

California Regional Water Quality Control Board
San Diego Region
David Gibson, Executive Officer



Executive Officer’s Report
December 11, 2013

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The December report for the Tentative Schedule of Significant NPDES Permits, WDRs, and Actions, and the attachments noted on page 1 are included at the end of the report.

Part A – San Diego Region Staff Activities

1. Personnel Report

Staff Contact: Lori Costa

The Organizational Chart of the San Diego Water Board can be viewed at http://www.waterboards.ca.gov/sandiego/about_us/org_charts/orgchart.pdf

Recent Hires

Brandi Outwin, a Senior Water Resource Control Engineer, will begin working for the San Diego Water Board on December 9, 2013 in the Source Control Regulation Unit. Brandi started her career with the state in 2007 as an engineer here at the San Diego Water Board then moved to the Santa Ana Water Board. For the past four years Brandi worked for the Los Angeles Water Board where she supervised the Municipal Permitting Unit. She has a Bachelor of Science Degree from the University of Michigan, Ann Arbor.

Departures

Andres Polis, a Scientific Aid in the Wetland and Riparian Protection Unit, left state service on October 9, 2013 to work for the County of San Diego. Andreas started working for the Regional Board as a Student Assistant in July 2011. He assisted with the review of Clean Water Act Section 401 applications and storm water monitoring reports. Andreas received his Bachelor of Science degree in Geology in December 2012.

Recruitment

We have begun the process to recruit for a Staff Services Analyst in the Mission Support Services Unit.

2. Annual Meeting of the California Aquatic Bioassessment Workgroup (CABW)

Staff Contacts: Carey Nagoda and Chad Loflen

The 20th annual meeting of the California Aquatic Bioassessment Workgroup was held at the University of California, Davis, on October 29 and 30, 2013. Speakers and attendees included representatives from federal and state agencies, research institutes, universities, non-profit organizations, and consulting companies from California, Nevada, and Arizona. Lilian Busse, Chad Loflen, and Carey Nagoda of the San Diego Water Board's Healthy Waters Branch attended the meeting.

Presentations were given on a wide range of policy and technical topics, such as the State Water Board biological objectives regulatory framework, relevant to the San Diego Water Board. Special sessions included: (1) addressing non-perennial streams, (2) cyanobacteria and cyanotoxins, and (3) impacts of marijuana cultivation.

Carey Nagoda presented results from the cyanotoxin screening studies that have been conducted in streams, depressional wetlands, lakes/reservoirs, and coastal wetlands in the San Diego region and throughout southern California. The presentation, "Cyanotoxins Discovered in Different Water Body Types Throughout Southern CA," generated interest and many questions from the participants.

The special session on non-perennial streams was particularly relevant to efforts of the San Diego Water Board. The Monitoring Assessment and Research Unit (MARU) has been active and continues to work on non-perennial streams assessment development. MARU staff will be conducting bioassessment monitoring in Spring 2014 for two regional projects of the Surface Water Ambient Monitoring Program ([SWAMP](#)). The first project, which began in 2013, is a non-perennial streams project whose purpose is to document the extent, hydrology, and ecology of non-perennial streams in the San Diego Region ([monitoring plan](#)). The second project assists in the implementation of the San Diego Water Board's [coordination of monitoring for the San Diego River Watershed](#), by conducting bioassessment sampling in the upper portion of the San Diego River Watershed ([monitoring plan](#)).

A video of the CABW will be available in a few weeks at http://www.waterboards.ca.gov/water_issues/programs/swamp/reports.shtml.

3. Southern California Wetlands Recovery Project

Staff Contact: Bruce Posthumus

The Southern California Wetlands Recovery Project (WRP) Board of Governors met in Los Angeles on November 7, 2013. Tomas Morales represented the San Diego Water Board at the meeting. The San Diego Water Board is one of eighteen state and federal agencies that are part of the WRP. The WRP works cooperatively with local governments, businesses, non-profit organizations, scientists, and other stakeholders to protect and restore coastal, riparian, and other wetlands in coastal watersheds of southern California.

At its November 7 meeting, the WRP Board of Governors:

- Adopted a new WRP Work Plan;
- Adopted a resolution indicating the Board's intent for the proposed WRP in-lieu fee mitigation program (for mitigating impacts to waters of the United States) to coordinate and cooperate with other in-lieu fee programs in coastal southern California; and
- Directed the WRP Wetlands Managers Group to represent the WRP in implementing and updating the following statewide initiatives:
 - California Aquatic Resources Status and Trends Monitoring
 - California State Wetlands Program Plan
(see http://water.epa.gov/type/wetlands/upload/ca_wpp.pdf)
 - State Wildlife Action Plan
(see <http://www.dfg.ca.gov/SWAP/2005/docs/SWAP-2005-TOC-and-Sum.pdf> and <http://www.dfg.ca.gov/SWAP/2005/docs/SWAP-2005.pdf>).

The WRP Work Plan consists of a vetted list of projects for (a) land acquisition for conservation, (b) wetlands restoration planning, and (c) on-the-ground wetlands restoration. WRP agencies work to obtain funding and provide other support for development and implementation of projects on the WRP Work Plan. WRP Work Plan projects completed since 1999 have resulted in:

- Acquisition of more than 8000 acres for conservation;
- Completion of more 30 restoration planning projects; and
- On-the-ground restoration of more than 4500 acres.

The Board of Governors (made up of high level representatives of participating agencies) is the decision-making body of the WRP. The WRP Wetlands Managers Group (made up of staff from participating agencies) advises the Board of Governors. Bruce Posthumus represents the San Diego Water Board on the Wetlands Managers Group. The California Coastal Conservancy provides staffing for the WRP.

The WRP website (which is not up-to-date) is at: <http://www.scwrp.org/index.htm>.

4. Community Outreach and Education

Staff Contacts: Amy Grove and Sheila Christine McQuaid-Moran

On October 15, 2013, staff members Amy Grove and Sheila Christine McQuaid-Moran had the opportunity to volunteer in the second grade classes at Garden Road Elementary School in Poway. The second grade classes have been learning about natural resources and how humans can have positive and negative impacts on those resources. The staff presentation included a discussion of the water cycle, an interactive activity using the watershed model “hands-on” activity table, and age appropriate worksheets that allowed the students to understand and observe the effects of human activities on water quality and beneficial uses.

Part B – Significant Regional Water Quality Issues

1. Examination of Spotted Sand Bass (*Paralabrax maculatofasciatus*) Pollutant Bioaccumulation in San Diego Bay

Staff Contact: Chad Loflen

San Diego Water Board Environmental Scientist Chad Loflen recently published a scientific article on spotted sand bass (*Paralabrax maculatofasciatus*) bioaccumulation in San Diego Bay. The study evaluated existing data on concentrations of polychlorinated biphenyls (PCBs), the organochlorine insecticide DDT, and mercury. The study abstract is as follows:

*The spotted sand bass (*Paralabrax maculatofasciatus*) is an important recreational sport and subsistence food fish within San Diego Bay, a large industrialized harbor in San Diego, California. Despite this importance, few studies examining the species life history relative to pollutant tissue concentrations and the consumptive fishery exist. This study utilized data from three independent spotted sand bass studies from 1989 to 2002 to investigate*

PCB, DDT, and mercury tissue concentrations relative to spotted sand bass age and growth in San Diego Bay, with subsequent comparisons to published pollutant advisory levels and fishery regulations for recreational and subsistence consumption of the species. Subsequent analysis focused on examining temporal and spatial differences for different regions of San Diego Bay.

Study results for growth confirmed previous work, finding the species to exhibit highly asymptotic growth, making tissue pollutant concentrations at initial take size difficult if not impossible to predict. This was corroborated by independent tissue concentration results for mercury, which found no relationship between fish size and pollutant bioaccumulation observed. However, a positive, though highly variable relationship was observed between fish size and PCB tissue concentration.

Despite these findings, a significant proportion of fish exhibited pollutant levels above recommended state recreational angler consumption advisory levels for PCBs and mercury, especially for fish above the minimum take size, making the necessity of at-size predictions less critical. Lastly, no difference in tissue concentration was found temporally or spatially within San Diego Bay.

The scientific article was published in PeerJ, an online-only, Open Access, peer-reviewed scholarly journal.¹ The article can be found via the following link: <https://peerj.com/articles/213/>.

Concurrent with San Diego Water Board efforts, the State of California Office of Environmental Health Hazard Assessment (OEHHA) independently developed health advisories and [guidelines for consumption of fish from San Diego Bay](#) (see [November 2013 Executive Officer's Report](#)), including spotted sand bass. San Diego Water Board's staff research confirms OEHHA findings regarding PCBs and mercury as pollutants of concern for consumption. Furthermore, the research provides recommendations for future bioaccumulation study efforts and health-related evaluation for the species. These results will also be used in the near-term, as the San Diego Water Board is planning to conduct additional sport fish tissue sampling in San Diego Bay during the summer and fall of 2014.

2. Contaminant Bioaccumulation and Risk Evaluation for San Diego Bay

Staff Contact: Julie Chan

The San Diego Water Board continues to advance the understanding of the San Diego Bay Ecosystem. In conjunction with the Port of San Diego and the Southern California Coastal Water Research Project (SCCWRP), the Board is undertaking an extensive study of the bioaccumulation of contaminants and their risks. The goals of the study are to:

¹ Loflen (2013), Examination of spotted sand bass (*Paralabrax maculatofasciatus*) pollutant bioaccumulation in San Diego Bay, San Diego, California. PeerJ 1:e213;DOI10.7717/peerj.213

- Measure the bioaccumulation and transfer of chemical contaminants from sediments up the food chain in the San Diego Bay ecosystem;
- Assess health risks to humans and wildlife consuming seafood from San Diego Bay; and
- Develop or refine data analysis tools for assessing sediment quality related to bioaccumulation risks.

The San Diego Water Board will use the results of this study to better assess the risks to human health and wildlife from contaminants in sediment that bioaccumulate through the San Diego Bay food web. Study results will aid the Board in making sound regulatory decisions based on up-to-date information using improved analytical tools and methods. Further, the samples collected provide additional opportunities for assessments and the study results will help identify the next gaps in our scientific understanding.

The study is a key project in the Monitoring and Assessment Practical Vision, and is being conducted as a component of the much larger Bight '13 study lead by SCCWRP. The study draws on resources from the Port's portion of the Regional Harbor Monitoring Program and the State Water Board's discretionary contract funds.

Initial sampling for the study was completed in the summer of 2013. Paired sediment and tissue samples were collected at nine stations in San Diego Bay; three each in the north, central and south bay areas. Tissue from benthic infauna was collected at these stations, as well as tissue from other trophic levels present in the bay. Sediment chemistry samples were also collected at about 40 stations in the bay including the nine paired stations mentioned previously. Shore and sea bird eggs from nesting sites along the bay were also collected. Analyses of the bird eggs will provide a direct measure of contaminant levels in bird tissue. These data will be very helpful in calibrating food web models for bioaccumulation in wildlife.

Because the food web system in San Diego Bay is so complex, the San Diego Bay study cannot address all of our questions about contaminant bioaccumulation and risk. Nonetheless, this study can be leveraged in significant ways. To this end, the San Diego Water Board, along with the U.S. Fish and Wildlife Service, City of San Diego, and SCCWRP identified additional study components that would enhance the ongoing study. The City also became a funding partner this fiscal year allowing work to begin on some of the component studies. The San Diego Water Board is seeking funding for these additional study components which are briefly described below.

1. **Shallow water habitat project.** This project will enhance the bird egg study by providing sediment and tissue data from important feeding areas for shore and sea birds. These data will improve our understanding of the transfer of contaminants from sediment to birds.
2. **Sport fish project.** Bight '13 is focusing on bioaccumulation to wildlife. This additional collection of sport fish will enhance the human health data set for interpreting the bioaccumulation of contaminants from sediment to humans. The data will also allow comparison to recent OEHHA fish advisories for the region to evaluate temporal trends.

3. **Supplemental tissue analysis project.** The Bight' 13 fish collections efforts in San Diego Bay were successful, with multiple species collected from three regions of the Bay. Bight' 13 will analyze a limited number of selected species from each site. This project would analyze specimens of fish already collected as part of the Bight' 13 sampling. These analyzes will support a better understanding of the different pathways for the transfer of contaminants from sediment through food webs in San Diego Bay. Analyses of additional species and samples will provide a better understanding of the variability in bioaccumulation present within and among different regions of the Bay.
4. **Zooplankton project.** Zooplankton represents an important pathway for contaminant transfer into many types of fish that are consumed by birds, including terns. Collection of zooplankton was included in the Bight' 13 study, but there was not sufficient mass collected to analyze for contaminants. This project would develop and implement a different sampling protocol for successful zooplankton collection.
5. **Comparison of laboratory and insitu infauna bioaccumulation project.** Laboratory bioaccumulation tests are popular because of their relatively low costs. The results of these tests are frequently used to assess bioaccumulation-related risks and the effectiveness of remediation actions, especially for small sites where collection of resident fish/invertebrates is impractical. The reliability of these tests for predicting bioaccumulation rates for San Diego Bay, however, are not well known. This project would evaluate the accuracy of standard laboratory bioaccumulation tests by comparing the test results to tissue chemistry analyses of similar organisms living at the sediment collection site.

