

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

ITEM NO. 5

TENTATIVE ORDER NO. R9-2006-0064

**WASTE DISCHARGE REQUIREMENTS FOR FALLBROOK PUBLIC UTILITY DISTRICT
TREATMENT PLANT NO. 1 RECLAMATION PROJECT, SAN DIEGO COUNTY**

RESPONSES TO COMMENTS FROM INTERESTED PARTIES

Comment #	Comment	Staff Response
<i>Comments received from Fallbrook Public Utility District via correspondence dated May 26, 2006 transmitted by electronic mail.</i>		
1.	<p>General Comment</p> <p>Fallbrook Public Utility District ("Fallbrook") appreciates that the Regional Water Quality Control Board for the San Diego Region ("Regional Board") has postponed the proposed reissuance of a permit for Fallbrook's recycled water distribution until August of 2006 as there are many issues that need to be discussed to determine if such a permit should be issued. Fallbrook sends this comment letter early to facilitate such discussions.</p>	<p>The tentative Order was rescheduled to the August 16, 2006 Regional Board meeting to accommodate a request from the California Department of Health Services (DHS).</p>

Comment #	Comment	Staff Response
2.	<p>General Comment</p> <p>The primary issue is the form of the permit to be adopted. Fallbrook has many times requested the issuance of a Water Reclamation Requirements ("WRRs") for its water reclamation facilities. However, the Regional Board persists in attempting to issue a permit other than that requested. The following comments are submitted on behalf of the Fallbrook on the proposed Tentative Waste Discharge Requirements for Treatment Plant No. 1 Reclamation Project in San Diego County, Tentative Order No. R9-2006-0064 ("Tentative Order"). It is hoped that in response to these comments the Regional Board will convert the Tentative Order to a WRRs or provide a compelling legal reason why this permit cannot be issued solely as a WRRs. If the requested changes are not made, then water recycling may become an option too expensive for Fallbrook to continue to pursue.</p>	<p>The discharge of recycled water, through recycled water uses approved by DHS, is subject to waste discharge requirements (WDRs) prescribed by the Regional Board for the protection of waters of the State as well as water reclamation requirements (WRRs) prescribed by the Regional Board, in consultation DHS, for the protection of public health. All water recycling projects may be subject to both WDRs and WRRs unless one or both are waived by the Regional Board. WRRs are not issued in lieu of WDRs. These issues are discussed further in responses to other comments below.</p> <p>Fallbrook Public Utility District (FPUD) has demonstrated for over twenty years that its ability to pursue water recycling is not contingent on being issued a permit that is solely a WRR. FPUD's water recycling project is currently subject to Order No. 91-39 which is a WDR with WRRs. In order to continue protecting waters of the State, Regional Board staff does not recommend waiving all waste discharge requirements for FPUD's water recycling project and intends to present the tentative Order to the Regional Board for consideration of adoption as WDRs with WRRs with some modifications as indicated in the Errata Sheet.</p>

Comment #	Comment	Staff Response
3.	<p>1. The Tentative Order Must Be Revised to Remove Reference to "Waste Discharge Requirements."</p> <p>Regional Board staff refers to the Tentative Order as a "Waste Discharge Requirements" ("WDRs") issued "pursuant to Water Code Section 13263" that also contains water recycling requirements. See Tentative Order at page 5, Finding 15; see also Fallbrook's Specific Comment below at Comment 5.a. For the reasons set forth below, Fallbrook requests that the Regional Board revise the Tentative Order such that the order ultimately provided to the Regional Board members for consideration is solely a WRRs issued pursuant to Water Code section 13523 rather than as a joint WDR/WRRs issued under Water Code section 13263.</p> <p>The reclamation activities performed by Fallbrook under this Tentative Order do not constitute disposal or the discharge of "waste" that would require WDRs. Rather, Fallbrook is seeking to use "recycled water" for a direct beneficial use for irrigation and agricultural uses that requires only WRRs to be issued under Water Code sections 13522.5 and 13523.2</p> <p>The Water Code defines "recycled water" as "water, which as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource." See Water Code §§ 13050(n) and 13575(a) (3) (emphasis added). In this case, Fallbrook's disinfected tertiary-treated water is the result of the treatment of "waste," and this water is suitable for a direct beneficial use or a controlled use that would not otherwise occur. See 22 Cal. Code Regs. §§60301.220, 60301.225, 60304-60307; see also Water Quality Control Plan, San Diego Region ("Basin Plan") at 4-13, and at 4-5 (confirming the issuance of WRRs and Master Reclamation Permits for reclamation activities). Thus, Fallbrook's "recycled water" is not</p>	<p>The Regional Board disagrees that the use of recycled water is not subject to waste discharge requirements. FPUD's contention is based on recycled water having been deemed by the State of California as a valuable resource and safe for re-use from a public health perspective. This contention ignores actual and potential water quality impacts of recycled water on receiving surface waters and groundwaters.</p> <p>The recycled water distributed by FPUD is disinfected tertiary effluent. At FPUD Plant No. 1, tertiary effluent is secondary effluent that has undergone sand filtration to further remove suspended solids, turbidity and pathogens. Secondary effluent at FPUD is wastewater that has been treated, oxidized, stabilized, and clarified using a biological treatment process. The tertiary treatment process does not result in significant removal of dissolved constituents such as nutrients, metals and soluble organics; consequently, the dissolved constituent concentrations in FPUD's tertiary effluent are essentially the same as in secondary effluent. The tertiary effluent is then further treated by chlorine disinfection to remove pathogens.</p> <p>The Regional Board supports and encourages the use of recycled water as stated in State Water Board Resolution No. 77-01 and in the Basin Plan. At the same time, the Regional Board must continue its mandate to protect waters of the State and recognizes that recycled water, while it is in a general sense a valuable resource, contains and conveys wastes and pollutants which impact or may impact the quality of receiving waters (see Finding 24). Additionally, the Regional Board has a Memorandum of Agreement with DHS to issue WRRs for the protection of public health. The Basin Plan states "It has long been a policy of the Regional Board to encourage and promote water</p>

Comment #	Comment	Staff Response
	<p>considered a "waste" under the Water Code, and should not be regulated as such by the Regional Board under WDRs.</p> <p>The California Legislature has expressly recognized the safety and benefit of "recycled water," and that such water is not to be considered a "waste." The Water Code states, "[I]t is hereby declared that the people of the state have a primary interest in the development of facilities to recycle water containing waste to supplement existing surface and underground water supplies and to assist in meeting the future water requirements of the state." See Water Code §135 10 (emphasis added); see also Water Code 5 13512; San Diego Basin Plan at 4-28. Water Code section 13511 states, in part, "[t]he Legislature further finds and declares that the utilization of recycled water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety, and welfare of the people of the state. . . ." Water Code section 13529(f) states that the "use of recycled water has proven to be safe and the State Department of Health Services is drafting regulations to provide for expanded uses of recycled water." Finally, Water Code section 13551 states, in part, "a person or public agency, including a state agency, city, county, city and county, district, or any other political subdivision of the state, shall not use water from any source of quality suitable for potable domestic use for non-potable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is available..." See also Water Code §13550(a). In fact, the use of potable water for irrigation uses is legislatively determined to be an "unreasonable use of the water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available." Water Code §13550.</p>	<p>reclamation while taking into consideration the need to protect beneficial uses of surface and groundwaters and protect the public health. (Basin Plan, page 4-29)" The Basin Plan discusses in great detail the manner by which the Regional Board will regulate water recycling projects. In Chapter 4 of the Basin Plan, pages 13-14 cover WRRs while pages 28-40 discuss WDRs as they pertain to water recycling projects. FPUD cited a small section of Chapter 4 page 28 of the Basin Plan that supports its position but apparently did not consider the rest of the section pertaining to WDRs.</p> <p>The Basin Plan states that "Any person proposing to discharge reclaimed water must file a report of waste discharge The Regional Board, after consultation with DHS (Department of Health Services), may adopt waste discharge requirements for the reclaimed water discharge (Basin Plan, page 4-29)." This requirement is well within the authority provided under California Water Code §§13260 and 13263. The Basin Plan further discusses potential water quality concerns associated with recycled water use and states that "the Regional Board must also consider potential impacts from reclamation on ground and surface water quality."</p>

