargers who were Members of a group on or before June 30, 2008.</u> The fee regulations can be accessed online at http://www.waterboards.ca.gov/resources/fees/water_quality/</p> <p><i>Draft Initial Study, CEQA Environmental Checklist, Section 2 – Agricultural and Forest Resources, Anticipated Costs, WDR Fees:</i></p> <p><u>Agricultural Operations enrolled in the General Orders will pay annual WDR fees to the State Water Board. Annual WDR fees are established by the State Water Board and can be found in the California Code of Regulations (CCR) title 23, section 2200.6. The fees are assessed based on the type of enrollment (Individual or as a Member of a Third-Party Group), and the acreage of the Agricultural Operation. The 2015-16 annual fees for Individuals and for Members of a Third-Party Group are presented in Tables 1 and 2, respectively.</u></p> <p><u>Additionally, Agricultural Operations that were not members of a Third-Party Group on or before June 30, 2008 are required to pay a one-time enrollment</u></p>	

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		<p><u>fee. The fee is \$200 for Agricultural Operations that receive a written request to submit an application for enrollment (NOI), and \$50 for all other dischargers.</u></p> <p><u>The San Diego Water Board does not have the authority to waive these fees except under limited circumstances stipulated in section 2206.6(b) which provides: "b. Upon approval by the Regional Board to join a group subject to waste discharge requirements or waivers of waste discharge requirements for discharges from agricultural lands, including irrigated lands, the discharger shall submit to the State Water Board an application fee, unless such fee is not required by the Regional Board. The application fee is a one-time fee of \$200 for dischargers that have received a written request to submit an application or report of waste discharge, and \$50 for all other dischargers. This application fee shall not apply to dischargers who were members of a group on or before June 30, 2008."</u></p> <p><u>The San Diego Water Board will waive the one-time application fee for approved Members of Third-Party Groups who submit a timely NOI for enrollment under the Third-Party General Order by the deadlines specified in section III.B. This will provide an incentive for compliance and participation in the Third-Party Groups.</u></p> <p>For more information regarding fees, please refer to the response to Comment No. 39.</p>	
51	<p><i>Third-Party General Order section V.A</i> - On this list of ten discharge specifications several are vague and leave room for interpretation. Even if complying with other aspects of the order, our concern would be that the Third-Party Group or Members could be challenged. Specifically:</p> <p>1. What would determine if a discharge is "contributing"</p>	<p>The Tentative General Orders will be adopted by the San Diego Water Board under the authority of the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), specifically Water Code sections 13263 and 13267. Among other mandates section 13263 subd. (a) requires the San Diego Water Board to set WDRs that implement applicable water quality control plans, including water</p>	None necessary

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	<p>to surface erosion in an arroyo (wash), which is basically an ephemeral stream channel that discharges after storms and is almost always eroding the streambed by definition?</p> <p>3. As this is not drinking water, objectionable taste does not seem applicable as it is subjective.</p> <p>9. Who is going to determine the amount of settleable material that degrades a benthic community?</p> <p>10. Who determines how much natural light loss "significantly" degrades the communities?</p>	<p>quality objectives. Consistent with this requirement discharge specifications in section V.A of the Third-Party General Order and section IV.A of the Individual General Order were derived from applicable Basin Plan narrative water quality objectives.</p> <p>For instance, discharge specification 3 states, "<i>The waste shall not contain materials or substances in amounts that cause or contribute to the occurrence of objectionable tastes or odors in surface waters or groundwater.</i>"</p> <p>Undesirable tastes and odors in waters of the State may be a nuisance and may indicate the presence of pollutants. This discharge specification provides a basis for ensuring that the discharge does not cause or contribute to violations of the narrative <i>Water Quality Objectives for Taste and Odor</i> on page 3-32 of the Basin Plan which provides in relevant part that that "<i>Waters shall not contain taste or odor producing substances at concentrations which cause a nuisance or adversely affect beneficial uses.</i>"</p> <p>Moreover, many surface water bodies located in areas of Agricultural Operations, such as the San Luis Rey River, the Santa Margarita River, and Rainbow Creek, are designated in the Basin Plan as having Municipal and Domestic Supply (MUN), which includes uses of water for community, military, or individual water supply systems, including but not limited to drinking water supply) existing beneficial uses (See Table 2-2 of the Basin Plan). Additionally, groundwater in areas of Agricultural Operations are also designated in the Basin Plan as having existing MUN beneficial uses (see Table 2-5 of the Basin Plan). Because both surface water and groundwater in areas of Agricultural Operations are designated as having existing beneficial use for Municipal and Domestic Supply, discharge specification 3 is appropriate to include in the General Tentative Orders.</p>	

