CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

Addendum to Tentative Order
for discharges of groundwater to surface waters
San Francisco Bay Region

This addendum shows revisions to the Tentative Order distributed for public comment between January 17, 2025, and February 18, 2025, in response to the U.S. Supreme Court's ruling in the *City and County of San Francisco, California v. Environmental Protection Agency* (2025) 145 S.Ct. 704. The ruling held that NPDES permits may not include end-result requirements under the Clean Water Act. As such, the Regional Water Board removed the end-result requirements from the Tentative Order, including Discharge Prohibitions 3.4 and 3.5, and the receiving water limitations that had been in section 5, as shown below.

Interested persons are invited to submit written comments concerning the changes below. At this time, the Regional Water Board will accept comments pertaining only to revisions in this addendum. Comments on this addendum must be submitted in person, by email, or by mail to the attention of Marcos De la Cruz (marcos.delacruz@waterboards.ca.gov) by 5:00 p.m. on August 4, 2025. Written comments should be sent to the Regional Water Board at 1515 Clay Street, Suite 1400, Oakland, CA, 94612.

The Regional Water Board will respond to comments received regarding this addendum and to comments on the original Tentative Order received during the previous public comment period that took place in January and February. There is no need to re-submit those comments. The Regional Water Board will hold a public hearing on the Tentative Order during its regular meeting on September 10, 2025, at 9:00 a.m.

Revisions to the Tentative Order are shown below with underline text for additions and strikethrough ~~text~~ for deletions.

A. We revised section 2 of the Tentative Order (Findings), as follows:

> **2.3 Provisions and Requirements Implementing State Law.** Discharge Prohibition 3.5 below is included to implement state law only. This prohibition is not required or authorized under the federal CWA; consequently, violation of this prohibition is not subject to the enforcement remedies that are available for NPDES violations.
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> **2.4~~3~~ Notification of Interested Parties.** The Regional Water Board notified prospective enrollees and interested agencies and persons of its intent to prescribe these WDRs, and has provided an opportunity to submit written comments and recommendations. Fact Sheet section 8.1 provides details regarding the notification.

B. We revised section 3 of the Tentative Order (Discharge Prohibitions) as follows:

~~**3.4.** Discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses is prohibited.~~

~~**3.5.** Discharge to a storm drain that causes scouring or erosion at the point where the storm drain discharges into the receiving water, or causes or contributes to scouring of banks, excessive sedimentation, or flooding of the storm drain system or receiving water downstream of the point of discharge is prohibited.~~

3.4~~6~~. ~~Wastewater collection, treatment, or discharge of pollutants that causes pollution, contamination, or nuisance as defined by Water Code section 13050 is prohibited.~~ The treatment of pollutants shall not create nuisance as defined by California Water Code section 13050.

3.5~~7~~. Bypass or overflow of untreated or partially-treated groundwater to waters of the state or waters of the United States from a treatment system, or any collection or transport system or pump station tributary to the treatment system, is prohibited, except in accordance with Attachment D section 1.7.2. The Regional Water Board may take enforcement action against a Discharger for bypass, except under the circumstances listed in Attachment D section 1.7.3.

C. We revised section 5 of the Tentative Order as follows:

5. RECEIVING WATER LIMITATIONS

This Order does not contain receiving water limitations.

~~**5.1.** Discharges shall not cause the following conditions in receiving waters:~~

~~5.1.1. Floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;~~

~~5.1.2. Alteration of suspended sediment in such a manner as to cause nuisance or adversely affect beneficial uses or detrimental increase in the concentrations of toxic pollutants in sediments or aquatic life;~~

~~5.1.3. Suspended material in concentrations that cause nuisance or adversely affect beneficial uses;~~

~~5.1.4. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;~~

5.1.5. Alteration of temperature beyond present natural background levels, unless it is demonstrated that such alteration in temperature does not adversely affect beneficial uses;

5.1.6. Changes in turbidity that cause nuisance or adversely affect beneficial uses, or increases from normal background light penetration or turbidity greater than 10 percent in areas where natural turbidity is greater than 50 nephelometric turbidity units (NTU), or above 55 NTU in areas where natural turbidity is less than or equal to 50 NTU;

5.1.7. Coloration that causes nuisance or adversely affects beneficial uses;

5.1.8. Oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses;

5.1.9. Concentrations or quantities of toxic or other deleterious substances that cause deleterious effects on wildlife, waterfowl, or other aquatic life, or render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration; or

5.1.10 Increase of total dissolved solids concentrations or salinity so as to adversely affect beneficial uses, particularly fish migration and estuarine habitat.