Comment #	Comment	Staff Response
4.	<p>In this case, Fallbrook has requested and continues to request WRRs pursuant to Water Code section 13523 for purposes of operating its reclamation and recycling activities. However, the Regional Board staff has decided to issue a Tentative Order combining WDRs and WRRs, which can only lawfully be done as a Master Reclamation Permit under the authority of Water Code Sections 13523.1 and 13263(h). By including WDRs, the Regional Board is fundamentally altering the regulatory landscape that should be applicable to Fallbrook's reclamation projects. This action unnecessarily subjects Fallbrook to additional enforcement and liability under Water Code section 13350, and certainly does not encourage the use of recycled water. Other recent permits around the State, including the Los Angeles Region's Harbor Water Recycling Project, which involved the use of advanced treated recycled water for groundwater injection, have been issued only as WRRs.</p> <p>The only possible reasons Fallbrook can speculate why the Regional Board is using a WDR for this permit are the following:</p> <p>1) The previous recycled water permit was issued essentially as a Master Reclamation Permit, including both WDR and WRR provisions. At the time Order No. 91-39 was issued with WDR provisions, many of the requirements and legislative findings encouraging recycled water use were not effective. See e.g., A.B. 704 (1993); A.B. 1247 (1995). Furthermore, at that time, Fallbrook presumably consented to the issuance of that Order.</p> <p>2) The Regional Board is seeking a permit fee since fees are set for WDRs, but not for WRRs.</p> <p>REQUESTS: Remove "Waste Discharge Requirements" from the title and body of the Tentative Order, and replace with "Water Reclamation Requirements."</p>	<p>Tentative Order No. R9-2006-0064 is an update of Order No. 91-39 which are WDRs with WRRs. It is appropriate to continue regulation of FPUD's water recycling project as proposed in the tentative Order, except as indicated in the Errata Sheet, for the following reasons:</p> <ol style="list-style-type: none"> 1) The project was originally approved by the Regional Board in 1991 with the understanding that waters of the state would be protected along with public health through the issuance of WDRs with WRRs. 2) The project, now as in 1991, is subject to WDRs as well as WRRs contrary to FPUD's contention that only WRRs apply to water recycling projects. 3) The issuance of a combined WDR with WRRs, if the permittee does not consent to a master recycling permit, is an efficient use of Regional Board resources by consolidating permitting activities for the same project and facilitating regulation of recycled water use sites. 4) FPUD consented to Order No. 91-39, which is a WDR with WRRs, but is now requesting only WRRs and only for the production of recycled water. Under Order No. 91-39, FPUD has primary responsibility for also regulating its recycled water use sites. If FPUD no longer regulated its use sites, as it requests now, the use sites would be required to obtain WRRs for use sites from the Regional Board; this adds a level of regulatory burden on the use sites which would not encourage water recycling. <p>FPUD's contention that the Regional Board is "fundamentally altering the regulatory landscape" with the issuance of WDRs for water recycling projects for the protection of waters of the State is incorrect. WDRs,</p>

Comment #	Comment	Staff Response
	<p>Remove the terms "waste," "effluent" and "discharge" and instead use the terms "recycling," "reuse," "use," or "recycled water" to define the use of this valuable resource.</p>	<p>either as separate WDRs or within master recycling permits, have been issued by this Regional Board in keeping with the Regional Board's mandate to protect waters of the State. This Regional Board is not unique in issuing WDRs for water recycling projects. For example the Los Angeles Regional Board has issued two orders that are titled as WRRs for the Harbor Water Recycling Project (Order Nos. R4-2003-0025 and R4-2003-0134); however, both contain WDRs based on groundwater beneficial uses and water quality objectives contained in the Los Angeles Regional Board's Basin Plan, contrary to FPUD's comment.</p>
5.	<p>2. The Biosolids Provisions Should be Removed from the Permit as Duplicative.</p> <p>The previous Order No. 91-39 and this Tentative Order contain not only recycled water requirements, but also biosolids provisions. However, the provisions for biosolids regulation are not necessary as Fallbrook's recently adopted NPDES permit (Order No. R9-2006-0002, pg. 28-29, Provisions VI.C.2.c.I-9) contains requirements for handling, treatment, use, management and disposal of sludge (biosolids). Duplicative permitting of biosolids in this Tentative Order is unnecessary. Without the biosolids requirements, there are no actual wastes being regulated in the proposed WDRs. Specifically, Fallbrook requests that the Regional Board remove the last sentence in Finding 16, remove Finding 22 from the Tentative Order, and remove Provision E. of the MRP.</p> <p>REQUEST: Remove all references to regulation of sewage sludge and biosolids as this is regulated in Fallbrook's recently adopted NPDES Permit/WDRs.</p>	<p>As stated in the previous responses to comments, the Regional Board recognizes that recycled water, while it is in a general sense a valuable resource, contains and conveys pollutants which impact or may impact the quality of receiving waters and are therefore subject to waste discharge requirements.</p> <p>The last sentence of Finding 16 has been modified as indicated in the Errata Sheet. A final sentence has been added to Finding 22 as indicated in the Errata Sheet.</p> <p>MRP Provision E is retained without modification. Sludge/biosolids are subject to USEPA biosolids regulations contained in 40 CFR Part 503. MRP Provision E requires that FPUD retain records and submit certifications as required by USEPA whether or not FPUD has an NPDES permit. The reporting requirement of Provision E also has the secondary purpose of allowing the records that are separately maintained by the Regional Board for FPUD's NPDES permit and water recycling project to be complete on their own; this facilitates file reviews by the Regional Board staff and the public.</p>

