

## State Water Resources Control Board

### EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL ORDERS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A “general order” does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with the requirement to meet statutory disclosure requirements. For more information, see Water Code section 13287 and [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

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EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS  
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1. Pending General Order that the communication concerned:

Sanitary Sewer System Waste Discharge Requirements - SSS WDR

2. Name, title and contact information of person completing this form:

Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.

Jared Voskuhl, CASA Manager of Regulatory Affairs, [jvoskuhl@casaweb.org](mailto:jvoskuhl@casaweb.org)

3. Date of meeting, phone call or other communication: 11/18/22

Time: 8:00 AM

Location: Virtual

4. Type of communication (written, oral or both): Oral

5. Names of all participants in the communication, including all board members who participated:

Dorene D'Adamo, Nichole Morgan, Mary Cousins, Debbie Webster, Steve Jepsen, Jared Voskuhl

6. Name of person(s) who initiated the communication:

Jared Voskuhl

7. Describe the communication and the content of the communication. Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.

Discussed the timing of the administrative process before the 12/6/22 SWRCB meeting, discussed the cost of compliance for the new Order, and discussed exfiltration, spill reporting, and due dates for various requirements.

8. Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.

## Discussion Topics for SSS-WDR



### Goal:

- Reduce cost of compliance for requirements with limited or no water quality impact
- Provide direction on significant new requirements added to this revised draft version

### Topics:

1. Exfiltration (Findings, page 13 and Attachment D, p. D-8)
  - a. Finding 3.2.4 (legal risk)
  - b. Prioritization of exfiltration in SSMP Section 8.1 (capital and O&M costs)
2. Spill Reporting (Attachment E1)
  - a. Duplicate Lateral Spill Reporting (Staff have agreed to fix but review will be needed) (p. E1-18)
  - b. Definition of Enrollee “owned and/or operated” laterals (p. E1-18)
  - c. Reporting frequency and information needed in CIWQS for spills < 50 gallons (new “Category 4”) (p. E1-17)
3. Due Dates
  - a. Spill Emergency Response Plan updates (Section 5.12, page 26 and Attachment D, page D-6)
  - b. SSMPs are updated for many reasons; are not following the 2006 Order Due Dates (Section 5.5, p. 20)

### Exfiltration:

#### 3.2.4. Underground Sanitary Sewer System Leakage

~~Not all, yet many~~ **Portions of some** sanitary sewer systems **may** leak, causing underground exfiltration (exiting) of sewage from the system. **Underground exfiltration of sewage, in and of itself, may not threaten beneficial uses.** Exfiltrated sewage that remains in the underground infrastructure trench and/or the soil matrix, and that does not discharge into waters of the State (surface water or groundwater) may not threaten beneficial uses.

Underground exfiltrated sewage may threaten beneficial uses if discharged to waters of the State. Exfiltrated sewage that discharges to groundwater may impact beneficial uses of groundwater and pollute groundwater supply. Additionally, exfiltrated sewage may enter into a compromised underground drainage conveyance system that discharges into a water of the United States, or into groundwater that is hydrologically connected to (feeds into) a water of the United States, thus potentially causing: (1) a Clean Water Act violation, (2) threat and impact to beneficial uses, and/or (3) surface water pollution.

## Discussion Topics for SSS-WDR



### Exfiltration:

#### From Section 8.1

Utilize observations/evidence of system conditions that **may** contribute to sewage exiting the system that have a **potential** to enter into a water of the State, for prioritization of rehabilitation and/or repair of compromised system component accordingly;

#### From the 11/14 Workshop:

- A subset of publicly owned systems will have additional capital costs to address underground exfiltrating sewage that, due to location-specific factors, will reach groundwater
  - Additional capital costs to address observed exfiltrated sewage (during condition assessments) in system areas that the sewage may reach groundwater.  
(1% x (120,000 miles of sewer) x (5280 feet/mile) x (\$100 +/-/foot)

$$1\% \times 120,000 \text{ miles} \times 5,280 \times \$100/\text{foot} = \$633,600,000$$

