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SAN GABRIEL VALLEY WATER ASSOCIATION

May 21, 2018

Water Docket Environmental Protection Agency
 Mail Code 2282-IT
 1200 Pennsylvania Avenue NW
 Washington DC 20460
 Attn: Docket ID No. EPA-HQ-OW-2018-0063

Re: San Gabriel Valley Water Association Comments on Clean Water Act Coverage of "Discharges of Pollutants" via a Direct Hydrological Connection to Surface Water, Docket ID No. EPA-HQ-OW-2018-0063

The following comments are submitted by the San Gabriel Valley Water Association, a voluntary organization representing cities, water suppliers, and other groups that have a stake in water issues in the San Gabriel Valley. It was formed to promote, maintain, and coordinate the adequate supply and quality of water delivered to consumers in the Basin.

The Main San Gabriel Basin lies in eastern Los Angeles County, California. The hydrologic basin or watershed coincides with a portion of the upper San Gabriel River watershed, and the aquifer or groundwater basin underlies most of the San Gabriel Valley. Surface area of the groundwater basin is approximately 167 square miles. The fresh water storage capacity of the basin is estimated to be about 8.6 million acre-feet.

We appreciate the opportunity to provide comments on the question of the applicability of the Clean Water Act Section 402 to discharges to groundwater that is hydrologically connected to surface water. In our region, protecting the quality of groundwater is vital because the great majority of the water supply for the 2 million people who reside in our Basin is provided by groundwater. We are acutely aware that the groundwater and surface water are connected and that hydrologic connection is used every day in our water management activities. We strongly believe that it is the role of the states to regulate the quality and use of groundwater and that the imposition of the National Pollutant Discharge Elimination System (NPDES) on groundwater would be a duplicative and an onerous burden on water service providers.

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The Federal Register notice (Vol. 83, No. 34/Tuesday, February 20, 2018) requests comments on the following questions:

- Whether EPA should review and potentially revise its previous statements concerning the applicability of the CWA NPDES permit program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection.
- Whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA.
- Whether these releases could be better addressed through other federal or state statutory or regulatory programs.
- What format or process EPA should use to revise or clarify its previous statements.

Before addressing these four questions, let us note that designating groundwater as a Waters of the US could significantly impact spreading operations in the San Gabriel Valley in that it could potentially restrict raw water spreading for replenishment and recharge. While we do not have a direct nexus to a surface water stream, the fact is that the recharge water is delivered to our Basin via a pipeline connection, and then released into the natural riverbed for recharge. We are concerned that these operations may be threatened and that a nexus may be found between our groundwater recharge and a Water of the US. We rely on imported water from the State Water Project and it is most cost effective to take it from untreated water connections versus treated water connections through the Metropolitan Water District of Southern California. This allows for more collaborative uses for the benefit of cities and local agencies in both recharging our aquifer and also in collecting storm water as a part of our MS4 compliance.

Whether EPA should review and potentially revise its previous statements concerning the applicability of the CWA NPDES program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection.

Previous EPA statements on this issue are inconsistent and incomplete, and EPA should clearly rescind those previous statements when it issues a new policy. Most especially, EPA should clearly state that the CWA does not directly regulate nonpoint sources and does not indirectly regulate nonpoint sources with a hydrologic connection to surface waters. A “waters of the US” designation does not include an isolated or a non-tributary groundwater or a tributary or hydrologically connected groundwater. Finally, regulation of discharges to groundwater must be undertaken only by legislative change and not by the courts or unilaterally by USEPA.

Whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA.

The Clean Water Act does not regulate discharges to groundwater with a hydrological connection to surface water as is clear from the text, the structure, and the purposes of the Act. The definition of “waters of the United States” is lengthy but again does not refer to groundwater. A point source discharge to groundwater with a hydrologic connection to surface water does not constitute a discharge of a pollutant as the term is defined in section 502 of the CWA.

Are these releases better addressed through other federal or state statutory or regulatory programs?

States have the responsibility to protect groundwater and all of the 50 states have laws in place and regulations that prohibit or regulate the release of pollutants into groundwater. Further, there are federal environmental laws other than the CWA that are better designed and are currently used to address releases of pollutants into groundwater. This includes the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act.

We are concerned that unless corrected in a revised rule, the lack of clarity in this process could have unintended consequences that might impede beneficial and innovative public infrastructure projects. This could include, but not be limited to, groundwater recharge systems that are used to convey surface water, storm water, or recycled wastewater into aquifers to augment public water supplies as well as create seawater intrusion barriers, prevent land subsidence, and eliminate surface outfalls to protect water quality.

What format or process should EPA employ to revise or clarify its previous statements

EPA should issue a straightforward statement that the NPDES program does not apply to discharges to groundwater and this statement should be followed by the issuing of a formal notice that EPA and the Army Corps of Engineers will engage in a formal rule-making to clarify and enact its position.

The San Gabriel Valley Water Association appreciates the opportunity to submit these comments concerning whether the CWA covers “discharges of pollutants” to groundwater. Please feel free to contact us if you have questions, or if you would like additional information concerning the issues raised in these comments.

Sincerely yours,



David Michalko
President
San Gabriel Valley Water Association