Comment #	Comment	Staff Response
6.	<p>3. The Tentative Order Improperly Requires Recycled Water to Meet Primary and Secondary Drinking Water Standards. ⁴</p> <p>The Tentative Order requires that recycled water not contain constituents exceeding the most current applicable Maximum Contaminant Levels (MCLs) (primary and secondary drinking water standards). See Tentative Order at Discharge Specifications B.3, B.4., and B.6. The inclusion of these requirements as end-of-pipe limits is inappropriate for the beneficial reuse of recycled water.</p> <p>MCLs are adopted by the Department of Health Services (DHS) to apply only to the direct supply of water to the public for drinking water purposes. See accord 22 C.C.R. §64449(a) (stating that secondary MCLs shall not be exceeded in the water supplied to the public). The MCLs set forth in Title 22 of the California Code of Regulations were intended only to apply to drinking water treatment facilities providing potable water at the tap or point-of-use, not as specifications applicable to reclamation and/or reuse projects. See 22 C.C.R. §6443 1 and §64444. Since the recycled water produced by Fallbrook is not used for direct potable purposes, the Title 22-based MCL requirements are unnecessarily restrictive and inappropriate. For this reason, the Regional Board should remove reference to MCLs in the Tentative Order. Given the inapplicability of MCLs to Fallbrook's reclamation activities, the Regional Board should also refrain from requiring Fallbrook to monitor for each and every MCL set forth in Title 22.</p> <p>The Regional Board's use of Title 22 criteria is also inconsistent with how DHS uses and enforces MCLs. Secondary MCLs are set for constituents that may adversely affect the <u>taste, odor, or appearance</u> of drinking water, and are directly related to consumer "acceptance" or "dissatisfaction" with the drinking water provided through a</p>	<p>FPUD's comment refers to Discharge Specification B.6. FPUD most likely intended to refer to Discharge Specification B.7.</p> <p>The effluent limitations under Discharge Specifications B.3, B.4, and B.7 are all based on groundwater water quality objectives contained in the Basin Plan (See Findings 32-39 and Fact Sheet pages 1-4). Many of those water quality objectives <u>are</u> based on drinking water standards, but nevertheless, the effluent limitations are implementing water quality objectives and not drinking water standards. Unless the Basin Plan is amended to remove or amend those water quality objectives that are based on drinking water standards, the effluent limitations in the tentative Order are retained. FPUD's comments comparing implementation of drinking water standards with the effluent limitations are not pertinent.</p> <p>When site specific groundwater and hydrogeologic information is available, the Regional Board may take that information into consideration when developing effluent limitations rather than applying water quality objectives to the effluent end-of-pipe. However, as discussed on Fact Sheet page 1, Footnote D to Table 3.1 of the Basin Plan states that point sources will be controlled to achieve effluent quality corresponding to the tabulated numerical values (Footnote D applies to the hydrologic areas and subareas where FPUD distributes recycled water). The water quality objectives are therefore applied directly to the effluent, and effluent limitations were developed without consideration of dilution or assimilative capacity in the receiving groundwater.</p> <p>Even if Footnote D to Table 3.1 of the Basin Plan did not apply to FPUD, the Regional Board does not have site</p>

Comment #	Comment	Staff Response
	<p>community water system. See 22C.C.R. §64449(a). If a secondary MCL for a constituent contained in Table 64449-A is exceeded in drinking water, an investigation by DHS and a study by the water supplier is required to determine actual consumer acceptance or dissatisfaction with the drinking water that does not meet the particular MCL. See 22 C.C.R. §64449(d). If there is no community water system, as in this case, there are no consumers to be surveyed and, thus, no acceptance or dissatisfaction to measure. Nonetheless, under the Regional Board's Inorganic Chemicals water quality objective and its application in the Tentative Order, Fallbrook may be exposed to serious liability for non-compliance with provisions of a WDR, unlike situations where MCLs are exceeded under drinking water regulations. See, e.g., Water Code §13350.</p> <p>In addition, DHS is permitted to & the requirement to meet secondary MCLs based upon consumer acceptance or economic considerations. See 22 C.C.R. §64449 (e) (1) and (2). However, exceedances of the secondary MCLs in this case may subject Fallbrook to liability under the Water Code. Id. Such a result was never intended by Title 22. Thus, the inclusion of MCLs as enforceable waste discharge requirements is unwarranted and inappropriate.</p> <p>The application of MCLs on the basis and for the purpose of protecting underlying groundwater from potential incidental recharge from Fallbrook's irrigation projects is inappropriate.⁵ Irrigation projects properly using agronomic rates may, at most, provide minor, incidental recharge to the underlying groundwater basin. However, when attenuation and other factors are taken into account, the impact to the groundwater table is expected to be negligible. This is precisely why the California Legislature provided an entirely different statutory scheme for the beneficial reuse of recycled water. In fact, DHS does not</p>	<p>specific groundwater and hydrogeology information that is necessary to develop effluent limitations that are not “end of pipe” applications of the water quality objectives. The purpose of MRP Provision F for groundwater monitoring in the tentative Order is to obtain such information. However, MRP Provision F has been deleted in the tentative Order as indicated in the Errata Sheet in response to a request from FPUD (see Comment # 10 below).</p> <p>The Regional Board does not have information, and FPUD has not provided information, which demonstrate that recycled water is applied at agronomic rates at all times at all use sites and that no recycled water reaches the water table. Even if no recycled water reaches the water table because of application at agronomic rates, pollutants carried by the recycled water which are not absorbed by vegetation accumulate in the soil as water is absorbed by plants and evaporated from the soil. During rain events, these accumulated pollutants are flushed from the soil into the water table by percolating rain water. FPUD’s contention that “when attenuation and other factors are taken into account, the impact to the groundwater table [from recycled water] is expected to be negligible” is not scientifically supported by site specific information. Groundwater monitoring is the most appropriate way to demonstrate that groundwater is not being impacted.</p>

Comment #	Comment	Staff Response
	<p>even apply or require the application of primary and secondary drinking water standards to non-potable irrigation projects.</p> <p>Furthermore, no justification exists to directly apply these drinking water standards simply because no attenuation or quantity data is available. Because Water Code section 13523 does not require the application of MCLs to recycled water in the first place, the Regional Board bears the burden to demonstrate that the requirements imposed are necessary and reasonable. Water Code §§13523(a), 13000. Finally, by applying primary and secondary MCLs as direct limits, the Regional Board is discouraging the use of recycled water throughout this region, which is contrary to State law and policy.</p> <p>If the Regional Board persists with applying MCLs to Fallbrook's reclamation activities via WDRs or through some other means, the Regional Board must refrain from applying Title 22 drinking water standards at the "end of pipe," and instead, consider site-specific factors such as attenuation of recycled water constituents in groundwater, the quantity of recycled water actually reaching the ground water aquifer, and the dilution provided by the groundwater aquifer when calculating requirements. See State Board Order No. 2003-0013 (requiring the Regional Board to consider dilution, flow, attenuation, and other technical issues when determining appropriate regulatory requirements).</p> <p>Here, public water supplies are fully protected by the high levels of treatment, by the fact that any reclaimed water, if it reaches groundwater, is diluted in the aquifer, and because the compounds are monitored by drinking water suppliers and there will likely be further reductions prior to serving the water to customers. The public benefit of reclamation and reuse in water starved Southern California outweighs the possibility that stringent limitations might discourage</p>	

