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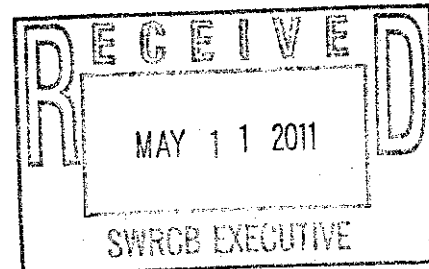
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Public Comment  
Sanitary Sewer System WDR  
Deadline: 5/13/11 by 12 noon

Ref: 11-2894

May 11, 2011

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, California 95814



Re: Comment Letter – SSS WDRs Review & Update

Dear Ms. Townsend:

The Leucadia Wastewater District (District) is a public agency located in Carlsbad that provides wastewater services to approximately 60,000 residents in northern portions of the City of Encinitas and southern portions of the City of Carlsbad. The District is an independent enterprise special district that is overseen by a 5 member Board of Directors who are elected at large. The service area encompasses 16 square miles and the District operates and maintains approximately 200 miles of gravity pipelines, 14 miles of forcemain pipelines and 10 pump stations. The wastewater is transported to the Encina Wastewater Authority for treatment, which is regional facility located in Carlsbad that is jointly owned by the District and five other public agencies.

The District appreciates the opportunity to submit comments on the draft statewide Sanitary Sewer Systems Waste Discharge Requirements ("Draft WDR"). Based on our review of strikeout version of the Draft WDR, we have separated our comments into two categories: 1) general overlying comments regarding the Draft WDR; and 2) more specific comments pertaining to individual sections of the document. Our comments are as follows:

**GENERAL COMMENTS:**

1. The District is concerned that the Draft WDR would impose an additional layer of regulatory requirements before the benefits of the existing 2006 WDR can be realized. Since the 2006 WDR was adopted, the District has invested significant time and resources to implement its terms and further improve the quality and reliability of District services. These improvements include an updated Wastewater Ordinance with enhanced enforcement mechanisms, implementation of a FOG inspection and quality control program, updated Standard Specifications for new wastewater facilities, adoption of an Overflow Emergency Response Plan, and certification of its Sewer System Management Program 2007. In addition, the District adopted a comprehensive asset replacement program that helps identify and prioritize maintenance and infrastructure and depths of wastewater facilities and other factors relevant to the reliability of facilities. Finally, the District adopted a public information program to encourage inspection and maintenance of private laterals and a private lateral grant program to help private property owners offset the cost of lateral repairs and maintenance. These actions have enhanced and improved the District's ability to provide safe and reliable service to its customers in a financially sound manner. The District encourages the Board to not revise the current WDR until the actions taken by the District and other agencies to implement the 2006 WDR have been fully implemented and assessed.

2. Sanitary sewer system regulations should not be adopted under a two-tiered WDRs and NPDES permit. We strongly oppose the two-tiered WDRs and NPDES permit alternative, whereby an SSO occurring previously or in the future would trigger the requirement to apply for an NPDES permit, and agree with several points included in the Staff Report also opposing an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize sanitary-sewer overflows (SSOs) to waters of the United States, there is no need for an NPDES permit. The result of triggering an NPDES permit would subject local public agencies to additional and more egregious non-governmental organization (NGO) lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or further reduce SSOs.

As described in the Staff Report, this alternative would also require significant additional Water Board staff resources to track and implement the different permit tiers. We understand that these staff resources are limited, and believe that they should instead be used to further improve SSO reduction efforts under the existing SSS WDRs.

3. The Draft WDR's focus on private laterals raises several concerns. First, it appears to be directed towards shifting responsibility for privately owned sewer laterals to public agencies. For example, while the Draft WDR does acknowledge that maintenance and repair of private laterals may be the responsibility of the private owners, it would require public agencies to be responsible for mapping and documentation of all private lateral facilities, including the existence of back-flow devices, clean outs, etc. The proposed revisions also appear to impose responsibility for lateral inspection and clean out programs. At worst, these programs create an additional and significant financial and liability burden on public agencies. At best, they create unnecessary confusion by giving the false impression that public agencies are in some fashion now responsible for the well being of privately owned and maintained sewer laterals.