Contaminants of emerging concern project. Very little is known regarding the occurrence and bioaccumulation of Contaminants of Emerging Concern in San Diego Bay. A recent report to the Water Board by a CEC expert panel identified two types of CECs as priorities for initial monitoring with respect to tissues: brominated flame retardants (PBDEs) and perfluorooctane sulfonate (PFOS). The Bight' 13 survey will measure PBDEs in sediment and tissue samples collected in San Diego Bay, but no measurements of PFOS are planned. This project would provide funding to evaluate selected samples of sediment, fish, and bird eggs collected in Bight' 13 and projects above for PFOS.

3. South Orange County Beach Water Quality Monitoring

Staff Contact: Bruce Posthumus

As part of an ongoing effort to develop a unified beach water quality monitoring program for the portion of Orange County in the San Diego Region, the South Orange County Beach Water Quality Workgroup held its seventh meeting on November 21, 2012. Three different organizations currently conduct four different beach water quality monitoring programs in south Orange County. Those four programs, which overlap spatially and temporally, are partially but not fully integrated. San Diego Water Board staff convened the workgroup with the goal of ensuring that beach water quality monitoring in south Orange County is protective, reasonable, equitable, and coordinated. The workgroup includes representatives of, County of Orange Public Works, County of Orange Health Care Agency, Surfrider Foundation, and Sierra Club, among others.

Work to be completed includes resolving remaining issues, presenting the proposed unified monitoring program to the Southern California Beach Water Quality Workgroup, conducting a public workshop, and finishing the staff report. Staff currently plans to present the proposed unified monitoring program to the San Diego Water Board at its March or April 2014 meeting.

This effort has its origins in concerns about beach water quality monitoring that were raised in connection with the San Diego Water Board’s reissuance of NPDES permits for discharges to the ocean from two ocean outfalls operated by South Orange County Wastewater Authority. This effort is also one of the steps in implementing “A Framework for Monitoring and Assessment” that was endorsed by the San Diego Water Board at its December 2012 meeting. The resolution endorsing the framework is available at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/swamp/docs/Monitoring_Resolution_R9-2012-0069.pdf.

The framework is available at:

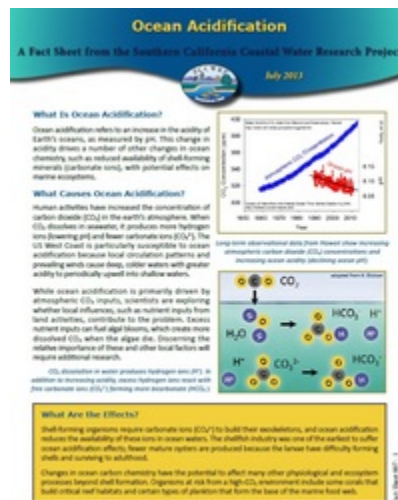
http://www.waterboards.ca.gov/sandiego/water_issues/programs/swamp/docs/MonitoringFrameworkForSDR-final.pdf.

4. Water Quality Fact Sheets

Staff Contact: Bruce Posthumus

The Southern California Coastal Water Research Project (SCCWRP) has produced two new fact sheets about water quality topics on which SCCWRP conducts research. These new fact sheets are about:

1. Marine Debris; and
2. Ocean Acidification



Topics of previous SCCWRP fact sheets are:

1. **Rapid Microbiological Monitoring Methods;**
2. **Contaminants of Emerging Concern (CECs);**

3. **Integrated Sediment Quality Assessment;**
4. **Microbial Source Tracking & Assessment;**
5. **Harmful Algal Blooms (HABs); and**
6. **Hydromodification**

The fact sheets are available at <http://www.sccwrp.org/Documents/FactSheets.aspx>.

SCCWRP is a public agency formed to conduct coastal environmental research and suggest management strategies. The San Diego Water Board is one of the SCCWRP member agencies. David Gibson represents the San Diego Water Board on the SCCWRP Commission, which is SCCWRP's governing board. David Barker is the alternate. More information about SCCWRP is available at: <http://www.sccwrp.org/AboutSCCWRP.aspx>.

5. San Diego River Park Foundation: State of the River Report 2013 (Attachment B-5)

Staff Contact: David Gibson

The San Diego River Park Foundation, who is creating a continuous park along the 52 mile San Diego River, released a State of the River report on November 22, 2013. The State of the River report addresses the health of the San Diego River; trash, water quality (temperature, conductivity, dissolved oxygen, and flow) and invasive plant cover were used as indicators of river health. Data were collected in 2013, and ten sections in the lower San Diego River were monitored and assessed. The indicators for each of the sections were given a letter grade from "A" to "F," and the grades were also summarized for each indicator and for the entire lower watershed. The lower watershed received an overall grade of "C" (fair), with trash scoring a "C," water quality a "D," and invasive plant cover a "B." Results from the data will be used by the San Diego River Park Foundation to establish an action plan for 2014, with the emphasis on trash removal.

The report shows that the section from Qualcomm Way to I-15 has the highest amount of trash and over 50 percent of all trash volume documented occurred in this two mile stretch; much of this trash is related to homeless encampments. An action plan is needed to address this public and environmental health issue, and coordination between the San Diego Water Board, the California Department of Transportation, and other responsible agencies is critical. State Water Board staff has been working collaboratively with a Public Advisory Group in the development of proposed statewide water quality control plans for trash in the form of amendments to the California Ocean Plan and the Inland Surface Waters, Enclosed Bays, and Estuaries Plan. The proposed Trash Amendments will include five elements: (1) Water Quality Objective, (2) Prohibition of Discharge, (3) Implementation, (4) Compliance Schedule, and (5) Monitoring. The San Diego Water Board is also participating in several studies about trash monitoring in San Diego watersheds, coastal wetlands, and the near-coast environment through the Stormwater Monitoring Coalition (SMC), and the Regional Bight Survey 2013.

The State of the River Report is the type of community led approach imagined in the Practical Vision. Although trash, water quality, and invasive plant cover partly describe the health of the river, additional indicators (e.g. biological communities, bacterial indicators and fish tissue) are needed to answer the question of the health of the San Diego River. Accordingly, the San Diego

Water Board and several stakeholders, including the San Diego Park Foundation, have developed an integrated monitoring and assessment program for the San Diego River watershed (San Diego River Watershed Monitoring Program). The overall program design addresses each of the four key management questions (Is the ecosystem healthy? Is it safe to eat fish and shellfish? Is it safe to swim? Is the water safe to drink?) and provides the rationale for the recommended design approach, selection of indicators, monitoring frequency, appropriate data products, and coordination with other efforts, as well as a preliminary estimate of cost. The monitoring of the San Diego River Park Foundation is included into this program. The San Diego River Watershed Monitoring Program implements the new Framework for Monitoring and Assessment in the San Diego region, and will act as a model for analogous monitoring and assessment in other watersheds and water bodies of the region. The final report on the program design for San Diego River Watershed Monitoring Program will be released early 2014. The program design is expected to be an important component of the implementation of the Healthy Waters and Monitoring Chapters of the Practical Vision.

Additional information on the Statewide Water Quality Control Plans for Trash is available at: http://www.waterboards.ca.gov/water_issues/programs/trash_control/index.shtml.

The State of the River Report can be found here: http://sandiegoriver.org/online_info_center.html.

6. North American Lake Management Society Symposium

Staff Contacts: Cynthia Gorham and Lilian Busse

The 33rd annual symposium of the North American Lake Management Society Symposium (NALMS) was held in San Diego on October 30th, 31st, and November 1st, 2013. The theme of the 2013 symposium was “Lake Management in an Era of Uncertainty.” Topics revolved around the uncertainty that lake managers face every day; ecological uncertainty, uncertainty in funding and public support, uncertainty in the regulatory environment, and uncertainty in water supply and climate change impacts.

Speakers and attendees included federal and state agencies, universities, environmental consulting companies from throughout the United States, and representatives from Canada, Mexico and other countries. Two San Diego Water Board staff members attended the conference (Cynthia Gorham and Lilian Busse). Five or six sessions were held concurrently each day focusing on a number of topics, with several of interest to staff, including: 1) harmful algal blooms, 2) watersheds – monitoring and management, 3) restoration and sustainability, 4) regulatory assessments, 5) cyanobacteria and internal phosphorus loading, and others.

The conference provided an opportunity to learn how others are studying and managing water quality issues similar to our own and to build relationships that can help the Water Board achieve its mission. For instance, Dr. Busse met with staff from the U.S. Environmental Protection Agency Office of Water on nutrient criteria in California. She also discussed the application of Phoslock with the company's general manager. Phoslock is a new technology for reducing phosphorus in lakes that was recently permitted by the San Diego Water Board.

Following our “[Framework for Monitoring and Assessment in the San Diego Region](#)” and the Monitoring and Assessment chapter of our Practical Vision, San Diego Water Board staff are

working to develop comprehensive, collaborative ambient monitoring and assessment programs for the region's inland surface waters, bays and estuaries, and the ocean. Lessons from the conference will be applied in at least two current San Diego Water Board projects related to lake management. First, the coordination of watershed monitoring in the San Diego River watershed will soon be progressing from the planning phase to the implementation phase. Monitoring and assessment will include the lakes and reservoirs in the San Diego River watershed. Second, monitoring and assessment staff is conducting a study to screen for cyanotoxins from harmful algae in lakes and reservoirs of the San Diego region. Samples have been collected in 2013 and the data analysis and report are commencing.

Information on NALMS is available at: <http://www.nalms.org/>.

Information on the 2013 annual NALMS Symposium is available at: <http://www.cvent.com/events/nalms-2013-san-diego-california/event-summary-1860e6d4cdf940a7a492613c6e3d4607.aspx>.

7. San Pasqual Valley Salt and Nutrient Management Plan Stakeholder Workshop

Staff Contact: Fisayo Osibodu

The City of San Diego (City) held its second stakeholder workshop in conjunction with the San Pasqual/Lake Hodges Planning Group Meeting at the San Diego Zoo Safari Park in Escondido on November 7, 2013. The workshop provided the group with an update on development of the Salt and Nutrient Management Plan (SNMP) for the San Pasqual Valley Groundwater Basin. The workshop was also attended by members of the San Diego Water Board staff, agricultural operations, and representatives from other commercial and private entities (including San Pasqual Valley leaseholders).

The San Pasqual Valley Groundwater Basin is an alluvial aquifer that underlies the San Pasqual Valley and significant portions of Cloverdale Canyon, Rockwell Canyon, and Bandy Canyon in north San Diego County. The San Pasqual basin is located upstream from Hodges Reservoir and downstream from Sutherland Reservoir. The City owns the land and water rights to a 7.1 square mile area of the basin. The City leases much of this land for agricultural and residential uses, for which groundwater from the San Pasqual Basin serves as the primary source of water supply.

During the workshop, the City provided an overview of its Draft SNMP for the San Pasqual Basin. The overview identified salt and nutrient sources; provided an estimate of salt and nutrient loading inputs to the basin; and included a discussion on available surface and groundwater monitoring data. The City has provided a copy of its Draft SNMP to its stakeholders and expects to receive comments on the Draft SNMP.

The City submitted the Draft SNMP to the San Diego Water Board on November 13, 2013. San Diego Water Board staff is reviewing the SNMP and plans to provide written comments to the City.

The City's staff point of contact for the development of its plan is Mr. Larry Abutin. Mr. Abutin can be reached at labutin@sandiego.gov.

8. Response to Request for Documents from Representative Darrell Issa, Chairman of U.S. House of Representatives Committee on Oversight and Government Reform (*Attachment B-8*)

Staff Contact: Catherine Hagan

In September 2013, the San Diego Water Board and the United States Environmental Protection Agency (USEPA) received separate requests for documents from Representative Darrell Issa, Chairman of the U.S. House of Representatives Committee on Oversight and Government Reform (See Attachments 1 and 2). The request to the San Diego Water Board relates broadly to different aspects of the Regional Municipal Storm Water Permit adopted by the Board in May 2013 (Order No. R9-2013-0001 or Regional Permit), as well as other components of the San Diego Water Board's municipal storm water program. Categories of documents sought by the request include, among others, those relating to incorporation of the wasteload allocations established in the Bacteria Total Maximum Daily Load (TMDL)² as numeric effluent limits in the Regional Permit and the legal support therefor, those concerning the San Diego Water Board's analysis and use of the maximum extent practicable standard in its storm water permitting, and documents concerning cost benefit studies or analyses pertaining to municipal storm water permits. For the most part, the scope of documents sought dates back to January 1, 2007.