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		The San Diego Water Board will ultimately determine compliance with the discharge specifications on the basis of monitoring data and other available information.	
52	<p><i>Third-Party General Order section V.B</i> - This section prescribes 10 management measures that growers must follow. Water Code section 13360 prevents Regional Water Boards from prescribing management measures. Section V.B. should be stricken from the Third-Party General Order. To memorialize this understanding the following could be added to the Third-Party General Order:</p> <p><u>The Board is prevented by Water Code section 13360 from prescribing specific management practices to be implemented. However, it may set forth performance standards and require dischargers to report on what practices they have or will implement to meet those standards.</u></p>	<p>Section V.B of the Third-Party General Order and section IV.B of the Individual General Order comply with Water Code section 13360. The listed management practices are performance standards, and the Tentative General Orders do not prescribe how Members/Dischargers are required to meet the performance standards.</p> <p>For example, the Tentative General Orders require Members/Dischargers to maintain a 100 feet buffer zone between compost piles and surface waterbodies. The San Diego Water Board is authorized by Water Code Section 13243 to specify areas where discharges of waste are not permitted. Additionally, this performance standard does not specify how this is to be accomplished. (See section V.B.3 of the Third-Party General Order and section IV.B.3 of the Individual General Order.)</p> <p>For more information regarding performance standards, please refer to the response to Comment Nos. 53 and 54.</p>	None necessary
53	<p><i>Third-Party General Order section V.B</i> - While we believe section V.B. should be stricken, should the San Diego Water Board see fit to ignore Water Code section 13360, the following amendments should be made:</p> <p>1. Not apply <u>Avoid as best practicable the application of fertilizers, pesticides, herbicides, algaecide, or fumigants within three days prior to a predicted rain event.</u></p> <p>There are several reasons for this suggestion. First, greenhouse applications pose no threat from rain events. Second, use of constant feed fertilizer programs would be interrupted. Constant feed uses very small doses of fertilizer in irrigation water that minimizes any runoff threat and in itself is a preferred management practice. Third, crops could be placed at risk from pests and diseases when serial storms</p>	<p>For the reasons stated in the comment, the San Diego Water Board has modified the Tentative General Orders as follows:</p> <p><i>Third-Party General Order section V.B.1:</i> Not apply <u>To the extent practical, avoid the application of fertilizers, pesticides, herbicides, algaecide, or fumigants within three days prior to a predicted rain event.</u></p> <p><i>Individual General Order section IV.B.1:</i> Not apply <u>To the extent practical, avoid the application of fertilizers, pesticides, herbicides, algaecide, or fumigants within three days prior to a</u></p>	<p>Modified Third-Party General Order section V.B.1</p> <p>Modified Individual General Order section IV.B.1</p>

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	are predicted.	predicted rain event.	
54	<p>(Second part of Comment No. 53)</p> <p>2.a. Municipal solid waste <u>except for biodegradable waste when processed.</u></p> <p>It is our understanding that the definition of municipal solid waste can include green waste and food waste. Processed green waste is important to agricultural operations as mulch, soil additive, and as an input to composting. Though only emerging, the composting of food waste for use on farms is seen as an important future step in reducing waste sent to landfills.</p>	<p>To provide clarification regarding the use of processed biodegradable waste as a soil amendment, the San Diego Water Board has modified the Tentative General Orders as follows:</p> <p><i>Third-Party General Order section V.B.2.a:</i></p> <p>Municipal solid waste <u>except for biodegradable waste meeting the definition of "compost" as defined in Public Resources Code section 40116.</u></p> <p><i>Individual General Order section IV.B.2.a:</i></p> <p>Municipal solid waste <u>except for biodegradable waste meeting the definition of "compost" as defined in Public Resources Code section 40116.</u></p>	<p>Modified Third-Party General Order section V.B.2.a</p> <p>Modified Individual General Order section IV.B.2.a</p>
55	<p><i>Third-Party General Order section VI.A-H</i> - The list of plans, policies, and regulations imply by reference responsibilities for Third-Party Groups that exceed the charts in Attachment A. We suggest a note mentioning the limits of responsibilities as detailed in the Monitoring Requirements</p>	<p>Water Code section 13263(a) provides that WDRs "shall implement any relevant water quality control plans that have been adopted and shall take into consideration the beneficial uses to be protected, [and] the water quality objectives reasonably required for that purpose..." The Tentative General Orders protect the beneficial uses of receiving waters in part through the Receiving Water Limitation (section VI of the Third-Party General Order and section V of the Individual General Order) requirements to comply with applicable water quality standards contained in the water quality control plans and policies and federal regulations listed in Items A through H. The water quality standards contained in these documents are incorporated by reference in the Tentative General Orders as if set forth in full therein.</p> <p>To facilitate compliance, the San Diego Water Board has modified section VI of the Third-Party General Order and section V of the Individual General Order to remove the specific list of plans and policies and has identified water quality benchmarks for specific waste constituents</p>	<p>Modified Third-Party General Order section VI and Attachment B, Fact Sheet section VI</p> <p>Modified Individual General Order section V and Attachment B, Fact Sheet section V</p>

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		<p>required to be monitored and the applicable water quality standards. The water quality benchmarks for the receiving water standards are set forth in the Monitoring and Reporting Program (MRP) for the Tentative General Orders.</p> <p>Section VI of Attachment B (Fact Sheet) to the Third-Party General Order, and section V of Attachment B (Fact Sheet) to the Individual General Order have also been revised to include tables to add additional clarity on the applicable water quality standard and beneficial use(s) being protected.</p>	
56	<p><i>Third-Party General Order section VII.A.4</i> - We suggest allowing for web access for Members to the requirements of this section. It is possible that the amount of data required will exceed the capacity of some Member's computer systems. Third-Party Groups could store all the data and give Members direct access.</p>	<p>The Third-Party General Order does not prohibit Third-Party Groups from electronically storing documents and data on behalf of its Members. Copies of site-specific planning documents for an Agricultural Operation that are intended to be periodically referenced by the Member and his/her employees, such as the NOA and the WQPP, should be available on-site or easily accessed electronically.</p>	None necessary
57	<p><i>Third-Party General Order section VII.B.1</i> - The doubling of water quality training from the two hours under the Agricultural Waiver to four hours is excessive and will be seen as punitive. In addition to the required training, the Third-Party Group will be in regular communication with its Members discussing water quality protection issues. Also, the record-keeping, WQPP, quarterly self-inspection, and annual self-assessment will act as education opportunities for Members. The two-hour standard is adequate.</p>	See response to Comment No. 3.	See response to Comment No. 3
58	<p><i>Third-Party General Order section VII.C.2</i> - We are concerned about the requirement that the members' WQPP must be sent to the San Diego Water Board. Information within WQPPs will contain intellectual property, trade secrets, and proprietary information, much of which has no correlation or nexus to the San Diego Water Board's authority to regulate water quality. Prior to any request for the entire</p>	See response to Comment No. 48.	See response to Comment No. 48