5.2. Discharges shall not cause the following limits to be exceeded at any place in receiving waters within one foot of the water surface:

5.2.1. Dissolved Oxygen — Downstream of Carquinez Bridge: 5.0 mg/L, minimum
Upstream of Carquinez Bridge: 7.0 mg/L, minimum
Cold water habitat (non-tidal): 7.0 mg/L, minimum
Warm water habitat (non-tidal): 5.0 mg/L, minimum

The median dissolved oxygen concentration for any three consecutive months shall not be less than 80 percent of the dissolved oxygen content at saturation. When natural factors cause concentrations less than that specified above, the discharge shall not cause further reduction in ambient dissolved oxygen concentrations.

5.2.2. Dissolved Sulfide — Natural background levels

5.2.3. pH — The pH shall not be depressed below 6.5 nor raised above 8.5. The discharge shall not cause

~~changes greater than 0.5 pH units in normal ambient pH levels.~~

~~5.2.4. Nutrients — Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.~~

~~**5.3.** Discharges shall not cause a violation of any water quality standard for receiving waters adopted by the Regional Water Board, State Water Resources Control Board (State Water Board), or U.S. EPA as required by the CWA and regulations adopted thereunder. If more stringent water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Regional Water Board may revise or modify this Order in accordance with the more stringent standards.~~

D. We revised Attachment F section 3.2 as follows:

3.2. California Environmental Quality Act (CEQA)

Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code division 13, section 3 (commencing with § 21100). <u>This Order includes Discharge Prohibition 3.4 under state law only. This state law requirement is not subject to exemption under Water Code section 13389. However, the previous order imposed this requirement. As such retaining this requirement is not a project subject to CEQA because it will not cause a direct or indirect physical change in the environment (Public Resources Code §§ 21065, 21080).</u>

E. We revised Attachment F section 3.3.9 as follows:

3.3.9. **Endangered Species Act Requirements.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§ 2050 to 2097) or Federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). This Order requires compliance with effluent limits~~, receiving water limits,~~ and other requirements to protect the beneficial uses of waters of the State, including protecting rare, threatened, or endangered species. Dischargers are responsible for meeting all applicable Endangered Species Act requirements.

F. We revised Attachment F section 4.1.1 as follows:

~~4.1.1.4. **Discharge Prohibition 3.4. (No discharge of silt, sand, clay or other earthen materials):** This prohibition is based on Basin Plan Table 4-1, Discharge Prohibition 9, which prohibits the discharge of silt, sand, clay, or other earthen materials, to prevent discoloration, turbidity, and damage to aquatic life and spawning areas.~~

~~4.1.1.5. **Discharge Prohibition 3.5. (No storm drain discharge causing scouring, erosion, and excessive sedimentation, or flooding).** This prohibition is based on the sediment and erosion control goals of Basin Plan section 4.19 and is consistent with the Municipal Regional Stormwater Permit (NPDES Permit CAS612008).~~

4.1.1.4~~6~~. **Discharge Prohibition 3.4~~6~~. (~~No discharge causing pollution, contamination, or nuisance~~ No treatment of pollutants shall create nuisance).** This prohibition is necessary to prevent the creation of ~~pollution, contamination, or~~ nuisance conditions, as defined on Water Code section 13050~~, as the result of wastewater collection, treatment, or discharge to receiving waters~~.

4.1.1.5~~7~~. **Discharge Prohibition 3.5~~7~~. (No bypass to waters of United States).** This prohibition is based on 40 C.F.R. section 122.41(m) (see Attachment D section 1.7).