The San Diego Water Board's initial substantive response to the letter, including the vast majority of responsive documents, was provided to Chairman Issa and the ranking minority member of the Committee (Elijah Cummings) in late September (Attachment 3 (without enclosures)). In order to thoroughly respond to the request, it was necessary to perform an exhaustive search of archived e-mails of numerous San Diego Water Board staff and counsel. A supplemental response was provided on October 17, followed by a final response, with remaining responsive e-mails, on November 4, 2013 (see Attachments 4 and 5 (without enclosures)). Water Board counsel withheld certain e-mails on the basis of attorney client, work product and deliberative process privileges and included a privilege log with the final response. To date, the San Diego Water Board has not received a response or follow-up request from Chairman Issa. Also to date, the USEPA has not provided a written response to the request it received.

Part C – Statewide Issues of Importance to the San Diego Region

1. Proposed Regulations for Well Stimulations and Underground Injection Projects (Hydraulic Fracturing) (*Attachment C-1*)

Staff Contact: Craig Carlisle

Background

On September 20, 2013, Governor Brown signed into law Senate Bill 4 (Pavley, Chapter 313, Statutes of 2013). SB 4 will be codified in the Public Resources Code, and will complement

² Amendment to the Water Quality Control Plan for the San Diego Region to Incorporate the Revised Total Maximum Daily Loads for Indicator Bacteria, Project I - Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek).

existing rules that require some of the strongest well construction standards in the nation by enacting further safeguards to public health and safety, and the environment regarding the practices known as well stimulation. Well stimulation methods include hydraulic fracturing or “fracking.” The new law requires the following:

1. Oil and gas producers must get a permit from the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR) to conduct well stimulation;
2. The Natural Resources Agency must complete an independent scientific study on well stimulation treatments; and
3. The State Water Board must develop groundwater modeling criteria and implement groundwater monitoring programs.

The DOGGR has released proposed regulations to implement SB 4, and intends these regulations to go into effect in January 2015. The DOGGR oversees the drilling, operation, maintenance, and abandonment of oil, natural gas, and geothermal wells. The proposed regulations require that a permit application to conduct well stimulation include detailed information about the fluids to be used, a groundwater monitoring plan, and a water management plan.

The State Water Board has been involved with DOGGR on implementation of SB4 and has been meeting regularly with DOGGR since December 2012. The State Water Board plans to begin development of the modeling criteria in 2014.

Water and Water Quality

Large amounts of wastewater are produced in oil and gas operations. Well stimulation fluids commingle with wastewater during stimulation operations. Existing regulations specify the disposal requirements for this wastewater. One of three things happens to this water:

1. Reinjection through regulated injection wells for enhanced oil operations;
2. Reinjection into regulated wastewater disposal wells; or
3. Treated to meet standards that allow use for other purposes or discharge.

California oil and natural gas is almost always associated with “produced water,” the brackish water that has been trapped in the oil or gas formation for millions of years. Generally, a reservoir formation holds far more water than oil or natural gas; 80-90 percent water is not uncommon in California oil and gas fields. This means that, on average for all wells in the State, for every 100 barrels of fluid produced, more than 80 of the barrels of fluid are brackish water. When well stimulation occurs, most of the fluid used in the stimulation is pumped to the surface along with the produced water, making separation of the stimulation fluid from the produced water impossible. The recoverable stimulation fluid is then co-disposed with the produced water.

Water is by far the largest component of hydraulic fracturing (fracking) fluids. According to one estimate, an initial drilling operation may consume from 6,000 to 600,000 US gallons of fracking fluids.³ Due to public concerns about the high volume of water used in fracking, oil and gas

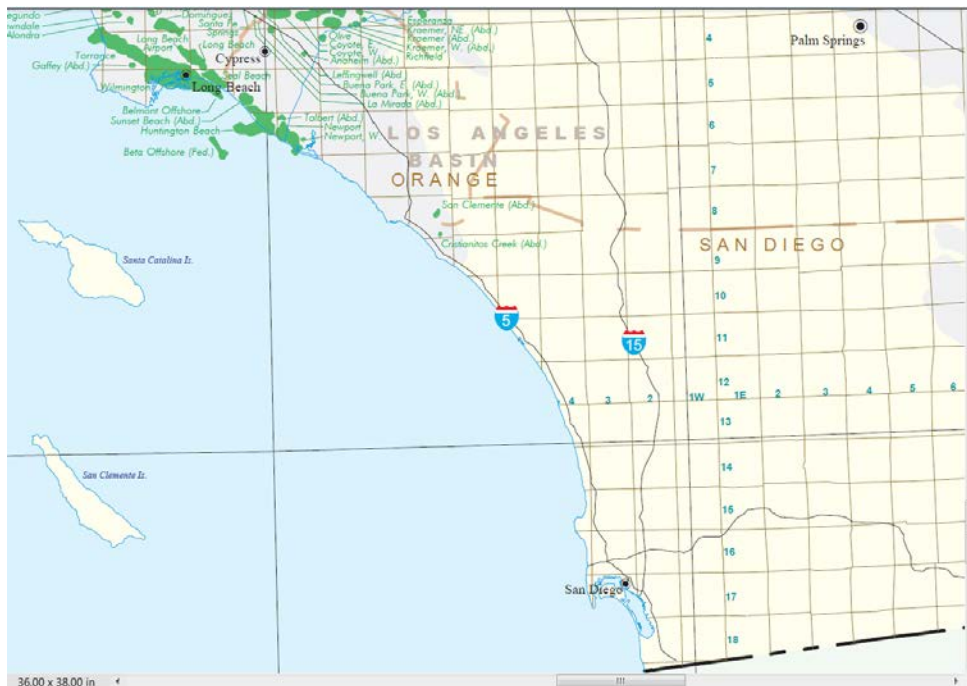
³ http://www.sourcewatch.org/index.php?title=Fracking_and_water_consumption

drilling companies have started reusing and recycling the wastewater. The natural-gas industry uses a number of methods to recycle drilling waste. Some drillers have used recycling equipment at the well site or trucked the water to a recycling facility where the wastewater is filtered, evaporated, and then distilled, to be used again at the well. Other companies add fresh water to the wastewater, to dilute the salts and other contaminants, before pumping it back in the ground for more fracking. Some of it sold for use as dust suppression or to melt ice on roads, because the brine wastewater tends to be extremely salty. Any fracking sludge that settles from these various processes is taken to landfills or is sent to injection disposal wells.⁴

Oil and Gas Production in Region 9

Based on the local geology, Region 9 is not a likely target for much oil and gas exploration. Some exploration wells have been drilled in our Region with little or no success. There are two small abandoned oil fields in Region 9; the San Clemente Oil Field and Christianitos Oil Field near the northwest corner of our Region. A map showing their location and a portion of a report on the San Clemente Oil Field are provided below. Well stimulation activities have been used in oil wells for over 60 years. In the mid-1950s, a well in the San Clemente Oil Field was stimulated with “hydrafracing” and some heavy oil was produced.

The text of the proposed regulations and information on submitting comments can be found here: <http://www.conservation.ca.gov/dog/Pages/Index.aspx>.



Source: Oil, Gas, and Geothermal Fields in California. California Department of Conservation. 2001. ftp://ftp.consrv.ca.gov/pub/oil/maps/Map_S-1.pdf

⁴ Ian Urbina, "[Wastewater Recycling No Cure-All in Gas Process](#)," NY Times, March 1, 2011.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

Significant NPDES Permits,
WDRs, and Actions of the
San Diego Water Board

December 11, 2013

APPENDED TO EXECUTIVE OFFICER'S REPORT

DATE OF REPORT
December 5, 2013

**TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS
OF THE SAN DIEGO WATER BOARD**

Action Agenda Item	Action Type	Draft Complete	Written Comments Due	Consent Item
January 2014 <i>No Meeting Scheduled</i>				
February 12, 2014 <i>San Diego Water Board</i>				
NPDES Permit Reissuance for Genetech Discharge to the Oceanside Ocean Outfall (<i>Mata</i>)	Permit Reissuance	90%	15-Jan-2014	Yes
Rescission of Waste Discharge Requirements Proposed Onsite Wastewater Treatment System, Anza Commercial Center, Anza, Riverside County (<i>Cali</i>)	WDR Addendum	100%	6-Jan-2014	No
Administrative Civil Liability against the City of Encinitas and USS Cal Builders (<i>Neill</i>)	ACL Complaint	100%	15-Jan-2014	No
Regional Board Workshop on Annual Priorities (<i>Gibson</i>)	Workshop	NA	NA	NA
Election of Regional Board Chair and Vice Chair for 2014 (<i>Gibson</i>)	Election	NA	NA	NA
March 12, 2014 <i>San Diego Water Board</i>				
Update on Efforts of the Tijuana River Valley Recovery Team (<i>Valdovinos</i>)	Information Item	NA	NA	NA
Update on the Cleanup of the A8 Anchorage, San Diego Bay (<i>Becker</i>)	Information Item	NA	NA	NA
Update on the Surface Water Ambient Monitoring Program (<i>Busse and Loflen</i>)	Information Item	NA	NA	NA
Update on Statewide Biological Objectives (<i>Haas</i>)	Information Item	NA	NA	NA

**As of September 30, 2013, the San Diego Water Board is located at 2375 Northside Drive, Suite 100, San Diego, CA 92108 and our new main phone number is 619.516.1990.*



2013

State of the River Supplemental Report



Prepared by:

The San Diego River Park Foundation

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BACKGROUND

In 2000, the largest sewer spill in California's history dumped 34 million gallons of raw untreated sewage into the San Diego River. Few would argue that a spill of this magnitude is not an environmental tragedy. But this tragedy was made all the worse by the fact that this spill ran for nearly a week while few people even noticed or cared. The community had turned its back on the River.

The San Diego River Park Foundation (SDRPF) was born to give the San Diego River back its voice! There are 164,929 people living within one mile of the San Diego River, and over a half million people living within the 440 square mile watershed. Over 760,000 people rely on drinking water from resources within the watershed, and more surf, swim, or fish at the river's outlet at the Pacific Ocean. In addition, San Diego County is the most biodiverse county in the continental United States, with at least 28 federally-listed endangered species living at least seasonally within the San Diego River watershed.



In a time when people are increasingly suffering from afflictions of a sedentary lifestyle, the time is critical to take action to halt the damage to our remaining natural areas. Despite the urban encroachment on the San Diego River, there are segments that continue to be resilient, thriving ecosystems. These areas are proof that with care and restoration, we can return the function and vibrancy of these natural systems.

The River Park Foundation's Healthy River, Healthy Communities is a multi-pronged approach designed to provide meaningful action-oriented opportunities for the community to track, report and address challenges that the river faces. The program's dynamic nature increases our rate of success. The program is able to adapt to the needs identified in the surveys, and to schedule clean-ups around the seasonal changes like big storms, new dumping areas, and the ever-evolving needs of the River Park. This success has become a model and received state and national recognition. Two components of the Healthy River, Healthy Communities program, RiverWatch and RiverBlitz, are used to inform and provide data for this State of the River report.

Started in 2008, RiverBlitz is a twice annual program to document the conditions along and within the lower San Diego River for trash, invasive non-native plants as well as site condition issues. The purpose of these surveys and recording this information is to help guide management and track progress toward alleviation and reduction of the social and biological impacts from these issues. Results are used to guide the Foundation's clean-up programs and data is mapped online for public access (available at www.imrivers.com/sandiego09) and results compiled annually into State of the River Report.

The volunteer based RiverWatch Team was started in 2004 by the Foundation, to provide baseline water quality data for the San Diego River. The Team currently monitors the lower San Diego River and tributaries from 15 stations stretching from eastern Santee to the San Diego River estuary near I-5 on a monthly basis. Measurements are taken for general chemistry at each site. Nitrate and phosphate measurements are taken at 5 sites and all water samples are analyzed by a partner lab for toxicity. Historical and monthly results are available by station or analyte through the Foundation's web portal (<http://108.168.216.185/sdrpf-riverwatch/>). Monthly and annual water quality reports including the SDRPF's Water Quality Index are available on the River Park Foundation's website (www.sandiegoriver.org/online_info_center.html). The running annual average is used for this report.

THE RIVER'S GRADE

For 2013, the grade for the lower San Diego River is a C or Fair.

Figure 1. Sections Evaluated



- 1 Estuary
- 6 Mission Gorge
- 2 Mission Valley West
- 7 Santee West
- 3 Fashion Valley to Qualcomm Way
- 8 Santee East
- 4 Qualcomm Way to I-15
- 9 Lakeside
- 5 Mission Valley East
- 10 El Monte Valley

Figure 2. Grades by Section and Overall Grades

SECTIONS	1	2	3	4	5	6	7	8	9	10	Overall
Trash	A	D	B	F	C	A	C	C	A	A	C
Water Quality		D	C	C	D	C	D	F			D
Invasive Non-Native Plants	A	B	A	F	C		A	C	A	A	B
Cumulative Grade	A	D	B	F	D	B	C	D	A	A	C

TRASH

Trash along the San Diego River and within the surrounding riparian habitat affects aesthetics, perception, use of the River Trail and River Park as well as environmental and public health. Addressing the trash issue may seem to be as simple as preventing littering, but this problem is a result of a complex set of intervening engineering, planning, cultural and social challenges. RiverBlitz surveys by volunteers document the location of trash to within less than a meter of accuracy and allow the River Park Foundation to schedule events to clean it up. The source, location and volume trends gleaned from these surveys allow the River Park Foundation to track efficacy of efforts, prediction of seasonal hotspots, determination of continuing problem areas and sources that help to inform management actions, advocacy and education.