Comment #	Comment	Staff Response
	<p>proponents from undertaking this or similar projects. See SWRCB Order No. 2006-01 at pg. 6.</p> <p>REQUEST: Remove drinking water Primary and Secondary MCLs as enforceable limits from the Tentative Order applicable to non-potable irrigation use.</p>	
7.	<p>4. The Tentative Order Puts at Risk the Continued Use of Recycled Water in the Fallbrook Area.</p> <p>Based on recycled water data included in the Tentative Order, the recycled water may not be able to consistently comply with several of the proposed discharge specifications. Compare Tentative Order's table on pg. 7 containing recycled water data with tables on pgs. 17-18 setting forth discharge specifications. Thus, based on available plant performance data, Fallbrook will not be able to reliably comply with the Tentative Order. This could result in sporadic delivery, or complete termination, of recycled water delivery from Fallbrook thereby requiring the use of potable water sources in its place.</p> <p>Delivery of recycled water must be dependable to be used by customers. Customers in many cases cannot easily be switched from recycled water to a potable water supply. Industrial users, in particular, require reliable service as unplanned shutdowns could affect production of products or processes. It is unlikely that most water recycling operations in Southern California would be able to comply with this type of permit. This Tentative Order's requirements are far beyond what is typical for similar projects throughout the State. The Regional Board's proposed actions will, at the very least, deal a serious blow to the cost effectiveness and increased use of recycled water in the Fallbrook area and will likely result in a broad reduction in recycled water</p>	<p>The discharge specifications of the tentative Order includes recalculated effluent limitations that protect waters of the state by implementing beneficial uses and water quality objectives. Based on information available to the Regional Board at the time of preparation of the tentative Order, the Regional Board anticipated that FPUD would likely be able to comply with the recalculated effluent limitations.</p> <p>Effluent limitations for distribution of recycled water to HSA 2.13 are more stringent than for HSAs 3.11 and 3.12 in FPUD's current water recycling permit, Order No. 91-39, as well as in the tentative Order because HSA 2.13 has more stringent groundwater water quality objectives. This situation is unavoidable unless the water quality objectives are amended in the Basin Plan. However, the tentative Order retains features of amendments to FPUD's current water recycling permit, Order No. 91-39, which accommodate and support FPUD's water recycling project and effectively relieve FPUD of compliance burden for the distribution of recycled water to nurseries in HSA 2.13 as well as the Interstate 5 corridor (see tentative Order Provisions B.5 and B.6).</p> <p>The Regional Board disagrees that "this Tentative Order's requirements are far beyond what is typical for similar projects throughout the State" since the Los</p>

Comment #	Comment	Staff Response
	<p>use.</p> <p>Fallbrook would also like to remind the Regional Board of the strong public policy in favor of reasonable regulation of reclamation projects, such as the Fallbrook project. See, e.g., Petition of Water Replenishment District of Southern California, Water Reuse Association and County Sanitation Districts of Los Angeles County (Requirements for Alamitos Barrier Recycled Water Project, State Water Resources Control Board Order No. WQ 2006-0001 (remanding permit for removal of overly stringent discharge requirements that could pose compliance problems, and therefore, increase liability/enforcement, based on Water Code's strong policy in favor of encouraging water recycling). As presently drafted, the Tentative Order will discourage the use of Fallbrook's recycled water for irrigation, and unnecessarily increase liability and the potential for enforcement action.</p> <p>In addition, if costs and efforts to comply become more than can be recouped by recycling the water, Fallbrook will no longer have an incentive to recycle and could merely dispose of its effluent through Ocean outfall, which would be a waste of a valuable resource.</p> <p>REQUEST: Remove primary and secondary drinking water MCLs and additional monitoring not required for Title 22 Recycled Water.</p>	<p>Angeles and Santa Ana Regional Boards have issued similar permits with effluent limitations that implement water quality objectives to protect waters of the state (See Order Nos. R4-2003-0025, R4-2003-0134, R8-2004-002 and R8-2004-020).</p> <p>FPUD's citation of State Water Resources Control Board Order No. WQ 2006-0001 is not appropriate since that case involved numeric effluent limitations based on drinking water notification levels from the California Department of Health Services (DHS) to implement narrative water quality objectives. Notification levels from DHS do not have the same regulatory effect as drinking water maximum contaminant levels (MCLs), and there were no numeric water quality objectives that were based on the DHS notification levels. In contrast, the numeric effluent limitations contained in tentative Order No. R9-2006-0064 are based on numeric water quality objectives for groundwater based on MCLs (and not notification levels) that are contained in the Basin Plan.</p> <p>The Regional Board acknowledges FPUD's concerns about increased costs; however, the Regional Board does not have information that demonstrates that the requirements of the tentative Order will make water recycling economically infeasible. As in all engineering economic analyses, benefits-to-costs ratios of FPUD's water recycling project should take into consideration all benefits and costs as well as non-quantifiable factors. If FPUD does terminate its water recycling project, it will be required to submit a water reclamation feasibility analysis as part of its NPDES permit renewal application. The water reclamation feasibility analysis shall include justification why any wastewater proposed for discharge to the ocean after a single use is not being reclaimed for a beneficial use. (See State Water Board</p>

Comment #	Comment	Staff Response
		<p>Order No. WQ 84-7 and Basin Plan page 4-39).</p> <p>Effluent limitations other than those required under CCR Title 22 are retained. Modifications to effluent limitations for TDS, chloride, sulfate, and total nitrogen are made to the tentative Order, as indicated in the Errata Sheet, for other reasons.</p>
8.	<p>5. The Regional Board's Adoption and Application of the Basin Plan's Chemical Constituents Water Quality Objective for Ground Water Violates State Law. The Regional Board's adoption and application of the narrative water quality objective for "Inorganic Chemicals," specifying that ground waters designated for use as domestic or municipal supply ("MUN) shall not contain concentrations of inorganic chemicals in excess of the MCLs in effect at the time the chemical constituents objective was adopted and including any prospective, future changes to the MCLs as the changes take effect, violated the Water Code. See Basin Plan at 3-8 and 3-9; Water Code §§513241 and 13000. Water Code section 13241 requires the Regional Board to consider the social, environmental and economic impacts of water quality objectives prior to adoption. See Water Code §13241(a)-(f). Furthermore, Water Code section 13242 requires that the Regional Board adopt an implementation plan for meeting the adopted objectives and a timeline for doing so. Moreover, under Water Code section 13240. Basin Plans and the objectives contained therein must be reviewed and revised periodically. Fallbrook is not aware of any evidence to indicate that the Regional Board complied with Water Code sections 13241 or 13242 when it initially adopted the water quality objective for Inorganic Chemicals and the corresponding MCLs in effect at that time, or that the Regional Board has met its statutory mandate to review and revise this objective as required under Water Code section 13240.</p>	<p>FPUD misinterprets California Water Code (CWC) Section 13240. CWC §13240 states that “each regional board shall formulate and adopt water quality control plans” and that “such plans shall be periodically reviewed and may be revised.” However CWC §13240 does not specifically require the review and revision of every water quality objective. The Regional Board conducts a triennial review process to review and revise the Basin Plan to meet the statutory requirement of CWC §13240. Within the triennial review process, the Regional Board solicits input from the public regarding which parts of the Basin Plan should be considered for review. Water quality objectives may be reviewed and revised during the triennial review process, typically when a request from the public has been received by the Regional Board to do so.</p> <p>The water quality objectives contained in the Basin Plan were adopted by the Regional Board in a public hearing during which the factors identified under CWC §13241 were considered to the extent necessary. FPUD makes a blanket statement suggesting that these factors were not considered by the Regional Board but does not provide any information that supports its suggestion.</p> <p>Chapter 4 of the Basin Plan, entitled “Implementation”, constitutes the implementation program for achieving water quality objectives described in CWC §13242. While CWC §13242 requires an implementation program for achieving water quality objectives, it does</p>

