WARREN D. WILLIAMS
General Manager-Chief Engineer

1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
FAX 951.788.9965
www.rcflood.org

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

September 14, 2015

Sent via email to: sandiego@waterboards.ca.gov

Mr. Wayne Chiu
CRWQCB - San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92108

Dear Mr. Chiu:

Re: Comment - Tentative Order No. R9-2015-0100, Place ID: 786088WChiu

The Riverside County Flood Control and Water Conservation District (District) appreciates this opportunity to submit comments on the above named Tentative Order, on behalf of the Riverside County MS4 Permittees within the San Diego Region (Riverside County Co-Permittees), which includes the District, the County of Riverside, and the Cities of Murrieta, Temecula and Wildomar. Tentative Order No. R9-2015-0100 (Tentative Order) proposes to amend the National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region, Order No. R9-2013-0001, as amended by Order No. R9-2015-0001 (Regional Permit) to include the Riverside County Co-Permittees, and also incorporate limited permit provisions for the City of Menifee.

The Riverside County Co-Permittees have previously commented that the San Diego Regional Water Quality Control Board (Regional Board) lacks authority to adopt a Regional Permit covering San Diego, Orange, and Riverside Counties. Our concerns and legal objections to inclusion into the Regional Permit, as well as other comments on provisions in the Regional Permit, are more completely set forth in our written comment letters dated January 10, 2013 (regarding Order No. R9-2013-0001) and November 19, 2014 (regarding Order R9-2015-0001), and also in the Santa Margarita Region Report of Waste Discharge (ROWD) dated May 10, 2015. We respectfully request that these written comments and ROWD, as well as the testimony of the District and Riverside County witnesses at the Regional Board hearings held in 2013 and 2015 in connection with the adoption of these Orders, be incorporated in the record for this Tentative Order. We note that our previous comments regarding the absence of an alternative compliance pathway may no longer be relevant, given that an alternative compliance pathway is being proposed for adoption in the Tentative Order. For the convenience of the Board and staff, those previous written comments have been submitted under a separate cover.

Notwithstanding the above concerns, on August 26, 2015, District staff met with Regional Board staff on behalf of the Riverside County Co-Permittees to discuss issues relating to the Regional Permit; Regional Board staff provided valuable compliance assistance and recommendations during this meeting. Our discussion focused on the following issues:

- Permit implementation challenges resulting from the Riverside County Co-Permittees' necessary late entry into the 2013 Regional Permit;
- The Tentative Order's proposed receiving water limitations alternative compliance pathway language;
- The Tentative Order's proposal to include limited permit provisions for the City of Menifee; and
- Monitoring and assessment under Regional Permit Provision D.4.a(1)(a).

In what follows, we summarize the understandings that we reached with Regional Board staff on those issues as well as set forth our suggested revisions to certain elements of the Tentative Order's alternative compliance pathway section. Finally, we include a request for re-inclusion of a third-party certification program into the Regional Permit's existing development inspection provisions.

Permit Implementation Challenges Resulting from Late Entry into the 2013 Regional Permit

During our meeting with staff, we noted that several of the ROWD requirements of the Regional Permit[1], could not feasibly be completed by the Riverside County Co-Permittees because we would not have an approved Water Quality Improvement Plan (WQIP) or Jurisdictional Runoff Management Plan (JRMP) at the time of ROWD submittal, December 2017. We estimated the earliest possible date for Regional Board acceptance of our WQIP to be May 2018, just one month before Regional Permit expiration. It is our understanding that, while the ROWD must be submitted by the date specified in the Regional Permit, it only need address the provisions that can feasibly be completed with the data and information that is available to us prior to the deadline for ROWD submittal.

Additionally, we noted several other Regional Permit provisions, including requirements to submit certification of legal authority[2], assessment and subsequent WQIP revision requirements[3], and requirements to submit a regional monitoring and assessment report[4], which either require data gathered under an approved WQIP, or are due for submittal outside of the Regional Permit's term. From our discussion, we understand that the Regional Board would agree that: 1) the certification of legal authority which was submitted by the Riverside County Co-Permittees under Order No. R9-2010-0016 will remain effective until a new certification is submitted with our first WQIP annual report (after the current Permit term has ended), 2) any provisions regarding assessments or requiring data gathered under an approved WQIP will not be due until such time that the necessary data are gathered and the assessments made under time periods described in the Regional Permit, and 3) we should complete the regional monitoring and assessment report for the current Regional Permit term utilizing data gathered during the transitional monitoring period, as these will be the only data that will be available to us at that time.

Receiving Water Limitations Alternative Compliance Pathway Language

As the Regional Board Executive Officer and staff indicated in hearings on the Regional Permit, neither the Riverside County Co-Permittees, nor co-permittees from the other two counties in the Permit will be able to meet the Regional Permit's Receiving Water Limitations (RWL) provisions for some years. In light of that fact, which was also recognized by the State Water Board in its precedential Order WQ 2015-0075 regarding the Los Angeles County MS4 Permit, we appreciate that the Tentative Order proposes to incorporate a pathway to compliance with RWLs. We support the alternative compliance pathway concept set forth in Tentative Order Provision B.3.c, and for purposes of additional clarity and utility in the language, we offer the following three comments:

Comment #1

Proposed Provision B.3.c(1)(a)(vii) would require that co-permittees develop at least one annual milestone and date for its achievement for each final numeric goal included in the WQIP. We believe that this proposed provision may place undue burden on municipalities and municipal agencies, including the Riverside County Co-Permittees, particularly in the case of longer-term projects. For example, due to the nature of municipal budget and project approval processes, final numeric goals requiring 20 years or more to complete will necessarily generate annual milestones which will be less definitive and more speculative the farther out in time that they are projected. Moreover, we are sensitive to the even greater burden that this proposed

[1] Including Provisions B.5.a, B.5.c, D.4.d(1) through (3), and F.5.b(3) and (4)
[2] Provision E.1.b
[3] Provisions D.4.a(2), D.4.b(1)(c), D.4.b(2)(c), D.4.c, D.4.d
[4] Provision F.3.c

provision would place on other regional co-permittees that have jurisdiction over multiple watershed management areas (WMAs). To ease their burden, we believe that some accommodation should be made in the Tentative Order language to allow milestones to be spaced further apart. We propose the following revision to accommodate both concerns, but ask that these two concerns be considered as separate requests (proposed revised language in ***bold, underline***):

> Provision B.3.c(1)(a)(vii): *"For each final numeric goal developed pursuant to Provisions B.3.a and B.3.c.(1)(a)(i)-(v), at least ~~one annual~~ **two** milestones[footnote omitted] and dates for ~~its~~**their** achievement must be ~~included within each Water Quality Improvement Plan Annual Report reporting period until the final numeric goal is achieved~~ developed for the permit term. **The two, or more, milestones and dates for their achievement shall be submitted in the first Water Quality Improvement Plan Annual Report of each permit term. When a subsequent permit is adopted, a new set of milestones and dates for their achievement shall be submitted as part of the first Water Quality Improvement Plan Annual Report under that permit, until the final numeric goal is achieved."***

Comment #2

Proposed Provisions B.3.c(2) and B.3.c(2)(d) would enable co-permittees who opt to use the WQIP for RWL compliance to remain in compliance as long as they have a WQIP which has been accepted by the Regional Board in accordance with the WQIP update requirements of Provision F.2.c. While this language appears to provide that co-permittees remain in compliance so long as they meet the requirements for updates set forth in Provision B.3.c(2), other provisions of the Tentative Order or Regional Permit appear to introduce some uncertainty. First, we note that footnote 10 on page 36 states that proposed changes to the WQIP do not stay any permit provision. Second, Provision A.4.c states that, in connection with the updating of a WQIP, "[n]othing in Provisions A.4.a and A.4.b prevents the San Diego Water Board from enforcing any provision of this Order while the applicable Copermittees prepare and implement the above update to the Water Quality Improvement Plan and jurisdictional runoff management programs."

Additionally, it is unclear what the proper action should be in situations where one or more, but not all, co-permittees within a WMA require revision to their individual jurisdictional programs under the WQIP. Taken together, the Tentative Order language is unclear whether all of the other co-permittees would be covered during individual co-permittee-proposed periods of WQIP revision, public review, and Regional Board consideration, because during any periods of revision, the entire WMA would not have a Regional Board accepted WQIP as is required under Tentative Order Provision B.3.c.(2)(d). We believe that it is logical that co-permittees should be covered under the compliance pathway, as long as they continue to meet the other requirements of Provision B.3.c.(2), and the WMA has a WQIP which has been initially accepted by the Regional Board. In order to address these issues, we offer the following revisions to clarify:

> Provision B.3.c(2): *"Each Copermittee that voluntarily completes the requirements of Provision B.3.c.(1) is deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b for the pollutants and conditions for which numeric goals are developed when the Water Quality Improvement Plan, incorporating the requirements of Provision B.3.c.(1), is accepted by the San Diego Water Board pursuant to Provision F.1.b ~~or F.2.c~~. The Copermittee is deemed in compliance during the term of this Order as long as:"*
>
> Provision B.3.c(2)(d): Delete.
>
> Provision A.4.c: *"**Except as provided in Provision B.3.c(2),** nothing in Provisions A.4.a and A.4.b prevents the San Diego Water Board from enforcing any provision of this Order while the applicable Copermittees prepare and implement the above update to the Water Quality Improvement Plan and jurisdictional runoff management programs."*

Comment #3

Proposed Provision B.3.c does not provide for interim compliance for co-permittees who are engaged in the WQIP planning phase. The State Water Board, in Section II.B.6 of Order WQ 2015-0075, endorsed this provision in the 2012 Los Angeles County MS4 permit, which allows interim compliance for co-permittees under that permit while they are preparing their planning documents, subject to rigorous requirements.

We believe that the provision of interim compliance is consistent with Principle Number 3 in Section II.B.7 of the State Water Board Order WQ 2015-0075, which expects that every regional board have incorporated in their alternative compliance pathways a mechanism that "allows permittees appropriate time to come into compliance . . . during full implementation of the compliance alternative." When read with Section II.B.6 of the State Water Board's Order, we believe that the compliance pathway option should also apply during the development and approval period for the WQIP, so long as co-permittees are in compliance with all applicable permit requirements and time schedules. To effectuate such an option, we suggest the following language to be included as a new Provision B.3.c(3):

> ***"A Copermittee who provides written notice to the Regional Board Executive Officer of its intent to utilize the compliance option provided in Provision B.3.c shall be deemed in compliance with Provisions A.1.a, A.1.c, A.1.d, A.2.a, and A.3.b within a Watershed Management Area from the date of that notice to the date that the San Diego Water Board accepts the Water Quality Improvement Plan pursuant to Provisions F.1.b or F.2.c, provided that the Copermittee meets all deadlines set forth in Provisions F.1.a and b for the development of the Water Quality Improvement Plan, and is otherwise in compliance with the requirements of Provision B.3.c. Any failure by the Copermittee to meet such deadlines or to be in compliance shall, from the date of such failure, remove the "deemed complaint" status of the Copermittee unless and until the Copermittee's Water Quality Improvement Plan is accepted by the San Diego Water Board."***

Proposed Inclusion of the City of Menifee in WQIP Development and Implementation

The City of Menifee lies primarily within the Santa Ana Regional Board's jurisdiction; less than 1.3 square miles of the City are located within the Santa Margarita River WMA. Finding number 29.b and various portions of Attachment F of the Tentative Order describe the circumstances under which the Regional Board proposes, through agreements, to require the City of Menifee to participate during development and implementation of the Santa Margarita River WMA WQIP; Table B-1 also proposes to add the City as a "Responsible Co-Permittee" within the WMA.

During our aforementioned meeting, we presented MS4 inventory and mapping which shows that the City of Menifee does not currently own or operate any MS4 within the Santa Margarita River WMA. Regional Board staff explained that should the Regional Board adopt the Tentative Order, the City would be bound by the provisions of its Phase 1 MS4 Permit in the Santa Ana Region only, with the exception of applicable TMDLs which may be developed for the Santa Margarita River WMA in the future. It was further explained that, with the exception of adoption of applicable future TMDLs, the City's implementation of the WQIP would be achieved through implementation of Santa Ana Region MS4 Permit compliance documents and programs.

The City of Menifee has provided comments on the Tentative Order requesting removal of language in the Tentative Order that requires the City to participate in the development and implementation of the Santa Margarita WMA WQIP; the Riverside County Co-Permittees support the City's comments, which are attached to this letter.

Monitoring and Assessment

Provision D.4.a(1)(a) prescribes that assessments required to be made under Provision D.4.a(2) must be included in each co-permittee's transitional monitoring and assessment reports; however, Provision D.4.a(2) requires determination of whether strategies identified in the co-permittee's WQIP are progressing towards

Administrative Record Page No. 020998

achieving interim and final numeric goals described in the WQIP. It is our understanding that transitional monitoring and assessment applies to the time period when a co-permittee's WQIP is being developed, and therefore assessments made during this time period cannot provide information on the progress of the WQIP. In light of this issue, which appears to have been a typographical error, we suggest the following revision:

> Provision D.4.a(1)(a): "***~~Based on~~ The*** *data collected pursuant to Provision D.1.a**~~, the assessments under Provision D.4.a(2)~~** must be included in the Transitional Monitoring and Assessment Program Annual Reports required pursuant to Provision F.3.b.(2)."*

Re-Inclusion of the Optional Third-Party Certification Program into the Regional Permit's Existing Development Inspection Provisions

Section F.3.b(4)(c) of Order No. R9-2010-0016 allowed the Riverside County Co-Permittees the option to propose a third-party certification program for commercial and industrial inspection programs, subject to Regional Board Executive Officer acceptance. We note that a similar provision does not exist in the Tentative Order, and respectfully request inclusion of this option in the Regional Permit.