Stormwater debris washed into the River.

The existing conditions documented during RiverBlitz show that the overall trash grade for the San Diego River is a C or fair. One section received an F or poor, four sections received A grades or excellent, one section received a D and another three a C. Of the sections that received F and D, trash associated with camp sites comprised 84% of the volume.

A top priority of the River Park Foundation is trash removal from the River and surrounding riparian habitat. Over 1.5 million pounds of trash have been removed by the Foundation and its volunteers in less than a decade. The Trash Free River Initiative was born in 2008, facilitated from the RiverBlitz surveys that provide a systematic data-driven avenue to address the trash discovered during the surveys. The trash removal goals have been continually accelerated and each time, that new goal has been met. What started as a two year target removal timeframe in 2008 was accelerated to one year then six months. After the most recent surveys in October 2013, we have set a goal to remove all trash within three months of documentation. To achieve the goal requires creative use of all the tools at our disposal, mainly large and small scale volunteer clean-up events. Broader scope area-wide clean-up days along with more frequent small targeted events are being used.

One observed effect of these accelerated goals is that as we clean up the river faster, litter and the other types of trash have less of a chance to accumulate and a larger portion of the overall trash volume is sourced to encampments. The October 2013 survey documented 47,175 pounds of trash, 75% of which was associated with homeless encampments (by volume). Stormwater debris accounted for the lowest level of trash volume among all sections in the past 6 years at just 2% of total trash volume. Primarily we believe the low rainfall in the past two years is one reason. Our storm events bring flushing of this type of trash from streets in the watershed into the river via the storm sewer system, the lack of rainfall means a lack of flushing. The secondary reason we believe is that as trash is picked up from the river banks and flood plains it no longer is poised to enter the river during rain events.



Abandoned homeless encampment in riverbed.

Behavioral and policy changes are needed to reach the goal of a truly trash free river. In order to meet the goal of a trash free river the Foundation is working with a variety of partners to address trash on a watershed level. This requires coordination of activities, consensus and a common platform for the exchange of information. Until this higher level of coordination, stakeholder buy in and investment are achieved and social challenges to a trash free river are addressed, the Foundation's clean-up program will be needed on a regular basis to ensure that trash is removed quickly and with minimal impact on the San Diego River thereby preventing pollution on site, further downstream and at local beaches as well the Pacific Ocean.

Figure 4. Trash Source by Volume (Comparison 2013 to 2012)

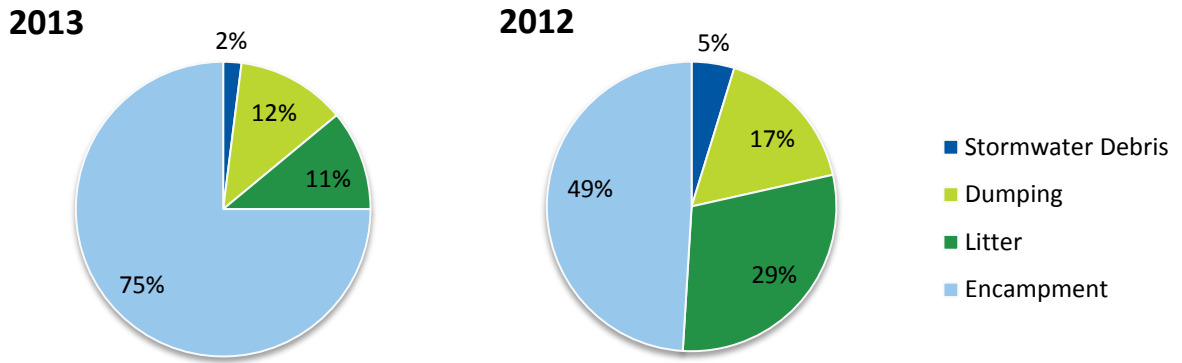


Figure 5. Trash Source by Number of Sites (Comparison 2013 to 2012)

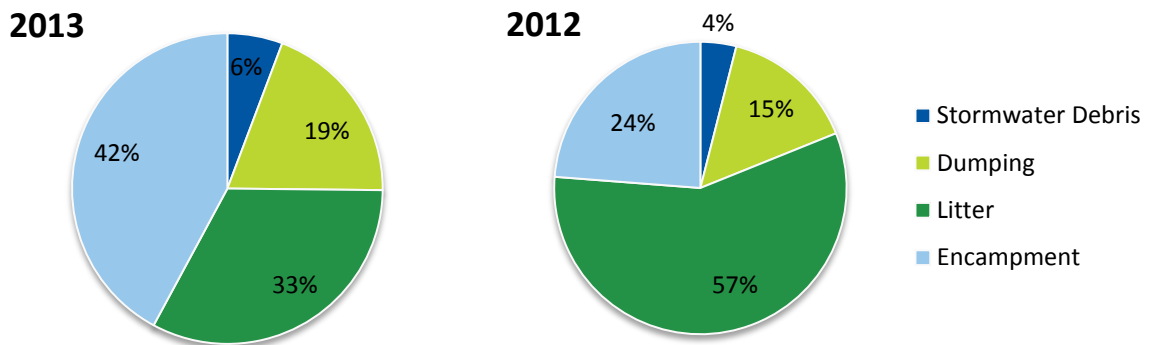
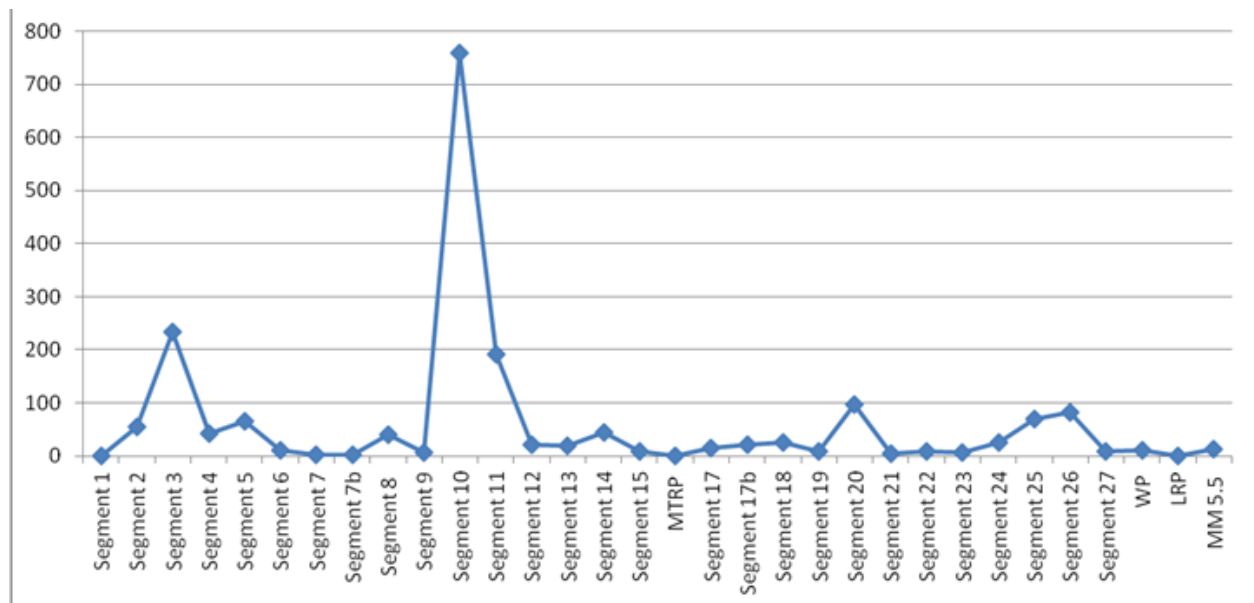


Figure 6. Trash Volume by Segment (number of bags)



WATER QUALITY

The seasonal variations and trends in water quality of the San Diego River would be largely unknown without our RiverWatch Team's efforts, because permit water quality monitoring focuses on discharge points such as storm drain outlets, while the RiverWatch monitoring program covers 90% of the lower San Diego River at a scale large enough to identify differences by reach and river segment but also fine enough to help pinpoint specific problem sites and areas. The initial baseline monitoring effort has over the last several years matured into a robust ambient monitoring program, obtaining long-term data on San Diego River surface water quality that would otherwise go unmonitored.



Surfactant in water.

The health of the Lower San Diego River declined throughout most reaches and segments during 2013. Data gathered over the last 12 months indicate that all segments of the lower river, extending from Lakeside to the Estuary, experienced lower water quality levels as evidenced by individual parameters and collective index. Of the 9 water years (WY) monitored, two years have been of average rainfall ('09 & '10), 2 years have been above average ('05 & '11) and 5 have been below average rainfall years ('06, '07, '08, '12, '13). Condition trends reflect a correlation between water quality and rainfall. In average rainfall years, we see fair water quality, while in below average rainfall years, we record poor water quality, and with above average rainfall, we record good water quality throughout the lower San Diego River. This reflects that increased flow from rain events positively impacts water quality within the engineered lower San Diego River.



Ludwigia sp., an invasive aquatic plant.

The Water Quality index running average value for WY 2013 is 31 or a D, down 2 points from 33 last year. The current running average is 13% below the 9-Yr average of 37 (D marginal), representing the lowest value to date over the past 110 months of water quality monitoring. Water quality index values at individual sites range from B-Good and F-Poor depending on the season, stream flow and extent of aquatic growth such as the invasive water primrose (*Ludwigia sp.*). Water Quality index values were particularly low at Mast Park throughout most of WY13 (a low rainfall year). The Mast Park site in Santee received an F. The highest quality site at the downstream end of Mission Trails Regional Park received a B.

The full Water Quality Index report for WY 2013 that includes comprehensive review of water quality results, seasonal patterns and trends within the Lower San Diego River watershed is available on the River Park Foundation's website