Comment #	Comment	Staff Response
		not require adoption of a specific implementation program for each water quality objective at the time of adoption of the water quality objective.
9.	<p>By using a prospective, incorporation-by-reference method of adopting water quality objectives for ground water basins designated MUN, the Regional Board also abdicated its responsibility to consider the factors contained in Water Code sections 13241 and to develop an implementation plan under Water Code section 13242 at the time the water quality objective was adopted and each time a new or more stringent MCL was or is incorporated into Title 22. See accord Office of Administrative Law ("OAL"), Notice and Decision Re: Approval and Partial Disapproval of a Rulemaking Action on the Adoption of the Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (OAL File No. 00-0317-15)(Apr. 28,2000) (finding that prospective incorporation-by-reference "is of dubious validity").</p> <p>Furthermore, through the use of the prospective, incorporation-by-reference method of adopting water quality objectives for those water bodies or ground water basins designated MUN, the Regional Board failed to comply with the applicable public notice and participation requirements of the Water Code. Id. at 7; see also Water Code §13244. Finally, by utilizing this short-cut method of adopting water quality objectives, the Regional Board failed to comply with Water Code section 13000, providing for reasonable water quality regulation.</p> <p>REQUEST: Remove reference to Primary and Secondary MCLs imposed pursuant to the Basin Plan's Inorganic Chemicals Water Quality Objective for Groundwater.</p>	<p>In the OAL determination <i>Notice and Decision Re: Approval and Partial Disapproval of a Rulemaking Action on the Adoption of the Policy for the Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California</i> (OAL File No. 00-0317-15)(Apr. 28,2000), OAL considered the prospective incorporation by reference of analytical test methods that are or may be approved at a future date by USEPA. OAL disapproves of prospective incorporation of federal regulations; however, OAL allows the prospective incorporation of state regulations. Since MCLs are promulgated as state regulations by DHS, OAL will, and has approved, Basin Plan language incorporating them by reference.</p> <p>Use of prospective incorporation is permissible when the Regional Board intends to rely entirely on the regulation of another state agency, and the other agency is required to go through a formal rulemaking process to amend the regulation. If DHS proposes to change the regulatory MCLs, DHS will publish a Notice of Hearing and provide opportunity for comments. It is the intent of the Regional Board to set groundwater water quality objectives for many inorganic and organic constituents in hydrologic basins with MUN beneficial use designations to be numerically equivalent to drinking water MCLs.</p>

Comment #	Comment	Staff Response
10.	<p data-bbox="380 256 1115 318">6. The Additional Monitoring Burden Placed on Recycled Water is Not Warranted.</p> <p data-bbox="380 337 1157 1208">The Regional Board has included substantial new monitoring and reporting requirements. The sampling and analytical costs to comply with the Monitoring and Reporting Program ("MRP") associated with the Tentative Order are significant. Sampling and analytical costs for the additional monitoring will be expensive as will be the costs for outside certified lab testing costs, equipment rental, sampling labor, and transportation costs. Additionally, some of the constituents that require monitoring may not even have analytical methods developed for testing. The proposed sample collection activities represent additional staff-hours (both in house and contracted out) every year not currently budgeted or funded. It is estimated that the equipment and labor involved with the requirement for continuous monitoring and recording of chlorine will add \$20,000 in additional costs, just for chlorine issues. In addition, Fallbrook has never before been required to monitor for the nearly 70 constituents contained in the Monitoring and Reporting Program, many of which that do not have limits specified. It is unclear the value of this data since it appears to duplicate much of the monitoring required by Fallbrook's NPDES permit. In addition, the MRP mandates the construction of three (3) groundwater monitoring wells, which will cost approximately \$20,000 to \$50,000 to install, if easements and access can be obtained to do so at no cost.</p> <p data-bbox="380 1227 1157 1458">The burden of these additional monitoring requirements and limits have not been assessed and weighed against the need for the information as required under Water Code Section 13225(c) and 13267(b) and, thus, these requirements are improperly placed on this recycled water project. Requirements to monitor nearly all priority drinking water pollutants in both the recycled water and the ground</p>	<p data-bbox="1178 256 1881 422">FPUD's comment is premised on water recycling projects being subject only to water reclamation requirements. The Regional Board asserts that water recycling projects are subject to waste discharge requirements (See responses to comments #2 and 3).</p> <p data-bbox="1178 441 1894 571">The Regional Board has the following responses to FPUDs claims regarding increased costs associated with expanded monitoring requirements of the tentative Order:</p> <ul data-bbox="1178 591 1904 1458" style="list-style-type: none"> <li data-bbox="1178 591 1904 756">• The Regional Board estimated the additional costs associated with additional effluent monitoring as approximately \$2,000 per set of analysis. The majority of effluent monitoring is required only annually. <li data-bbox="1178 776 1904 1042">• It is unlikely that there are any constituents being required for monitoring that do not have analytical methods. All constituents are either typical water pollutants which certified laboratories routinely analyze for, or are constituents that have analytical methods available by virtue of also being constituents required to be monitored in drinking water supplies. <li data-bbox="1178 1062 1904 1162">• New monitoring requirements for chlorine are required by the Department of Health Services as part of revised Title 22 water recycling criteria. <li data-bbox="1178 1182 1904 1458">• The need for monitoring the effluent for nearly 70 additional constituents are the result of 1) the Regional Board's review of FPUD's effluent quality data reported under its NPDES permit, 2) the Basin Plan requirements, and 3) the increasing need to ensure that pollutants in the effluent previously not monitored for do not impact groundwater quality and the quality of surface waters that are hydrologically

Comment #	Comment	Staff Response
	<p>water will not encourage the use of recycled water for non-potable projects or the conservation of scarce potable water resources. The groundwater monitoring may be of little value since potable water used for local irrigation contains many of the same constituents and yet is not being held to the same strict standards as required by the Tentative Order. Thus, there would be no way to conclusively determine that Fallbrook's recycled water, even were it to reach local ground water, is affecting the quality of the water of the state.</p> <p>Fallbrook requests that all water quality monitoring not necessary to determine compliance with appropriately imposed recycled water limits be deleted from the Tentative Order. The only water quality monitoring that should be imposed by the Regional Board are those required by Title 22 for disinfected tertiary-treated recycled water, such as continuous turbidity, daily coliform and disinfection requirements, and dissolved oxygen. In fact, these are typical requirements included in WRRs statewide for irrigation projects using recycled water, and what is required by the Department of Health Services' reclamation criteria. If the Regional Board has concerns over the ultimate use of the recycled water, then the Regional Board should issue separate water recycling requirements or WDRs to those end users.</p> <p>REQUEST: Remove all of the proposed monitoring requirements except those required by DHS for Title 22 Recycled Water used for Irrigation and those constituents which are presently included in the existing WDRs.</p>	<p>connected to groundwaters.</p> <ul style="list-style-type: none"> • If effluent monitoring requirements of the tentative Order duplicate effluent monitoring required under FPUD's NPDES permit, then FPUD would only need to do the analysis once but report the results under both requirements. • The Regional Board anticipated that the proposed groundwater monitoring program of the tentative Order would only require shallow wells at a cost of installation of \$10,000-\$15,000 per monitoring well. • FPUD's contention that groundwater monitoring would be of little value because recycled water and potable water contain many of the same constituents ignores that the levels of many of these constituents are typically much higher in recycled water, as shown in Findings 24 and 25 of the tentative Order. • The Regional Board has concerns about the ultimate use of recycled water and actual and potential impacts of the use of recycled water on waters of the State. Order No. 91-039, which allowed FPUD to distribute to multiple use sites as requested by FPUD, was adopted by the Regional Board based on FPUD assuming responsibility for ensuring that the recycled water distributed to individual use sites will not negatively impact waters of the State and will be protective of public health. By suggesting that the Regional Board should issue separate water recycling requirements or WDRs to end users, FPUD is basically asking the Regional Board to change the regulatory arrangement which FPUD originally requested and agreed to. • Because water recycling projects are also subject to waste discharge requirements, it is appropriate to include monitoring requirements in the tentative