G. We revised Attachment F section 4.1.2 as follows:

4.1.2. **Basin Plan Discharge Prohibition 1**

Basin Plan Table 4-1, Discharge Prohibition 1, prohibits…

This Order covers Dischargers performing groundwater extraction and cleanup. It requires Dischargers to document in their NOIs that neither reclamation nor discharge to a publicly-owned treatment works is technically and economically feasible. Additionally, sections 6.3.3, 6.3.4, and 6.3.5 of this Order require Dischargers to document how they will reliably prevent discharges of inadequately-treated wastewater as prohibited by Discharge Prohibition 3.6~~7~~.

H. We revised Attachment F section 4.3.3.3.1 as follows:

4.3.3.3.1. **Acute and Chronic Toxicity.** Dischargers covered by this Order are exempt from toxicity requirements… ~~Dischargers covered by this Order are subject to water quality standards for receiving waters as described in section 5.3 of the Order.~~

I. We added section 4.3.3.3.3 to Attachment F as follows:

4.3.3.3.3. **Narrative Water Quality Objectives.** Basin Plan chapter 3 includes narrative water quality objectives for all surface waters within the region, except the Pacific Ocean. Where reasonable potential is found, the Basin Plan requires these objectives to be translated into effluent limitations.

4.3.3.3.3.1. Basin Plan section 3.3.1 requires that discharges not exceed bacterial water quality objectives for marine and freshwater receiving waters with water contact recreation, shellfish harvesting, non-contact water recreation, and municipal supply beneficial uses. Discharges covered by this Order are not known to be sources of anthropogenic bacteria. Furthermore, this Order prohibits the discharge of domestic sewage. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters. See section 3.2 of the Order.

4.3.3.3.3.2. Basin Plan section 3.3.2 requires that controllable water quality factors not cause a detrimental increase in the concentration of bioaccumulative, toxic substances in bottom sediments or aquatic life. This Order finds reasonable potential for certain bioaccumulative pollutants (e.g., selenium). As explained in Fact Sheet section 4.3.3.3, elevated levels of selenium in Stevens Creek fish tissue demonstrate that the narrative bioaccumulation water quality objective is not being met. Therefore, this Order contains effluent limitations and monitoring requirements for selenium. Similarly, the Order contains effluent limitations and monitoring requirements for mercury because discharge data shows reasonable potential for this pollutant to exceed its water quality criteria. The effluent limitations for selenium and mercury included in this Order are sufficient to prevent excursions above this narrative water quality objective in receiving waters.

4.3.3.3.3.3. Basin Plan section 3.3.3 requires that receiving waters not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses. Discharges covered by this Order are not known to be sources of biostimulatory substances, such as nitrates, ammonium, and phosphates. Furthermore, as described in section 1.2.4, this Order prohibits discharges of sewage, which would contain nutrients. Therefore, there is no reasonable potential for discharges to contain biostimulatory

substances in concentrations that could exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.4. Basin Plan section 3.3.4 requires that discharges be free of coloration that causes nuisance or adversely affects beneficial uses. Discharges covered by this Order are not known to be sources of substances causing coloration at levels adversely affecting beneficial uses or nuisance. Covered discharges receive at least filtration treatment and more advanced treatment, such as GAC, for organic compounds. This treatment is expected to remove substances that may produce coloration. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.5. Basin Plan section 3.3.5 requires that dissolved oxygen remain above 5.0 mg/L in tidal waters downstream of Carquinez Bridge and above 7.0 mg/ in tidal waters upstream of Carquinez Bridge. It also requires that dissolved oxygen remain above 7.0 mg/L in nontidal waters with cold water habitat beneficial uses and above 5.0 mg/L in nontidal waters with warm water habitat beneficial uses. Furthermore, the median dissolved oxygen concentration for any three consecutive months is not to be less than 80 percent of the dissolved oxygen content at saturation. When natural factors cause concentrations less than that specified above, the discharge is not to cause further reduction in ambient dissolved oxygen concentrations.

Discharges covered by this Order are likely to contain relatively low dissolved oxygen concentrations because groundwater exists in anaerobic environments. However, discharges receive at least filtration treatment and more advanced treatment that incidentally aerates the wastewater. Furthermore, most covered discharges are directed to storm drains where additional aeration occurs. Therefore, there is no reasonable potential for discharges to contain dissolved oxygen at levels below the narrative water quality objective.