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	<p>WQPP, the San Diego Water Board should make a finding showing the necessity of the data and information required to be submitted and how such data is related to water quality. Such information must remain confidential. The Porter-Cologne Act explicitly provides protection to members for intellectual property, trade secrets, and proprietary information that may be within a WQPP, monitoring report, or technical submittal:</p> <p>“When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report (Water Code section 13267(b)(2)).”</p> <p>Thus, the San Diego Water Board must acknowledge that farm specific information, including pesticide application, irrigation practices, mapping, crop rotations, best management practices, etc. are intellectual property, trade secrets, and proprietary information that must remain confidential.</p> <p>Keeping information within WQPPs on farm rather than submitting them to the San Diego Water Board does not hinder the San Diego Water Board's ability to regulate water quality nor will it prevent the San Diego Water Board from obtaining information it deems necessary. Water Code section 13267 specifically provides the San Diego Water Board with the authority to "investigate the quality of any waters of the state within its region." (Water Code section 13267(a).) In doing so, the statute further provides the San Diego Water Board with the authority to require "any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge ...</p>		

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	<p>(to) furnish, ... technical or monitoring program reports which the regional board requires."</p> <p>Our suggestion is to have the member submit the WQPP to the Third-Party Group for verification of completion and task the Third-Party Group with acknowledging in the NOI that the WQPP is complete and in possession of the member and available for inspection should an investigation be launched.</p>		
59	<p><i>Third-Party General Order section VII.C.4 - "Periodically evaluate" is vague. A requirement exists for quarterly self-inspections on a defined schedule. We suggest elimination of C.4.</i></p>	<p>The Tentative General Orders require Dischargers to design, implement, and maintain effective management practices to reduce or eliminate sources of NPS pollution.</p> <p>An effective inspection program is needed to ensure that the deployed management practices are working effectively to address site-specific pollutants.</p> <p>To clarify the minimum frequency for evaluating the effectiveness of deployed management practices, the San Diego Water Board has modified the Tentative General Orders as follows:</p> <p><i>Third-Party General Order section VII.C.4:</i></p> <p><u>At least quarterly.</u> Members shall periodically evaluate the effectiveness of the management practices in the WQPP and make modifications to the WQPP as necessary.</p> <p><i>Third-Party General Order section VII.D.1:</i></p> <p><u>At least quarterly</u> Quarterly during the months of March, June, September, and December, Members shall inspect the Agricultural Operation to assess the operation and maintenance of installed management practices and to correct any deficiencies.</p> <p><i>Individual General Order section VI.C.4:</i></p> <p><u>At least quarterly.</u> Dischargers shall periodically evaluate the effectiveness of the management practices in the WQPP and make modifications to the</p>	<p>Modified Third-Party General Order sections VII.C.4 and VII.D.1</p> <p>Modified Individual General Order sections VI.C.4 and VI.E.1</p>

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		<p>WQPP as necessary.</p> <p><i>Individual General Order section VI.E.1:</i></p> <p>At least quarterly Quarterly during the months of March, June, September, and December, Dischargers shall inspect the Agricultural Operation to assess the operation and maintenance of installed management practices and to correct any deficiencies.</p>	
60	<p><i>Third-Party General Order section VII.6.i</i> - The agricultural chemicals used on a farming operation is in constant flux depending on the season, crops grown, environmental conditions, and pest or disease challenges. Requiring that the WQPP contain a list of chemicals would mean constant amendment of the WQPP. The WQPP is to be kept on-site and made available to the San Diego Water Board upon request. We suggest that the requirement for disclosure of chemicals used only be required when the San Diego Water Board makes a request to review the WQPP.</p>	<p>The San Diego Water Board recognizes that the Discharger may not be able to forecast all of the agricultural chemicals that will be used in a given year at an Agricultural Operation. However, it is important for the Discharger to select management practices that are appropriate for the agricultural chemicals that are used. In order for the San Diego Water Board to assess the sufficiency of the WQPP for any given Agricultural Operation, it is appropriate to include a list of the types of agricultural chemicals typically used at the Agricultural Operation. To clarify this expectation, the San Diego Water Board has modified the Tentative General Orders as follows:</p> <p><i>Third-Party General Order section VII.C.6.i:</i></p> <p>List of agricultural chemicals <u>typically</u> applied to crops at the Agricultural Operation, including but not limited to fertilizers and organic amendments, pesticides, and fumigants.</p> <p><i>Individual General Order section VI.C.6.h:</i></p> <p>List of agricultural chemicals <u>typically</u> applied to crops at the Agricultural Operation, including but not limited to fertilizers and organic amendments, pesticides, and fumigants.</p>	<p>Modified Third-Party General Order section VII.C.6.i</p> <p>Modified Individual General Order section VI.C.6.h</p>
61	<p><i>Third-Party General Order section VII.C.6.k.ii</i> - This mapping requirement is onerous and impractical. For a Member to</p>	<p>See response to Comment No. 25.</p>	<p>See response to</p>