Comment #	Comment	Staff Response
		<p>Order that are in addition to monitoring requirements based on CCR Title 22.</p> <p>The effluent monitoring requirement of the tentative Order are retained without modification. However, the Regional Board agrees to remove groundwater and surface water monitoring requirements of the tentative Order, as indicated in the Errata Sheet. The Regional Board will re-assess the need for groundwater and surface water monitoring based on data that will be collected from the effluent monitoring program. The elimination of the proposed groundwater monitoring program consequently also means that hydrogeologic information will not be obtained which would allow determination of assimilative capacity and natural attenuation in the groundwater basin. (See Comment #6)</p>
11.	<p>a. Finding 15. Although not titled as such, this Order is being issued as a Master Reclamation Permit without Fallbrook's consent.</p> <p>As specified in Finding 15, the Tentative Order is being issued pursuant to Water Code sections 13263 and 13500-13556. In addition, the Tentative Order, which applies to the producer and distributor of recycled water, required Fallbrook to "establish and enforce rules and regulations which apply to users of its recycled water." This is a Master Reclamation Permit requirement, as are the reporting requirement contained in the MRP at pages 42-43. See Water Code § 13523.1 (b)(3), (4), and (5).</p> <p>Reclamation projects in California can be governed by either "WRRs" issued pursuant to Water Code section 13523 or a "Master Reclamation Permit," which can be a joint WDR/WRR, issued pursuant to Water Code section 13523.1. See Basin Plan at pg. 4-13. Importantly, the</p>	<p>The Regional Board disagrees that the use of recycled water is not subject to waste discharge requirements. (See response to Comment #3).</p> <p>FPUD's current requirements for its water recycling project, Order No. 91-039, were established as waste discharge requirements with water recycling requirements. In lieu of requiring the individual use sites to obtain water recycling requirements from the Regional Board, Order No. 91-039 allowed FPUD to distribute recycled water to multiple use sites provided that FPUD established and enforced Rules and Regulations for Reclaimed Water Users to protect public health. Tentative Order No. R9-2006-0064 is an update of Order No. 91-039 and follows the same regulatory arrangement that allows FPUD to distribute recycled water to multiple use sites while protecting waters of the State and public health. The issuance of combined</p>

Comment #	Comment	Staff Response
	<p>issuance of a "Master Reclamation Permit" by the Regional Board must only be "with the consent of the proposed permittee," given the potentially increased breadth of regulations (i.e., inclusion of WDRs and heightened enforcement due to increased responsibility overseeing recycled water users). See Water Code section 13523.1 (stating "Each regional board, after consulting with, and receiving the recommendations of, the State Department of Health Services and any party who has requested in writing to be consulted, with the consent of the proposed permittee, and after any necessary hearing, may, in lieu of issuance of . . . water reclamation requirements pursuant Section 13523 for a user of reclaimed water, issue a master reclamation permit . . .") (emphasis added).</p> <p>In this case, Fallbrook does not consent to the issuance and/or use of a "Master Reclamation Permit" to regulate Fallbrook's beneficial reuse projects. Fallbrook did not request a Master Reclamation Permit, and Regional Board staff did not obtain Fallbrook's consent prior to issuing the Tentative Order for comment and hearing.</p> <p>Fallbrook, therefore, requests that the Regional Board revise the Tentative Order such that the order ultimately provided to the Regional Board members for consideration and/or adoption constitutes solely "WRRs" issued pursuant to Water Code section 13523 rather than a Master Reclamation Permit containing joint WDR/WRRs.</p>	<p>waste discharge requirements and water recycling requirements is an efficient use of Regional Board resources as explained in the response to Comment #4.</p>

Comment #	Comment	Staff Response
12.	<p>b. Finding 35 and Provisions B.3 - B.4. Daily limits are not necessary.</p> <p>The groundwater objectives to be protected are all set as long term annual averages for human health protection over 70 years of exposure from drinking water from that source. Further, the objectives are set to not "be exceeded more than ten percent of the time in a one-year period." See Basin Plan at Tables 3-2 and 3-3. As such, no need exists to set daily limits on the recycled water and statistically derived annual average limits would be adequate to protect the quality of the groundwater.</p>	<p>Unlike drinking water standards, the groundwater objectives are <u>only</u> set to not "be exceeded more than ten percent of the time in a one-year period."</p> <p>The Regional Board utilized the statistical procedure described in the Fact Sheet to derive the 12-month average and daily maximum effluent limitations from the same statistical distribution, and together, both ensure that the objective is not exceeded more than ten percent of the time.</p>
13.	<p>c. Findings included without supporting evidence.</p> <p>The Tentative Order includes many findings that do not contain supporting evidence. For example, Finding 36 of the Tentative Order and the findings on page 3 of the Fact Sheet contain unsupported findings regarding the fate and transport of nitrogen compounds. Similarly, Finding 41 concludes that the Regional Board considered the 13241 factors, but the Tentative Order and the Fact Sheet contain absolutely no evidence of these considerations. Findings unsupported by evidence constitute a per se prejudicial abuse of discretion.</p>	<p>The fate of nitrates and the nitrogen cycle are common knowledge for professionals and many laypersons concerned with wastewater treatment and environmental impacts. The Fact Sheet reference section lists two supporting technical references that were consulted regarding nitrates and nitrogen: <i>Wastewater Engineering: Treatment, Disposal, and Reuse</i> (Metcalf & Eddy, Inc., 3rd Edition) and USEPA's <i>Onsite Wastewater Treatment Systems Manual</i> (February 2002, EPA/625/R-00/008). The Fact Sheet is modified as indicated in the Errata Sheet to list additional references that were consulted and to identify specific pages within those references that support Finding 36 and the Fact Sheet.</p> <p>FPUD's claim that the Findings and the Fact Sheet "contain absolutely no evidence" that the factors listed under CWC §13241 is incorrect. For example CWC §13241(a) requires that the Regional Board consider "past, present, and probable future beneficial uses of water". Findings 28-31 identify the designated beneficial uses of the groundwater in the Fallbrook area and Findings 20 and 21 discusses the past and present</p>

Comment #	Comment	Staff Response
		<p>direct beneficial use of FPUD's recycled water. The Regional Board's consideration of the CWC §13241 factors are also documented in the Regional Board records but not in the Findings and Fact Sheet. For example, economic consideration of the increased costs from additional monitoring were considered as indicated in the response to Comment #10.</p>
14.	<p>d. Many of the reuse restrictions are more stringent without an explanation as to the necessity of such changes.</p> <p>Many of the recycled water limits are more stringent than before without any evidence as to why more stringent requirements are necessary. Many of these may be byproducts of the new calculations being performed to derive the limits, but others do not seem to have an explanation. For example, the turbidity requirements used to be based on "average operating turbidity," but are now "daily average" values, which appears to be much more restrictive and may cause compliance problems. Because the applicable water quality objective for the groundwaters at issue is 5 NTU as an annual average not to be exceeded more than 10% of the time, the restrictions included in the Tentative Order appear unduly restrictive.</p>	<p>Effluent limitations based on groundwater water quality objectives listed under Table 3-3 of the Basin Plan were recalculated using the statistical procedure explained in the Fact Sheet. These recalculated effluent limitations may be numerically lower than effluent limitations contained in FPUD's previous water recycling WDR, but they more accurately implement the Basin Plan water quality objectives, which are values not to be exceeded more than ten percent of the time in a one year period.</p> <p>The tentative Order contains errors in the effluent limitations for TDS, chloride and sulfate that are based on an allowed typical incremental increase over the concentrations in the supply water (Provision B.4). During the development of the tentative Order, the Regional Board had determined typical incremental increases using data submitted by FPUD for its effluent and potable supply water. However, the tentative Order included typical increments for San Diego County instead of the FPUD-specific increments that were determined. The tentative Order is modified to include the FPUD-specific increments, and the Fact Sheet is modified to explain the derivation of the effluent limitation, as indicated in the Errata Sheet. The FPUD-specific increments would result in more stringent effluent limitations; however, these more stringent effluent limitations are appropriate because they are based on data submitted by FPUD and they implement</p>