4. The Draft WDR revisions extend far into the day-to-day activities and attempt to regulate virtually every aspect of agency operations. District submits that such micromanagement is unnecessary and would create an expensive and unmanageable layer of additional requirements. For example, in one section the Draft WDR delves into the personnel issues by requiring a staff assessment program that, apparently, seeks to direct how districts evaluate and assess personnel, and in another section provides specific requirements for budgetary planning that is duplicative of what responsible agencies already do each year.

### SPECIFIC COMMENTS:

#### A. DEFINITIONS

##### Draft WDR Provision.

"8. Private Lateral – Privately owned sewer piping that is tributary to an Enrollee's sanitary sewer system. The responsibility for maintaining private laterals can be solely that of the Enrollee or private property owner; or it can be shared between the two parties. Sewer use agreements dictate lateral responsibility and the basis for a shared arrangement."

**Comment.** The District recommends deletion of the last sentence because "sewer use agreements" are not the only means by which lateral responsibility is established. For example, lateral responsibility can be established by, among other things, general ownership obligations, easement agreements or ordinances.

**Draft WDR Provision.**

**2.11. Sanitary sewer system** – Any system of publicly or privately owned pipes, pump stations, sewer lines, or other conveyances, upstream of a wastewater treatment plant head-works used to collect and convey wastewater to the publicly owned a treatment facility or downstream sanitary sewer system. Temporary storage and conveyance facilities attached to the sanitary sewer system (such as vaults, temporary piping, construction trenches, wet wells, impoundments, tanks, etc.) are considered to be part of the sanitary sewer system, and discharges into these temporary storage facilities are not considered to be SSOs. The term "collection system" shall have the same definition as a sanitary sewer system for the purposes of the SSS WDRs."

**Comment.** The definition should be revised to clarify that it only applies to facilities owned by an Enrollee. The current reference to publicly or privately owned pipes, etc. arguably includes privately owned laterals and other facilities that are not the Enrollee's responsibilities. To avoid this interpretation, the District recommends that the reference to "any system of publicly or privately owned pipes . . ." be changed to "any system of Enrollee owned pipes, . . ."

**C. PROHIBITIONS**

**Draft WDR Provision.**

**3.** The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills to any surface water body is prohibited. This prohibition applies to the chlorine residual in the potable water used for wash down and clean-up of wastewater spills.

**Comment.** The incidental discharge of potable water should not be a prohibited discharge. If the water is clean enough to drink, it should be available for clean up purposes without risking a violation.

**D. PROVISIONS**

**Draft WDR Provision.**

**6.4.** The Enrollee shall report all SSOs must be reported in accordance with Section G of the SSS WDRs general WDRs. In addition, the Enrollee shall report PLSDs they become aware of in accordance with Section G of the SSS WDRs."

**Comment.** Enrollees should not be required to report discharges from PLSDs. It is an additional administrative burden without any evidence that it would provide any benefit. There is no evidence to support a finding that additional actions are necessary to correct private lateral spills when they occur. By virtue of the fact that such events directly affect service to occupied structures, corrective action occurs without the need for additional regulation of an Enrollee that does not own or maintain the impacted lateral.

**Draft WDR Provision.**

**"Sewer System Management Plan (SSMP)"**

(b)(iii) **Organization:** The SSMP must identify: . . .

- (ii) (b) The names, email addresses, and telephone numbers for current governing board members including the board chair and names, email addresses, and telephone numbers for agency management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP program including Legally Responsible Official(s) and Data Submitter(s) registered with the State Water Board. The SSMP must identify lines of authority through an organization chart or similar document with a narrative explanation of each individual's role and responsibility; and"

**Comment.** Including board member information as part of the SSMP contacts is not needed and has the potential to create unnecessary confusion regarding operational responsibilities. Organization staff, not policymaking board members, are responsible for the SSMP implementation.