Conclusion

The Riverside County Co-Permittees are committed to water quality in the Santa Margarita River WMA, and look forward to continued collaboration with Regional Board staff. Thank you for your consideration of these comments. If you have any questions, please contact me at smckibbi@rcflood.org, or 951.955.1273.

Very truly yours,

STUART E. MCKIBBIN
Chief of Watershed Protection Division

Attachment
- City of Menifee Comment Letter dated September 10, 2015

SEB:cw
P8/172444

Scott A. Mann
Mayor

John V. Denver
Mayor Pro Tem

Greg August
Councilmember

Matthew Liesemeyer
Councilmember

Vacant
Councilmember
District 3

September 10, 2015

Wayne Chiu
California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Subject: Comment - Tentative Order No. R9-2015-0100, Place ID: 786088WChiu

Dear Mr. Chiu,

The City of Menifee (the "City") would like to thank the San Diego Regional Water Quality Control Board ("San Diego Water Board") for the opportunity to comment on Tentative Order No. R9-2015-0100, an Order amending Order No. R9-2013-0001 as amended by Order No. R9-2015-0001 ("Tentative Order"). The City is committed to developing and implementing jurisdictional and regional programs and strategies that will improve overall water quality.

The City has been working hard to meet the requirements of the Santa Ana Region Permit under Order No. R8-2010-0033. The Report of Waste Discharge (ROWD) submitted to the Santa Ana Board in July 2015 highlights the Santa Ana Region's major water quality accomplishments since the Permit issuance. The City has been an active participant in the region, including in the development and implementation of the Comprehensive Nutrient Reduction Plan (CNRP) (approved July 2013) to address nutrient Total Maximum Daily Loads (TMDL) for Canyon Lake and Lake Elsinore and in the development of the Watershed Action Plan (WAP) (pending Santa Ana Regional Board approval). The City has also developed a Local Implementation Plan (LIP), which details the day-to-day jurisdictional storm water program to meet Permit requirements.

As stated in the Tentative Order, the City is located partially within the jurisdiction of both the San Diego Water Board and the Santa Ana Regional Water Quality Control Board ("Santa Ana Water Board"). More specifically, less than 1.3 square miles in the City is located in the Santa Margarita Watershed Management Area (WMA). To date, the San Diego Water Board and the Santa Ana Water Board have maintained agreements that designate the Santa Ana Water Board as the single Regional Water Board to regulate the City on matters pertaining to Phase I municipal separate storm sewer system (MS4) permits. The Tentative Order proposes continuing this practice, following past agreements, with the significant exception of now requiring the City to participate in the development and implementation of the Santa Margarita WMA Water Quality Improvement Plan (WQIP).

Both the City and the Riverside County Flood Control and Water Conservation District (RCFCWCD) maintain GIS layers of MS4 infrastructure that they own and

29714 Haun Road
Menifee, CA 92586
Phone 951.672.6777
Fax 951.679.3843
www.cityofmenifee.us

operate within the City. Since the release of the Tentative Order, the City of Menifee has coordinated with RCFCWCD to investigate ownership of MS4 within the small portion of the City that is within the Santa Margarita WMA. As shown on the attached maps, MS4 within the portion of the City in the Santa Margarita WMA is owned and operated exclusively by RCFCWCD. The City of Menifee does not own or operate MS4 within the Santa Margarita WMA.

It is the City's understanding, according to the Code of Federal Regulations, title 40, section 122.1(b)(1), that "[t]he NPDES program requires permits for the discharge of 'pollutants' from any 'point source' into 'waters of the United States'". The City does not own or operate any "point sources," as defined in 40 C.F.R. § 122.2 or section 502(14) of the Clean Water Act, within the Santa Margarita WMA. Because the City is not responsible for any MS4 within the Santa Margarita

WMA, it should not be required to develop and implement the Santa Margarita WMA WQIP. For this reason, the City respectfully requests removal of language in the Tentative Order that requires the City to participate in the development and implementation of the Santa Margarita WMA WQIP. Suggested edits to the text of the Tentative Order are shown below:

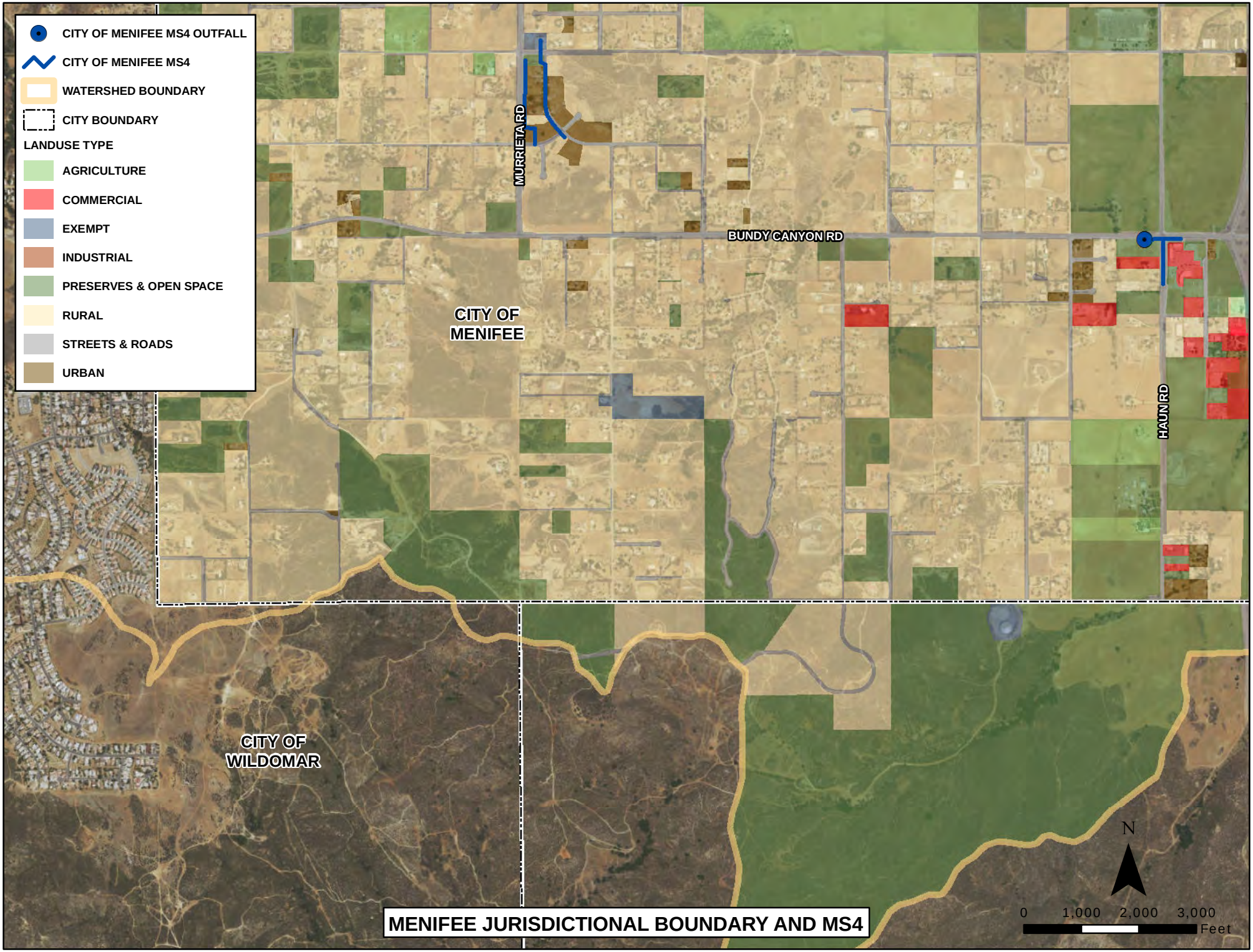
- Attachment 1, Finding 29(b): "...the City of Menifee is largely regulated by the Santa Ana Water Board under Order No. R8-2010-0033 as it may be amended or reissued, including those portions of the City of Menifee within the San Diego Water Board's jurisdiction, upon the effective date of this Order. ~~The agreement also requires the City of Menifee to actively participate during development and implementation of the Santa Margarita River Watershed Management Area Water Quality Improvement Plan required pursuant to this Order~~..."
- Attachment 1, Table B-1 "Watershed Management Areas": Please strike the City of Menifee from the table and remove the associated footnote.
- Attachment 2, Provision B.1: "~~Footnote 3 to Table B-1 has been included to specify that Phase I MS4 discharges within the jurisdictional boundaries of the City of Menifee located within the San Diego Region will be regulated under Santa Ana Water Board Order No. R8-2010-0033 (NPDES No. CAS618033) and any reissuance thereof. At this time, the City of Menifee is not identified as a responsible Copermittee for any TMDLs established by the San Diego Water Board. Under the terms of the agreement, the City of Menifee must actively participate in the development and implementation of the Santa Margarita River Watershed Management Area Water Quality Improvement Plan required pursuant to Order No. R9-2013-0001, and any reissuance thereof.~~"
- Attachment 2: "The City of Menifee is not regulated as a Copermittee under this Order because it <u>does not own or operate</u> ~~Phase I~~ MS4 ~~discharges~~ <u>within the portion of the City that is located within the San Diego Region.</u> ~~Are regulated by Santa Ana Water Board Order No. R8-2010-0033 as it may be amended or issued pursuant to Water Code section 13228 designation. The requirements of this Order that apply to the City of Menifee for the duration of this Order, consistent with the Water Code section 13228 written agreement dated [Month][Day], 2015, are described in Finding 29 and Footnote 3 to Table B-1.~~"

Thank you for your consideration. Please feel free to contact me or Yolanda Macalalad at 951-639-1368 extension 169 if you have any questions regarding the above comments.

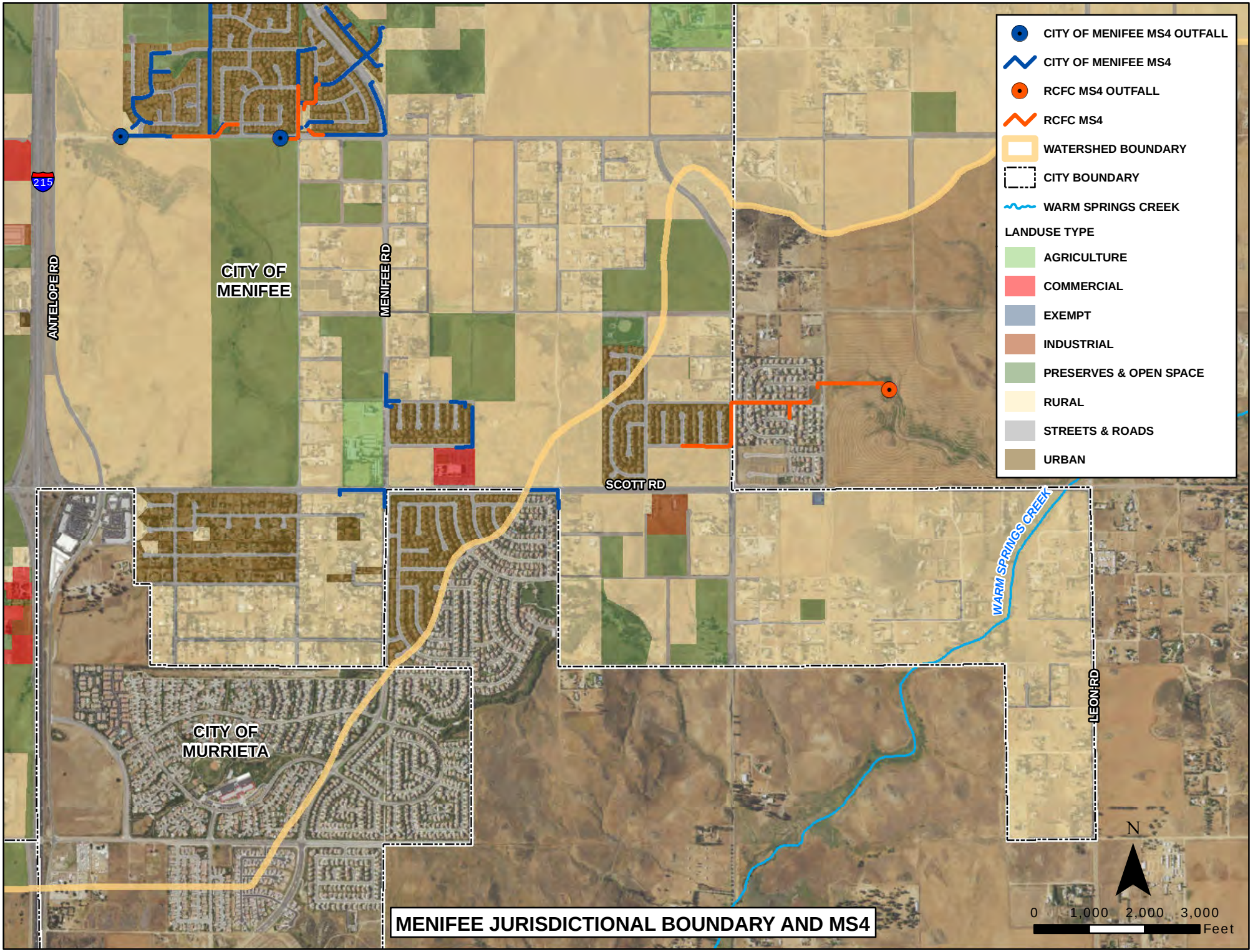
Sincerely,

Jonathan Smith, PE, QSD
Director of Public Works/City Engineer

Cc (by email):
ymacalalad@cityofmenifee.us
sglynn@cityofmenifee.us
nabad@cityofmenifee.us
sebruckner@rcflood.org



MENIFEE JURISDICTIONAL BOUNDARY AND MS4



MENIFEE JURISDICTIONAL BOUNDARY AND MS4

WARREN D. WILLIAMS
General Manager-Chief Engineer

1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
FAX 951.788.9965
www.rcflood.org

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

September 14, 2015

Sent via email to: sandiego@waterboards.ca.gov

Mr. Wayne Chiu
CRWQCB - San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Dear Mr. Chiu:

Re: Comment - Tentative Order No. R9-2015-0100, Place ID: 786088WChiu

In conjunction with our comment letter dated September 14, 2015, the Riverside County Co-Permittees[1] are submitting for inclusion into the administrative record for Tentative Order No. R9-2015-0100, comments which were submitted on previous Orders. Please find attached the following items:

- Comment letter dated January 10, 2013 regarding Order No. R9-2013-0001;
- Comment letter dated November 19, 2014 regarding Order R9-2015-0001; and
- Section 4.0 of the Santa Margarita Region Report of Waste Discharge (ROWD), dated May 10, 2015.