www.sandiegoriver.org/online_info_center.html

Figure 7. San Diego River Park Foundation RiverWatch Sites

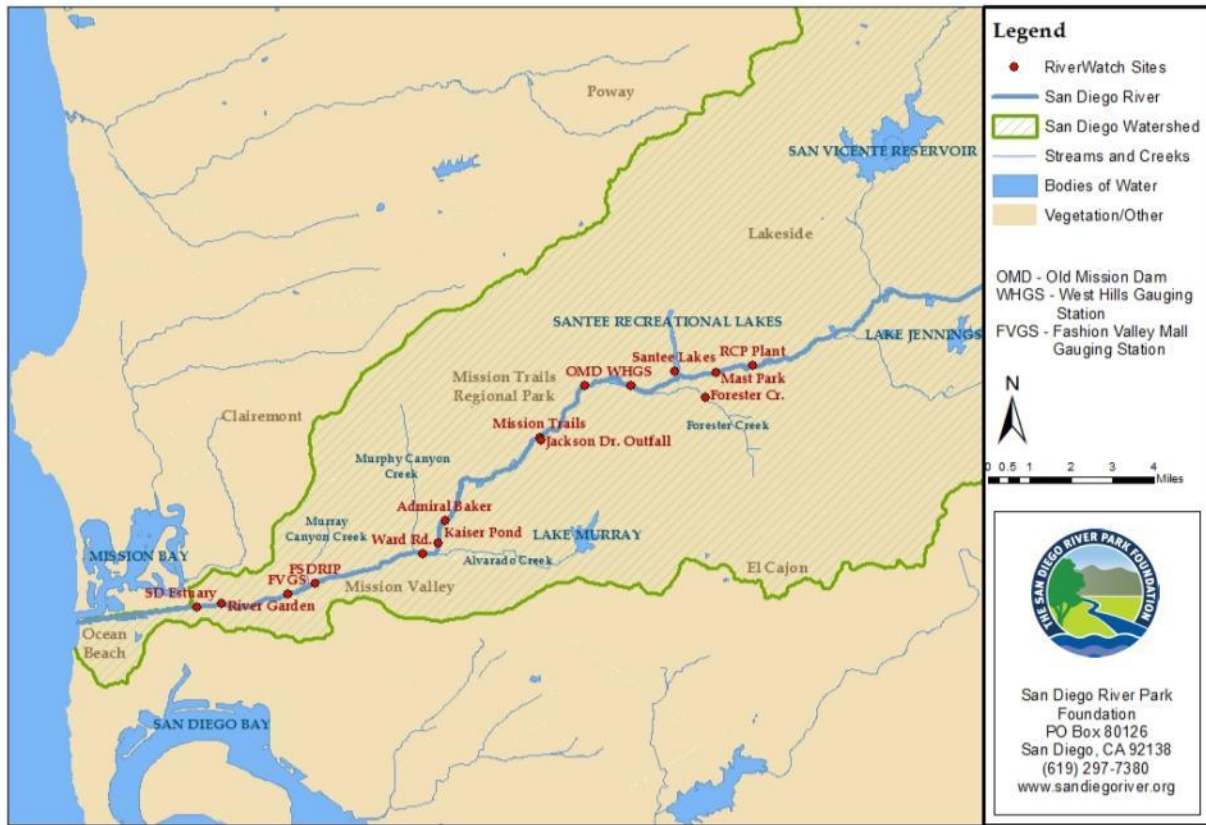
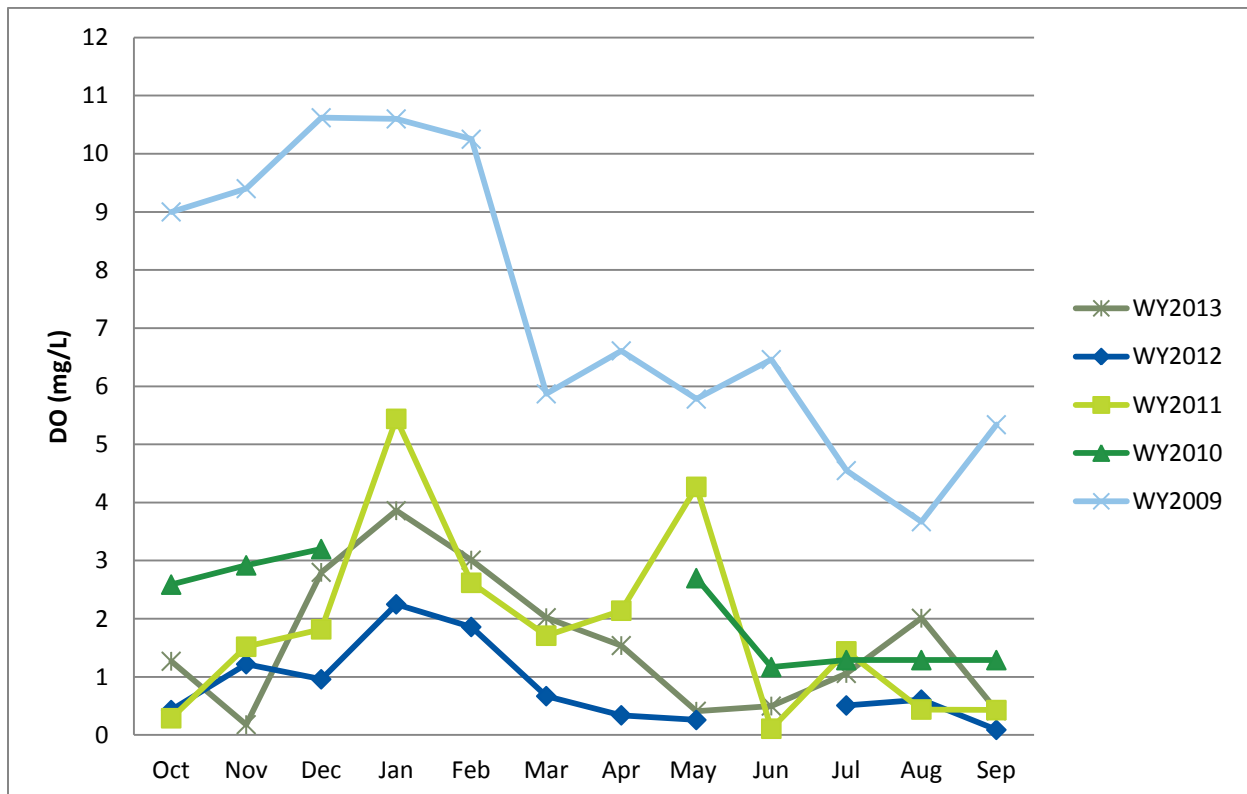


Figure 8. Dissolved Oxygen at Mast Park



INVASIVE NON-NATIVE PLANTS:

The California Invasive Plant Council (Cal-IPC) lists 1,800 non native plants within the state of California, of those 1,800, nearly 200 are considered invasive (1). The River Park Foundation's RiverBlitz survey focuses on 8 target species that are among those on the list. Three of the eight are in the high threat category, two in the moderate and an additional three in the limited category (statewide limited) but are prevalent within the San Diego River watershed (1). One of the highest impact species in the high threat category is *Arundo donax*, or Giant Reed (1). About \$71 million has been spent on arundo control statewide (2). At a \$25,000 per acre cost of control, though the cost is high, the benefits of control are a 2:1 ratio over costs invested in the impacts of water use, sediment and debris trapping, flood damage, fire, habitat and beach debris. (2)

Nearly 90% of the RiverBlitz survey area contains arundo including each of the 10 sections. Only 3 segments have zero arundo documentation. Of these, 2 segments have undergone recent arundo removal; the third is within the First San Diego River Improvement Project, known as FSDRIP, an area actively managed for invasive non-native plants. Other invasive non-natives on the target list are more common in certain sections than others, for instance, tamarisk (*Tamarisk sp.*) documentation



Invasive castor bean.

represents 33% of invasive sites within Santee sections in comparison to 4% of sites in Mission Valley. Brazilian pepper tree (*Schinus terebinthifolius*) comprises 4% of sites in Santee while 18% in Mission Valley. Others like Arundo and Castor Bean (*Ricinus communis*) are more uniformly spread, 21% of segments contain Castor Bean and 16% of segments in Mission Valley. Brazilian pepper tree and Canary Island date palm (*Phoenix canariensis*) exhibit the highest salt tolerance comprising 81% of estuarine invasive non-native plant site documentation.

For the October 2013 survey as in 2012, only one section has an invasive non-native canopy coverage high enough to categorize as an F while five are within the A range. There are two sections in the C range and another in the B range. One section improved a letter grade, in Mission Valley West, and this site had active restoration between the 2012 and 2013 survey. While many sections are in good condition as reflected in the grades, regrowth following treatment from on site seed bank and upstream deposition downstream are threats. For instance, Castor bean is the most highly documented species in recent restoration sites, this may be due in part to the large seed banks with long seed viability and their tendencies to germinate profusely and colonize a landscape in full sun as when invasive canopy has been removed (3). While most sites have treatment plans of 3 years or more ensuring follow-up treatment is occurring is important so as not to resort to pre-restoration conditions.

Addressing the challenges of invasive non-native plants requires not only a top down approach but also area focuses and a watershed-wide initiative as canyons and tributaries contain large amounts of each species. Further coordination with partners documenting canyon populations and their removal can improve efforts on a watershed scale to control invasive non-natives as eradication is not a possibility at this level of invasion. To achieve this, further coordination and capacity is needed to both initiate the effort as well as to manage data, develop meetings and a work plan.

Figure 9. Occurrence of Selected Invasive Non-Native Plant Species

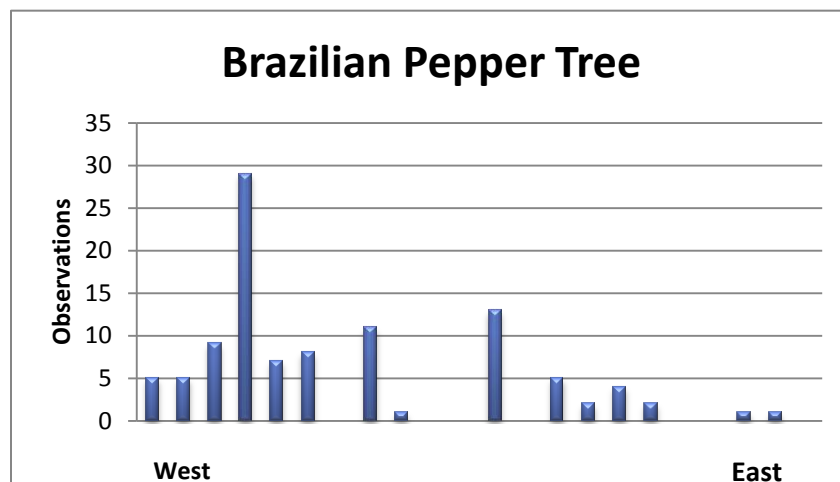
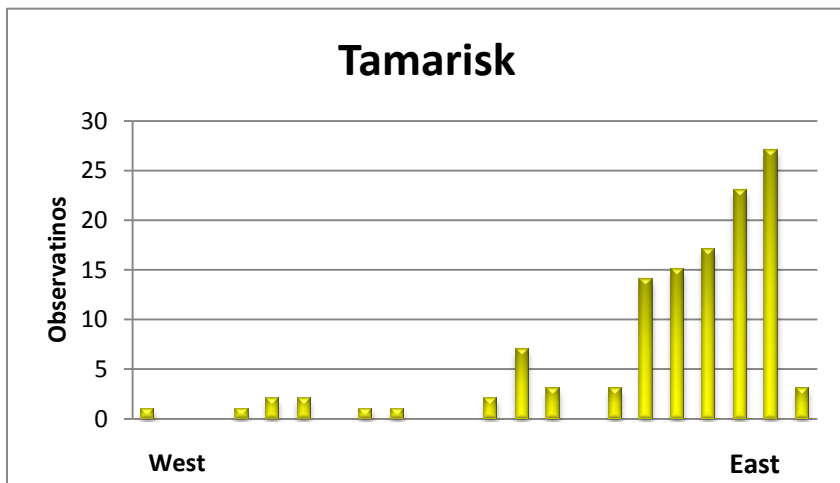
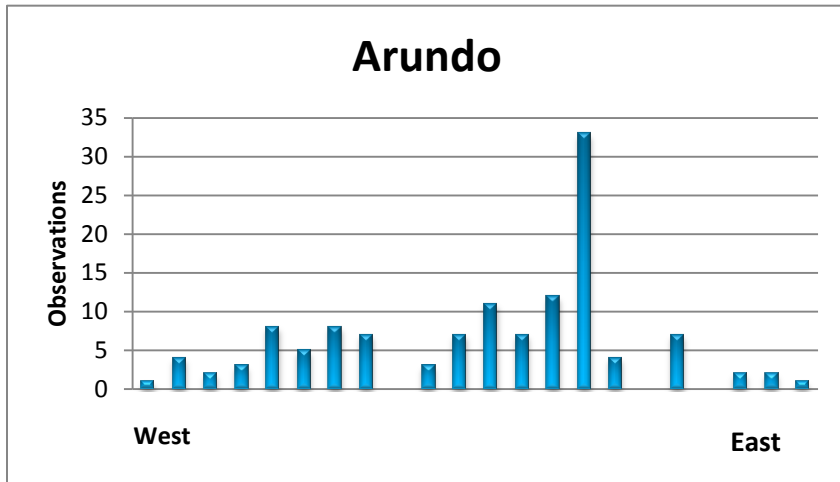


Figure 10. October 2013 Data Table

Sections	Segment	Acres	Trash Bags	Invasive Acreage	Bag/Acre	% Cover	WQI
1	1	159	0	0.00	0.0	0.0%	ND
	2	153	54	0.00	0.4	0.0%	ND
2	3	8.16	234	0.14	28.7	1.7%	29.0
	4	10.4	42	0.20	4.0	1.9%	29.0
	5	13.6	65	0.25	4.8	1.8%	29.0
	6	8.47	11	0.10	1.3	1.2%	29.0
	7a	8.84	2	0.03	0.2	0.4%	29.0
	7b	2.75	2	0.00	0.7	0.0%	29.0
3	8	29.6	41	0.06	1.4	0.2%	39.0
	9	41	7	0.00	0.2	0.0%	37.0
4	10	72.9	760	6.37	10.4	8.7%	37.0
	11	31.2	192	4.20	6.2	13.5%	37.0
5	12	3.55	22	1.05	6.2	29.6%	31.0
	13	27.9	20	Under Treatment	0.7	0.0%	28.0
	14	4.97	45	0.04	9.1	0.8%	28.0
	15	24.5	8	6.34	0.3	25.9%	31.5
6	MTRP	87	0	0.00	0.0	0.0%	44.0
7	17	5	14	0.00	2.8	0.0%	25.3
	17b	12.6	22	0.00	1.7	0.0%	25.3
	18	11.8	26	0.02	2.2	0.1%	25.3
8	19	15	8	0.12	0.5	0.8%	25.0
	20	7.6	97	0.58	12.8	7.6%	25.0
	21	4.5	4	0.00	0.9	0.0%	25.0
	22	6.4	8	0.04	1.3	0.7%	25.0
	23	11	6	0.00	0.5	0.0%	12.0
	24	15.5	26	0.00	1.7	0.0%	12.0
	25	9.99	69	0.53	6.9	5.3%	12.0
	26	19.9	83	1.30	4.2	6.5%	12.0
	27	3.75	9	0.46	2.4	12.2%	16.0
	WP	76.9	10	0.02	0.1	0.0%	ND
9	LRP	60	0	0.00	0.0	0.0%	ND
10	MM 5.5	48	13	0.05	0.3	0.1%	ND

Invasive % Cover	Trash Bags per Acre	Water Quality Index	Letter Grade	Narrative
0-1.9	<1	>75	A	Excellent
2-2.9	1.0-1.9	50-74.9	B	Good
3-3.9	2.0-2.9	36-49.9	C	Fair
4-4.9	3.0-3.9	25-35.9	D	Marginal
>5	>4	<25	F	Poor

CONCLUSION

The State of the River Report and this Supplemental Report is a powerful tool to bring awareness to the poor health of the River. Trash, water quality, and invasive non-native plants tell part of this story, but there are more indicators of the River's health.