4.3.3.3.3.6. Basin Plan section 3.3.6 requires that discharges not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses. The discharges covered by this Order receive at least filtration treatment and more advanced treatment for organic compounds that also remove floating solids, liquids, foams, and scum. Furthermore, as described in Discharge Prohibition 3.3, this Order prohibits discharges

of floating oil, residual petroleum products, or other floating materials. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.7. Basin Plan section 3.3.7 requires that discharges not contain visible, floating, suspended, or deposited oil or other products of petroleum origin. The discharges covered by this Order receive at least filtration treatment and more advanced treatment, such as GAC, for compounds of petroleum origin to meet technology-based effluent limitations for VOCs and petroleum-related compounds (e.g., TPH as gasoline, TPH as diesel, and TPH as motor oil). Furthermore, as described in Discharge Prohibition 3.3, this Order prohibits discharges of floating oil, residual petroleum products, or other floating materials. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters. See Fact Sheet section 4.2.2.

4.3.3.3.3.8. Basin Plan section 3.3.8 requires that receiving waters remain free of toxic substances in concentrations that are lethal to or that produce significant alterations in population or community ecology or receiving water biota. As described in Fact Sheet section 4.3.3.3.1, discharges covered by this Order are not known to be sources of toxicity. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.9. Basin Plan section 3.3.9 requires that pH not be depressed below 6.5 nor raised above 8.5 in receiving waters, and that discharges not cause changes greater than 0.5 pH units in normal ambient pH levels. The technology-based effluent limitations for pH are sufficient to prevent excursions outside this narrative water quality objective. Therefore, there is no reasonable potential for discharges to violate the narrative water quality objective in receiving waters. See Fact Sheet section 4.2.2.1.

4.3.3.3.3.10. Basin Plan section 3.3.10 requires that radioactive material not be present in concentrations that result in the accumulation of radionuclides in the food web that could present hazards to human, plant, animal, or aquatic life. Discharges covered by this Order are not known to be sources of radioactive substances that would present hazards to human, plant, animal, or aquatic life. Therefore, there is no reasonable potential for discharges to contain

radionuclides at levels above this narrative water quality objective.

4.3.3.3.3.11. Basin Plan section 3.3.11 requires that discharges not increase the total dissolved solids or salinity of receiving waters so as to adversely affect beneficial uses. Discharges covered by this Order are rarely sources of salinity that would adversely affect beneficial uses of receiving waters. However, locations near former salt evaporation ponds in the southern portion of the San Francisco Bay Region may have higher levels of salinity in groundwater compared to surface waters. Therefore, this Order establishes effluent and receiving water monitoring requirements for salinity to assess whether discharges exceed this narrative water quality objective in receiving waters. See Attachment E section 3.1 and 3.2.

4.3.3.3.3.12. Basin Plan section 3.3.12 requires that discharges not alter suspended sediment in such a manner as to cause nuisance or adversely affect beneficial uses or detrimental increase in the concentrations of toxic pollutants in sediments or aquatic life. Discharges covered by this Order receive at least filtration treatment and more advanced treatment for dissolved compounds that also remove suspended sediment. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.13. Basin Plan section 3.3.13 requires that discharges not cause bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses. The discharges covered by this Order receive at least filtration treatment and more advanced treatment for dissolved compounds. Furthermore, covered discharges are not known to be sources of substances, such as nitrates, ammonium, and phosphates, that may cause aquatic growths to the extent that such growths could cause a nuisance or affect beneficial uses. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.14. Basin Plan section 3.3.14 requires that discharges not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses. Discharges covered by this Order receive at least filtration treatment and more advanced treatment for dissolved compounds that also remove suspended materials. Therefore, there is no

reasonable potential for discharges to exceed this narrative objective in receiving waters.