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Jared Voskuhl, CASA Manager of Regulatory Affairs, [jvoskuhl@casaweb.org](mailto:jvoskuhl@casaweb.org)

3. Date of meeting, phone call or other communication: 11/22/22

Time: 2:00 PM

Location: Virtual

4. Type of communication (written, oral or both): Oral

5. Names of all participants in the communication, including all board members who participated:

Laurel Firestone, Sean Maguire, Mary Cousins, Debbie Webster, Steve Jepsen, Jared Voskuhl, Diana Messina, Afrooz Farsimadan, Phil Crader, Karen Mogus.

6. Name of person(s) who initiated the communication:

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# Discussion Topics for SSS-WDR



## **Goal:**

- Reduce cost of compliance for requirements with limited or no water quality impact
- Provide direction on significant new requirements added to this revised draft version

## **Topics:**

### Exfiltration (Findings, page 13 and Attachment D, p. D-8)

- Finding 3.2.4 (legal risk)
- Prioritization of exfiltration in SSMP Section 8.1 (capital and O&M costs)

### Climate Change and Capacity

- Considerations for discretionary enforcement (6.1.6)

### Spill Reporting (Attachment E1)

- Sampling within 18 hours to enable daylight operations. Instead of 12 hours (used to be 48 hours)
- Notification within 1,000 feet of municipal wells for Cat 1 (p E1-11)
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- Reporting frequency and information needed in CIWQS for spills < 50 gallons (new “Category 4”) (p. E1-17)

### Administrative Costs

- Spill Emergency Response Plan updates (Section 5.12, page 26 and Attachment D, page D-6)
- SSMPs are updated for many reasons; are not following the 2006 Order Due Dates (Section 5.5, p. 20)
- Small System Considerations – Procedures, LRO

# Discussion Topics for SSS-WDR



## Exfiltration:

### 3.2.4. Underground Sanitary Sewer System Leakage

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~~Red Strike Through~~ = Our requested deletions from current draft order

**Blue Bold** = Our requested additions to the current draft order

# Discussion Topics for SSS-WDR



## Exfiltration:

### From Section 8.1:

- Utilize observations/evidence of system conditions that may contribute to **a potential discharge. sewage exiting the system that have a potential to enter into a water of the State, for prioritization of rehabilitation and/or repair of compromised system component accordingly;**

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### From Definitions:

#### **Potential to Discharge, Potential Discharge**

Potential to Discharge, or Potential Discharge, means any exiting of sewage from a sanitary sewer system which can reasonably be expected to discharge into a water of the State based on the size of the sewage spill, proximity to a drainage conveyance system, and the nature of the surrounding environment.

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## Category 4 Spill Reporting:

### Quarterly Certified Spill Reporting for Category 4 Spills

Spill Occurrence	Quarterly Report Due Date
January 1 – March 31	<del>April 15</del> <b>April 30</b>
April 1 – June 30	<del>July 15</del> <b>July 31</b>
July 1 – September 30	<del>October 15</del> <b>October 31</b>
October 1 – December 31	<del>January 15</del> <b>January 31</b>

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Table E2-4

### Spill Category 4: Spills Less Than 50 Gallons That Do Not Discharge to Surface Waters

Spill Requirements	Due	Method
Notification	Not Applicable	Not Applicable
Monitoring	Conduct spill-specific monitoring.	(Section 2 of Attachment E1)
Reporting	<ul style="list-style-type: none"> <li>Submit quarterly Certified Spill Report to the online CIWQS Sanitary Sewer System Database, within <del>30</del> <b>45</b> days after the end of the calendar quarter in which the spills occurred.</li> <li>Submit Amended Spill Reports within 90 calendar days after the certified Spill Report due date.</li> <li>If, during any calendar month, only Category 4 spills occur (no other category spills occur), certify “Category 4 Spills Only” in the online CIWQS Sanitary Sewer System Database, within 30 days after the end of the calendar quarter.</li> </ul>	(Section 3.4., 3.5. and 3.7. of Attachment E1)

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# Discussion Topics for SSS-WDR



## Exfiltration:

### Cost of Compliance – Capital Only, Exfiltration Only

#### From the 11/18 Workshop:

- A subset of publicly owned systems will have additional capital costs to address underground exfiltrating sewage that, due to location-specific factors, will reach groundwater
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(1% x (120,000 miles of sewer) x (5280 feet/mile) x (\$100 +/-/foot) ?