As you can see, there is still much work to be done. Additional community-based monitoring can help not only to supplement public agency programs, but also help to inform the public of emerging issues.

For more information about water quality, invasive non-native plant populations and trash along the Upper San Diego River contact the Foundation at info@sandiegoriver.org 619-297-7380.

Thank you to all volunteers from RiverWatch and RiverBlitz that make this report possible through their diligent and thorough data collection. Thank you to John Kennedy for spearheading the Water Quality Indexing project and the Healthy River, Healthy Communities program sponsors.

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1. Invasive Plant Inventory. California Invasive Plant Council. Online database. Accessed 11/4/2012. <<http://www.cal-ipc.org/ip/inventory/index.php#inventory>>
- 2: *Arundo donax* Distribution and Impact Report March 2011 agreement No. 06-374-559-0, State Water Resources Control Board *Prepared by:* California Invasive Plant Council <<http://www.cal-ipc.org/ip/research/arundo/0CovertExecSummary.pdf> >
3. Burrascano, Cindy. 2000. *Ricinus communis*. pp. 269-273 in Bossard, C. C., J.M. Randall, and M. C. Hoshovsky. *Invasive Plants of California's Wildlands*. University of California Press. Berkeley, CA
4. Kennedy, John, PE. "Lower San Diego River Water Quality 2013, WY13 Water Quality Monitoring Report". San Diego River Park Foundation. November 2013.

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September 12, 2013

LAWRENCE J. BRADY
STAFF DIRECTOR

Mr. David W. Gibson
Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Dear Mr. Gibson:

The Committee on Oversight and Government Reform is conducting oversight of the U.S. Environmental Protection Agency's and the California state San Diego Regional Water Quality Control Board's (RWQCB) actions related to storm water permits for local governments in the southern California region. The Committee is primarily concerned with the proposed November 12, 2010, memorandum entitled, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs (November 2010 Memorandum).'"¹

It appears that EPA's proposed November 2010 Memorandum made substantive changes to storm water permits without corresponding scientific justification or consultation with local governments about cost feasibility, and relies on questionable legal authority. Additionally, as permitting authorities would be required to adopt strict numeric standards for storm water outlined in the proposed November 2010 memorandum, EPA has offered no substantive information on ensuring that the permits are technically or financially practicable and appears unwilling to conduct meaningful oversight of regional authorities, leaving cities and counties vulnerable to costly litigation. Furthermore, it appears that the RWQCB has raced ahead of the federal deliberative process on these standards and unilaterally implemented them.

The Clean Water Act allows EPA to delegate permitting authority to the states, and the RWQCB is authorized as the permitting authority for the San Diego Region.² A Municipal Separate Storm Sewer System (MS4) permit was approved by the RWQCB on May 8, 2013, and included a TMDL for bacteria.³ The issuance of this MS4 permit raises a number of concerns about the incorporation of numeric effluent limitations into storm water permits pursuant to

¹ EPA Memorandum, J. Hanlon, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'" (Nov. 12, 2010).

² 33 U.S.C. § 1342(p)(3)(B) (1972).

³ California Regional Water Quality Control Board San Diego Region, Order No. R9-2013-0001 (May 8, 2013).

Mr. David W. Gibson
September 12, 2013
Page 2

EPA's proposed November 2010 Memorandum for regional permits. As the November 2010 Memorandum is still proposed, and apparently still under review at OMB, the RWQCB appears to be moving ahead of the deliberative quality-control process that EPA is required to undergo before it can issue such regulatory requirements. Therefore, RWQCB is implementing a proposed EPA action that has not yet been fully vetted.

EPA and the RWQCB have offered no substantive information on how the municipal permittees will be able to meet the compliance requirements of the MS4 permit through available technologies and in consideration of economic restraints. In a telephone conversation with Congressional staff, neither EPA nor the RWQCB could explain compliance options that would be reasonably available to the regulated municipalities and effectively encourage clean water technologies.⁴

Additionally, it is concerning that the science of permit guidelines implemented under the proposed November 2010 Memorandum appears to be questionable. The Clean Water Act requires that storm water permits should only be issued to the "maximum extent practicable (MEP)."⁵ The Bacteria TMDL is expected to cost between \$2.8 billion and \$5.1 billion over the 18-year compliance timeline, and the co-permittees have expressed concern that the numeric standards cannot be achieved using available technology.⁶ The MS4 permit was developed by comparing San Diego's water to an undeveloped watershed, and neither EPA nor the RWQCB could explain the analytical standards used to determine what public benefit would be achieved to justify billions of dollars in taxpayer cost.⁷

Despite these concerns, and with no requirement to do so, the RWQCB is implementing these standards. In order for the Committee to better understand how the RWQCB intends to address the concerns raised by EPA's proposed November 2010 Memorandum and the MS4 permits issued by the RWQCB, please provide the following information.

1. All documents and communications referring or related to any RWQCB's analysis or response to EPA's November 2010 Memorandum from January 1, 2007, to present.
2. All documents or communications referring or related to whether the Memorandum is a sound basis for implementing a bacteria TMDL standard and whether the Memorandum is binding and imposes a requirement on permitting authorities regarding numeric effluent limitations from January 1, 2007, to present.
3. All documents and communications referring or related to any guidance EPA has provided to the RWQCB on the use of numeric effluent limitations in permits in the absence of a finalized document updating the 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources

⁴ Phone Briefing for Congressional Staff with John Kemmerer, Associate Director, Water Division, U.S. EPA Los Angeles Field Office and Jimmy Smith, Assistant Executive Officer, San Diego RWQCB, July 17, 2013.

⁵ 33 U.S.C. § 1342(p)(3)(B)(iii)

⁶ Deborah Sullivan Brennan, *New Runoff Rules' Huge Effect on Residents, Businesses*, SAN DIEGO UNION-TRIBUNE, May 27, 2013.

⁷ See California Regional Water Quality Control Board San Diego Region, Resolution No. R9-2010-001 (Feb. 10, 2010) (referencing the Leo Carillo Beach in calculation of the TMDL indicator bacteria).

Mr. David W. Gibson
September 12, 2013
Page 3

and NPDES Permit Requirements Based on Those WLAs” from January 1, 2007, to present.

4. All documents and communications referring or related to any considered use of an MEP standard or any analysis conducted by the RWQCB on an MEP standard from January 1, 2007 to present.
5. All documents referring or related to cost benefit studies for the permits in question performed by or commissioned for the RWQCB.
6. All documents and communications referring or related to the cost-benefit ratio that permitting authorities should use for storm water permits, including any cost-benefit analysis conducted or commissioned by the RWQCB for these permits from January 1, 2007 to present..

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

We ask that you provide the requested information no later than 5:00 p.m. on September 26, 2013. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Joseph Brazauskas or Ryan Hambleton of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
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 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENDDATE, BEGINDATE, BEGINTIME, ENDDATE, ENDDATE, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

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9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ONE HUNDRED THIRTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

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FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

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RON DESANTIS, FLORIDA

September 12, 2013

LAWRENCE J. BRADY
STAFF DIRECTOR

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Ms. McCarthy:

The Committee on Oversight and Government Reform is conducting oversight of the U.S. Environmental Protection Agency's actions related to storm water permits for local governments in the southern California region. The Committee is primarily concerned with the proposed November 12, 2010 memorandum entitled, "Revisions to the November 22, 2002, Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs (November 2010 Memorandum).'"¹ It appears that the proposed November 2010 Memorandum made substantive changes to storm water permits without corresponding scientific justification or consultation with local governments about cost feasibility, and relies upon questionable legal authority. Additionally, as permitting authorities adopt strict numeric standards for storm water outlined in the proposed November 2010 memorandum, EPA has offered no substantive information on ensuring that the permits are technically or financially practicable and appears unwilling to conduct meaningful oversight of regional authorities, leaving cities and counties vulnerable to costly litigation.

The Clean Water Act allows EPA to delegate permitting authority to the states, and the Regional Water Quality Control Board (RWQCB) is authorized as the permitting authority for the San Diego Region.² A Municipal Separate Storm Sewer System (MS4) permit was approved by the RWQCB on May 8, 2013, and included a TMDL for bacteria.³ The issuance of this MS4 permit raises a number of concerns about the incorporation of numeric effluent limitations into storm water permits pursuant to EPA's proposed November 2010 Memorandum for regional permits. As the November 2010 Memorandum is still proposed, and apparently still under

¹ EPA Memorandum, J. Hanlon, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs'" (Nov. 12, 2010).

² 33 U.S.C. § 1342(p)(3)(B) (1972).

³ California Regional Water Quality Control Board San Diego Region, Order No. R9-2013-0001 (May 8, 2013).

The Honorable Gina McCarthy

September 12, 2013

Page 2

review at OMB, EPA appears to have given regional entities such as the RWQCB unchecked authority to implement unattainable numeric standards.

First, EPA and the RWQCB have offered no substantive information on how the municipal permittees will be able to meet the compliance requirements of the MS4 permit through available technologies and in consideration of economic restraints. In a call with Congressional staff, neither EPA nor the RWQCB could explain compliance options that would be reasonably available to the co-permittees and effectively encourage clean water technologies.⁴ EPA continually references the use of Integrated Planning and State Water Quality Improvement Plans; however, EPA has not offered any statutory authority for the use of this framework or offered specific information on how to formulate such a plan. Ultimately, it appears that this program will not change the requirements in the relevant permits, and still leave the co-permittees exposed to third party lawsuits and civil penalties.

Additionally, it is concerning that the science of permit guidelines implemented under the proposed November 2010 Memorandum appears to be questionable. The Clean Water Act requires that storm water permits should only be issued to the “maximum extent practicable (MEP).”⁵ The Bacteria TMDL is expected to cost between \$2.8 billion and \$5.1 billion over the 18-year compliance timeline, and the co-permittees have expressed concern that the numeric standards cannot be achieved using available technology.⁶ The MS4 permit was developed by comparing San Diego’s water to an undeveloped watershed, and neither EPA nor the RWQCB could explain the analytical standards used to determine what public benefit would be achieved to justify billions of dollars in taxpayer cost.⁷

For the Committee to better understand how EPA intends to address the concerns raised by its proposed November 2010 Memorandum and the MS4 permits issued by the local authorities EPA has empowered, I request that EPA provides the following.

1. All documents and communications referring or relating to the proposed November 2010 Memorandum.
2. All documents and communications referring or relating to guidance EPA is offering to permit authorities on the use of numeric effluent limitations in permits in the absence of a finalized document updating the 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs” from January 20, 2009, to the present.

⁴ Phone Briefing for Congressional Staff with John Kemmerer, Associate Director, Water Division, U.S. EPA Los Angeles Field Office and Jimmy Smith, Assistant Executive Officer, San Diego RWQCB, July 17, 2013.

⁵ 33 U.S.C. § 1342(p)(3)(B)(iii).

⁶ Deborah Sullivan Brennan, *New Runoff Rules' Huge Effect on Residents, Businesses*, SAN DIEGO UNION-TRIBUNE, May 27, 2013.

⁷ See California Regional Water Quality Control Board San Diego Region, Resolution No. R9-2010-001 (Feb. 10, 2010) (referencing the Leo Carillo Beach in calculation of the TMDL indicator bacteria).

The Honorable Gina McCarthy

September 12, 2013

Page 3

4. All documents and communications referring or relating to the analysis EPA will conduct on MS4 permits to ensure that the MEP standard is met from January 20, 2009, to the present.
5. All documents and communications referring or relating to the appropriate cost-benefit ratio that permitting authorities should use for storm water permits from January 20, 2009, to the present.
6. All documents and communications referring or relating to EPA's belief that a cost of \$5 billion for quality compared to an undeveloped water region is practicable/meets MEP standard from January 20, 2009, to the present.
7. All documents and communications referring or relating to how Integrated Planning will help municipal permittees if violation of one or more permits occurs from January 20, 2009, to the present.
8. All documents and communications referring or relating to protection municipal permittees will be offered from costly lawsuits through Integrated Planning from January 20, 2009, to the present.
9. All documents and communications referring or relating to the legal authority EPA has to implement Integrated Planning from January 20, 2009, to the present.
10. All documents and communications referring or relating to the steps EPA has taken to implement Integrated Planning alongside the State Water Quality Improvement Plan from January 20, 2009 to the present.

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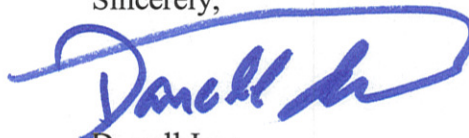
The Honorable Gina McCarthy

September 12, 2013

Page 4

If you have any questions about this request, please contact Joseph Brazauskas or Ryan Hambleton of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish above the name.

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
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5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.