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	survey all properties within one mile of his or her property boundary for all items mentioned in this section is beyond the capacity of any individual. Also, to expect a Member to report to the San Diego Water Board what is taking place on what could amount to hundreds of parcels is a possibly serious violation of privacy. We suggest an amendment that makes these mapping requirements apply solely to the Member's property.		Comment No. 25
62	<i>Third-Party General Order section VII.C.6.k.ix</i> - Proposed monitoring locations will be a discussion between the Third-Party Group and the San Diego Water Board. One of the advantages of joining a Third-Party Group is the group monitoring. Location of the monitoring stations is not relevant to Members. Also, every Member would be required to have in their WQPP the identical map retained by every other Member. We suggest that the Third-Party Group be required to make the map available upon request to Members and that this requirement be stricken.	For the reasons stated by the commenter, the San Diego Water Board agrees and has modified the Third-Party General Order to remove this requirement.	Modified Third-Party General Order section VII.C.6.k
63	<i>Third-Party General Order section VII.C.6.m and n</i> - We suggest deletion of both requirements. Item C.7 that follows is in essence a duplication.	<p>Sections VII.C.6.m, VII.C.6.n, and VII.C.7 of the Third-Party General Order and sections VI.C.6.l, VI.C.6.m, and VI.C.7 of the Individual General Order are actually three separate requirements addressing the construction, operation, maintenance, and evaluation of management practices:</p> <p>Sections VII.C.6.m and VII.C.6.n of the Third-Party General Order and sections VI.C.6.l and VI.C.6.m of the Individual General Order can be consolidated into a single requirement in each General Order.</p> <p>Section VII.C.7 of the Third-Party General Order and section VI.C.7 of the Individual General Order require Members/Dischargers to periodically evaluate whether or not the management practice selected is actually the appropriate management practice for the site. If not, the Member/Discharger should consider choosing another</p>	<p>Modified Third-Party General Order Sections VII.C.6.m and n.</p> <p>Modified Individual General Order section VI.C.6.l and m.</p>

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		<p>more appropriate management practice.</p> <p>Based on these considerations the Tentative General Orders are revised as follows:</p> <p><i>Third-Party General Order Section VII.C.6.m and Individual General Order section VI.C.6.l are changed to:</i></p> <p>A detailed description of each current and proposed management practice, including its purpose, operational status, and a time schedule for the <u>operation and maintenance of current management practices</u>, and a time schedule for if the construction, and implementation, operation and maintenance, if the <u>of proposed management practices</u> is not currently in use. This includes but is not limited to management practices related to irrigation efficiency and management, pesticide management, nutrient management, salinity management, and sediment and erosion control to achieve compliance with this General Order. <u>This also includes management practices required to address applicable TMDLs, including but not limited to management practices identified in the Rainbow Creek Nutrient Management Plan.</u> The time schedule <u>for construction and implementation of proposed management practices</u> shall reflect the shortest practicable time required to perform each task and shall include a final date for construction and implementation. The schedule may not be longer than that which is reasonably necessary to achieve compliance with the receiving water limitations contained in section VI of this General Order.</p> <p><i>Third-Party General Order Section VII.C.6.n. and Individual General Order section VI.C.6.m. are deleted.</i></p>	

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		A detailed schedule for operation and maintenance of each current or proposed management practice.	
64	<p><i>Third-Party General Order section VIII.B</i> - As an overall comment on this section the Third-Party Group will be challenged to fulfill any portion of a WQRP if a minority of farms in the region are Members of a group. In essence, the Third-Party Group, and its Members, will be burdened with monitoring and testing for non-members in order to meet the requirement for showing that exceedances are attributable to non-Members. This will serve as a major disincentive to remain in a group when Members learn they carry the burden and cost of discovering the pollutant contributions of non-members.</p>	<p>By selecting monitoring locations in accordance with Attachment A section III.B.1 of the Third-Party General Order, the Third-Party Group will reduce or eliminate the likelihood that an exceedance of a water quality benchmark is due to non-Members.</p> <p>Moreover, under the terms and conditions of the Tentative General Orders, both Third-Party Group Members and individual Dischargers are subject to the same requirements to not cause or contribute to exceedances of water quality standards except where a clearly articulated program of management practice implementation with a finite time schedule such as that described in the WQRP is established. Both Third-Party Groups and non-member individual Dischargers are subject to the same burden of preparing and implementing a WQRP in the event that a water quality benchmark is exceeded. Where the source of an exceedance is from a Discharger not enrolled under either the Tentative General Orders or individual WDRs, the Discharger would be subject to administrative civil liability. In the Central Valley, failing to enroll in the irrigated lands regulatory program resulted in fines ranging from \$10,000 to upwards of \$300,000 by the Central Valley Regional Water Quality Control Board.</p>	None necessary
65	<p><i>Third-Party General Order section VIII.D.3</i> – It is stated here that Dischargers have 180 days from the effective date of the General Order in order to submit a completed NOI, which will come through the Third-Party Group. The 180 day timeframe will be very difficult to meet. From the effective date of the Third-Party General Order the Third-Party Group must first apply for and receive a NOA from the San Diego Water Board before any work can begin. The Third-Party Group must then launch the enormous task of enrolling members</p>	See response to Comment No. 47.	See response to Comment No. 47