Comment #	Comment	Staff Response
		<p>the Basin Plan policy on recycled water use in areas downstream of drinking water reservoirs.</p> <p>The turbidity discharge specifications of the tentative Order are based on the more stringent DHS turbidity requirements in the Title 22 water recycling criteria and are not based on the groundwater water quality objective. The turbidity discharge specification of 2 NTU daily average is based on the Title 22 definition of “filtered wastewater” which was revised by DHS in November 2000 as a 24-hour average turbidity from the previous less precise “average operating turbidity”.</p>
15.	<p>e. The Order contains undefined terms.</p> <p>The Tentative Order at Provision C for the first time uses the term "Recycled Water Agency," however that term is undefined.</p> <p>In addition, other terms, such as "toxic materials" used in Provision A.4(d), are also undefined. Many, if not all, constituents and even water itself can be toxic in excessive quantities. This term also does not state what organism is target for any analysis of toxicity. Because these terms are vague, they should be removed or defined in the Tentative Order prior to adoption.</p> <p>Another provision that is not adequately defined is the requirement that signs be "translated into Spanish and other appropriate languages" in Provision D.1(m). Since tens or hundreds of languages are spoken in California, it would be difficult to determine which languages are appropriate. Given the proximity of Fallbrook to Mexico, Spanish would be considered to be appropriate. However, Fallbrook requests that the reference to "and other appropriate languages" be removed as not adequately defined and overbroad.</p>	<p>The term “Recycled Water Agency” was actually first used at the beginning of the requirements of the tentative Order on page 15 which states “It is hereby ordered that, the Fallbrook Public Utility District (hereinafter Recycled Water Agency or FPUD) . . . :”</p> <p>The term “Recycled Water Agency” is defined in CCR Title 22 §60301.740 as “the public water system, or a publicly or privately owned or operated recycled water system, that delivers or proposes to deliver recycled water to a facility.” FPUD is a Recycled Water Agency.</p> <p>Provision A.4(d) is deleted from the tentative Order, as indicated in the Errata Sheet. The Regional Board agrees that the term “toxic materials” is undefined. Prohibition A.4(d) was retained in the tentative Order from the Order No. 91-039, but the Regional Board has not found a basis for the prohibition in current statutes or regulations.</p> <p>The intent of Provision D.1(m) is to require signage at recycled water use sites that would notify the public not to drink recycled water used at the site. Provision D.1(m) is revised in the tentative Order, as indicated in the Errata Sheet, to more closely reflect the</p>

Comment #	Comment	Staff Response
		requirements of Title 22 §60310 (g). The revision deletes the requirement to translate wording into Spanish and other appropriate languages and instead requires the incorporation of the international symbol provided as Attachment 1 to the tentative Order. The revision also allows the use of alternative means of public notification.
16.	<p>f. The Order unlawfully delegates modification authority to the Executive Officer.</p> <p>Water Code Section 13223(a) specifically excepts modification of any waste discharge requirement from being delegated to the Executive Officer by the Regional Board. Therefore, if the Order is adopted as proposed as a WDR, then several provisions therein contain unlawfully delegated authority to the Executive Officer. However, if modified to be solely a WRR as requested by Fallbrook, [those provisions can remain.</p> <p>If issued as a WDR, at least the following provisions are unlawful:</p> <p>Tentative Order, Provision D.1 (i) - allows the Executive Officer to modify storage requirements</p> <p>Tentative Order, Provision E.4. - allows revisions to the MRP by the Executive Officer</p> <p>MRP, Provision A. 1. - allowing amendment of monitoring points</p>	<p>The tentative Order is revised, as indicated in the Errata Sheet, as follows:</p> <ul style="list-style-type: none"> • The phrase “except as authorized by the Regional Board Executive Officer” is deleted from Provisions D.1(h) and D.1(i). • The phrase “and future revisions thereto as specified by the Executive Officer” is replaced with “and future revisions thereto as adopted by the Regional Board” in Provision E.4. • The sentence “Monitoring points shall not be changed without notification to and the approval of the Executive Officer” is deleted from MRP Provision A.1. FPUD is allowed discretion in locating monitoring points provided that location requirements specified in the MRP (e.g., MRP Provisions C.2 and C.3) are satisfied. Provision A.8 also requires FPUD to keep records of monitoring information for all monitoring activity including the exact place of monitoring.
17.	g. Other comments and edits to the Tentative Order are included in the redline version attached hereto as Exhibit A.	<i>No Exhibit A was provided by FPUD at the time the comments were submitted on May 26, 2006.</i>

Comment #	Comment	Staff Response
18.	As it now stands, the Tentative Order being proposed is overly onerous and Fallbrook does not consent to its issuance. However, Fallbrook looks forward to meeting with your staff to discuss how to implement the requested revisions expeditiously such that Fallbrook's provision of recycled water can continue under a reasonable WRR-type permit.	<p>The Regional Board disagrees that the tentative Order, as originally proposed on May 26, 2006, is overly onerous. However, the Regional Board agrees to modify the tentative Order in response to certain requests from FPUD as explained in the above responses to comments.</p> <p>The distribution of recycled water is subject to both WDRs and WRRs, and the tentative Order is not only a WRR-type permit.</p> <p>Regional Board staff met with FPUD representatives on June 1, 2006 along with representatives from DHS to discuss the tentative Order and FPUD comments. It was Regional Board staff's understanding from the meeting that the increased costs associated with the new groundwater and surface water monitoring requirements of the tentative Order were the most significant concern to FPUD and that if those monitoring requirements were removed, FPUD would consent to the remainder of the tentative Order.</p>
<i>Comments from Fallbrook Public Utility District and Melissa Thorme, Counsel to FPUD, via electronic mail on August 8, 2006</i>		
19.	Attached is the requested redline version turning the permit into a WRRs as requested by Fallbrook. Unless these changes are incorporated into the errata, I am afraid that my client cannot consent to a new permit and will just continue under the existing permit. Please let us know if you would like to discuss this early next week before the hearing.	<p>The Regional Board did not request a redline version of the tentative Order turning the permit into a WRRs. The Regional Board only inquired if a redline/strike-out version of the tentative Order was attached to FPUD's May 26, 2006 comment letter which FPUD stated was attached as Exhibit A. (See Comment #17)</p> <p>The redline version of the tentative Order submitted by FPUD contains substantial proposed changes, and most of those proposed changes are not being made to the tentative Order through the Errata Sheet. The Regional Board is aware that FPUD does not consent to the</p>