**Draft WDR Provision.**

"(c) (iii) Legal Authority. . . .

- (iii) (e) Ensure access in easements, right of ways, and any other areas sanitary sewer system facilities are installed for maintenance, inspection, or repairs of the sanitary sewer system and for any portions of the service lateral owned or maintained by the Public Agency Enrollee;

**Comment.** The additional requirements regarding ensuring access are unnecessary and have the potential to create confusion. For example, the requirement to "ensure access" in easements and rights of way is unnecessary because, by definition, easements and rights of way include a right of access, even if access is not expressly addressed in the document. The District recommends that the general requirement to ensure access included in the existing WDR be maintained.

- (iv) Limit flows to the sanitary sewer system from connected sources including service laterals and satellite collection systems;

**Comment.** The proposal to include authority to "limit flows . . . from connected sources" is problematic because it is uncertain what ability any Enrollee has to limit flow from connected sources. For example, would an Enrollee be required to insert a device into an existing system to limit the amount of flow, or are other actions required? Such requirements would be unusual and problematic to implement.

- (v) Ban new connections;

**Comment.** The requirement that authority include the ability to "ban new connections" raises concerns because it is uncertain and has the potential to be very controversial. For example, if the intent is to provide agencies with the authority to declare complete moratoriums on connections, that could be very problematic and unnecessarily create stress between public agencies and their constituents. Also, wastewater agencies have legal obligations to provide sewer service to their constituents, so a provision indicating that they have the ability to simply discontinue providing new service could be legally unenforceable. The District recommends that this provision be eliminated, or at minimum, revised to clarify that the authority to ban new connections is limited to those circumstances in which such action is necessary to prevent a public nuisance or otherwise protect the public health and safety.

(d)(vi) Limit the discharge of roots, fats, oils, and grease and other debris that may cause blockages; and

(e)(vii) Enforce any violation of its sewer ordinances and, if applicable, collect penalties.

In addition, the Enrollee shall specify whether they own and maintain service laterals, and the portion(s) owned and/or maintained including pipe, clean outs, and backflow prevention devices. Any policies and procedures related to requirements for sewer easements shall also be addressed in this section of the SSMP."

**Comment.** The additional requirement that the legal authority section specify whether Enrollees own and maintain service laterals is out of place in the Legal Authority section in that it refers to ownership and maintenance responsibilities, not the legal authority of an Enrollee.

#### Draft WDR Provision.

"(d)(iv) **Operations and Maintenance Program:** The SSMP ~~must~~ shall include those elements listed below that are appropriate and applicable to the Enrollee's system:

(i)(a) **Map:** Maintain an up-to-date map of the sanitary sewer system, showing, at a minimum, all gravity line segments and manholes, pumping facilities, pressure pipes and valves, siphons, backflow prevention devices, and applicable stormwater-storm water conveyance facilities. A map illustrating the current extent of the sewer system shall be included in the SSMP."

**Comment.** The District objects to the mapping provisions which, when combined with the expanded definition of the sanitary sewer system, substantially expand the area of mapping required to include private laterals and related systems, such as, siphons, backflow prevention devices, etc. Enrollees should not be held responsible for documenting and mapping privately owned and maintained facilities.

#### Draft WDR Provision.

"(ii)(b) **O&M:** . . .

The SSMP shall identify the name(s) of contractors conducting routine work on the sewer system for implementation of the SSMP and a description of services provided."

**Comment.** This provision is unworkable because Enrollees need the flexibility to utilize and change the contractors on a regular basis without the need to update their SSMP. The decision regarding what contractor should be hired should be left to the discretion of Enrollees and not be subjected to a new regulatory program.

#### Draft WDR Provision.

"(iii)(e) **Rehabilitation and Replacement:** . . .

This section shall also include a description of any private sewer lateral inspection and replacement programs implemented within the sewer system service area."