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	<p>and assisting members to complete their individual WQPPs. Creating electronically transmittable WQPPs will require the development of custom software. In this same timeframe the Third-Party Group is required to submit its Monitoring Program Plan. At best, we believe it will take 270 days for the Third-Party Group to be in a position to submit the NOI's for its members.</p>		
66	<p><i>Third-Party General Order section IX.A.1</i> – This paragraph should be revised to clarify that the Third-Party Group is not the discharger under the Third-Party General Order. Thus, certain enforcement actions and violations of the Third-Party General Order do not apply to the Third-Party Group.</p>	<p>The San Diego Water Board agrees with the comment but does not agree that revision of Provision IX.A.1 is necessary. The requirements of the Third-Party General Order clearly articulate the requirements that apply to Third-Party Groups and the requirements that apply to Members of a Third-Party Group. As provided in section IX.F.1 of the Third-Party General Order, Third-Party Groups are tasked with assisting Members in carrying out certain terms and conditions of the order including but not limited to fee collection, conducting specified monitoring, maintaining a list of Members, and reporting monitoring results to the San Diego Water Board. Third Party Groups are not “Dischargers”. However, Members, and any non-Member owner or operator that cause or permit the discharge of waste are “Dischargers” and would bear ultimate responsibility for complying with the Third-Party General Order. Any violation or threatened violation of the conditions of the Third-Party General Order would subject Members, and any non-Member owner or operator to any remedies, penalties, process or sanctions as provided for under State law. (See Provision IX.F1 of the Third Party General Order.)</p> <p>To provide clarity sections IX.F.2 has been modified as follows:</p> <p><i>Third-Party General Order section IX.F.2:</i> Enforcement Authority – Third-Party Groups Failure to comply with the applicable terms and</p>	<p>Modified Third-Party General Order section IX.F. 2</p>

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		<p>conditions of this General Order may result in <u>revocation of approval to act as a Third-Party Group termination of coverage under this General Order.</u> Affected Dischargers would be required to join an approved Third-Party Group or obtain coverage under other applicable general or individual WDRs. <u>In the event of any violation or threatened violation of the conditions of this General Order applicable to Third- Party Groups, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law.</u></p>	
67	<p><i>Third-Party General Order section IX.A.3</i> - The title of this provision should be changed as "Duty to Mitigate" is not appropriate. A possible title would be "Reasonable Compliance".</p>	<p>To address the comment, the San Diego Water Board has modified the Tentative General Orders as follows:</p> <p><i>Third-Party General Order section IX.A.3:</i> <u>Duty to Mitigate-Minimize or Prevent Discharges</u></p> <p><i>Individual General Order section VII.A.3:</i> <u>Duty to Mitigate-Minimize or Prevent Discharges</u></p>	<p>Modified Third-Party General Order section IX.A.3 Modified Individual General Order section VII.A.3</p>
68	<p><i>Third-Party General Order section IX.A.6</i> - We suggest that Members be given a minimum of five business days notice that consent will be requested for inspection. This will possibly avoid the initiation of the warrant process and avoid confrontational meetings.</p>	<p>As provided in section IX.A.6 of the Third-Party General Order the San Diego Water Board will inspect Agricultural Operations under the authority of Water Code section 13267 subd.(c) to ascertain whether WDRs are being complied with. While such inspections may be conducted without prior notice, the inspections must be made with the consent of the owner or possessor of the facilities, or if consent is withheld, with a duly issued warrant.</p> <p>While the San Diego Water Board has the legal authority to perform unnoticed inspections, the San Diego Water Board may elect to notify a Member/Discharger prior to conducting an inspection based on site-specific considerations, such as the purpose of the inspection, the findings of previous inspections, and the compliance history of the Agricultural Operation.</p>	None necessary

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69	<p><i>Third-Party General Order section IX.D.2</i> - The record retention requirement in this section seems appropriate for Third-Party Groups. However, asking Members to retain all records and reports connected to the group monitoring process for five years, or even one year, is excessive and serves no purpose. Those records will be held by the Third-Party Group and readily available at any time to the Members.</p>	<p>It appears that the SDILRG is reading section IX.D.2 of the Third-Party General Order to require Third-Party Groups <i>and</i> their Members to <i>individually</i> retain all of the records pertaining to compliance with the Order. However, that is not the intention of section IX.D.2 of the Third-Party General Order. It is the expectation of the San Diego Water Board that Third-Party Groups <i>or</i> their Members <i>or</i> Third-Party Groups on behalf of their Members must retain all of the records pertaining to compliance with the Order for a period of five years. For instance, the monitoring information may be retained by the Third-Party Group only on behalf of their Members.</p>	None necessary
70	<p><i>Third-Party General Order section IX.E.2-4</i> - Not allowing electronic signatures on document submittals will be a burden to Third-Party Groups and Members. Five reports per year (four quarterly Self-Inspection Reports and one Annual Self-Assessment) must be completed by each Member and submitted to the Third-Party Group. Each report carries a signature requirement. For a Third-Party Group with a reasonably to be expected 2,500 Members there would be a requirement to collect 10,000 physical signature pages annually which must then be scanned and submitted to the San Diego Water Board. Electronic signatures are in common use and should be allowed.</p>	<p>The San Diego Water Board agrees that electronic signatures are acceptable and has revised the Tentative General Orders as follows:</p> <p><i>Third-Party General Order section IX.E.3:</i> <u>Signature and Certification</u> <u>Reports and information required under this General Order may be signed and certified electronically or in writing. Electronic signatures will have the same legal effect as written signatures.</u> Any person signing a document, plan, or report required by this General Order shall make the following certification:</p> <p><i>Third-Party General Order section IX.E.4:</i></p> <p>Each electronic document shall be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents shall include scanned copies of all signature pages; electronic signatures will not be accepted.</p> <p><i>Individual General Order section VII.E.3:</i></p>	<p>Modified Third-Party General Order sections IX.E.3. and IX.E.4</p> <p>Modified Individual General Order sections VII.E.3 and VII.E.4</p>

