

# REGIONAL WATER QUALITY CONTROL BOARD

## SAN DIEGO REGION

### EXECUTIVE OFFICER SUMMARY REPORT

MARCH 13, 2024

#### ITEM NO. 3

#### SUBJECT

Consideration of Tentative Order No. R9-2024-0001, Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region (Tentative Order No. R9-2024-0001). (Mahsa Izadmehr and Brandon Bushnell)

#### STAFF RECOMMENDATION

Staff recommend adoption of Tentative Order No. R9-2024-0001 (**Supporting Document 1**).

#### KEY ISSUES

- The California State Legislature established in Water Code section 13269(a)(2) that conditional waivers of waste discharge requirements (waivers) may not exceed 5-years in duration but may be renewed.
- Tentative Order No. R9-2024-0001, if adopted, will renew ten existing waivers for low threat waste discharges in the San Diego Region, which are set to expire in May 2024.
- California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) staff revised the waivers to: (1) remove requirements for discharges of waste that are now regulated by statewide general waste discharge requirements, (2) clarify the definitions for “non-contact cooling discharge” and “known contaminated sites”, and (3) improve readability of soil screening level tables.

#### PRACTICAL VISION

The Tentative Order implements the goals of the Practical Vision as follows:

- Strategizing for Healthy Waters - Tentative Order No. R9-2024-0001 will continue to provide protection for groundwater and surface water quality while unburdening the public from over-regulation of low threat waste discharges.

- Proactive Public Outreach and Communication - During the development of Tentative Order No. R9-2024-0001, San Diego Water Board staff engaged in proactive stakeholder outreach and communication efforts which included updating the conditional waivers web page, to provide current and relevant information to stakeholders and the public; hosting two online public workshops (**Supporting Document 2**); and holding a 30-day public comment period on Tentative Order No. R9-2024-0001.
- Sustainable Local Water Supply - Tentative Order No. R9-2024-0001 streamlines the approval process for gray-water projects, thereby reducing the Region's use of potable imported water.

## DISCUSSION

The purpose of this item is to provide the Board with information to assist in its consideration of Tentative Order No. R9-2024-0001. If adopted, Tentative Order No. R9-2024-0001 will renew ten existing conditional waivers of waste discharge requirements (waivers) for low threat waste discharges in the San Diego Region, which are set to expire in May 2024.

Section 13269 of the California Water Code (Water Code) authorizes the San Diego Water Board to waive certain discharge requirements found in the Water Code. For specific waste discharges or specific types of discharges, the San Diego Water Board may issue a conditional waiver provided the waiver is consistent with the *Water Quality Control Plan for the San Diego Basin (9)* (Basin Plan) and is in the public interest. The San Diego Water Board may waive requirements for a discharger to file a report of waste discharge (ROWD)<sup>1</sup> or obtain WDRs,<sup>2</sup> or both.

The San Diego Water Board adopted Order No. R9-2014-0041, *Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region* (Order No. R9-2014-0041), on June 26, 2014. Order No. R9-2014-0041 required the implementation of effective management measures and structural and non-structural best management practices to manage low threat discharges of waste to land. Additionally, the Board approved a Negative Declaration on June 26, 2014, supporting the conclusion that the waivers in Order No. R9-2014-0041 would not have a significant impact on the environment. The San Diego Water Board subsequently renewed the waivers in May 2019, as Order No. R9-2019-0005; and established that the revisions and changes in Order No. R9-2019-0005 did not significantly modify the impacts associated with the project as previously considered, and therefore the environmental documents for the project (Negative Declaration and Initial Study and Environmental

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<sup>1</sup> A report of waste discharge is an application submitted by the Discharger to receive waste discharge requirements (i.e., a permit) issued by the San Diego Water Board.

<sup>2</sup> Water Code sections 13260(a) and (c), 13263(a), and 13264(a).

Checklist) remained applicable.

The waivers in Tentative Order No. R9-2024-0001 will continue to address waste discharges to land expected to pose a low threat to water quality, provided eligible dischargers comply with waiver conditions. The current proposed revisions and changes in Tentative Order No. R9-2024-0001 also do not significantly modify the impacts associated with the project as originally considered, and therefore the environmental documents for the project remain applicable. The Staff Report (**Supporting Document 4**) provides the supporting rationale for the implementation of the waivers.

## **SIGNIFICANT CHANGES**

The following are the significant differences between the Tentative Order and Order No. R9-2019-0005:

1. The Tentative Order removes waiver for *Discharges to Land of Recycled Water* (formerly Waiver No. 2).
2. The Tentative Order amends the waiver for *Miscellaneous "Low Threat" Discharges to Land* (Waiver No. 2, formerly Waiver No. 3) to add a definition of "non-contact cooling discharge."
3. The Tentative Order amends the waiver for *Discharges/Disposal of Solid Waste to Land* (Waiver No. 8, formerly Waiver No. 9) to: (1) clarify the definition for "known Contaminated Sites", by providing additional guidance on detectable hydrocarbon odors in inert waste soils, and (2) simplify the Tier I and Tier II Soil Screening Level tables to improve readability.
4. The Tentative Order amends the waiver for *Discharges of Emergency/ Disaster Related Wastes* (Waiver No.10, formerly Waiver No.11) by eliminating certain sections that are now duplicative of the State Water Resources Control Board's Order WQ 2020-0004-DWQ, *General Waste Discharge Requirements for Disaster-Related Wastes*.

## **PUBLIC NOTICE**

The San Diego Water Board posted Tentative Order No. R9-2024-0001 and Notice of Public Hearing and Written Comment Period (**Supporting Document 3**) on its website on December 4, 2023. Additionally, the Notice of Public Hearing and Written Comment Period was sent via the State Board's e-mail subscription system (GovDelivery) to stakeholders subscribed to the Conditional Waiver and Board Meetings GovDelivery lists. These actions satisfy the public notification requirements of Water Code, division 7, section 13167.5 for a 30-day notice, and Calif. Code Regs. title 27, section 21730(b)

for a 30-day public notice. The Board received one comment letter from the City of San Diego on January 8, 2024 (**Supporting Document 5**). Upon review, we accepted three comments and disagreed with the remainder. The comments primarily focused on discharges to Municipal Separate Storm Sewer Systems (MS4) and the legal authority of the San Diego Water Board. The General Finding I.A of Tentative Order No. R9-2024-0001 explicitly states the Water Board's legal authority regarding in cases of non-compliance and outlines potential enforcement actions under Water Code sections 13323 and 13350(d) and (e) that can be taken, including termination of Waiver enrollment. Regarding the comments on MS4, General Findings, section A.1, clarifies that Waivers will cover types of discharge that do not adversely affect the quality or the beneficial uses of the waters of the state, as defined in Water Code section 13050(e). This definition encompasses any surface water or groundwater, including saline waters, within the state's boundaries. Board staff prepared a response to comments document (**Supporting Document 6**) and incorporated the accepted revisions into Tentative Order No. R9-2024-0001.

## **SUPPORTING DOCUMENTS**

1. Tentative Orde No. R9-2024-0001, Conditional Waivers of Waste Discharge Requirements for Low Threat Discharges in the San Diego Region
2. Notice of Public Workshops
3. Notice of Public Hearing and Written Comment Period
4. Staff Report
5. City of San Diego's Comments Letter
6. Response to Comments