#### The difference between current SSS WDR and proposed SSS WDR:

1. Much more discussion on exfiltration
2. A prohibition of discharges to Waters of the State (which includes groundwater)

The formula:  $1\% \times 120,000 \text{ miles} \times 5,280 \times \$100/\text{foot} = \$633,600,000$



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Time:  
Location:
  
4. Type of communication (written, oral or both):
  
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**From:** [Steve Moore](#)  
**To:** [Maguire, Sean@Waterboards](mailto:Maguire_Sean@Waterboards)  
**Subject:** Remaining 5 Issues  
**Date:** Thursday, December 1, 2022 4:38:00 PM

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Hi Sean,

I reviewed Change Sheet No. 1 and there's significant progress on the exfiltration and mapping deficiencies of the draft order. And several minor improvements. So we are grateful that staff continues to work through these issues one by one.

Unfortunately, there are still 5 items I think must be changed, which I provided some detail to you in our meeting.

I will testify in person on Tuesday but I think you should consider postponing and meet with us and hammer these things out. An alternative is to come up with a Change Sheet No. 2, but I am concerned that staff is not taking these matters as seriously as they should. I think maybe our representatives have been too nice and have not communicated the unintended consequences as strongly as they could.

Here are the issues added in the Oct 28 version that Enrollees have not had a chance to provide written comments about and are greatly concerning:

1. A new quarterly reporting program that exposes enrollees to enforcement for events that do not affect water quality
2. Cat 4 should not be entered into CIWQS like Cat 3 or Water Board has backtracked on its commitment to reduce excessive reporting of these events that do not affect water quality. Keep the monthly "no-spill" reporting or "Cat 4-only" with number of Cat 4's. Annual summary of Cat 4's, the same as lower laterals. No data entry for Cat 4's, the same as lower laterals (they are functionally the same in the field).
3. Blockage Control Program: There already is one. If it has to be added, its appropriate location in the SSMP is Element 4 not Element 7. Keep the successful FOG program where it is and keep calling it FOG – it works as an effective source control program and should be highlighted not buried in with other blockages that are non-point source.
4. We need 24 h max time to WQ Sampling on large Cat 1's (down from 48 h in current order). We can settle for 18 h for practicality reasons, but 12 h will not be met much of the time.
5. Section 3.1.2 - Remove 'Impacts to Aquatic Life' and 'if within 1000 feet of muni well or surface water intake' – this info is not readily available to collection systems, especially smalls, and exposes enrollees to enforcement or penalty of perjury for submitting false information.

Thank you for listening to our concerns – as I said, these came out as new issues in the revised order, on which we were not allowed to provide written comments. That is a bit of a flaw and it would have been good if these intended changes were vetted with those of us who work on the ground, to get the necessary back-and-forth to avoid unintended consequences.

Thanks!

*Steve Moore, P.E., General Manager*  
Ross Valley Sanitary District  
2960 Kerner Blvd., San Rafael, CA 94901  
(415) 870-9764  
(415) 730-0089 (cell)  
Website: [www.rvsd.org](http://www.rvsd.org)  
Email: [smoore@rvsd.org](mailto:smoore@rvsd.org)

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*Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov). Use of this form is not mandatory.*

1. Pending General Order that the communication concerned:

Sanitary Sewer System Waste Discharge Requirements

2. Name, title and contact information of person completing this form:

Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.