Comment #	Comment	Staff Response
		<p>tentative Order.</p> <p>FPUD is requesting that the tentative Order only be issued as water recycling requirements for the production and distribution of recycled water but without provisions or requirements for use sites. If the redline version of the tentative Order submitted by FPUD were adopted, recycled water use sites would need to immediately stop using recycled water and apply for WRRs for use sites. Use sites may also need to obtain WDRs to incorporate requirements for protection of groundwater quality.</p> <p>During the June 1, 2006 meeting between Regional Board staff and FPUD representatives, FPUD stated that it would consent to the tentative Order if groundwater and surface water monitoring requirements were removed from the tentative Order. FPUD's recent demand to convert the tentative Order to WRRs per its redline version contradicts FPUD's statements during the June 1, 2006 meeting. Because this recent demand is unexpected, the Regional Board is unprepared at this time to take over regulation of the recycled water use sites. However, it is willing to do so if necessary, but the process to adopt WRRs (and/or WDRs) for the use sites and set up a regulatory program will take several months. During that interim period, use sites will not have the required WRRs for the use of recycled water.</p> <p>The continuation of FPUD's water recycling project under Order No. 91-039 is not a desirable option. Since Title 22 water recycling criteria have been updated by DHS, Order No. 91-039 does not reflect the latest standards for recycled water for the protection of public health.</p>

Comment #	Comment	Staff Response
20.	<p><i>FPUD submitted a “redline” edited version of the tentative Order as an attachment to Melissa Thorme’s electronic mail correspondence dated August 8, 2006. (See Comment #19)</i></p> <p><i>The redline version is available at http://www.waterboards.ca.gov/sandiego/misc/R9-2006-0064/R9-2006-0064.html</i></p>	<p>FPUD submitted a redline version of the tentative Order which, in FPUD’s opinion, converts the tentative Order to only a WRRs for the production and distribution of recycled water. The redline version would not require FPUD to regulate its use sites and would require use sites to obtain WRRs for use sites and/or WDRs.</p> <p>In general, the conversion of the tentative Order from a WDR with WRRs to only a WRR is rejected because water recycling projects are also subject to WDRs and not just WRRs. The conversion of the tentative Order to a WRR only for the production and distribution of recycled water is also rejected in general because this would add a layer of regulatory burden on recycled water users that would not encourage water recycling. Consequently, proposed changes that reflect the conversion the tentative Order to a WRR only for the production and distribution of recycled water are not incorporated into the tentative Order. Specific proposed changes in the redline version have been either considered above through the responses to Comments #1-18 or are considered in the specific responses below:</p> <ul style="list-style-type: none"> • FPUD’s proposed Finding 4 and proposed additional language in Finding 35, while true, are not necessary and may lead to the inaccurate conclusion that water recycling projects are not subject to waste discharge requirements. While properly treated recycled water is safe from the perspective of public health and does not cause, constitute, or contribute to contamination, recycled water does contain and convey wastes and pollutants that can impact waters of the State. “Contamination” means the impairment of the quality of waters of the State by waste to a degree which creates a hazard to public health [CWC Section

Comment #	Comment	Staff Response
		<p>13050(k)]. The broader term “pollution” means alteration of the quality of the waters of the State by waste to a degree which unreasonably affects either the waters for beneficial uses or the facilities which serve these beneficial uses [CWC Section 13050(l)]. “Contamination” is one type of pollution included within the meaning of the term “pollution.” Properly recycled water may not cause contamination but the same is not true with regards to pollution.</p> <ul style="list-style-type: none"> • FPUD proposes changes to the wording in Findings 6, 7, 8, 12, 13, 14, and 15 of the tentative Order which are inaccurate. FPUD submitted Reports of Waste Discharge in 1990, 1996, and 1997. Order No. 91-039 and previous permits for FPUD’s water recycling project were all issued as WDRs, or WDRs with WRRs, but not as master reclamation permits; master reclamation permits were not statutorily available until after Order No. 91-039 was adopted. • FPUD proposes additional language in Finding 14 of the tentative Order regarding its request for only a WRR for its water recycling project and stating that FPUD does not consent to a master reclamation permit. FPUD also proposes additional language in Finding 15 of the tentative Order stating that a master reclamation permit is being issued. These proposed additions are not accurate since the tentative Order is not being issued as a master reclamation permit pursuant to CWC Section 13523.1. Instead the tentative Order is an update of Order No. 91-039, which was issued as WDRs with WRRs and which required FPUD to regulate its recycled water use sites to protect public health. • FPUD proposed to replace the term “effluent” throughout the tentative Order with the term “recycled water” or some other terminology that

Comment #	Comment	Staff Response
		<p>avoids the use of the term “effluent”. These proposed word changes are rejected. The term “recycled water” means properly treated wastewater suitable for direct beneficial use or a controlled use. However, the tentative Order uses the term effluent to refer to the water flowing from a water or wastewater treatment facility. “Effluent” is a neutral term that does not presume proper or improper treatment or compliance or non-compliance with requirements.</p> <ul style="list-style-type: none"> • FPUD proposed to replace references to “Recycled Water Agency” with “FPUD” throughout the tentative Order. The term “Recycled Water Agency” is defined in CCR Title 22 §60301.740 as “the public water system, or a publicly or privately owned or operated recycled water system, that delivers or proposes to deliver recycled water to a facility.” FPUD is a Recycled Water Agency; therefore, the two terms are synonymous as used in the tentative Order. While the proposed changes are not inappropriate, they are also not necessary. • FPUD proposed to insert the term “dry-weather” in describing flowrates at its Wastewater Treatment Plant No. 1. These changes are accepted, as indicated in the Errata Sheet, where the design capacity of the treatment plant is the subject. However, the term “dry weather” is not inserted in the flowrate limitation Provision A.5 because it is the intent of the prohibition to assign one flowrate limitation that applies year-round. • FPUD proposed to replace references to “wastes” and “wastewater” in the prohibitions of Provisions A.8 and A.9 with the term “recycled water”. These changes are rejected since the prohibitions are intended to apply to wastes and wastewater and not

Comment #	Comment	Staff Response
		<p>just to recycled water.</p> <ul style="list-style-type: none"> • FPUD proposed to replace the term “discharge” or “discharge of waste” with “provision of recycled water” throughout the tentative Order. The two terms are synonymous with respect to waste discharge requirements, and the changes are rejected as unnecessary. Where appropriate, however, the Regional Board replaced the term “discharge” with “distribution of recycled water” or similar terminology, as indicated in the Errata Sheet. • FPUD proposed deletions and additions to Provisions B.8 and B.9 which modify the intent of the provisions. The unmodified provisions are taken from Title 22 water recycling criteria and are retained. • FPUD proposed to insert the phrase “or its equivalent” in Provision B.1 and “or equivalent” in Provision B.8 regarding required treatment levels for recycled water. These changes are rejected since Title 22 water recycling criteria already specify allowable treatment levels and acceptable processes but do not provide for alternate or equivalent treatment levels or processes not specified in the water recycling criteria. • FPUD proposed to delete Finding 23 and Provisions B.5, B.6, E.7, F.1, and F.3 without justification. These are necessary findings and provisions and are therefore retained. • FPUD’s proposed change to the pH effluent limitation is accepted, as indicated in the Errata Sheet. • FPUD proposed to modify Provision F.4. The changes are rejected because they do not reflect the

Comment #	Comment	Staff Response
		<p>intent of the provision nor reflect the provisions of CWC Sections 13260, 13291, 13267, and 13268.</p> <ul style="list-style-type: none"> • FPUD’s proposed addition to MRP Provision A.3 regarding use of test methods approved by the Executive Officer is accepted, as indicated in the Errata Sheet. • FPUD’s proposed addition to MRP Provision A.14 is rejected because it is vague and unnecessary. • FPUD proposed to delete Recycled Water Use Provisions (Section D) and Recycle Water Users Summary Report requirements (MRP Section I) in keeping with its request to convert the tentative Order to WRRs only for the production and distribution of recycled water. These deletions are rejected since the tentative Order is a WDR with WRRs with requirements for FPUD to regulate its use sites.