San Diego Regional Water Quality Control Board

September 25, 2013

Honorable Darrell Issa
 Chairman, Committee on Oversight and
 Government Reform
 House of Representatives
 2157 Rayburn House Office Building
 Washington, DC 20515-6143

Dear Chairman Issa:

On behalf of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board or RWQCB), I am responding to your letter dated September 12, 2013, (hereafter Committee Request) and providing documents responding to your request. The San Diego Water Board has diligently searched its available records and believes the enclosed documents comprise the vast majority of responsive materials, with the possible exception of archived emails which are not fully accessible. As indicated by James Smith, the San Diego Water Board's Assistant Executive Officer, in his September 13 conversation with Ryan Hambleton, however, the San Diego Water Board's computer networks and electronic storage systems were shut down September 17 and will not be accessible until September 30, 2013, due to relocation of the San Diego Water Board's offices. This highly unusual circumstance has limited the San Diego Water Board's access to its electronic records in preparing this response. Due to the diligent work of San Diego Water Board staff during the limited time available, I nonetheless believe this response includes all requested documents from the San Diego Water Board's files.¹

The San Diego Water Board converted to a new email system in June 2012. As a result, the process of collecting, sorting, searching and reviewing emails from the legacy system is time-consuming and cumbersome. In the meantime, I have included copies of emails that are responsive to the Committee Request.² Given the archive collection and assembly process, the San Diego Water Board has only had three days to search the archives for responsive e-mails. Based on the search to date, I expect that we will find very few responsive emails that are not privileged. The San Diego Water Board expects to complete this process by October 18, 2013, and will provide any additional responsive emails and a privilege log at that time.

¹ Materials provided on the enclosed thumb drive are Bates labeled, with the exception of (1) the petition for review filed by Orange County and Orange County Flood Control District, titled "a2254petition.pdf" which could not be altered to electronically add Bates numbers, (2) the emails provided as a pdf document, and (3) the audio files of San Diego Water Board workshops and hearings.

² The emails are included in a single pdf file. An index of the emails is attached to this letter and is viewable with the latest version of Adobe Reader.

The responsive documents are organized according to the specific numbered requests identified in the Committee Request.

Request 1. "All documents and communications referring or related to any RWQCB's analysis or response to EPA's November 2010 Memorandum from January 1, 2007, to present."

The San Diego Water Board did not conduct an analysis of, or provide a response to, the United States Environmental Protection Agency's (USEPA) November 2010 Memorandum (November 2010 Memorandum or Memorandum). The San Diego Water Board obtained a copy of the November 2010 Memorandum, however, and has considered it in the context of development of the Regional Municipal Separate Storm Sewer System (MS4) Permit, San Diego Water Board Order No. R9-2013-0001, adopted May 8, 2013 (Regional Storm Water Permit). Documents related to the San Diego Water Board's consideration of the November 2010 Memorandum in the context of the Regional Storm Water Permit are provided in response to Request 2, below.

Request 2. "All documents or communications referring or related to whether the Memorandum is a sound basis for implementing a bacteria [Total Daily Maximum Load (TMDL)] standard and whether the Memorandum is binding and imposes a requirement on permitting authorities regarding numeric effluent limitations from January 1, 2007, to present."

The San Diego Water Board has consistently recognized that the Memorandum is *not* legally binding and serves only as guidance. The San Diego Water Board has concluded, however, that the guidance provided in the Memorandum is consistent with federal law set forth in the Federal Water Pollution Control Act (Clean Water Act) at section 402(p)(iii)(1)(b) and implementing regulations (40 Code of Federal Regulations (C.F.R.) section 122.44(d)(1)(vii)(B)), which provides that, when developing water quality based effluent limitations, the permitting authority must include effluent limitations that are consistent with the requirements and assumptions of any available wasteload allocations developed for previously adopted TMDLs. Please see documents responsive to this Request 2, and in particular, the Fact Sheet for the Regional Storm Water Permit (Attachment F to that Permit) and the San Diego Water Board's Response to Comments on the tentative Regional Storm Water Permit.

The San Diego Water Board notes with concern your comment suggesting that regional permitting authorities began to incorporate numeric effluent limitations into storm water permits only in response to USEPA's proposed November 2010 Memorandum. (Committee Request, pp. 1-2.) As pointed out in the July 17, 2013, meeting on this topic with your staff in San Marcos, the San Diego Water Board views the applicable federal regulations in the first instance, and not USEPA's November 2010 Memorandum, as informing the San Diego Water Board's decisions to translate wasteload allocations (based on numeric targets for pollutant loads) into numeric effluent limitations in municipal storm water permits. This interpretation of the federal regulations is consistent with the November 2010 Memorandum but predates it, as evidenced by the San Diego Water Board's adoption of the Orange County storm water permit (Order No. R9-2009-0002) in November 2009 (included with this response, Request 4 (incorporating numeric effluent limitations for the Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park TMDLs into the municipal storm water permit for southern Orange County)).

Moreover, as noted in the San Diego Water Board's response to comments on the tentative Regional Storm Water Permit:

"[b]ecause TMDLs and their programs of implementation are adopted through the Basin Plan amendment process in California, the TMDL implementation program contained in a regional water board's basin plan becomes a regulation upon approval by the State of California Office of Administrative Law. All permits must implement the applicable water quality control plan (i.e. Basin Plan), including any applicable TMDL implementation programs (citations omitted)." (Response to Comments, page 48.)

As distinct from USEPA guidance, a Basin Plan is essentially a regulation (see Cal. Gov. Code § 11353). A Basin Plan amendment goes through significant public process, including notice, comment, hearing, and environmental review pursuant to the California Environmental Quality Act (CEQA). Before becoming effective and enforceable, a Basin Plan amendment must be approved by the San Diego Water Board, the State Water Resources Control Board, and the Office of Administrative Law. When the amendment involves a TMDL, USEPA must also approve it. These steps occurred for each of the TMDLs referenced in the Regional Storm Water Permit.

Your letter appears to express concern with use of undeveloped watersheds in development of the Revised Total Maximum Daily Loads for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (including Tecolote Creek), adopted February 10, 2010 (Bacteria TMDL). (See Committee Request, p. 2, ¶ 2.) It is important to recognize that the reason for considering an undeveloped watershed as a reference watershed in the development of a TMDL is to approximate and take into account naturally occurring pollutants. The practical result of this approach is to avoid imposing responsibility on municipalities to control discharges of naturally occurring pollutants. In other words, municipalities are permitted to discharge bacteria at a comparable level to bacteria that is found, through reference to these undeveloped watersheds, to be naturally occurring. This approach has been used elsewhere in California, and is reflected in the San Diego Water Board's Basin Plan.

You also state that neither the USEPA nor the San Diego Water Board has offered substantive information on how the municipalities will be able to comply with permit provisions implementing the Bacteria TMDL. Successful implementation of the Bacteria TMDL (achieving reductions necessary to restore waterbodies degraded and impaired by bacteria) will most likely be achieved through a combination of best management practices such as source control, including elimination of most dry weather non-storm water discharges, structural practices and education. The San Diego Water Board does not know with certainty the suite of practices that ultimately will prove successful.³ As requested by municipalities, the San Diego Water Board's tentative order was revised prior to the April 2013 hearing to include numerous measures to afford added flexibility for the municipalities in implementation of the TMDL requirements. The revisions incorporated an explicit re-opener provision, water quality based effluent limitations derived from the TMDLs' loads, and an additional BMP-based option for demonstrating compliance with the TMDL requirements. These revisions were included in the

³ Except as otherwise required by federal law, the San Diego Water Board is not permitted to dictate to a permittee how to comply with permit requirements. (See Cal. Wat. Code sec. 13360.) Rather, the permitting agency crafts permit requirements that are protective of water quality; it is up to the permittees, with input from the San Diego Water Board, to determine how best to achieve those protective levels.

final Regional Storm Water Permit adopted by the Board and this added flexibility is described in the Executive Officer Summary Report for the April 2013 hearing, included in response to this Request 2.

Request 3. "All documents and communications referring or related to any guidance EPA has provided to the RWQCB on the use of numeric effluent limitations in permits in the absence of a finalized document updating the 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NDPES Permit Requirements Based on Those WLAs' from January 1, 2007, to present."

The San Diego Water Board does not have any documents, other than those provided in response to Request 2, above, that are responsive to this request.

Request 4. "All documents and communications referring or related to any considered use of an MEP standard or any analysis conducted by the RWQCB on an MEP standard from January 1, 2007 to present."

The Regional Storm Water Permit adopted in May of this year represents the fifth iteration of municipal storm water permits issued in San Diego. The documents responsive to this particular request are therefore numerous. The San Diego Water Board has evaluated the maximum extent practicable (MEP) standard not only in administrative proceedings to adopt storm water permits (see documents responsive to this Request 4), but also in the context of the administrative challenge initiated in 2008 by some San Diego County municipalities before the Commission on State Mandates (Commission). These municipalities asserted that portions of the 2007 San Diego County MS4 Permit (R9-2007-0001) constitute unfunded state mandates for which the municipalities should be reimbursed by the State of California. Litigation challenging the Commission's final decision in that San Diego Test Claim is pending before the California Third District Court of Appeal. Many of documents from these proceedings, as relevant to this Request 4, are provided with this response.⁴

With regard to San Diego Water Board MS4 administrative permitting proceedings, I have enclosed numerous documents in the following general categories: MS4 Permits, including required Fact Sheets, San Diego Water Board Responses to Comment Letters (which incorporate individual comments), and other responsive documents generated or received during the permit proceedings.

Also enclosed are petitions for review of the four MS4 permits adopted by the San Diego Water Board during the relevant time period specified in the Committee Request. These petitions for review were filed by municipalities or other stakeholders with the State Water Resources Control Board. The San Diego Water Board has not yet responded to any of the petitions. The petition challenging the 2007 San Diego MS4 permit was dismissed in April 2007 without need for a written response. None of the Copermitees pursued judicial review of the 2007 permit. The Copermitees in the Orange County MS4 Permit (issued November 2009) and in the Riverside County MS4 Permit (issued December 2010) filed petitions for review but asked that the State Water Resources Control Board not actively consider their petitions, holding them in

⁴ While Orange County and Riverside County also filed test claims with the Commission challenging portions of their respective MS4 permits issued in 2009 and 2010, the San Diego Water Board has not yet responded and the Commission is not actively considering them while the litigation on the other test claim is pending. Copies of the Orange County and Riverside County test claims can be provided upon request.

abeyance. As a result, the San Diego Water Board has not had an opportunity to respond to those petitions for review. Finally, a number of municipalities challenged the Regional Storm Water Permit issued this year. The State Water Board has not yet requested the San Diego Water Board's response to these petitions.

Request 5. "All documents referring or related to cost benefit studies for the permits in question performed by or commissioned for the RWQCB."

The San Diego Water Board does not perform or commission cost benefit studies when developing NPDES permits. Although the Regional Water Boards consider costs among other factors in determining what constitutes MEP, the Board need not perform a cost-benefit analysis. (See State Water Board Order No. WQ 2000-0011 (*City of Bellflower, et al.*) It is also appropriate for the San Diego Water Board to consider the cost of any impairments to receiving waters from storm water runoff, such as the impacts of beach closures on the local economy. (*Ibid.*)

The San Diego Water Board, therefore, does not have any documents responsive to this request. The San Diego Water Board can and does, however, routinely consider cost information that is submitted as part of its permitting or rulemaking proceedings. As the documents responsive to this Request reflect, the record for the Regional Storm Water Permit is replete with information about costs. In fact, the County of San Diego requested at the April 2013 permit adoption hearing that the San Diego Water Board accept into the record and consider a 2011 cost-benefit study commissioned by the City of San Diego that evaluated potential costs associated with implementation of the Bacteria TMDL. (See, *Meeting Water Quality Standards for San Diego's Recreational Waters – A Cost-Benefit Analysis* (Point Loma Nazarene, for City of San Diego) (April 2011) (City Study).)

Although the City and County declined to submit this information during the board's lengthy public workshops in the Fall of 2012 and the deadline for submitting written evidence had passed, the San Diego Water Board recognized the importance of considering available cost information. Thus, the San Diego Water Board decided at its April hearing to postpone final action on the permit, largely to ensure that all parties, the San Diego Water Board staff and Board members, had a meaningful opportunity to evaluate and comment on the cost information in the City Study proffered by the County. Board member discussions, in particular at the May 8 adoption hearing, clearly reflect that the San Diego Water Board values the opportunity to consider a robust study that would meaningfully evaluate costs and how best to achieve maximum effectiveness for the costs expended. The San Diego Water Board found the City Study did not rise to this level. Board Members found weaknesses in that the City Study failed to consider many qualitative and potentially unquantifiable benefits (see audio recording of May 8 meeting, file 10Item 9(4) (at approximately 7:03 to 10:30 of 50:39 min)) and because the study was outdated, was neither peer reviewed nor put out to bid, and generally lacked the substantive merit to allow its consideration as a serious study (see audio recording of May 8 meeting, file 12Item9(6) (at approximately 12:48 through 20:00 of 29:41 min.)).