If you have any questions, please contact me at smckibbi@rcflood.org, or 951.955.1273.

Very truly yours,

STUART E. MCKIBBIN
Chief of Watershed Protection Division

Attachments

SEB:cw
P8/172432

[1] The Riverside County Flood Control and Water Conservation District, County of Riverside and the Cities of Murrieta, Temecula and Wildomar

4.0 Additional Comments on Proposed Permit

- **Previous Comments** - The Co-Permittees previously have expressed concerns regarding inclusion in the San Diego Regional Board's Regional Permit (Order No. R9-2013-0001, as modified by Order No. R9-2015-0001). The Co-Permittees' concerns and legal objections to inclusion in a regional permit are set out more fully in our written comment letter dated January 10, 2013, in Order No. R9-2013-0001 and November 19, 2014 regarding Order R9-2015-0001. For your convenience, these comments are included as Appendix D.

- **Receiving Water Limitations Language -** The Riverside County Co-Permittees continue to believe strongly that every MS4 Permit should incorporate a clear and achievable path to compliance for Co-Permittees. The Co-Permittees are actively participating in the workshops held by Regional Board staff concerning this important topic.

  The focus of the Watershed Workplan is on an iterative, flexible, and priority-setting approach that is intended to enable the Co-Permittees to focus on the most important water quality impairments in the SMR, and improve water quality. As we have previously commented, if the Co-Permittees have no protection from automatic liability for exceedances of water quality standards, they must address each such exceedance, even when that exceedance may be transitory or of minimal environmental or public health consequence. Stretching resources to address such issues diverts limited Co-Permittee resources from the most important threats to water quality and delays overall water quality improvement.

  State Board staff has already strongly signaled its support of alternative compliance language in MS4 permits, as set forth in the draft Order on the petitions challenging the 2012 Los Angeles County MS4 Permit. The Co-Permittees look forward to working with Regional Board staff, permittees from Orange and San Diego Counties, and the other stakeholders to develop appropriate alternative compliance language.

- **Prior Lawful Approval Language -** The Co-Permittees request language that allows each Co-Permittee to evaluate each project independently, in order to determine at their sole discretion, compliance as it relates to Prior Lawful Approval.

- **CEQA Processing Considerations** – Programmatic requirements that entail structural improvements such as retrofits and/or BMPs will trigger CEQA compliance. Future Permit language should discuss lead agency designation and consider CEQA processing in future workplan implementation timelines.

WARREN D. WILLIAMS
General Manager-Chief Engineer

1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
FAX 951.788.9965
www.rcflood.org

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

November 19, 2014

sent via email 11/19/14: Laurie.Walsh@waterboards.ca.gov

Ms. Laurie Walsh, P.E., WRC Engineer
CRWQCB - San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Dear Ms. Walsh:

Re: Comment - Tentative Order No. R9-2015-0001Place ID:65801LWalsh

This letter is written by the Riverside County Flood Control and Water Conservation District (District), on behalf of itself, the County of Riverside and the Cities of Murrieta, Temecula, and Wildomar (collectively, the Riverside County Co-Permittees) regarding Tentative Order No. R9-2015-0001 (Tentative Order). The Tentative Order proposes to add the County of Orange and other agencies located in South Orange County within the existing San Diego County Municipal Separate Storm Sewer System (MS4) Permit. The Riverside County Co-Permittees appreciate the opportunity provided by the San Diego Regional Water Quality Control Board (Regional Board) to offer its comments on the Tentative Order.

The Riverside County Co-Permittees wish to reiterate their concerns regarding a Regional MS4 Permit for San Diego, Orange, and Riverside Counties. Those concerns are set out more fully in our written comment letter dated January 10, 2013, on Order No. R9-2013-0001. The Riverside County Co-Permittees will be submitting a Report of Waste Discharge prior to the expiration of their current MS4 Permit, seeking either modification to the Regional Permit or an individual permit covering only those Co-Permittees. For your convenience, the January 10, 2013 comments are attached to this letter. The Co-Permittees request that this comment letter and attachments be added to the record for the Tentative Order, since most of the issues raised in those comments still pertain to the Tentative Order. The Co-Permittees also request that the oral testimony of Riverside County Co-Permittees on Order No. R9-2013-0001 be included in the record for the Tentative Order. The Riverside County Co-Permittees support the South Orange County Co-Permittees general approach to the issues raised by the Tentative Order.

Notwithstanding the Riverside County Co-Permittees' concerns to a Regional Permit, and subject to it, the Co-Permittees offer the following observations regarding the Tentative Order.

1. Need for Path to Compliance

As set forth in our written and oral comments on Order No. R9-2013-0001, the Riverside County Co-Permittees continue to believe strongly that every MS4 permit, including the Tentative Order, should

Administrative Record Page No. 021007

incorporate a clear and achievable path to compliance for Co-Permittees. As the Executive Officer and staff indicated in the hearings on Order No. R9-2013-0001, the San Diego County Co-Permittees will be out of compliance with the Permit's receiving water limitations (RWL) provisions for years. We agree with staff's assessment, and state further, that the lack of a provision to allow Co-Permittees to be considered in compliance with the RWL provisions leaves the Co-Permittees open to possible enforcement by third-parties and, as importantly, threatens the compliance approach that has been successfully employed by the Riverside County Co-Permittees to address water quality impairments in the Santa Margarita Region.

The Riverside County Co-Permittees agree with staff that a MS4 permit which allows the Permittees to adopt a "fail early and fail often" iterative approach to water quality is preferable to a permit which simply mandates certain actions. The Santa Margarita River Watershed Water Quality Workplan in Riverside County follows an iterative, flexible, and priority-setting approach that is intended to enable the Co-Permittees to focus on the most important water quality impairments in the Region, and make real, quantifiable improvements in water quality. As we have previously commented, if the Co-Permittees have no protection from liability for exceedances of water quality standards, they must address each such exceedance, even when that exceedance may be transitory or of minimal environmental or public health consequence. Stretching resources to address such issues diverts limited Co-Permittee resources from the most important threats to water quality and delays overall water quality improvement.

Recognizing this deficiency in the 2001 MS4 Permit for the Los Angeles County Co-Permittees, in its 2012 Permit, the Los Angeles Water Board adopted a path to compliance with RWLs through the development of adaptive and prioritized watershed management plans. The Riverside County Co-Permittees believe that a similar approach to RWL compliance should be included in the Tentative Order.

2. Hydromodification Provisions

While most of the substantive changes in the Tentative Order have specific application only to San Diego and/or South Orange Counties, the Riverside County Co-Permittees support exemptions for engineered channels and large river reaches in Provision E.3.c.(2)(e). This provision also provides an interim timeframe exemption for the implementation of hydromodification management BMP requirements for priority development projects.

The exemptions identified in Provision E.3.c.(2)(e) are appropriate and reasonable, and should be made permanent exemptions moving forward.

3. Basin Planning and Water Quality Improvement Plan (WQIP) General Comments

For the WQIPs to ultimately succeed, they need to be based upon regionally appropriate water quality standards. These water quality standards require review to ensure that they reflect sustainable conditions for beneficial uses, explicitly consider regulatory policy and environmental trade-offs

Administrative Record Page No. 021008

inherent in the protection of beneficial uses, and address the nature and impact of stormwater upon beneficial uses.

The Riverside County Co-Permittees would like to thank the Regional Board and staff for working with the Santa Margarita River Nutrient Initiative Group on such a review. This group, which includes dischargers, tribal interests, interested non-profits, scientists, and Regional Board staff, is using a scientifically based and rigorous approach to evaluate potential water quality targets for, and sources of, nutrients in the Santa Margarita Watershed. It is our belief that this effort will lead to more considered, effective, and appropriate management of local receiving waters, and thereby promote quicker and more effective environmental outcomes. It may also assist with the identification and development of innovative and alternative programs to manage nutrients within the Region. This effort will inform the development of the Santa Margarita River Watershed Water Quality Workplan and other regulatory programs.

The Co-Permittees request and encourage Regional Board staff to work with other stakeholders to consider, prioritize, and address other perceived constraints and inconsistencies within the San Diego Region Basin Plan. Such efforts will ultimately result in a better focus of local and regional compliance programs, including the WQIPs, on actions that are more likely to effectively and quickly address public health risks and environmental risks to receiving waters. Such an approach is exactly in line with staff's emphasis on workable solutions to these challenges.

The Riverside County Co-Permittees appreciate the opportunity to comment on the Tentative Order. Should you have any questions regarding these comments, please contact David Garcia at 951.955.1330/dhgarcia@rcflood.org.

Very truly yours,

for JASON E. UHLEY
Chief of Watershed Protection Division

Attachment

DHG:cw
P8/165901

WARREN D. WILLIAMS
General Manager-Chief Engineer

1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
FAX 951.788.9965
www.rcflood.org

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

January 10, 2013

Mr. Wayne Chiu, P.E.
California Regional Water Quality
Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

Dear Mr. Chiu:

Re: Tentative Order No. R9-2013-0001
Regional MS4 Permit
Place ID: 786088Wchiu

The Riverside County Flood Control and Water Conservation District (District) is submitting this comment letter on the above listed Tentative Draft Order on behalf of the Riverside County MS4 Copermittees within the San Diego Region (Riverside County Copermittees) which includes the District, the County of Riverside and the Cities of Murrieta, Temecula and Wildomar. Tentative Draft Order R9-2013-0001 (Draft Permit) was drafted by Board staff to cover Phase I municipal separate storm sewer system (MS4) Copermittees in San Diego County, southern Orange County, and the portion of southwestern Riverside County within the Santa Margarita Hydrologic Unit.

The Riverside County Copermittees have previously commented that the San Diego Water Board lacks authority to adopt a regional permit covering Orange and Riverside Counties, in addition to San Diego County; a comment which is discussed in further detail below and in the attached legal comments. Notwithstanding such objection, and subject to it, the Riverside County Copermittees are providing comments on the Draft Permit.

In the workshop on the Administrative Draft Order held on April 22, 2012 San Diego Water Board staff identified the following desired outcomes for the proposed permit:

- Improving the quality of water discharged from the MS4
- Restoring or enhancing Beneficial Uses and Receiving Water quality

It was further identified by Board staff that to be able to meet those goals, the proposed regional MS4 permit needed to be 1) Strategic, 2) Adaptive, and 3) Synergistic.

Notwithstanding the concerns of the Riverside County Copermittees with regard to the legal authority to issue a regional MS4 permit, the Copermittees agree that being able to adapt and direct resources toward specific water quality priorities in a given watershed, rather than all potential problems simultaneously, is more likely to result in actual and meaningful improvements in water quality. However, to be able to achieve those improvements the MS4 Permit must be crafted to provide the Copermittees with the ability to truly and fully

adaptively manage their programs to focus resources on those BMP strategies and monitoring efforts that are identified as being most effective, consistent with the MEP standard, at addressing watershed priorities.

Unfortunately, many provisions in the Draft Permit, including but not limited to the Receiving Water limitation provisions in Provision A and others discussed in this letter, still do not fully support the achievement of those outcomes. The Draft Permit does not provide the Copermittees with the flexibility to be fully strategic in managing their resources nor the ability to fully adapt their programs to focus on the highest priority water quality needs of the watershed. This comment letter and the other documents submitted herewith (a redline of the Draft Permit and Legal Comments) identify some suggestions which, if adopted by the San Diego Water Board, will help to address these limitations and facilitate the desired improvements.