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		<p><u>Signature and Certification</u></p> <p><u>Reports and information required under this General Order may be signed and certified electronically or in writing. Electronic signatures will have the same legal effect as written signatures.</u> Any person signing a document, plan, or report required by this General Order shall make the following certification:</p> <p><i>Individual General Order section VII.E.4:</i></p> <p>Each electronic document shall be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents shall include scanned copies of all signature pages; electronic signatures will not be accepted.</p>	
71	<p><i>Third-Party General Order Attachment A section III.B.2.a Table A-1</i> - It should be Flow Velocity and Cross Sectional Area. Stream depth and width can be removed if cross sectional area is included. The calculation of cubic feet per second flow comes from this information. We find cubic feet per day to be an odd requirement.</p>	<p>The San Diego Water Board is requesting stream depth and width to understand not only the cross sectional area of the stream but also to provide more information regarding possible causative factors for changes in stream flow. For example, a decrease in stream depth may indicate accelerated sediment deposition resulting from an increase in the discharge of sediment from upstream sources.</p> <p>The San Diego Water Board has modified the units for flow in Table A-1 in Attachment A of the Third-Party General Order and Table A-1 in Attachment A of the Individual General Order to be cubic feet per second, rather than cubic feet per day, as requested.</p>	<p>Modified MRP Table A-1 in Attachment A of Third-Party General Order</p> <p>Modified MRP Table A-1 in Attachment A of Individual General Order</p>
72	<p><i>Third-Party General Order Attachment A section III.B.2.a Table A-1</i> - We believe Chronic Toxicity should be removed as a monitoring requirement. We fear this testing could result in a very expensive endless loop of testing. Chronic Toxicity can be the result of a number of constituents that are not</p>	<p>Chronic toxicity testing is an essential component of an integrated approach to water quality-based toxics control. Aquatic toxicity tests (toxicity tests) utilize aquatic organisms to examine the adverse chronic effects of a given discharge. The results from these tests are used to detect aggregate toxic effects of known pollutants, and</p>	None necessary

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	related to agriculture.	<p>provide meaningful data when specific pollutants may not be known.</p> <p>Chronic toxicity testing in surface waters receiving agricultural operation discharges allows for an overall assessment of the health of the receiving water body by integrating all stressors affecting that water body, including pesticides, herbicides, and other agricultural chemicals that are not currently required to be tested for individually. The WQRP process will be especially important for evaluating the actual cause of any chronic toxicity determined in a water body. Also, as discussed in the response to Comment No. 64, by selecting monitoring locations in accordance with Attachment A section III.B.1 of the Third-Party General Order, the Third-Party Group will reduce or eliminate the likelihood that an exceedance of a water quality benchmark is due to non-Members.</p>	
73	<p><i>Third-Party General Order Attachment A section III.B.2.c - This section states dry season sample to be collected "after the site has applied pesticides or fertilizers and during an irrigation event."</i> This appears to be an error because Third-Party Groups are doing hydrologic unit level monitoring, not individual farm site-specific. It is suggested the first sentence be deleted.</p>	See response to Comment No.15.	See response to Comment No.15
74	<p><i>Third-Party General Order Attachment A section III.B.2.e - We do not believe that crop type or crop rotation are sufficient reason for an increase in the frequency of surface water sampling. San Diego is a region of permanent crops and crop changes occur over lengthy periods of time. Those two criteria should be eliminated.</i></p>	<p>While it is true that Agricultural Operations that produce certain crops like avocados, nuts, and fruit do not routinely rotate their crops, there are some Agricultural Operations in the San Diego Region that do routinely rotate crops, such as those who grow nursery crops and vegetables. Moreover, Attachment A section III.B.2.e of the Third-Party General Order provides examples of factors that should be considered when determining whether or not an increased sampling frequency is warranted. It is not intended to be an exhaustive list of such factors.</p>	None necessary
75	<p><i>Third-Party General Order Attachment A section IV.B.2.c - This section states that Third-Party Groups shall "confer" and</i></p>	The SMC (www.SoCalSMC.org) is a voluntary coalition of leading storm water and regulatory agencies in the	None necessary

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	<p>"coordinate" with the Southern California Stormwater Monitoring Coalition (SMC) on Regional Bioassessment Monitoring. A clear explanation of the San Diego Water Board's scale and expectations of the Third-Party Group's role in working with SMC is needed.</p>	<p>Southern California area who have joined together via a cooperative agreement to address issues associated with storm water management.</p> <p>There are over 4,200 miles of perennial streams in the coastal watersheds of Southern California that provide habitat, drinking water, agriculture and industrial beneficial uses. Effective protection and management of these aquatic resources require an understanding of their overall health (or condition) and the major stressors (such as agricultural runoff) that affect their condition. In order to address these challenges, the SMC began monitoring stream conditions in 2009 using multiple indicators of ecological health. This survey documented the condition of perennial wadeable streams in the region and set a baseline for monitoring regional trends. The SMC is currently engaged in the implementation of a five year work plan for the years 2015 through 2019 to implement bioassessment monitoring to answer key management questions about the condition of streams in the region.</p> <p>The bioassessment monitoring program of the Third-Party General Order provides an excellent opportunity for Third-Party Groups to collaborate with the SMC bioassessment monitoring effort in ways that not only may reduce sampling costs but also enable integration of the two monitoring efforts to better answer key questions about the water quality impacts of agricultural discharges. The San Diego Water Board's purpose in requiring that Third-Party Groups "confer" and "coordinate" with the SMC on regional bioassessment monitoring is to promote discussion and coordination on issues such as sampling locations, sampling frequency and timing, biological indicator assessment and data interpretation to leverage opportunities for cost savings and efficiency.</p>	
76	<p><i>Third-Party General Order Attachment A section IV.B.2.d - This section states dry season sample "shall be collected</i></p>	<p>See response to Comment No.15.</p>	<p>See response to Comment No.15</p>