**Comment.** This provision should be deleted because it infers that Enrollees are required to have private sewer lateral inspection and replacement programs. Such a requirement would drastically expand the duties and responsibilities of Enrollees and should not be included.

**Draft WDR Provision.**

- ~~"(b)(iv) (d) Provide training on a regular basis for staff in sanitary sewer system operations and maintenance, and require contractors to be appropriately trained Staff Assessment Program: The Enrollee must develop and implement a Staff Assessment Program (Assessment Program) for its sanitary sewer collection system operations staff, from line staff through supervisors, including contractors, or others performing or overseeing collection system O&M. The Assessment Program shall identify any staff deficiencies in meeting requirements for competently performing collection system O&M activities required by the Enrollee to adequately maintain sanitary sewer system assets. This includes review of current staff job duties, training, skill sets and/or abilities against the requirements needed by the Enrollee to comply with the SSS WDRs. The Assessment Program shall be updated at least every 12 months. All deficiencies identified shall be addressed by the Enrollee, including any needed changes including but not limited to adjustments to O&M procedures and staff training activities. and~~
- ~~(v) Contingency Planning: Identify the most critical collection system assets and operating procedures including components posing the highest risks and threats for an SSO. Contingency planning shall include a list of the most critical replacement part inventories that should be maintained by the Enrollee.~~
- ~~(ii) Provide equipment and replacement part inventories, including identification of critical replacement parts.~~
- ~~(vi) O&M and Sewer System Replacement Funding: The SSMP shall include budgets for routine sewer system operation and maintenance and for the capital improvement plan including proposed replacement of sewer system assets over time due to normal assets aging. Budgets shall include costs, revenues, and revenue sources for funding the work over a sufficient period to demonstrate the agency's ability to properly fund the sewer system in perpetuity.~~

**Comment.** The provisions outlined above substantially intrude into the day-to-day operations of Enrollees and should be eliminated. For example, the Staff Assessment Program would dramatically increase the obligations of a member agency and, potentially, create a tension between an Enrollee's obligation to comply with its SSMP and the privacy and due process rights of employees. The proposed rule would require agencies to "identify any staff deficiencies, review the abilities of staff and identify needed changes." Compliance with these requirements would be time consuming and create a potential privacy violation for agencies when identifying staff related issues. The contingency planning and O&M and sewer system replacement funding sections also delve into the day-to-day operations of Enrollees. At best, they are duplicative of what is already done by Enrollees. At worst, they create additional, contradictory requirements that interfere with each individual's and Enrollee's ability to plan and run its operation in an efficient and appropriate manner.



**Draft WDR Provision.**

**(f)(iv) Overflow Emergency Response Plan . . .**

- (ii) (b) A program to ensure appropriate response to all overflows including documentation of steps needed to prepare for natural disasters, hazardous weather events, and other severe circumstances that will affect sewer system operation. Program documentation should include contracts or agreements in place that may be needed in the event of SSOs to help mitigate the discharge;

**Comment.** The last sentence requiring that contracts and agreements be included as part of the SSMP should be eliminated because it is unduly burdensome and is likely to create confusion regarding the requirements for an adequate SSMP. The need for third party contracts will necessarily vary between Enrollees, depending upon their available staff and the legal regulations that govern their contractual activities. Including a provision in the Draft WDR that requires contract documentation be attached to the SSMP infers that such is a requirement to an adequate plan. The Draft WDR should leave each Enrollee with the flexibility to determine what, if any, contracts and agreements are necessary to have an adequate response plan.

**Draft WDR Provision.**

- (v)(f) A program and procedures to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to surface waters of the state of the United States that includes a risk and threat analysis of all sanitary sewer system assets. The program shall also specify steps and to minimize or correct any adverse impact on the environment resulting from the SSOs, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the discharge.

The risk and threat analyses shall identify the highest risks and threats ranked in order posed by sewer system failures such as but not limited to gravity sewer main lines, laterals, force mains, air relief valves, pumping facilities, and other facilities or equipment the failure of which could be expected to produce an SSO. The analyses shall include the expected consequences of each identified failure. The analyses shall also include system specific activities, procedures, and strategies employed by the Enrollee to help minimize the risks and threats of SSOs with consideration given to known problem areas identified within the collection system.