4.3.3.3.3.15. Basin Plan section 3.3.15 requires that discharges be free of dissolved sulfides above natural background levels. Sulfides can occur as a result of bacterial activity on organic matter under anaerobic conditions. Sulfides cannot exist to a significant degree in an oxygenated environment. The discharges covered by this Order are likely to contain sulfide concentrations because groundwater exists in anaerobic environments. However, these discharges also receive at least filtration treatment and more advanced treatment that incidentally aerate treated groundwater. Additionally, most covered discharges are directed to storm drains where additional aeration occurs. Therefore, there is no reasonable potential for discharges to contain sulfides at levels above this narrative water quality objective.

4.3.3.3.3.16. Basin Plan section 3.3.16 requires that discharges not contain taste- or odor-producing substances that impart undesirable tastes or odors to edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses. Discharges covered by this Order are not known to contain anthropogenic substances that impart undesirable tastes or odors to edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses in receiving waters. Covered discharges receive at least filtration treatment and more advanced treatment, such as GAC, for organic compounds that also remove substances that may impart undesirable tastes and odors. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.17. Basin Plan section 3.3.17 requires that discharges not alter temperatures beyond present natural background levels unless it can be demonstrated that such alterations do not adversely affect beneficial uses, and prohibits temperature increases of more than 2.8°C above natural receiving water temperatures. Discharges covered by this Order receive at least filtration and adsorption treatment, neither of which involves thermal inputs. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.18. Basin Plan section 3.3.18 requires that discharges be free of toxic substances in concentrations that are lethal to or that

produce detrimental responses to aquatic organism. As described in Fact Sheet section 4.3.3.3.1, discharges covered by this Order are not known to be sources of toxicity. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.19. Basin Plan section 3.3.19 requires that discharges be free of changes in turbidity that cause nuisance or adversely affect beneficial uses, or increases from normal background light penetration or turbidity greater than 10 percent in areas where natural turbidity is greater than 50 nephelometric turbidity units. Discharges covered by this Order receive at least filtration and more advanced treatment that also removes turbidity in treated groundwater. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters.

4.3.3.3.3.20. Basin Plan section 3.3.20 requires that discharges be free of un-ionized ammonia to prevent annual median concentrations in excess of 0.025 mg/L (as nitrogen) and concentrations in Central and Lower San Francisco Bay in excess 0.16 mg/L and 0.4 mg/L (as nitrogen). Discharges covered by this Order are not known to be sources of un-ionized ammonia in concentrations that are toxic to receiving waters. Furthermore, this Order prohibits the discharge of domestic sewage, which can contain ammonia. Therefore, there is no reasonable potential for discharges to exceed this narrative water quality objective in receiving waters. See section 3.2 of the Order.

J. We revised Attachment F section 4.4.1. as follows:

4.4.1. **Anti-Backsliding.** This Order complies with the anti-backsliding provisions of CWA sections 402(o) and 303(d)(4), and 40 C.F.R. section 122.44(l), which generally require effluent limitations in a reissued permit to be as stringent as those in the previous order. The requirements of this Order are at least as stringent as those in the previous orders…

The removal of these limitations is consistent with State Water Board Order WQ 2001-16, in which the State Water Board held that anti-backsliding does not necessarily dictate that a pollutant that was limited in a prior permit must have a limit in a later permit, even though there is no reasonable potential that the pollutant discharge will cause or contribute to a water quality standard exceedance. The State Water Board stated that where the anti-backsliding exception

in CWA section 303(d)(4)(B) is met (see section 4.4.2 below), the limit may be removed. The removal of these effluent limitations is consistent with antidegradation policies as explained below.

As discussed in Fact Sheet sections 5 and 6.4, this Order removes the receiving water limitations and a discharge prohibition that were included in the previous orders (Discharge Prohibition III.B of Order R2-2017-0048, and Discharge Prohibition III.C of R2-2018-0026). The discharge prohibition prohibited discharge of silt, sand, clay, or other earthen materials in a manner that would affect or threaten to affect beneficial uses in receiving waters. This Order also removes part of the nuisance provision contained in the previous orders (Discharge Prohibition III.E of Order R2-2017-0048 and III.G of R2-2018-0026), retaining the remainder as a State-only requirement (see Fact Sheet section 6.4). The removal of these requirements, as a matter of federal law, is consistent with the U.S. Supreme Court's holding in *City and County of San Francisco, California v. Environmental Protection Agency* (2025) 145 S.Ct. 704. However, as discussed in Fact Sheet section 4.3.4.4.5, the Regional Water Board has determined that the requirements in this Order are sufficient to ensure the discharge complies with Clean Water Act section 301(b)(1)(C) (33 U.S.C. § 1311(b)(1)(C)). As a result, the removal of the receiving water limitations and the discharge prohibition does not authorize the additional discharge of pollutants or authorize the violation of water quality standards. This Order does not, therefore, authorize either backsliding or further degradation of water quality.