Steven Moore, General Manager, 415 730 0089, [smoore@rvsd.org](mailto:smoore@rvsd.org)

3. Date of meeting, phone call or other communication: December 2, 2022 emails

Time: 11:31 am and 4:13 pm

Location: N/A

4. Type of communication (written, oral or both): Written

5. Names of all participants in the communication, including all board members who participated:

Joaquin Esquivel, Chair

6. Name of person(s) who initiated the communication:

Steven Moore

7. Describe the communication and the content of the communication. Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.

A request to consider postponing the adoption hearing for the proposed general permit renewal because of outstanding issues that could adversely affect small and disadvantaged enrollees, and a followup communication that stakeholders were still working through issues and there might be hope to go forward.

8. Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.



**From:** [Steve Moore](#)  
**To:** [joaquin.esquivel@waterboards.ca.gov](mailto:joaquin.esquivel@waterboards.ca.gov)  
**Subject:** Re: Sanitary Sewer WDR - maybe not ready to go  
**Date:** Friday, December 2, 2022 4:13:37 PM

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Hi Joaquin - I spoke with Jonathan and he put me through to Diana and there's hope so we'll keep trying. Have a great weekend,

*Steve Moore, P.E., General Manager*  
Ross Valley Sanitary District  
2960 Kerner Blvd., San Rafael, CA 94901  
(415) 870-9764  
(415) 730-0089 (cell)  
Website: [www.rvsd.org](http://www.rvsd.org)  
Email: [smoore@rvsd.org](mailto:smoore@rvsd.org)

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**From:** Steve Moore  
**Sent:** Friday, December 2, 2022 11:31 AM  
**To:** [joaquin.esquivel@waterboards.ca.gov](mailto:joaquin.esquivel@waterboards.ca.gov) <[joaquin.esquivel@waterboards.ca.gov](mailto:joaquin.esquivel@waterboards.ca.gov)>  
**Subject:** Sanitary Sewer WDR - maybe not ready to go

Good morning Joaquin,

I hope things are going well and the holidays are shaping up for you and your family. Things are going fine here, no complaints.

I have been helping with the revisions to the SSSWDR that are on the Tues. agenda for adoption. Staff has been responsive and engaged. I was hoping not to have to write this email, but here goes. I also left a voice mail with Eileen.

The Change Sheet No. 1 published yesterday is very detailed and complicated, addresses some issues, and leaves some important issues for Smalls and DACs unaddressed. It also appears to complicate an issue on Spill Prevention Plans. The remaining concerns we have are all related to unintended consequences and we are prepared to provide detailed examples and suggestions. But there are many. I have 5 issues I think are being ignored - not cost, but liability and confusion related to the Existing Order (which as you know is working well). It leaves Smalls and DACs vulnerable to enforcement, third party actions and even penalty of perjury for submitting false info. I know that the Board and staff do not have that intent.

I think it would be wise to postpone the adoption hearing and direct staff to sit down with the regulated community and hammer out some remaining refinements. This order will go on for 15-20 years and I think we all agree we should avoid unnecessary busy work and reporting for both regulators and regulated. The bulk of the concerns are related to additions in the Oct

28 draft that did not have a chance to be vetted (and no written response from Enrollees allowed).

Of course my thoughts go out to you dealing with yet another drought and all the strife that goes with it. We're trying to get our local water district to commit to more water recycling, but it's not easy.

Thanks for listening, and we look forward to bringing this update to conclusion soon working closely with the Water Board staff and members.