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	<p><i>after the Member(s) have (has) applied pesticides or fertilizers and during an irrigation event."</i> At the regional scale it would not be possible to time sample collection with applications because all farms are not on coordinated schedules. It is suggested the first sentence be deleted.</p>		
77	<p><i>Third-Party General Order Attachment A section VI.C - Agricultural Operation should be Agricultural Operations.</i></p>	<p>The San Diego Water Board has revised the Third-Party General Order as requested.</p>	<p>Modified Third-Party General Order Attachment A, MRP section VI.C</p>
78	<p><i>Third-Party General Order Attachment A section VI.F - The monitoring team will undoubtedly change throughout the program. Keeping track of personnel not under their direct control would be a burden for Third-Party Groups. Stating the various qualified organizations in charge of monitoring should suffice instead of listing individuals.</i></p>	<p>The San Diego Water Board agrees that the monitoring team personnel may change throughout the program. In order to address this, the San Diego Water Board has modified the Tentative General Orders as follows (noting that the modifications also address Comment No. 83):</p> <p><i>Third-Party General Order Attachment A, MRP section VI.F:</i></p> <p>A description of the monitoring team <u>and analytical laboratories</u>, including names, titles, qualifications, and contact information <u>of key personnel. Changes to the monitoring team should be included in the Annual Monitoring Report (MRP section VII.L).</u></p> <p><i>Individual General Order Attachment A, MRP section VI.F:</i></p> <p>A description of the monitoring team <u>and analytical laboratories</u>, including names, titles, qualifications, and contact information <u>of key personnel. Changes to the monitoring team should be included in the Annual Monitoring Report (MRP section VII.L).</u></p>	<p>Third-Party General Order Attachment A, MRP section VI.F</p> <p>Individual General Order Attachment A. MRP section VI.F</p>
79	<p><i>Third-Party General Order Attachment A section VII.G.1 - The term "applicable" puts the responsibility onto the Third-Party Group to determine what is applicable and what is not. It would seem VII.G.3 covers the [water quality] benchmarks</i></p>	<p>To provide clarity regarding the applicable water quality standards a summary description of applicable narrative and numeric water quality objectives has been provided in Fact Sheet Table B-10 of Attachment B of the Tentative</p>	<p>Modified Third-Party General Order Attachment A section VII.G.1</p>

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	and VII.G.I can be removed.	<p>General Orders. The Tentative General Orders have been modified as follows:</p> <p><i>Third-Party General Order Attachment A MRP section VII.G.1:</i></p> <p>Interpretations and conclusions as to whether applicable receiving water limitations in section VI of this General Order were <u>exceeded during the monitoring period attained</u> at each monitoring location. <u>For the purposes of this analysis section, an exceedance of an applicable receiving water limitation means a single exceedance of a Water Quality Benchmark listed on Table A-4 below.</u></p> <p><i>Individual General Order Attachment A section VII.G.1:</i></p> <p>Interpretations and conclusions as to whether applicable receiving water limitations in section VI of this General Order were <u>exceeded during the monitoring period attained</u> at each monitoring location. <u>For the purposes of this section, an exceedance of an applicable receiving water limitation means a single exceedance of a Water Quality Benchmark listed on Table A-2 below.</u></p>	Modified Individual General Order Attachment A section VII.G.1
80	<i>Third-Party General Order Attachment A section VII.H.1</i> - The Third-Party Group cannot say if the groundwater is safe to drink; it is only testing for one constituent. It can say that it does or does not contain nitrate as NO ₃ .	<p>The San Diego Water Board agrees with the SDILRG's comment and has modified the Tentative General Orders as follows:</p> <p><i>Third-Party General Order Attachment A section VII.H.1:</i></p> <p>Interpretations and conclusions as to whether the <u>collected-groundwater samples are reported to have nitrate concentrations greater than the nitrate MCL of 45 mg/L as NO₃, is safe to drink samples</u></p> <p><i>Individual General Order Attachment A section</i></p>	Modified Third-Party General Order Attachment A section VII.H.1 Modified Individual General Order Attachment A section VII.H.1