K. We revised Attachment F section 4.4.2 as follows:

4.4.2. **Antidegradation.** This Order complies with the antidegradation provisions of 40 C.F.R. section 131.12 and State Water Board Resolution 68-16. It does not authorize lowering water quality as compared to the level of discharge authorized in the previous order, which is the baseline by which to measure whether degradation will occur. This Order does not allow for an increased flow, a reduced level of treatment, or increased effluent limitations relative to the previous orders.

This Order does not retain WQBELs for acute toxicity, chloride, total dissolved solids, turbidity, chromium III, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, and indeno(1,2,3-cd)pyrene from the previous order because data no longer indicate reasonable potential for these pollutants to exceed water quality objectives. The quantities of these pollutants are not expected to exceed the quantity discharged under the previous order when the effluent limitations were in place because these WQBELs did not drive treatment

performance. Treatment performance is maintained by the remaining effluent limitations imposed by this Order. Furthermore, the effluent limitations for chloride, total dissolved solids, and turbidity were based on secondary Maximum Contaminant Levels that protected aesthetic characteristics rather than aquatic life or human health, such as taste and odor, for receiving waters with "Municipal and Domestic Supply" or "Groundwater Recharge" beneficial uses. Discharge Prohibition ~~3.4~~ 3.3~~, Receiving Water Limitation 5.1.6,~~ and turbidity monitoring requirements in Attachment E (MRP) will maintain controls on turbidity to protect beneficial uses.

This Order removes the generalized receiving water limitations and a discharge prohibition that were included in the previous orders (Discharge Prohibition III.B of Order R2-2017-0048, and Discharge Prohibition III.C of R2-2018-0026). The discharge prohibition prohibited discharge of silt, sand, clay, or other earthen materials in a manner that would affect or threaten to affect beneficial uses in receiving waters. As discussed in Fact Sheet section 4.3.3.3.3, the effluent limits established in this Order are sufficient to protect receiving waters. The removal of the generalized receiving water limitations and discharge prohibition will not result in an increased volume or concentration of pollutants in the discharge. As explained in Fact Sheet section 4.3.3.3.3, the technology and water quality-based effluent limits established in this Order are sufficient to drive treatment system performance in a manner comparable to the previous orders and to ensure that water quality and beneficial uses are protected. This Order does not, therefore, authorize further degradation of water quality.

L. We revised Attachment F section 5 and included a footnote as follows:

5. RATIONALE FOR RECEIVING WATER LIMITATIONS

~~The receiving water limitations in sections 5.1 and 5.2 of the Order are based on Basin Plan narrative and numeric water quality objectives. The receiving water limitation in section 5.3 of the Order requires compliance with federal and State water quality standards in accordance with the CWA and regulations adopted thereunder.~~ This Order removes the receiving water limitations contained in section V of the previous orders that served as backstops for unanticipated circumstances or changes to effluent quality that could affect water quality. The receiving water limitations made the Discharger responsible for the quality of the receiving water without specifying specific requirements (e.g., effluent limitations) or other actions the Discharger must take that apply at or before the discharge point. The Regional Water Board removed the receiving water limitations to be consistent with the U.S. Supreme Court's ruling in *City and County of San Francisco, California v. Environmental Protection*

Agency (2025) 145 S.Ct. 704, which held that NPDES permits issued by the U.S. EPA may not include end-result requirements under the Clean Water Act. End-result requirements are provisions that do not spell out what the Discharger must do or refrain from doing; rather, they make the Discharger responsible for the quality of the water in the body of water into which it discharges pollutants.[1]

The requirements in this Order will ensure that the discharge satisfies Clean Water Act section 301(b)(1)(C) (33 U.S.C. § 1311(b)(1)(C)), which requires that the permit include any more stringent limitation, including those necessary to meet water quality standards. See Fact Sheet section 4.3.3.3.3. If unanticipated circumstances or changes to effluent quality occur during the permit term, the Regional Water Board may reopen the permit to include any limitations necessary to protect water quality.