Cheers,

*Steve Moore, P.E., General Manager*

Ross Valley Sanitary District

2960 Kerner Blvd., San Rafael, CA 94901

(415) 870-9764

(415) 730-0089 (cell)

Website: [www.rvsd.org](http://www.rvsd.org)

Email: [smoore@rvsd.org](mailto:smoore@rvsd.org)

## State Water Resources Control Board

### EX PARTE DISCLOSURE REQUIREMENTS FOR PENDING GENERAL ORDERS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A “general order” does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with the requirement to meet statutory disclosure requirements. For more information, see Water Code section 13287 and [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

#### ***Must I disclose ex parte communications with board members regarding pending general orders?***

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of “financial interest,” consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (<http://www.fppc.ca.gov/index.php?id=51>)
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

#### ***What must I disclose?***

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

#### ***When is the disclosure due?***

Water Board staff must receive the disclosure within seven (7) working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

#### ***Who must receive my disclosure documents?***

Unless the board member(s) provided you with a different contact person, please send your materials to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

***What will the Water Board do with my disclosure?***

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board's proceeding.

***May other interested persons respond to a disclosure notice?***

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order's written comment period, included in oral comments at the hearing, or both.

**STATE WATER RESOURCES CONTROL BOARD  
EX PARTE COMMUNICATIONS REGARDING PENDING GENERAL ORDERS  
DISCLOSURE FORM**

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Melissa Thorme, Board Member, Santa Lucia C.S.D.

3. Date of meeting, phone call or other communication: December 5, 2022

Time:

Location:

4. Type of communication (written, oral or both): Written

5. Names of all participants in the communication, including all board members who participated:

Diana Messina, Sean McGuire, Nichole Morgan

6. Name of person(s) who initiated the communication:

Melissa Thorme

7. Describe the communication and the content of the communication. Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.

Provided text of requested changes that will be set forth in testimony at the December 6, 2022 hearing, for ease in implementing.

8. Attach a copy of handouts, PowerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.

**Testimony of Melissa Thorme,  
Elected Board Member, Santa Lucia Community Service District**

The below requested changes are submitted on behalf of our very small system with only 51 hook ups currently and 102 connections expected at build out. We have just 14 miles of pipes leading to a small wastewater treatment plant with a capacity of 120,000 gallons per day, currently treating 12,000 gallons per day, so a very small risk of large spills and a good record of no spills to waters. We also have a very small staff so increased requirements create increased strain on staff so we would appreciate consideration of the following changes:

1) Attachment E – Section 3.7 - **Change “no spill,” small “Category 4” spills, and lateral spills to a quarterly reporting schedule, instead of monthly,** since these are low risk events that can be reported in more detail in the annual reports. Making people certify no spills monthly seems like punishing good behavior.

2) Attachment E – Section 2.3.3. – **Remove fecal and total coliform sampling** as these have mostly been superseded by the Bacteria Provisions, which require bacteria standards based on *E. Coli* and Enterococcus, unless the Basin Plan requires additional sampling. Reduced sampling reduces costs, which is particularly important for small systems. Currently, the determination of what is “appropriate” and how to determine whether to sample one, or more, is not clear.

3) WDR Intro – The Introduction should include a general statement, such as **“Building on the success of the previous order that dramatically reduced sanitary sewer overflows statewide, this General Order regulates....”**

4) WDR Section 3.2.4, in the second paragraph, add after **“Additionally, if in close enough proximity,** exfiltrated sewage may enter into a compromised drainage conveyance system....” Based on expert testimony in Baykeeper’s litigation against two Bay Area cities for claims that sewage was exfiltrating into storm drains, the proximity needed was “one meter radially from the MS4 pipe.” This issue of proximity needs to be incorporated into any discussion related to exfiltration.

5) WDR- **Insert commonly used acronyms like Legally Responsible Official (LRO), Private Sewer Lateral (PSL), and Sanitary Sewer Management Plan (SSMP)** at least into the Definitions in Attachment A. Some acronyms have been included, but not these common ones.

6) WDR Sections 5.2 and 8.1 should recognize that the SSMP, SECAP, and any included “current standard industry practices” will be **“relative to the system’s size and budget.”**

7) WDR Section 3.3.2 – Correct the legal distinction related to the Sources of Drinking Water – “establishing state policy **that authorized Regional Boards to** designate...all waters of the State, with certain exceptions, as suitable or potentially suitable for municipal or domestic supply **(MUN) use.”**