This comment letter is organized as follows:

1 BACKGROUND 3
2 GENERAL COMMENTS 3
2.1 REGIONAL PERMIT 3
2.2 OUTCOME FOCUS 4
2.3 RESPONSIBILITY FOR MEETING GOALS OF CWA 5
3 SPECIFIC COMMENTS 5
3.1 FINDINGS 5
3.2 PROVISION A, PROHIBITIONS AND LIMITATIONS 9
3.3 PROVISION B, WATER QUALITY IMPROVEMENT PLANS 12
3.4 PROVISION C, ACTION LEVELS 14
3.5 PROVISION D, MONITORING AND ASSESSMENT 14
3.6 PROVISION E.1, LEGAL AUTHORITY 19
3.7 PROVISION E.2, IDDE 20
3.8 PROVISION E.3, DEVELOPMENT PLANNING 24
3.9 PROVISION E.4, CONSTRUCTION 29
3.10 PROVISION E.5., EXISTING DEVELOPMENT 30
3.11 PROVISION E.6, ENFORCEMENT RESPONSE PLANS 31
3.12 PROVISION E.7, PUBLIC ED 31
3.13 PROVISION, E.8 FISCAL ANALYSIS 32
3.14 PROVISION F 32
3.15 ATTACHMENT C 33

As noted, the Riverside County Copermittees also are submitting a redline of the Draft Permit ("Redline") that proposes alternative language intended at achieving solutions to the various issues raised in this letter, and a Legal Comment document ("Legal Comments") that provides additional legal context for the various issues raised in this letter. The Riverside County Copermittees reserve their right, in the context of filing a Report of Waste Discharge ("ROWD") prior to the expiration of Order R9-2010-0016 (the 2010 MS4 Permit), to again address these issues and others relevant and appropriate to the SMR.

1 BACKGROUND

The Riverside County Copermittees were issued an extensive and prescriptive MS4 Permit in November 2010 which greatly expanded monitoring obligations, required special studies, a jurisdictional runoff management program, and Watershed Workplan requirements that were very different than the requirements set forth in the previous MS4 Permit issued to the Copermittees. Development and implementation of the 2010 MS4 Permit compliance requirements has been very expensive, especially in comparison to the relatively few demonstrated impairments of Beneficial Uses in the region and the Copermittees' resources. These requirements have left other important societal needs unfulfilled by the Riverside County Copermittees during a period of unprecedented and continuing economic distress. Further, the Riverside County Copermittees are still in the process of developing and implementing these 2010 MS4 Permit requirements, which is a serious concern given the very different compliance approach proposed in the Draft Permit. The Copermittees hope that the compliance efforts under the current MS4 Permit are taken into account when they submit their ROWD at the expiration of the 2010 MS4 Permit.

2 General Comments

2.1 Regional Permit

The Riverside County Copermittees respectfully submit that the San Diego Water Board is not authorized under the Clean Water Act or under its implementing regulations to issue a regional permit to Copermittees in San Diego County, South Orange County and the Santa Margarita Region (SMR) of Riverside County. As discussed more fully in the Legal Comments, the only circumstance under which the San Diego Water Board could issue such a permit would be if the Copermittees in these counties agreed to such a permit. Additionally, while the Draft Permit purports to affect the conduct of the Riverside County Copermittees upon expiration of the 2010 MS4 Permit in November 2015, the Riverside County Copermittees have not submitted a ROWD requesting coverage under a regional permit. Because no application has been made for the regional permit, which is a requirement set forth in the CWA regulations, the San Diego Water Board lacks jurisdiction to name the Riverside County Copermittees on the Draft Permit at this time.

Notwithstanding the above, the Riverside County Copermittees are submitting the comments in this letter based on:

- The San Diego Water Board staff's stated intent to enroll the Riverside County Copermittees in this permit upon expiration of the 2010 MS4 Permit.
- Statements made by San Diego Water Board staff that this comment period would serve as the primary opportunity for the Riverside County Copermittees to influence their next term MS4 Permit. The Riverside County Copermittees are entitled, as part of the ROWD process, to again raise relevant issues regarding permit provisions, but have undertaken in these comments to address major current concerns.

2.2 Outcome Focus

As mentioned above, the Copermittees agree that being able to adapt and direct resources toward addressing the specific water quality priorities in a given watershed, rather than all potential problems simultaneously, is more likely to result in actual/meaningful improvements in water quality. However, to be able to achieve those improvements, the MS4 Permit must fully integrate the following principles:

- **The Jurisdictional Program requirements must be fully flexible:** The Permit must be written in a way that allows the Copermittees to truly and adaptively manage their programs to fully focus their existing resources on those BMP strategies and monitoring efforts that are identified within the Water Quality Improvement Plan (WQIP) as being most effective, consistent with the Maximum Extent Practicable (MEP) standard, at addressing the watershed's priorities. We understand this to be the goal of the San Diego Water Board as well. While some elements of the Draft Permit embody this need, others do not and require dedication of resources to specific pre-defined efforts, regardless of the identified need for that effort in the watershed. The specific program areas that need more work to this end are:

    - The approach to addressing Non-stormwater discharges
    - Development Planning
    - Retrofitting
    - Channel Rehabilitation

These issues and proposed new language to address these issues are included throughout this letter and/or in the attached Redline.

- **Basin Plan updates need to be Prioritized by the San Diego Water Board:** For outcome-based permitting to be successful, the desired outcomes must be achievable by and appropriate to the Copermittee. To do that, the outcomes must take into account the background conditions in the watershed, and be appropriate for the attainment of Beneficial Uses in the specific waterbody, based on the specific conditions within and influencing that waterbody. The values in the Basin Plan should be comprehensively re-evaluated to ensure that water quality standards are scientifically justified to protect Beneficial Uses. Without updating the Basin Plan, the outcomes that the Copermittees target in the WQIPs would be arbitrary and not guaranteed to achieve the desired beneficial use improvements. Such an update should be pursued aggressively, led by and adequately funded by the San Diego Water Board, with participation by the MS4 Copermittees and other dischargers and stakeholders in the watershed.

- **Other Dischargers need to be Similarly Regulated by the San Diego Water Board:** The MS4 Copermittees are not the only dischargers of pollutants in the watershed. For example, the SMR of Riverside County includes State Lands (such as Caltrans), Tribal Lands, Agricultural Operators, Industrial Permit dischargers, Construction Permit dischargers, Phase II entities, Water Districts, and 'De Minimus' dischargers issued general permit coverage; all of which:

- Have separate regulatory programs (such as permits or waivers) implemented by the San Diego Water Board;
- May discharge pollutants, including non-stormwater, that can affect the quantity and quality of runoff, both directly within Receiving Waters, and in runoff discharges that may enter into and be discharged from the MS4; and
- Cannot be regulated by the Copermittees for the quantity and quality of their runoff because of their separate permits or waivers granted by the NPDES Program Administrator.

As such, while MS4 Copermittees can implement programs to reduce pollutants in discharges that are within their legal jurisdiction, no amount of effort by the MS4 Copermittees can be expected to fully attain water quality standards in the Receiving Waters. The only way to achieve that outcome will be for the NPDES Program Administrator (the San Diego Water Board in most cases) to directly regulate each of these entities to similar levels and standards as set forth by this Permit.

2.3 Responsibility for meeting goals of CWA

The CWA requires Copermittees subject to any MS4 permit, including the Draft Permit, only to address discharges from their MS4s. 33 U.S.C. § 1342(p)(3)(B). The Copermittees are not required to restore Beneficial Uses in any Receiving Water, or to address sources of pollution to those Receiving Waters that are not being discharged into or from those MS4s. However, in various provisions in the Draft Permit, there is a suggestion that the Copermittees are solely responsible for attaining water quality standards in their respective Receiving Waters. The San Diego Water Board must make clear in the Draft Permit that the responsibilities of the Copermittees are limited to their MS4s and the requirements of the CWA for municipal stormwater dischargers. Redline changes have been proposed in the above referenced portions of the Draft Permit to address this issue.

3 Specific Comments

The following comments represent specific high level concerns that the Riverside County Copermittees have identified at this time. Additional comments on the Draft Permit can be found in the Redline, as well as in the attached Legal Comments.

3.1 Findings

The Riverside County Copermittees have two separate sets of comments on the Findings. The first addresses the need for additional findings, with respect to aspects of California law and the physical setting of the SMR. The second set of comments focuses on existing Findings in the Draft Permit.

3.1.1 Needed Additional Findings

The Findings in the Draft Permit fail to fully address the context and conditions under which the proposed permit requirements are to be applied. A more complete explanation of this background is necessary to ensure that the Provisions ultimately included in the Draft Permit are credible, appropriate and legally required, and that the Permit Provisions (which must stem from the Findings) reflect the

context of the broader issues that affect MS4s within the region. The Riverside County Copermittees request that San Diego Water Board staff work with the MS4 Copermittees to expand the Findings, including the addition of findings to address the following:

California Water Law

California law requires that downstream entities must accept runoff from up-gradient properties. Owners and operators of MS4s are not exempt from this legal mandate, even if that runoff contains pollutants. Moreover, flood control districts, including the District, are mandated by the California Legislature (Legislature) to protect the lives and property of residents from floodwaters. The Riverside County Copermittees request that a finding, in the form set forth in the Redlines, be added to the Draft Permit.

Flooding

Many areas that would be under the jurisdiction of the Draft Permit are subject to periodic catastrophic flooding, which results from natural conditions, specifically the presence of mountains and hilly areas in close proximity to development, along with the effect of strong Pacific storms. This flooding would occur even in the absence of development. The Legislature recognized the importance of this issue in the early 20th Century, when it established flood control districts across the state, including in Riverside, Orange and San Diego Counties. Such flooding has, and if not controlled, could result in loss of life and widespread property damage. Further, the flooding can mobilize significant amounts of pollutants from industrial, commercial, residential and agricultural lands, damaging watercourses, habitat, and the Beneficial Uses therein. MS4 systems are designed and constructed to mitigate these impacts. The Riverside County Copermittees request that a finding in the form set forth in the Redline be added to the Draft Permit.

Flood Control District Acts

As noted above, the Legislature established Flood Control Districts in Orange, Riverside, and San Diego Counties through a series of Flood Control Acts. The Legislature determined that protection of life and property from the effects of flooding through the implementation of flood control improvements was a priority, and assigned those Districts with the sole responsibility to design, construct and maintain those improvements necessary to manage and contain floodwaters to prevent such negative impacts, as well as to conserve floodwaters for beneficial use. As noted above, these improvements represent fundamental water quality BMPs inasmuch as they reduce the widespread exposure of runoff to pollutants. The Flood Control Districts, while owners and operators of MS4s, have no authority or powers beyond those granted by the Legislature. The Legislature did not provide the Flood Control Districts, for example, the authority to regulate land uses within the municipal jurisdictions of Riverside County, nor to control the volume or quality of runoff discharged by those land uses. Findings describing the legislative priority for flood control and the limitations on the governing power of the Flood Control Districts should be added to set forth the appropriate role of the Flood Control Districts as MS4 Copermittees. The Riverside County Copermittees request that a finding, in the form set forth in the Redline, be added to the Draft Permit.

Limits on Extent of Permittee Legal Authority

The MS4 Copermittees lack the authority to regulate many significant sources of pollutants that may impact Receiving Waters. For example, the Copermittees cannot regulate pollutants discharged from federal and state lands, facilities, tribal lands, special districts, utilities, agricultural lands, or railroads. Moreover, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preclude local regulation of pesticides. The Riverside County Copermittees request that a finding in the form set forth in the Redline be added to the Draft Permit.

3.1.2 Comments on Existing Findings

Findings 3 and 15 (and elsewhere in Draft Permit)

In Findings 3 and 15 (and throughout the Draft Permit), it is stated that the CWA requires controls to reduce the discharge of pollutants "in stormwater" to the MEP. Finding 15, moreover, states that non-stormwater discharges from the MS4 are "not considered stormwater discharges and therefore are not subject to the MEP standard, stating that the MEP standard "is explicitly for 'Municipal . . . Stormwater Discharges" from the MS4s.

These conclusions are directly contrary to the plain language of the CWA, as set forth in the November 16, 1990 preamble accompanying the CWA stormwater regulations. Those authorities provide that the MEP standard applies to *all* pollutants discharged from the MS4, notwithstanding that some may be transported by non-stormwater. Additionally, the Redline reflects deletion of the limitation of the MEP standard to stormwater discharges in multiple locations, reflecting federal law. For a further discussion of this issue, please see the Legal Comments. The Riverside County Copermittees also request deletion of Finding 15.

Finding 11

This Finding states that "[r]ivers, streams and creeks in developed areas used [to convey runoff] . . . are part of the Copermittees' MS4s regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the rivers, streams and creeks in the developed areas of the Copermittees' jurisdictions are both an MS4 and Receiving Water." This statement is incorrect and must be deleted (as reflected in the Redline). For reasons more fully set forth in the Legal Comments, natural streams cannot be considered MS4; there is no MS4 "outfall" from a channelized river or stream to a natural stream; and, USEPA itself requires a distinction between MS4s and Receiving Waters.