[1] While the Regional Water Board removed generalized receiving water limitations in accordance with the U.S. Supreme Court's decision interpreting the Clean Water Act's NPDES requirements, the Regional Water Board may decide in the future to include similar requirements as a matter of State authority.

M. We added Attachment F section 6.4 as follows:

6.4. **Discharge Prohibition from Previous Orders Retained to Implement State Law Only**

Discharge Prohibition III.E of Order R2-2017-0048 and III.G of R2-2018-0026 (the previous orders) stated, "Wastewater collection, treatment, or discharge of pollutants that causes pollution, contamination, or nuisance as defined by Water Code section 13050 is prohibited." Consistent with the holding in *City and County of San Francisco, California v. Environmental Protection Agency* (2025) 145 S.Ct. 704 (discussed in Fact Sheet section 4.3.4.4.5), this Order does not retain this prohibition as a federal requirement. However, this Order does retain a modified version of this prohibition in section 3.5 as a matter of State law: "the treatment of pollutants shall not create nuisance as defined by California Water Code section 13050." This requirement does not address the discharge of pollutants or pollution or contamination because this Order includes technology-based and water quality-based effluent limitations sufficient to prevent nuisance or contamination in receiving waters associated with discharges covered by this Order.

The Regional Water Board has maintained this prohibition as a State law requirement to implement Water Code section 13263, which identifies the need to prevent nuisance as a factor to consider when issuing waste discharge requirements. The U.S. Supreme Court's decision in *City and County of San Francisco v. U.S. EPA* did not interpret the Water Code. Furthermore, there is no provision of the

Water Code analogous to the NPDES permit shield that was a part of the basis of the U.S. Supreme Court's decision. Likewise, the Porter-Cologne Water Quality Control Act has consistently recognized the ability of the Water Boards to regulate to prevent nuisance, and the Porter-Cologne Water Quality Control Act does not share the legislative history of the federal Clean Water Act. This Order, therefore, maintains the requirements identified above to continue protections as a matter of State law.

As required by Water Code section 13263, the Regional Water Board has considered the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the factors listed in Water Code section 13241 in establishing these state law requirements. The Water Code section 13241 factors are considered below.

6.4.1. **Past, present, and probable future beneficial uses of water.** Basin Plan Chapter 2 identifies designated beneficial uses for water bodies in the San Francisco Bay Region. Beneficial uses of water relevant to this Order are also identified above in Fact Sheet section 3.3.1. The Regional Water Board has taken beneficial uses into account in establishing the requirements of this Order. The prohibition against nuisance will not adversely affect present and future beneficial uses of water.

6.4.2. **Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.** The environmental characteristics of freshwater and non-freshwater receiving waters in the San Francisco Bay Region are described in Basin Plan Table 2-1. The prohibition against nuisance will not adversely affect the environmental characteristics of these receiving waters.

6.4.3. **Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.** By complying with the CWA-mandated requirements established through this Order, the Dischargers will ensure control over factors that could affect water quality. The requirement to prevent nuisance will ensure that the treatment processes do not result in environmental conditions that could adversely affect the surrounding community.

6.4.4. **Economic considerations.** The Dischargers have reliably operated their treatment systems, some over several permit terms, without creating nuisance conditions. Therefore, this prohibition is unlikely to impose additional economic costs on Dischargers. In the unlikely event that the Dischargers incur additional costs to prevent nuisance

associated with their treatment systems, the costs would be justified and necessary to properly operate and maintain the treatment systems and protect public health and the environment. If a nuisance were to occur, it would have a negative economic impact on tourism, recreation, and affected residents in the area.

6.4.5. **The need for developing housing within the region.** The requirement to prevent nuisance will not adversely affect the development of housing within the region.

6.4.6. **The need to develop and use recycled water.** The requirement to prevent nuisance will have no impact on the development and use of recycled water.