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		<p><i>VII.H.1:</i></p> <p>Interpretations and conclusions as to whether the <u>collected-groundwater samples are reported to have nitrate concentrations greater than the nitrate MCL of 45 mg/L as NO₃</u> is safe to drink samples</p>	
81	<p><i>Third-Party General Order Attachment A section VII.I</i> - The requirement that data be reported by the Third-Party Group to CEDEN in addition to transmittal to the San Diego Water Board is an undue burden. We suggest the reporting to the San Diego Water Board satisfy all reporting requirements.</p>	<p>The San Diego Water Board does not agree that the submission of the required data to both CEDEN and GeoTracker is an undue burden on the Third-Party Groups. The Third-Party Group should shoulder the responsibility for monitoring data entry into systems such as CEDEN and Geotracker to help the San Diego Water Board to free its limited agriculture regulatory staff resources to focus on problem areas or dischargers.</p>	None necessary
82	<p><i>Third-Party General Order Attachment A section VII.J</i> - GeoTracker can potentially provide specific location data of the wells being sampled on a public forum. We are concerned about protecting well-privacy and suggest this requirement be eliminated.</p>	<p>The San Diego Water Board disagrees. In June 2015, Senate Bill 83 amended Water Code section 13752 to mandate public access to well completion reports. Well completion reports are required to be filed with the Department of Water Resources (DWR) for all groundwater wells at the time that they are constructed. The reports are required to contain information regarding each well's location and construction, and the lithology of the subsurface, among other items. As a result of the Water Code amendment, all well completion reports are available to the public, except that personal information (e.g., an individual's name and address) must be redacted.</p> <p>Since well completion reports, including information about the location of the wells, are now publicly available by request from DWR, the State Water Board will no longer obscure groundwater well location information on GeoTracker or withhold other records that identify the precise location of water supply wells used by public water systems. Not only is this consistent with the Legislature's clear policy direction regarding the transparency of groundwater data, it will also help to</p>	None necessary

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		<p>facilitate efforts by governmental agencies and nongovernmental organizations to identify individuals and communities that are in need of infrastructure and replacement water supplies, and general research regarding groundwater quality.</p> <p>Nonetheless, GeoTracker includes both a Public Website and a Regulator Website. Regulators have access to both, but the general public access is limited to the Public Website. The San Diego Water Board intends to use the Regulator Website for information such as well locations. However, well locations would be available to the public under a Public Records Act Request.</p>	
83	<p><i>Third-Party General Order Attachment A section VII.L</i> – The monitoring team will undoubtedly change throughout the program. Keeping track of personnel not under their direct control would be a burden for Third-Party Groups. Stating the various qualified organizations in charge of monitoring should suffice instead of listing individuals.</p>	<p>See response to Comment No. 78.</p>	<p>See response to Comment No. 78</p>
84	<p><i>Third-Party General Order Attachment A Table A-4</i> - Nitrate + Nitrate (as Nitrogen) should be Nitrate + <u>Nitrite</u> (as Nitrogen). Total Nitrogen should be <u>Nitrite</u> as Nitrogen.</p>	<p>The San Diego Water Board has revised Table A-4 of the Third-Party General Order and Table A-2 of the Individual General Order to correct the reference to Nitrate + Nitrite (as Nitrogen).</p>	<p>Modified Third-Party General Order Attachment A Table A-4</p> <p>Modified Individual General Order Attachment A Table A-2</p>
85	<p><i>Third-Party General Order Attachment A section VII.N – Table A-4</i> - We believe Chronic Toxicity should be removed as a monitoring requirement. We fear this testing could result in a very expensive endless loop of testing. Chronic Toxicity can be the result of a number of constituents that are not related to agriculture.</p>	<p>See response to Comment No. 72.</p>	<p>See response to Comment No. 72</p>
86	<p><i>Third-Party General Order Attachment B section I.D.2.a – Figure B-2</i> - There is no relevance to the San Diego Region</p>	<p>The San Diego Water Board does not agree that Figure</p>	<p>None necessary</p>

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 Commercial Agricultural Operations in the San Diego Region

No.	Comment	Response	Action Taken
	<p>of Figure B-2 or the accompanying text. If such a chart is needed, it should be representative of the San Diego Region. The chart and text should be removed.</p>	<p>B-2 in the Fact Sheet (Attachment B) should be removed. As discussed in the text immediately preceding Figure B-2 and in the reference for Figure B-2, Figure B-2 provides an overview of the impacts to surface water quality from agricultural activities on a nationwide basis. A specific discussion on water quality impacts from Agricultural Operations located within the San Diego Region is provided in the Third-Party General Order Attachment B section I.B.2.b. as well as in Third-Party General Order section I findings L and M.</p>	
87	<p><i>Third-Party General Order Attachment B section I.G.7.d</i> - When fees and costs of compliance are discussed this section makes the assumption that 60,000 irrigated acres in the region will enroll in the Third-Party General Order. Regardless of the number of acres enrolled, the monitoring obligations and costs for Third-Party Groups will remain the same. Therefore, if less than 60,000 acres are enrolled the per acre cost of compliance will rise proportionally. It is our belief that the 60,000 acre estimation is overly optimistic based on our experience with the Agricultural Waiver. The prepared charts should be revised and it is our suggestion it show the costs that Members should expect at enrollments of 30,000, 40,000, 50,000, and 60,000 acres.</p>	<p>As requested, Fact Sheet Tables B-7 and B-8 of Attachment B to the Third-Party General Order have been modified to include cost estimates based on enrollments of 30,000, 40,000, 50,000, and 60,000 acres.</p> <p>As shown in Table B-8, the estimated annual compliance costs for a 4-acre Agricultural Operation that is a Member of a Third-Party Group with enrollment of 30,000, 40,000, 50,000, and 60,000 acres, ranges from \$21 to \$5,023. Annual WDR Fees and Third-Party Group fees (including monitoring and reporting fees) range between \$21 and \$24. The estimated cost to implement appropriate management practices is anticipated to range between \$0 and \$5,023 annually, depending on the specific needs of the Agricultural Operation and the current implemented management practices.</p>	<p>Modified Third-Party General Order Attachment B, Fact Sheet Tables B-7 and B-8</p> <p>Modified Draft Initial Study, CEQA Environmental Checklist, Section 2, Tables 5 and 6</p>