Finding 12

This Finding states that as operators of MS4s, "Copermittees cannot passively receive and discharge pollutants from third parties." By providing free and open access to an MS4 that conveys discharges to Waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or otherwise control. This statement is incorrect and must be deleted (as set forth in the Redline). As the discussion in the Legal Comments indicates, municipalities must maintain the MS4 to protect the lives and property of their citizens and to prevent nuisance. Flood Control Districts have a statutory obligation to operate and maintain such MS4, an obligation which is not affected by

either the CWA or the terms of the Draft Permit. While an MS4 operator has the obligation to effectively prohibit the entry of non-stormwater into the MS4, it does not have legal responsibility for such discharges, which are the responsibility of the discharger itself and subject to the jurisdiction of the San Diego Water Board, pursuant to Water Code section 13260 *et seq.*

Finding 28

This Finding recites that the San Diego Water Board finds that the requirements of the Draft Permit "are not more stringent than the minimum federal requirements." The Riverside County Copermittees disagree with this finding, as it is not supported by the evidence, *i.e.*, the many requirements in the Draft Permit which exceed the federal MEP standard. Moreover, any decision by the San Diego Water Board to adopt "other provisions" going beyond MEP is not a federal requirement, but rather a discretionary decision taken by a state agency under authorization in the CWA. *See Defenders of Wildlife v. Browner,* 191 F.3d 1159, 1164-65 (9th Cir. 1999). Please see discussion in the Legal Comments. The Finding also indicates that the San Diego Water Board has developed an economic analysis of the Draft Permit. As set forth in the Legal Comments, the Riverside County Copermittees challenge the adequacy of that analysis.

Finding 29

This finding purports to find that the Draft Permit does not constitute an unfunded state mandate. The Riverside County Copermittees disagree with the conclusions set forth in this finding. More importantly, the finding is without legal effect because exclusive jurisdiction as to whether a state mandate exists, and whether it is unfunded lies with the Commission on State Mandates. Government Code §§ 17751 and 17552; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 837; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1546, 1596-97. The finding of an agency that has no jurisdiction to make that finding is entitled to no weight and should be deleted, as shown in the Redline. For an additional discussion of these issues, please see the Legal Comments.

Finding 31

The Riverside County Copermittees believe that the Receiving Water Limitation ("RWL") language set forth in the Draft Permit renders compliance with the permit impossible, since exceedances of water quality standards occur routinely through no fault of the MS4 Permittees. Thus, unless the RWL is modified to provide the Copermittees with a means to be in compliance, those Copermittees risk the threat of arbitrary San Diego Water Board enforcement or the bringing of citizen suit lawsuits under the CWA, which could nullify compliance with all other terms set forth in the Draft Permit, as discussed more fully in the Legal Comments. The exposure to third party litigation from the proposed RWL language is one of the most significant threats to an otherwise collaborative approach to achieving long term water quality improvement. This threat was emphasized by the recent bringing of a citizen suit lawsuit against the City of Malibu, the County of Los Angeles and the Los Angeles County Flood Control District based on similar language in the 2001 Los Angeles County MS4 Permit. The Riverside County Copermittees have suggested modifications to Provision A in the Redline and as discussed below and in the Legal Comments that are intended to better support the Iterative Process for compliance authorized by the State Water Resources Control Board in Order No.

2001-15, through the WQIP process. The Copermittees also note that the State Board considered the problems with the RWL language at a recent workshop, which may eventually result in modifications which should, if applicable, be reflected in the Draft Permit. Other requested changes to the Findings are set forth in the Redline.

3.2 Provision A, Prohibitions and Limitations

As noted above, the requirements set forth in Provision A are of great concern to the Riverside County Copermittees. The Copermittees generally support an approach to compliance that utilizes WIQPs as the implementing mechanism for the 'Iterative Process' described in Provision A.4, and that by implementing that iterative process in accordance with A.4, that the Copermittee should be in compliance with Provisions A.1 and A.2. The Redline reflects edits of Provision A to clarify the linkage between the prohibitions and limitations in Provisions A.1. through A.3. and Provision A.4 – which is described as the method for complying with the prohibitions and limitations. It must be noted, however, that the Riverside County Copermittees do not agree with the approach suggested, that any WQIP-based compliance approach be necessarily accompanied by a Reasonable Assurance Analysis. Such analyses can be extremely complex, expensive and time-intensive to develop, and similar analyses are commonly developed within TMDL models; taking a number of years to develop and refine. Given that the Santa Margarita Watershed has no adopted TMDLs; thus, comprehensive pollutant transport and BMP models are not available for the suite of constituents that might be considered for prioritization within a WQIP for the Santa Margarita Watershed. In the context of a TMDL, such models would be developed by the combined resources of the San Diego Water Board and a range of stakeholders and dischargers. Undertaking such an exercise solely with the public resources of the 275,000 residents of the SMR is beyond the financial ability of the Copermittees and would shift the responsibility for development of TMDLs from the San Diego Water Board to the Copermittees. Comments on Provision A can be found below, in the Redline and in the Legal Comments.

3.2.1 Overview of Key Issues

As noted above, an overriding issue for the Riverside County Copermittees is having a permit that, while being appropriately proactive and aggressive at addressing the prioritized water quality conditions with the Receiving Waters, is one that all Copermittees can remain in compliance with while implementing those requirements. As presently drafted (and as made clear by statements in the Fact Sheet), Provision A imposes immediate potential liability on every Copermittee if monitoring in the Receiving Waters reflects exceedances of water quality standards that may have been caused or contributed to by MS4 discharges. San Diego Water Board staff has repeatedly indicated in workshop presentations that they expect that Copermittees will not be able to comply with the Receiving Water Limitations and Discharge Prohibitions for some time. Staff has separately indicated that they are interested in having the Copermittees undertake bold initiatives in trying to address urban runoff pollution, and that the Copermittees have actually been encouraged to "fail early and fail often" as this would reflect such progress in refining these initiatives. The iterative, flexible and priority-setting approach reflected in the WQIP is intended to allow the Copermittees to focus on the most important problems in their watershed. The entire approach is endangered, however, by RWL provisions which would allow either the San Diego Water Board or a citizen plaintiff to sue the Copermittees for any individual exceedance of the

RWLs. Under the current version of Provision A, the unmitigated risk of such actions leads not to bold initiatives but rather to attempts to minimize liability.

As set forth in the Legal Comments, this approach is not mandated by the CWA, State Board orders or the opinion of the Ninth Circuit Court of Appeals in *Natural Resources Defense Council v. County of Los Angeles*, 673 F.3d 880 (9th Cir. 2011), *reversed*, 568 U.S. __ (January 8, 2013). As importantly, the threat of immediate potential noncompliance actually interferes with the ability of the Copermittees, including the Riverside County Copermittees, to comply with the Draft Permit. Instead of being able to focus on pollutants of highest concern in the watershed, as called for in the WQIP, the Copermittees will be forced to try to address every pollutant monitored, since the exceedance of any water quality standard leads to immediate potential liability. Moreover, because citizen plaintiffs are entitled to injunctive relief under Section 505(a) of the CWA, a federal judge could order the Copermittees to undertake steps completely independent of the WQIP or other compliance provisions in the Draft Permit.

The Riverside County Copermittees do not object to compliance provisions that will provide a means to achieve real improvement in water quality. The Copermittees are willing to undertake these Provisions, because the success or failure is in their control. Compliance with the requirements of Provision A, however, is beyond the control of the Copermittees. Based on the statements made during the workshop process, the Riverside County Copermittees believe that the San Diego Water Board is serious about working with the Copermittees on a permit that provides flexibility and problem solving approaches. To ensure that this flexibility is not lost, the Draft Permit must tie in compliance with Provisions A.1 through A.3 to a process set forth in Provision A.4. This approach is shown in the Redline and is discussed further below.

3.2.2 Comments in support of specific changes

Provision A, Introduction

The introduction notes that pollutants "in stormwater discharges" from the MS4 must be controlled to the MEP. As discussed above, the CWA does not differentiate between stormwater and non-stormwater discharges from the MS4; both must be controlled to the MEP standard. The Riverside County Copermittees have requested revised language in the Redline. Additionally, the linkage between compliance with Discharge Prohibitions (Provision A.1), Receiving Water Limitations (Provision A.2) and Effluent Limitations (Provision A.3) should be noted as being defined by Provision A.4. This change is reflected in the Redline.

A.1.a

First, language must be added providing that compliance may be addressed through the process set forth in Provision A.4. This language is provided in the Redline. Second, the Provision prohibiting discharges which are "threatening to cause" a condition of pollution, etc., is unenforceable, because it prohibits an action that, with respect to MS4 operators, is beyond their control. Moreover, there is no authority for such provisions in the Porter-Cologne Act. The Riverside County Copermittees request

deletion of this phrase, as shown in the Redline. Additionally, as set forth in the Legal Comments, the Provision improperly expands the Discharge Prohibitions to Waters of the State.

A.1.b

40 CFR § 122.26(d)(2)(iv)(B)(1) clarifies that the requirement for an MS4 Copermittee to "effectively prohibit" the discharge of Non-stormwater/illegal discharges into its MS4s is to be accomplished through "a program, including inspections, to implement and enforce an ordinance, orders or similar means…". The language of this Provision should reflect federal law in this respect. The Redline reflects this change.

A.1.c

First, this Provision requires the Copermittees to comply with the Basin Plan prohibitions listed in Attachment A. This list is over-inclusive, as it contains requirements that are not applicable to some or all of the Copermittees' MS4 discharges, or to the Riverside County Copermittees in particular. The Riverside County Copermittees request that this Provision be amended to read as follows: "Discharges from MS4s are subject to all applicable waste Discharge Prohibitions in the Basin Plan." This change is noted in the Redline. Second, language must be added providing that compliance with this restriction can be obtained through the process set forth in Provision A.4. This language is provided in the Redline.

A.2.a

First, this Provision and Provisions A.1. and A.3 should be linked to the iterative process described in A.4. Please see the Redline.

Second, not all plans, policies, etc. set forth in Provision A.2.a.(1)-(4) may qualify as "water quality standards" or be applicable to all the MS4 Copermittees. These subsections should be deleted, and replaced with a reference to "Water Quality Standards," which is a defined term in the Draft Permit (This change is reflected in the Redline). Otherwise, the MS4 Permit would become over inclusive with respect to what is considered a water quality standard. Such standards must be established in accordance with federal and state law. If this process has not been followed for a particular requirement, it is not a "water quality standard."

A.3.a

As discussed above, this Provision erroneously states that pollutants "in stormwater discharges" from MS4s must be reduced to the MEP. Please see the Redline.

A.3.b

This Provision should also provide that compliance with a TMDL constitutes compliance with Provisions A.1 and A.2, for those pollutants/waterbodies subject to the TMDL.

A.4.a

The Riverside County Copermittees support an approach whereby compliance with Provisions A.1 through A.3 are achieved through a truly iterative approach, one which reflects the intent of the

precedential State Water Board Order Nos. 99-05 and 2001-015. As set forth in the Redline, the Riverside County Copermittees believe that they and the other Copermittees under the Draft Permit should be considered in compliance with Provisions A.1, A.2 and A.3, as applicable, through development of the WQIP, unless the San Diego Water Board denies approval of a WQIP or amendment thereof. This ensures that the Iterative Process which is the focus of the WQIP, is utilized to provide a means to be in compliance for the Copermittees.

A.4.c

This Provision should be deleted, as is reflected in the Redline. Again, this Provision defeats the purpose of an iterative approach to compliance with the Provisions A.1 through A.3, because it allows the San Diego Water Board to enforce any provision of the Draft Permit, including those provisions at any time. The San Diego Water Board obviously retains full ability to enforce the provisions of the Draft Permit, including with respect to the failure of the Copermittees to carry out required provisions. To short circuit the WQIP/JRMP process, however, is to defeat the entire intent of the Draft Permit.

3.3 Provision B, Water Quality Improvement Plans

3.3.1 Overview of Key Issues

- The goals and requirements of the WQIP need to be aligned with the requirements of the CWA that were established specifically for MS4 permits, and not impose the restoration of Receiving Waters entirely upon MS4 Copermittees.
- The WQIP should focus on addressing sources of pollutants within the jurisdiction of the respective Copermittees.
- The BMP strategies identified in the WQIP should fully inform the selection and design of programs identified in the JRMP. Some minor edits were proposed in Provision B, with additional edits as warranted in Provisions D and E.

3.3.2 Comments in support of specific changes

Introductory paragraph

The introductory language implies that the WQIP should be designed to unilaterally protect, preserve, enhance, and restore water quality and Beneficial Uses in waters of the state. As noted in Section 2.3 above, MS4 Copermittees are responsible only for discharges from their MS4s, not the unilateral protection of Beneficial Uses within their watersheds.

Redline edits were provided to:

- Tie the goals of the WQIP to the requirements of the CWA applicable to MS4 Permits.
- Replace 'waters of the state' with 'Receiving Waters' to be consistent with federal law.
- Clarify the linkage between Provision A and Provision B.

Additionally, Redline edits were provided to clarify that the strategies identified in the WQIP are intended to guide the specific actions that will be implemented by the Copermittees pursuant to Provision E.

B.1

The Riverside Copermittees support the redlines of the San Diego County Copermittees with regard to setting forth that the WQIP for the Santa Margarita Watershed Management Area (WMA) would commence upon enrollment of the Riverside County Copermittees into the Order.

B.2.e.