**Comment.** The proposed risk analysis requirements would create a tremendous burden on each Enrollee to create a document that included all of the detailed information proposed. For example, requiring an analysis that includes "the expected consequences of each identified failure" would require engineering, geological, topographical and flood plain information to model the potential direction and scope of various spills. The cost of such analysis would be significant, with the corresponding value that would be limited at best.

**Draft WDR Provision.**

**(g)(viii) FOG Control Program: . . .**

- (e)(v) Authority to inspect grease-producing facilities, and enforcement authorities for violations of the local FOG control requirements. The FOG Control Program shall identify required

staffing levels and whether the Enrollee has sufficient staff to inspect and enforce the FOG ordinance."

**Comment.** The requirement to identify "required staffing levels" should be removed because it presumes a fixed staffing level for each Enrollee at all times. The necessary staffing levels will vary depending upon the size of an Enrollee system, frequency of problems and number of customers producing substantial amounts of FOG that enter into systems. Enrollees should be left with the flexibility to staff for FOG related services as needed, rather than have a fixed staffing level for something that may or may not be required.

**Draft WDR Provision.**

- ~~(i)(b) **Monitoring, Measurement, Performance Targets and Program Modifications:** The Enrollee shall develop performance targets and incorporate necessary program modifications to monitor the Enrollee's progress in reducing SSOs over time. The performance targets and program modifications must be reviewed on an annual basis and shall include at a minimum the following steps:~~
- ~~(a)(i) Identify performance targets and illustrate SSO trends, including: SSO frequencies and volumes. Results for performance target attainment and spill trends shall be included and routinely updated in the SSMP;~~
  - ~~(ii) Collect and maintain appropriate records and information relevant information that can be used to establish and prioritize appropriate SSMP activities; the performance targets;~~
  - ~~(iii) Link each performance target with the appropriate SSMP element(s);~~
  - ~~(iii) Monitor the implementation and, where appropriate, measure the effectiveness and success of each SSMP element of the SSMP in meeting each performance target developed;~~
  - ~~(iv) Assess the success of the preventative maintenance program;~~
  - ~~(v) Update SSMP program elements, as appropriate, based on to achieve the performance targets; monitoring or performance evaluations; and~~
  - ~~(v) Identify and illustrate SSO trends, including: frequency, location, and volume. a and~~
  - ~~(vi) Maintain an SSMP Change Log that includes a list of all modifications and changes made to the SSMP including date and identification of staff responsible for implementing each change.~~

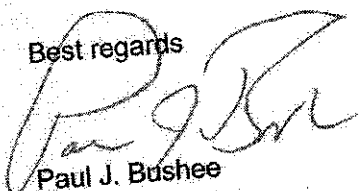
**Comment.** The proposed changes represent a substantial expansion that presumes the need for a performance program that may not be required. For example, it requires that Enrollees identify performance targets to meet. This presumes that Enrollees are having significant SSO problems in the first instance. The additional detail required would create significant administrative burden with little or no evidence that would have a corresponding benefit. The new requirements would require that Enrollees "identify performance targets and illustrate SSO trends," modifications, and that they maintain a detailed log of any changes made, including identification of staff responsible for implementing each change, regardless of how significant or insignificant the change may be. The District submits that the detailed reporting and accountability provisions in existence under the



current WDR already effectively document the performance of Enrollees and steps that have been taken to correct problems that arise from time-to-time. The additional reporting, planning and documentation that would be required as part of the proposed performance targets and program modification provisions above would create an unnecessary additional layer of administrative work.

Again, thank you for the opportunity to submit comments on the Draft WDR. Please do not hesitate to contact me at (760) 753-0155 or [pbushee@lwwd.org](mailto:pbushee@lwwd.org) should you have any questions.

Best regards



Paul J. Bushee  
General Manager

PJB:dwb