The San Diego Water Board also considered the economic benefits of clean beaches. Bacterial discharges cause beach closures. The San Diego Water Board considered the potentially severe impacts that frequent beach closures would have on the local economy and on the health of citizens. (See, in particular, San Diego Water Board staff and San Diego Coastkeeper hearing presentations at the December 2012 workshop.)

The San Diego Water Board also considers cost information related to reasonably foreseeable means of complying with a TMDL in the context of its compliance with the CEQA. The San Diego Water Board thus considered the costs of compliance when it developed the Bacteria TMDL. Clean Water Act section 303(d), however, requires TMDLs to establish TMDLs "at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." (33 USCA §1313(d)(1)(C).) Section 303(d) does not allow cost considerations to justify TMDLs that are inadequate to achieve attainment of water quality standards. Doing so would undermine the Clean Water Act's ability to restore and maintain the chemical, physical, and biological integrity of the Nation's waters as Congress intended. (See, 33 USCA §1251(a).)

In addition to the documents and emails responsive to this Request 5, audio recordings of the San Diego Water Board workshops (November and December 2012) and hearings (April and May 2013) are also included on the thumb drive.⁵

Request 6. "All documents and communications referring or related to the cost-benefit ratio that permitting authorities should use for storm water permits, including any cost-benefit analysis conducted or commissioned by the RWQCB for these permits from January 1, 2007 to present."

See response to Request 5. The San Diego Water Board is not aware of any efforts by any person to establish a "cost-benefit ratio" for stormwater permitting.

As indicated above, the San Diego Water Board expects to complete the process of searching email archives and providing any additional responsive emails and a privilege log by October 18, 2013. In the meantime, please contact me at (858) 336-2326 or at (619)-521-3005, my new office telephone number beginning September 30, if you have any questions about this response. Finally, please note that effective September 30, the San Diego Water Board mailing address will be 2375 Northside Drive, Suite 100, San Diego, California, 92108.

Sincerely,



David W. Gibson
Executive Officer

cc: The Honorable Elijah E. Cummings, Ranking Minority Member [with enclosures]

⁵ Due to the short time period for responding to this request, the San Diego Water Board is unable to provide citations to all of the specific locations on the audio recording where these discussions occurred.

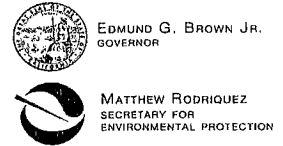
INDEX TO RESPONSIVE MATERIALS
 PROVIDED WITH SEPTEMBER 25, 2013 LETTER FROM
 DAVID W. GIBSON, SAN DIEGO WATER BOARD TO
 THE HONORABLE DARRELL ISSA, CHAIRMAN OF THE HOUSE COMMITTEE ON
 OVERSIGHT AND GOVERNMENT REFORM

<u>MATERIALS PROVIDED ON THUMB DRIVE</u>	<u>BATES NUMBERS</u>
<u>DOCUMENTS</u>	
<u>Request 2</u>	
Executive Officer Summary Report, April 2013 Public Hearing	000001-000011
San Diego Regional Storm Water Permit, including Fact Sheet	000012-000367
San Diego Regional Storm Water Permit Response to Comments	000368-000625
<u>Request 4</u>	
State Water Board Memorandum Dismissing Petition A-1830	000626-000628
Petition for Review of San Diego County MS4 Permit Order NO. R9-2007-0001 (A-1830)	000629-000642
Petitions for Review of Orange County MS4 Permit (Order No. R9-2009-0002) (A-2073 through A-2073(j))	000643-000805
Petitions for Review of Riverside County MS4 Permit (Order No. R9-2010-0016) (A-2142(a)-A-2142(b))	000806-000849
Petitions for Review of San Diego Regional Storm Water Permit (Order No. R9-2013-0001) (A-2254(a)-A2254(p))	000850-001393
Commission on State Mandates Test Claim (San Diego County MS4 Test Claim) 07-TC-09:	
Administrative Proceeding	001394-001601
Appellate Documents	001602-001864
Trial Court Documents	001865-002102
Orange County MS4 (2009) San Diego Water Board Counsel Memorandum	002103-002110
Orange County MS4 Permit (Order No. R9-2009-0002)	002111-002206
Orange County MS4 Fact Sheet (Order No. R9-2009-0002)	002207-002397
Orange County MS4 Response to Comments (Order No. 2009-0002)	002398-002908
Riverside County MS4 Permit (Order No. R9-2010-0016)	002909-003001
Riverside County MS4 Fact Sheet (Order No. R9-2010-0016)	003002-003201
Riverside County MS4 Response to Comments (Order No. R9-2010-0016)	003202-003407
Riverside County MS4 (2010) San Diego Water Board Counsel Memorandum	003408-003419

INDEX Continued

San Diego County MS4 Permit (Order No. R9-2007-0001)	003402-003538
San Diego County MS4 Permit (Order No. R9-2007-0001) Fact Sheet	003539-003653
San Diego County MS4 Permit (Order No. R9-2007-0001) Response to Comments	003654-003688
San Diego Regional MS4 Permit (Order No. R9-2013-0001) (including attachments)	003689-004045
<u>Request 5</u>	
04-02-13Congressional Letter to USEPA	004046-004047
04-04-13State Assembly Letter to San Diego	004048-004049
04-24-13USEPA Letter to Congressman Issa	004050-004052
05-02-13San Diego Water Board Letter to Assembly	004053-004057
City of San Diego, <i>Meeting Water Quality Standards for San Diego's Recreational Waters – A Cost-Benefit Analysis</i> , (Point Loma Nazarene University) (April 2011)	004058-004093
Comment Letters on Cost Issues (Regional Storm Water Proceeding)	004094-004135
Los Penasquitos Sediment TMDL Technical Report and Environmental Analysis	004136-004316
Slide Presentations at San Diego Regional Storm Water Permit Proceeding Workshops and Hearings	004317-004485 ¹
Bacteria TMDL Technical Report and Environmental Analysis	004473-004730
01-11-13USEPA Comment Letter on San Diego Regional Storm Water Permit	004734-004736
12-12-12San Diego Water Board Member Questions for December 12, 2012 Workshop	004737-004738
<u>AUDIO FILES</u>	
November 13, 2012 Workshop	
December 12, 2012 Workshop	
April 10-11, 2013 Hearing	
May 8, 2013 Hearing	
<u>EMAILS</u>	
Provided in PDF document, requires most recent Adobe Acrobat Reader to View	

¹ Due to time constraints, there are overlapping Bates numbers for those labeled 004473-004485.

EDMUND G. BROWN JR.
GOVERNORMATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

October 17, 2013

Via Overnight Mail

Honorable Darrell Issa
Chairman, Committee on Oversight and
Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Subject: Response to September 12, 2013 Committee Request

Dear Chairman Issa:

On behalf of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), I am providing a supplemental response to your September 12, 2013, request for documents (Committee Request). In my previous response, dated September 25, 2013, I indicated that the San Diego Water Board was continuing to search archived emails. Enclosed on a CD are additional responsive emails. We are continuing to search our archived emails and will provide any additional responsive emails as we find them and will provide a privilege log when we have completed our search. The San Diego Water Board also obtained the transcripts for the November (partial at this time) and December 2012 public workshops and the April and May 2013 public hearings at which the Board considered, and ultimately adopted, the Regional Storm Water Permit (Order No. R9-2013-0001). The transcripts are also included on CD and can be reviewed in lieu of the audio recordings previously provided.

Please contact me at (619) 521-3005 if you have any questions about this response.

Sincerely,

A handwritten signature in cursive script, appearing to read "David W. Gibson".

David W. Gibson
Executive Officer

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member [with enclosures]

EDMUND G. BROWN JR.
GOVERNORMATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

November 4, 2013

Via Federal Express Overnight Mail

Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Subject: Response to September 12, 2013 Committee Request

Dear Chairman Issa:

On behalf of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), I am providing our final document production in response to your September 12, 2013, request (Committee Request). In my previous responses dated September 25 and October 17, 2013, I indicated that the San Diego Water Board was continuing to search archived emails for responsive documents. We appreciate your patience during this process. The San Diego Water Board has now completed its search of archived e-mails for materials responsive to the Committee Request. The balance of the responsive emails and associated attachments are provided on the enclosed CD. For the most part, the responsive emails produced today are responsive to category 4 in the Committee Request the MEP standard. Approximately 10 of the documents on the CD have been redacted at least in part because they are privileged. The privileges asserted for the redactions and for associated documents withheld in their entirety are set forth on the enclosed privilege log.¹ Also enclosed is the requested certification signed by the San Diego Water Board's counsel regarding the document production.

¹ For the most part, we have not provided numerous drafts of documents (or their transmittal emails) exchanged between and among San Diego Water Board staff. Final versions of these draft documents have already been provided to the Committee. As drafts superseded by final board action, they are of little if any value, would be burdensome to the Committee due to volume and are arguably protected by the deliberative process privilege. To the extent the San Diego Water Board has asserted that the deliberative process protects documents identified in the privilege log, it has done so because it has determined that the public interest in disclosure of draft documents and internal deliberations is clearly outweighed by the public interest in encouraging internal, candid, staff deliberation and exchange of ideas ultimately leading to final agency actions. (See *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342; see also *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170.)

Finally, the San Diego Water Board has obtained the complete transcript from the November 2012 San Diego Water Board public workshop for the Regional Storm Water Permit (Order No. R9-2013-0001). The transcript is also included on the CD.

This response completes the San Diego Water Board's response and production of documents. Please contact me at (619) 521-3005 if you have any questions.

Sincerely,



David W. Gibson
Executive Officer

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member [with enclosures]

SAN CLEMENTE OIL FIELD

F. R. GOODBAN
Geologist, The Texas Company
Long Beach, California

The San Clemente field is in Orange County, California, approximately 3½ miles inland from the Pacific Ocean and 60 miles southeast of Los Angeles. The field contains two formerly producing wells, The Texas Company wells O'Neill Estates (NCT-1) No. 1 and (NCT-2) No. 1. Although production proved to be sub-economic, several factors pertaining to the accumulation are considered significant. It represents the most southerly production of oil in the State of California and the first production in the Capistrano Basin. Significant oil saturation was found in sands older than those currently producing in the adjacent Los Angeles Basin.

STRUCTURE

The most prominent structural feature in the San Clemente field is the north-northwestward-trending Cristianitos fault system. This fault system consists of westward-dipping normal faults, and has an estimated total stratigraphic throw of approximately 3,000 feet. The surface structure is a complex westward-plunging fold closed updip by faults of the Cristianitos system. Accumulation appears to be due primarily to fault closure, coupled with stratigraphic variations and permeability changes within the sands.

STRATIGRAPHY

Reference is made to the attached "Stratigraphy of the San Clemente Field" which contains a composite electric log and ties the well section to the outcrop section exposed in the Santa Ana Mountains to the north and east.

Wells in the San Clemente field have penetrated beds ranging in age from middle Miocene to the lower part of the Upper Cretaceous. These beds include the middle Miocene Monterey shales and San Onofre breccia and sands. The lower Miocene Sespe formation is represented in the subsurface by a series of buff to white sands interbedded with typical maroon-red and green clays and shale. Massive, unconsolidated Eocene white sands are underlain by alter-

nating clayey sands and vari-colored clays and shales which have been correlated with Paleocene horizons in other parts of the region.

Upper Cretaceous units, as penetrated, consisted of sandy shales and fine sands; a thick, coarse- to medium-grained sand with thin, black shales; a thick, dense, gray-black shale; and a dense, coarse sand and conglomerate. The uppermost two units may be correlated with the Pleasants and Schulz members of the Williams formation of Popenoe's subdivision of the Cretaceous of the Santa Ana Mountains (Popenoe, 1942). The lower two units are similar to the Holz member and Baker Canyon member of the Ladd formation of Popenoe's Santa Ana Mountains section.

HISTORY AND PRODUCTION

Production from the San Clemente field was obtained from the Schulz sand of the Upper Cretaceous Williams formation. The discovery well, The Texas Company well O'Neill Estates (NCT-1) No. 1, was drilled early in 1954 to a total depth of 7,044 feet and encountered two oil zones, 3,922 to 3,975 and 4,100 to 4,160 feet. After "hydrafracing," the lower zone produced 14 b/d of clean 45° oil. The upper zone proved to be wet. A second test, The Texas Company well O'Neill Estates (NCT-2) No. 1, located 1,500 feet to the west, was drilled to a total depth of 6,475 feet and completed for an initial production of 3 b/d of 41° oil cutting 96 percent water from selected perforated intervals between 5,341 and 5,777 feet. The San Clemente field was abandoned in the spring of 1955, after producing approximately 1,425 barrels of oil.

Low permeabilities and porosities appear to be the limiting factors in the San Clemente field. Porosities range from 10 to 16 percent. Permeabilities range from 1 md to 86 md.

The Hancock Oil Company drilled their well Krum-Forester No. 65-21 approximately ½ mile west of the abandoned O'Neill production. The Hancock well was aban-