Two changes have been proposed, as shown in the Redline:

- The introductory paragraph includes language that clarifies that the Numeric Goals are not enforceable compliance standards, effluent limitations, or Receiving Water limitations. This clarification is consistent with San Diego Water Board staffs' verbally stated intent.
- Provision B.2.e.(1) as written requires that the final Numeric Goals be "capable of demonstrating the achievement of the restoration and/or protection of water quality standards in Receiving Waters". As discussed in Provision 2.3 above, meeting WQS in Receiving Waters is a goal of the overall NPDES regulatory programs under the CWA and not as a requirement to be accomplished alone by MS4 Copermittees. Redline edits have been provided to clarify that such goals are only required to be for MS4 discharges.

B.3.

In the Redline, edits were made to the introductory paragraph to ensure that the requirements are consistent with federal law. The CWA requires the 'effective prohibition' of non-stormwater discharges, not 'preventing' or 'eliminating' them.

Edits were also made to Provision B.3.a. to link the strategies more clearly to the Numeric Goals developed pursuant to Provision B.2.e, as well as to link them to the JRMP programs in Provision E.

B.5

In the Redline, edits were made to the introductory paragraph to clarify that the WQIP (and by extension the JRMP and Monitoring programs) are intended to meet the requirements of Provisions A.1, A.2, and A.3. The Tentative Order particularly excluded Provision A.1.b. (dealing with non-stormwater discharges). However, as discussed in the attached Legal Comments, the CWA requires that illegal discharges must be addressed via a program (as included in Provision E.2), and it is appropriate that the program be guided by the priorities and strategies included in the WQIP.

Other edits were made to clearly link Provision B.5 to the applicable requirements of Provision F.

3.4 Provision C, Action Levels

3.4.1 Overview of Key Issues

- The Action Levels (non-stormwater, and stormwater) applicable within each watershed should only be those that are associated with the priority water quality conditions in that watershed, or that are 303(d) listed for that watershed. For example, if Zinc is not a priority pollutant for a watershed, and is not 303(d) listed, there should not be a Zinc action level. This change is needed because Provision D requires analysis for all 'action level' parameters. Analysis for pollutants that are not a priority for a watershed is a waste of Copermittee resources.
- The Copermittees should be able to establish alternative action levels that are appropriate to the WMA within their WQIP. Such alternative action levels would be subject to Executive Officer approval as part of the WQIP approval process.
- Footnote 8 and 10 need to clarify that the NALs and SALs are not enforceable limitations.
- Various references to 'waters of the state' need to be changed to Receiving Waters for consistency with the Draft Order and the CWA.

Please see the Redline for further detailed comments and language changes.

3.5 Provision D, Monitoring and Assessment

The Riverside County Copermittees appreciate the changes in the monitoring program reflected in the Draft Permit, as compared to the Administrative Draft. However, elements of the revised requirements are still infeasible for the Riverside County Copermittees. The comments below identify modifications of areas of the monitoring requirement's which can significantly improve the Copermittees' ability to implement and comply with the requirements, while still maintaining appropriate jurisdictional accountability and assessment requirements to guide the implementation of the WQIPs and JRMP programs. The Redline provides further detailed comments and language changes.

3.5.1 Overview of Key Issues

- Dry Weather MS4 Outfall Monitoring
  - The level of effort dedicated to monitoring and addressing outfalls with non-stormwater discharges should be commensurate with the potential impact that discharge has on a Receiving Water. If a discharge, whether persistent or transient, has no or little potential for impacting a flowing Receiving Water, (e.g. due to infiltration, evaporation, or treatment of the flows), the outfall should be de-emphasized relative to other outfalls that have discharges that have connectivity to a flowing Receiving Water.
  - Outfall Dry Weather Field Screening – As currently drafted, the number of required visual inspections of outfalls during dry weather required per Provision D.2.a.(2)(a) and Provision D.2.b.(1) is both excessive and disproportionate. This will particularly impact smaller jurisdictions, which may be required to do more visual inspections of MS4 outfalls than would larger jurisdictions with more outfalls and more resources.
  - Similarly, as written, the Persistent Flow Outfall Monitoring requirements of Provision D.2.b.(2)(b) are excessive and also will disproportionately impact smaller jurisdictions.

Jurisdictions with several hundred outfalls will likely have significantly more resources to perform the required monitoring than smaller jurisdictions with fewer outfalls, yet both are required to implement the same level of persistent flow monitoring.

- Assessment Requirements
  - The assessment requirements require modeled extrapolation of monitored outfall data to non-monitored outfalls for the purposes of calculating loads from each outfall in each jurisdiction. Such extrapolations though modeling or other calculations will not accurately reflect actual jurisdictional loads, and have no benefit that directly analyzing the monitored data cannot more accurately provide.

3.5.2 Other Global Issues

- As currently drafted, MS4s operated by a flood control district within a city or county would be effectively double-counted for identification of outfalls in each jurisdiction and for performance of the load calculations from each jurisdiction. Additionally, Flood Control Districts have no land use or enforcement authorities outside of the MS4 and rely on the local Copermittee to address pollutant sources and discharges to their MS4. Redline edits have been included to clarify the relationship between districts and the municipal jurisdictions they serve for the purposes of outfall monitoring and the assessment requirements.
- Timelines for monitoring and assessments were clarified throughout and linked to specific reporting requirements of Provision F in the Redline.

3.5.3 Comments in support of specific changes

D.1.a.(3) and D.1.e.

The Redline clarifies that the Receiving Water monitoring described in these sections must be conducted as applicable to the WMA and the Copermittees' MS4 discharges, because some of the monitoring requirements only apply to MS4 discharges to certain waterbodies. Not all Copermittees within a WMA will have discharges to that waterbody.

D.1.b.

The Redline proposes language to allow for alternative long-term monitoring stations to be identified. Using the SMR as an example, the Copermittees might wish to utilize a location other than the existing stations due to the influence of groundwater during dry weather and/or the general lack of MS4 contributions in dry weather to those locations.

Table D-1 and D-6

The Redline proposes an addition to the list of field observations, an assessment for flow connectivity of any MS4 discharges to the sampled Receiving Water. It is important to know whether the sampled Receiving Water included a contribution of flows from MS4 discharges, or whether the data reflect conditions in the absence of an apparent MS4 discharge contribution.

D.2.a.(2)

The Redline clarifies that the identification of annual outfall monitoring requirements is based on municipal Copermittee boundaries, inclusive of Flood Control District MS4 outfalls within their jurisdiction.

The Redline clarifies that the field screening requirements apply to those outfalls in the Copermittee's inventory that are 'accessible'. If an outfall is inaccessible for safety reasons or due to habitat restrictions, it would not need to be field screened.

The Redline simplifies the 'tiers' in Provision D.2.a.(2)(a) by removing the lower tier (i), and expanding the second tier (ii) to cover all Copermittees with 500 or less outfalls. This resolves the disproportionality that occurs for Copermittees with a number of outfalls near the current 125 outfall threshold. For example, as currently drafted, a city with 150 outfalls would be required to do 150 visual inspections per year, but a smaller city with 120 outfalls would be required to do 192 visual inspections per year. The Redline also maintains the 80% requirement from the first tier to help smaller Copermittees manage their workload for meeting the field screening requirements while also conducting the additional source identifications that are required under the Draft Permit.

The Redline includes edits to Footnote 19 to clarify that persistent flow should effectively be a discharge that is hydraulically connected to a flowing Receiving Water. Any other discharges that are not affecting a flowing Receiving Water (such as pooled or ponded water) would be addressed as a Transient Discharge, with source IDs any time an obvious illegal discharge (i.e. color or odor) is identified.

D.2.a.(3)

The Redline incorporates edits proposed by the San Diego County Copermittees to require 10% of the samples in each WMA to be from a first storm event. As described in the comments of the San Diego County Copermittees, this will help avoid overly skewing of the data to 'first flush' data, while still incorporating such data into the data and analyses.

D.2.b.(1)

The Redline removes the requirement that the number of visual inspections performed be equivalent to the number of inspections required under Provision D.2.a.(2)(a).

As areas within a jurisdiction are confirmed not to have non-stormwater discharges, inspections of other outfalls would have to be perpetually (and unnecessarily) increased to maintain compliance with this requirement. For example, if a Copermittee had 150 outfalls, but after the transitional period it confirmed that 100 of those outfalls had no evidence of non-stormwater discharges to flowing Receiving Waters, it would have to visit the remaining 50 outfalls for up to three times a year to meet the requirement in this Provision. As the Copermittee got closer to eliminating non-stormwater flows at more outfalls, inspections at the remaining outfalls would quickly become excessive and unreasonable. Removing this requirement will better incentivize the elimination of non-stormwater

flows, as a Copermittee can look forward to reducing its workload in areas confirmed to not have non-stormwater flows.

D.2.b.(2)(b)

While the Riverside County Copermittees support the San Diego County Copermittees' proposal to reduce the number of required outfalls from 10 to 5 persistently flowing outfalls per WMA, the Riverside County Copermittees believe that applying the same minimum bar to all Copermittees is inappropriate and disproportionately affects smaller Copermittees that have commensurately less staff and resources.

The Riverside County Copermittees propose requiring monitoring of the top 10% of the prioritized persistent flow outfalls, with a lower and upper limit of 1 and 5 respectively, as shown in the redlines. With this change, the level of effort required of any individual Copermittee would scale consistent with the number of persistent flow outfalls within each Copermittees' jurisdiction.

Additionally, the Riverside County Copermittees request changing the requirement of Provision D.2.b.(2)(b)(ii) to require annual monitoring rather than semi-annual monitoring. With this change, a Copermittee could focus more of their annual budget on conduction Source ID efforts – which can result in eliminating problematic non-stormwater flows, rather than on a second monitoring event. Copermittees would still have the option to conduct a second monitoring event if they have more resources available and want to remove the outfall from their monitoring list sooner in accordance with Sub-Provisions [a] through [d].

D.2.b.(2)(e)

The Riverside County Copermittees support the San Diego County Copermittees' comments regarding allowing for a tailored list of constituents to be developed for each WMA. The Redline incorporates those edits.

D.3.

The Riverside County Copermittees support the changes recommended by the San Diego County Copermittees to this section, and these changes are reflected in the Redline.

D.4.a.(2)

This Provision as drafted would require the MS4 Copermittees to make comprehensive evaluations of Beneficial Uses that are beyond their expertise or the scope of an MS4 permit. Such evaluations and determinations would require advanced studies and cannot be answered with the monitoring data collected through this permit. This Provision should either be deleted or, alternatively the Riverside County Copermittees request that the assessments be focused on determining the status and progress toward addressing any Numeric Goals established for those Receiving Waters in the WQIP. Please see the Redline.

D.4.b.(1)

The Redline clarifies that outfall assessments are to be done for the area covered by each Municipal Copermittee (consistent with the proposed definition), and that the data to be used by each Municipal Copermittee would include the data collected from any Flood Control District Copermittee operated MS4s within its jurisdiction. This ensures that jurisdictional data is not double reported for Flood Control District MS4s within a city or county.

For Sub-Provision D.4.b.(1)(c)(iv) three key changes are requested in the Redline:

1) Annual volumes and pollutant loads should only be calculated from the monitored outfalls with persistent discharge to a flowing Receiving Water. This is directly applicable to the purpose of the Draft Permit and an important change, because volume and pollutant data extrapolated to non-monitored MS4 outfalls would be inaccurate and potentially misused if taken out of context. It is understood that San Diego Water Board staff want to ensure that jurisdictional accountability is maintained. However, since MS4 outfall monitoring will be conducted within each jurisdiction, inter-jurisdiction comparisons and accountability can be accomplished using the monitoring data directly without such extrapolations.
2) Added language to require a Copermittee to include in its jurisdictional load calculations any discharge that was demonstrated to have entered another Copermittees' MS4 before being discharged into the flowing Receiving Waters. This is important to ensure that each Copermittee maintains accountability for pollutants discharged to flowing Receiving Waters from within its jurisdiction.
3) The Redline proposes that the calculations of pollutant loads be only for the priority water quality constituents identified in the WQIP.

D.4.b.(2)(b)

Two key changes are recommended in the Redline:

1) Annual volumes and pollutant loads should only be calculated from the monitored outfalls for the monitored storm events. This is an important change because volume and pollutant data extrapolated to non-monitored events would be inaccurate and potentially misused if taken out of context. It is understood that San Diego Water Board staff want to ensure that jurisdictional accountability is maintained, so the Redline proposes that data from the monitored outfalls be extrapolated to identify loads for each jurisdiction during each monitored event. With this information, inter-jurisdiction comparisons and the desired 'accountability' can be accomplished using the monitoring data directly without such extrapolations to non-monitored events.
2) The Redline requests that calculations of pollutant loads be performed only for the priority water quality constituents identified in the WQIP.

D.4.b.(2)(c)

The Redline edits are consistent with those proposed by the San Diego County Copermittees, with minor modifications for clarity.

D.4.d.(2)(c)

It would be difficult to proactively determine the pollutant load reductions that *would* be necessary to demonstrate that discharges *are not* causing or contributing to exceedances of Receiving Water Limitations. Instead it would make more sense to calculate the necessary pollutant load reductions where the discharge has been demonstrated to be causing or contributing to such exceedances. In such circumstances, the necessary parameters would be known to calculate the needed load reduction. These changes are set forth in the Redline.

3.6 Provision E.1, Legal Authority

3.6.1 Overview of Key Issues

The Riverside County Copermittees note that Provision E.1, relating to the establishment of adequately legal authority, exceeds the requirements of federal CWA regulations in several respects. The federal regulations at 40 CFR 122.26(d)(2)(i)(A)-(F), provide explicit guidance for the Copermittees in developing the necessary legal authority to control MS4 discharges within its jurisdiction. However, several of the subsections of Provision E.1 go beyond these federal requirements, with respect to areas not within the responsibility of MS4 dischargers, such as negotiating with non-Copermittee entities. The Riverside County Copermittees have provided requested changes in the Redline, which are explained briefly below.

3.6.2 Comments in support of specific changes

E.1.a(1)

Changes in the Redline to accurately reflect the language of 40 CFR 122.26(d)(2)(i)(B).

E.1.a(2)

Changes in the Redline to accurately reflect the language of 40 CFR 122.26(d)(2)(i)(A). In addition, the Provision as written improperly requires the Copermittees to control the quality of runoff from sites covered by the state general permits for industrial activity and construction. These general permits are enforced by the State Board and the regional boards, and it is a state responsibility which cannot be handed off to the Municipal Copermittees.

E.1.a(3)

Changes in the Redline to accurately reflect the language of 40 CFR 122.26(d)(2)(i)(C).

E.1.a(5)

The Redline requests deletion of this Provision, which is not a requirement for municipal stormwater dischargers set forth in the CWA regulations. The Provision also improperly requests the Municipal Copermittees to attempt to negotiate with third parties the contribution of pollutants to the Copermittees' MS4. The Copermittees have no jurisdiction over such parties. The San Diego Water

Board has such jurisdiction, and should take responsibility for addressing non-MS4 sources of pollutants that may ultimately enter the MS4.

E.1.a(6)

Changes in the Redline to reflect accurately the language of 40 CFR 122.26(d)(2)(i)(E).

E.1.a(7)

The Redline requests deletion of this Provision, which is not a requirement for municipal stormwater dischargers set forth in the CWA regulations.

E.1.a(8)

The Redline requests deletion of this Provision, which is not a requirement for municipal stormwater dischargers set forth in the CWA regulations.

E.1.a(9)

The Redline requests deletion of this Provision, which is not a requirement for municipal stormwater dischargers set forth in the CWA regulations.

E.1.a(10)

The Redline requests both correction of the language in this Provision to comport with the federal regulations in 40 CFR 122.26(d)(2)(i)(F) and deletion of the second clause of this Provision, which is not found in 40 CFR 122.26(d)(2)(i)(F). Moreover, the requirement to inspect and monitor in the first clause of this Provision covers the issues set forth in the second clause. It is therefore unnecessary.

3.7 Provision E.2, IDDE

3.7.1 Overview of Key Issues

- The Draft Permit requires the Copermittees to address all non-stormwater discharges from the MS4 as illegal discharges, and then describes certain sources that need not be prohibited. This is effectively a 'guilty until proven innocent' provision, where a Copermittee will be required to expend potentially significant resources conducting source identification efforts any time non-stormwater is observed discharging from the MS4. In addition to the issues discussed in the Legal Comments, the Provision raises two practical and logistical problems:

    - This requirement is entirely independent of the determination that there are in fact any significant pollutants in such a discharge. A Copermittee could be spending substantial sums tracking (and then potentially enforcing upon) the source of a discharge that is not negatively impacting Receiving Waters. This not only is a waste of public resources, but would undermine the credibility of stormwater programs.
    - The San Diego Water Board and the State Water Board do not treat non-stormwater flows in the same manner across all of their regulatory mechanisms. For example, Order

> No. R9-2008-0002 allows non-stormwater discharges to occur, POTWs are issued permits for their discharges and agricultural operators can discharge irrigation water. The Copermittees should not be forced to conduct an expensive source investigation, only to find that the discharge complies with a permit or a waiver granted by the Water Board. The Copermittee would have no ability to address such a discharge as an 'illegal discharge', and further would have no ability to recuperate their costs for the source identification.

The best way to address these issues, is to require the Copermittee to have and enforce an effective prohibition of illegal discharges of *pollutants* (through statutes, ordinances, permits, contracts, orders or similar means), and then allow the Copermittee full discretion to determine which non-stormwater discharges have the potential to negatively impact Receiving Waters, consistent with the WQIP priorities – and address those as illegal discharges.

- Several categories of non-stormwater discharge that were previously conditionally exempt consistent with the CWA, are required by the Draft Permit to be treated as illegal discharges, unless they have coverage under another order issued by the San Diego Water Board. In addition to the problems identified above for conducting enforcement in the absence of a pollutant discharge, the San Diego Water Board, not the Copermittees, is responsible for evaluating coverage, need for coverage, and compliance with other orders issued by the Water Board. The Copermittees have neither authority nor jurisdiction. Please see the Redline.
- Several categories of non-stormwater discharge that were previously conditionally exempt consistent with the CWA, are required by the draft permit to be 'controlled' or otherwise prohibited by the Copermittees. The Fact Sheet further describes that such controls are warranted because they could potentially contain pollutants. However, the CWA only requires controls where the discharges are determined to be a significant source of pollutants. Please see Legal Comments for a further discussion of this issue as well as the Redline.
- The Draft Permit eliminates the conditional exemptions for Landscape Irrigation, Irrigation Water, and Lawn Watering (collectively 'irrigation runoff'). The San Diego Water Board has provided no data demonstrating that these discharge categories have contributed a significant pollutant load to Receiving Waters within Riverside County. Information discussed in the Fact Ssheet focuses on data from other counties. The only data from Riverside County is public educational material referring to irrigation runoff; this material, however, was adapted from public education material from other counties. That public educational material was intended to help prevent such discharges from becoming a significant source of impact on the Receiving Waters, and did not constitute a determination that such discharges are in fact, actually a significant source that needs to be subject to a prohibition. See the discussion in the Legal Comments as well as the Redline.
- The Draft Permit, in Provision E.2.a.(7) requires efforts to minimize or eliminate all non-stormwater flows, including those that are natural, conditionally exempt, or otherwise permitted by the San Diego Water Board, regardless of whether or not such discharges are not contributing pollutants to the MS4. Such a requirement conflicts with the prior Provisions E.2.a.(1) through

(5), which state conditions where such discharges need not be prohibited. The requirement should therefore be removed, as set forth in the Redline.

3.7.2 Comments in support of specific changes

E.2.a.(1) and (3)

The Riverside County Copermittees request that this Provision be deleted (as shown in the Redline) and the categories of non-stormwater discharges be re-incorporated into Provision E.2.a.(3). The apparent premise of Provision E.2.a(1) as drafted is that since the San Diego Water Board requires those discharges to have coverage under a separate order, they are illegal if they lack such coverage. The MS4 Copermittees, however, are not responsible for enforcing discharge coverage under separate San Diego Water Board orders; that is the responsibility of the San Diego Water Board itself. Requiring the Copermittees to enforce such entities for their lack of coverage under a separate San Diego Order shifts that responsibility from the Board to Copermittees. This is not authorized by the CWA or the Porter-Cologne Water Quality Act. The Copermittees are, under the CWA, only required to address such discharges as illegal discharges if the discharge is found to be contributing a significant pollutant load to the MS4. By moving those categories to Provision E.2.a.(3), as shown in the Redline, the Copermittees will still be required to treat such discharges as illegal discharges if and when they are found to be contributing significant pollutants to the MS4. This proposed approach is consistent with other MS4 permits in the state, including prior San Diego Water Board orders, and is further consistent with the approach taken for the WQIP, which is intended to allow the Copermittees to focus resources on addressing the specific impacts that MS4 discharges are having on Receiving Water quality.

E.2.a.(2)

This Provision requires the Copermittees to treat water line breaks as illegal discharges, which in turn requires the Copermittee to conduct enforcement measures. Water main breaks are accidental occurrences, or may be the result of acts of nature. It is no more appropriate to treat accidents as illegal and subject to enforcement than it would be for a city to declare vehicular accidents as illegal, and conduct enforcement against those involved. This language needs to be removed as shown in the Redline. Additionally, as discussed in the Legal Comments, a recent case from the federal district court in Virginia suggests that the regulation of mere flow may exceed the authority of the CWA.

E.2.a.(4)

The Redline clarifies that if the 'statues, ordinances, permits, contracts, orders or similar means' are enacted/adopted by a Copermittee, the categories of non-stormwater discharges listed do not need to be treated as illegal discharges. Otherwise, the language could be read to imply that, for example, if it was infeasible for a particular resident to direct wash water to landscaped areas, that the Copermittee would be required to treat that residents' discharge as illegal and enforce upon them.

E.2.a.(5)

Contrary to the provisions of the CWA regulations, prior MS4 permits issued by the San Diego Water Board and other permits in the state, the Draft Permit requires implementation of BMPs, where

feasible, during emergency firefighting activities. During such emergencies, all focus of public resources must appropriately be dedicated to protecting life and property. Any diversions from that mission would only serve to diminish and potentially compromise that mission. The Redline proposes language consistent with that adopted by the San Diego Water Board in 2010 for the Riverside County MS4 Permit (Order R9-2010-0016).

E.2.a.(7)

Provisions E.2.a.(1) through E.2.a.(6) describe circumstances where non-stormwater discharges need not be prohibited. This Provision then requires the Copermittees to minimize such 'conditionally allowed' flows anyway. This requirement exceeds the scope of the CWA and its implementing regulations and makes no sense. The Redline requests deletion of these Provisions.

E.2.b.(1)(d)

This Provision requires the MS4 Copermittees to map all known private outfalls to Receiving Waters. Such a requirement is beyond the scope of an MS4 permit and should be removed, as shown in the Redline. The Draft Permit does not require a Copermittee to address private outfalls to Receiving Waters; this is the responsibility of the San Diego Water Board, which governs all waste dischargers under the authority of the CWA or the Porter-Cologne Act.

E.2.b.(4)

This Provision requires the Copermittees, in conjunction with a spill, to 'prevent contamination of surface water, groundwater, and soil.'This requirement is clearly beyond the scope of an MS4 permit issued under the CWA (which regulates only discharges of water containing pollutants *from* the MS4 to Receiving Waters) and must be removed, as shown in the Redline. The Draft Permit could more appropriately require the Copermittees to 'coordinate, to the extent possible, with spill response teams to prevent entry of spills into the MS4.'

E.2.d.(2)(e)

The Redline requests edits to clarify that the intent of this Provision is to document and attempt to quantify any obvious sources of non-stormwater illegal discharges in response to the outfall monitoring, and that it is not necessary to conduct a full source identification any time there is evidence of water near an outfall.

New Provisions E.2.d.(3)(e)-(f)

The Redline adds two new provisions to this section to address a gap in potential outcomes from a source identification effort. These Provisions address scenarios where a Copermittee identifies A) the illegal discharge is coming from another upstream Copermittees' MS4, or B) that the discharge has been authorized by the San Diego Water Board, either through an order or waiver of WDRs. In the first scenario, the responsibility to continue the source identification, and conduct enforcement, would be transferred to the upstream Copermittee. In the second scenario, the responsibility for follow-up would fall on the San Diego Water Board, after receiving relevant information from the Copermittee. This Provision also provides for reimbursement to the Copermittee for the cost of the source identification, since the San Diego Water Board required the Copermittee to conduct the investigation,

while not commensurately prohibiting all non-storm water discharges from all other sources regulated by the Water Boards.

3.8 Provision E.3, Development Planning

3.8.1 Overview of Key Issues

- Priority Development Projects - The Tentative Order identifies categories of projects that are to be defined as 'Priority Development Projects' (PDPs), which in turn will be required to comply with specific water quality and Hydromodification mitigation and quantitative requirements. The criteria for PDPs is quite broad and would include the majority of development projects, from small convenience stores and residences, to mega malls and specific plan developments. The Fact Sheet describes that while some smaller project types may not have significant pollutant loads, they may have a hydrologic impact upon Receiving Waters. However, it is important to recognize that pursuant to Provision E.3.a., All projects are required to implement a variety of LID principles such as disconnecting impervious surfaces, draining impervious surfaces to landscaped areas, and minimization of soil compaction in landscaped areas. Since such LID principles will be implemented wherever feasible consistent with the MEP standard, these smaller development projects are unlikely to create a pollutant or hydrologic impact. Additionally, the Fact Sheet advocates incentivizing LID design concepts and green infrastructure and building principles. Accordingly, the Redline requests changes to Provision E.3.b.(3) as described in Provision 3.8.2 below. The Legal Comments further note the potential impact of the Virginia case (*Virginia Dept. of Transp. v. U.S. Environmental Protection* Agency) holding that the CWA does not regulate stormwater as a pollutant.
- Design Capture Volume – There are two problems with how the Draft Permit defines the Design Capture Volume:
    - The Draft Permit changes the 'design capture volume' from previous permits by eliminating the term 'runoff'. Prior permits described that the design capture volume is the volume of stormwater runoff from the 24-hour 85th percentile storm event. This permit changes that to be the volume of stormwater produced from a 24-hour 85th percentile storm event. The elimination of the term 'runoff' means that BMPs would need to be sized potentially much larger than previously. For example, if the 85th percentile storm is 1" and a BMP is designed to treat 1 acre of residential land with a coefficient of runoff of 0.6, then under the current permits the BMP must be sized to hold 2,178 cubic feet of water. However, under the language of the Draft Permit, the BMP treating the same area would be required to hold 3,630 cubic feet of water, a 70% increase in BMP size. Accordingly, the Redline restores the term 'runoff'.
    - Additionally, the Draft Permit defines the Design Capture Volume alternatively as: *"the volume of storm water that would be retained onsite if the site was fully undeveloped and naturally vegetated, as determined using continuous simulation modeling techniques based on site-specific soil conditions and typical native vegetative cover."* In addition, to the problem identified above regarding the volume of storm water runoff, this language does not provide a temporal standard for determining which volume to

calculate from a continuous simulation model. Additionally, such models are not commonly used among general practitioners in the civil engineering community. The Redlines propose an alternative and simpler approach for this second definition: "The volume of stormwater runoff produced from a 24-hour 85th percentile storm event, that would be retained onsite in the pre-project condition." This definition is advantageous for several reasons: 1) it is simple for any civil engineer to understand, calculate, and comply with and is based on the same storm and hydrologic calculations as the first option, 2) it respects natural hydrology for the site, which may have had runoff in the pre-project condition, and as such, is more compatible with the intent of LID to mimic natural hydrology, and 3) as a result it is less likely to result in potential degradation of Beneficial Uses downstream, from reductions in flows beyond the pre-project condition.

- Pre-Project vs Pre-Development – Both the Storm Water Pollutant Control BMP requirements and the Hydromodification Management BMP requirements in the Draft Permit specify a 'pre-development' condition as the mitigation standard for all PDPs. In addition to the legal problems with such a standard as set forth in the Legal Comments, there are practical problems with the standard.
    - The presumption made in the discussions in the Fact Sheet are that all Receiving Waters can, and will, be restored to a fully natural condition - effectively to a natural floodplain. This presumption does not address reality, which is that development has occurred in those floodplains over many generations. The San Diego Water Board obviously lacks the authority to force homeowners and businesses to vacate such floodplains to effectuate restored natural conditions. Such an action would represent an unconstitutional taking. Moreover, the Legislature, in the Flood Control Acts covering all three counties proposed to be covered by the Draft Permit, has specifically authorized Flood Control Districts to construct flood control structures required to protect the lives and properties of the citizens.
    - Mitigation to a pre-development condition also may not be necessary to protect Receiving Waters from the effects of Hydromodification. If, for example a Receiving Water with existing development tributary to it, has not experienced increased erosion due to that existing development, there is no reason to require Hydromodification mitigation to anything more than the existing condition. In the counter-example, if under the existing condition the Receiving Water has experienced increased erosion due to that existing development, then, legal issues aside, there would be technical benefit to mitigating to that pre-development condition.

  The Redline proposes alternative language that requires mitigation to a pre-development standard only where it is legal and technically justified based on the conditions of the Receiving Water.
- Alternative Compliance – The alternative compliance project options as set forth in the Draft Permit pose two key problems:

- Several statements are conflicting and thus confusing as to what the required standard is for the various alternative compliance projects. For example, throughout Provision E.3.c. it is stated that 'a PDP may be allowed to comply with Provision E.3.c.(1)(a) and/or Provision E.3.c.(2) if they …'. This language can be mis-read to imply that the project must comply both with Provisions E.3.c.(1)(a) and E.3.c.(2) *and* implement the alternative compliance project (thus negating the benefit of alternative compliance). The Redline clarifies this language.
- The Biofiltration option set forth in the Draft Permit arbitrarily, and without technical basis or justification, **doubles** the sizing standard for biofiltration BMPs from 0.75 times the design capture volume (as set forth in the 2010 MS4 Permit and the 2009 Orange County Permit) to 1.5 times the design capture volume. The existing 0.75 standard was set due to the fact that 1) the 85th percentile 24-hour storm occurs over a period of time, and 2) such BMPs have outflows and will regain some capacity during the storm event, and as such, do not need to instantaneously hold the entire 'Design Capture Volume' to have fully treated that volume. In fact, studies have shown that in addition to yielding excellent pollutant concentration reductions, LID Biofiltration BMPs are excellent at reducing the volume of runoff similar to retention BMPs. According to the ASCE International BMP database 60% or more of the long-term volume of runoff from a site can be retained within a Bioretention BMP (Bioretention BMPs are the primary 'biofiltration' BMP now allowed in Riverside County). In comparison, a Retention BMP sized to hold the runoff from the 85th percentile storm event (the Design Capture Volume) will end up retaining approximately 80% of the long-term volume of runoff. Thus, by simple proportions, a Bioretention BMP sized to 'hold' 100% of the Design Capture Volume may also be able to retain 80% of the long-term volume of runoff. $\left(\frac{0.75\times DCV}{60\%\ retained}=\frac{1.0\times DCV}{80\%\ retained}\right)$. This is being validated through Bioretention BMPs that have been constructed and are being monitored for such volume reductions at the Riverside County Flood Control District's headquarters in Riverside. Further, Biofiltration BMPs have the added benefit of providing better overall treatment of back to back storms. Where a Retention BMP would be full after the first storm, fully bypassing the second storm without treatment, a Biofiltration BMP will have restored some capacity after the first storm, providing for treatment of some or all of the second of the back to back storms. Thus, the attached redlines propose changing the sizing factor for Biofiltration BMPs to 1.0 times the Design Capture Volume. The Redline proposes changes consistent with these comments.

3.8.2 Comments in support of specific changes

Introduction

Provision E.3.g (Strategies to address the highest priority water quality conditions) was moved to the beginning to support and better integrate the development planning programs in the JRMP with the strategies developed in the WQIP.

E.3.a.(3)

The Redline changes the title of this section (and other appropriate references to this Provision) to refer to LID Principles, as identified in the CASQA LID Manual for Southern California (https://www.casqa.org/LIDDemo/LowImpactDevelopmentManual/tabid/242/Default.aspx)

E.3.b.(1)(c) (New Provision)

This Provision was added to clarify the requirements if a project that was already subjected to SSMP requirements redevelops a portion of the site.

E.3.b.(2)

The Redline edits shown for this Provision are primarily to simplify this Provision, by grouping various categories by their applicable square footage threshold and including some of the specifics in the definitions (Attachment C). Other changes (beyond reorganization) include:

- Removing the addition of 'driveways' from subsection (g) as described in Provision 3.8.1 of this letter.
- Adding a footnote for parking lots, to clarify that the trigger would not include parking lots that are not exposed to runoff, such as subterranean or covered parking lots. It is beneficial to not have parking lots exposed to runoff; excluding such parking lots from being defined as a PDP is a good way to encourage such practices.
- Hillside development projects were not included as it is not believed to be necessary anymore with the relatively low threshold (10,000 square feet) identified for other categories included in this and other recent MS4 permits.
- The definition for "Environmentally Sensitive Areas" from existing MS4 permits was restored to include the language referring to discharges that are not commingled with flows from adjacent or other upstream lands (note that the change is shown in the definitions per the re-organization suggested above).

E.3.b.(3)

- The PDP exemption for sidewalks, bicycle lanes, or trails, [E.3.b.(3)(a)] has been expanded to as shown in the Redline to include driveways and parking lots. If those projects implement criteria already described in that section, they are also unlikely to create an impact to Receiving Waters. Further, including those project types in that exemption will further incentivize developers to utilize those LID Principles.
- The exemption described in Provision E.3.b(3)(b), was modified as shown in the Redline, and as discussed in the comment letter submitted by the Riverside County Transportation Department. Please see that letter for a justification for the requested changes.
- As shown in the Redline, the exemptions for new and redeveloped single family residences [E.3.b.(3)(c) and (d)] were consolidated into a new provision [E.3.b.(3)(c)], covering all single family residential projects (both new and redeveloped). The key difference is that such projects would be considered exempt if they are both 1) not part of a larger common plan of development or planned subdivision, and 2) successfully incorporate each of the applicable source control and LID Principles identified in Provision E.2.a.(2)-(3) to the MEP.

- A new Provision-E.3.b.(3)(d), titled 'Watershed Protection Projects' was added in the Redline. The project types described therein are all projects that are undertaken to rehabilitate or prevent environmental, social, and economic damage within the watershed, including Receiving Waters. These projects, while they may in some cases require some level of impervious surfaces to be constructed, are 1) not designed for human use or activity that would generate pollutants, or are designed specifically to mitigate such pollutants; and 2) will implement each of the applicable source control and LID Principles identified in Provision E.2.a.(2)-(3) to the MEP.

E.3.c.(1)

In addition to the edits discussed in Provision 3.8.1 of this letter, the Redline removed subprovision E.3.c.(1)(c) , for two reasons:

- The requirements that must be met to when implementing an alternative compliance project are more fully described in Provision E.3.c.(3).
- The language, as drafted, appeared to require double-mitigation. It requires that: 1) conventional treatment is required to treat the entire volume not retained onsite, and 2) the pollutant load discharged must also be mitigated with an alternative compliance project. Such a scenario would be requiring double-mitigation. The Redline provides a clearer and more simple mitigation standard.

E.3.c.(2)

The Riverside County Copermittees have two concerns with this Provision:

- The first concern is the universal requirement to mitigate to the 'pre-development' standard, as discussed above in section 3.8.1 of this letter. The Copermittees in the Redline propose that this language be changed to the 'pre-project' condition. For new development projects, the 'pre-project' condition will be equivalent to the 'pre-development' condition. For redevelopment projects, the standard would be the conditions that exist onsite prior to the construction of the project. This is appropriate, because in many areas, particularly in areas of existing development that would be subject to 'redevelopment', Receiving Waters are engineered and maintained to 1) provide flood protection for the public, 2) ensure that floodwaters don't comingle with pollutants on adjacent private properties and 3) to ensure that the existing development draining to that system does not cause erosion. In cases where the Receiving Waters are not engineered and maintained, and erosion problems caused by existing development are observed, language has been added to the Redline to provide for additional standards to be developed in the WQIP, based on the WQIP priorities.
- Additionally, the Redline proposes an additional exemption from HMP requirements for projects that discharge into conveyance channels that are engineered and maintained for the build-out condition all the way from the project to a waterbody that is sufficiently resistant to Hydromodification. This language is consistent with the above discussions, and ensures the PDPs are not required to mitigate for non-existent impacts. Please see the specific language in the Redline. The engineered channel exemption can be found in other recent MS4 permits, including the recently adopted Los Angeles County MS4 Permit.

E.3.c.(3)(a) and (b)

These two Provisions were re-written in the Redline to be simpler and clearer on what BMPs, criteria, sizing standards are required for what type of project. This alternative language still meets the intent of the Draft Permit, while being easier to understand and comply with. Aside from simplifying the language, the following other changes were made in the Redline:

- The alternative compliance options must be determined to provide an equal or greater overall water quality benefit for the WMA.
- Additional options were provided for who can design the alternative compliance projects
- All alternative compliance projects are required to be consistent with the strategies in the WQIP. While the specific alternative compliance project would not be required to be identified in the WQIP, the goal of this language is to ensure that allowing the alternative compliance project would not in any way be detrimental to or contrary to the strategies in the WQIP.
- Requirements E.3.c.(3)(a)(iv) and (v) were removed entirely, as they conflict with E.3.c.(3)(a)(iii) which allowed the projects to be in the same WMA (preferably the same HSA)
- Changed the sizing factor for Biofiltration BMPs to 1.0 as discussed in section 3.8.1 of this letter, and deleted the option [d] which required triple mitigation by requiring Biofiltration + Conventional Treatment + Alternative Compliance projects.
- Added Conventional Treatment Control BMPs as an alternative compliance option, only where it has been shown to be technically infeasible to meet E.3.c.(1) and technically infeasible to implement LID Biofiltration Treatment Control BMPs.

E.3.c.(3)(c)

Redline edits in this section are primarily to simplify and consolidate the requirements. Sub-Provision [C] was removed, as it was duplicative of the mitigation standards for the alternative compliance project are specified in E.3.c.(3)(b) and E.3.c.(3)(c)(i)[a].

3.9 Provision E.4, Construction

3.9.1 Overview of Key Issues

This Riverside County Copermittees' comments and edits are set forth in the Redline.

- One key issue for the Copermittees is the edit shown in the Redline to Provision E.4.c, which clarifies that the Copermittees are responsible for *requiring* BMPs at private construction sites, and *implementing* BMPs at Copermittee construction sites.

3.9.2 Comments in support of specific changes

The Redline edits include comments supporting the requested edits.

3.10 Provision E.5., Existing Development

3.10.1 Overview of Key Issues

The Draft Permit includes requirements for advanced programs to identify opportunities and implement programs to facilitate the construction of Retrofit and Stream/Channel/Habitat Rehabilitation projects on private properties. Such requirements are clearly beyond the requirements of the CWA for a management plan to be implemented by an MS4 Copermittee. The Riverside County Copermittees request deletion of these requirements.

Alternatively, the Riverside County Copermittees have the following comments:

While these retrofitting and rehabilitation approaches can be helpful and/or needed in some circumstances, they are not required in all circumstances, nor are required to address all pollutants that may be identified in a WQIP as the highest priority water quality conditions. For example, some pollutants are best addressed with regulatory source controls at the state or federal level, such as the removal of copper from brake pads, and controls on pesticides, while other pollutants can be adequately addressed through inspections and enforcement. There are several problems with requiring Copermittee resources to be invested in such Retrofit and/or Rehabilitation strategies (collectively referred to as 'retrofit'):

- Land Ownership: The land that could potentially be identified for retrofit would likely not be owned by a Copermittee. The Copermittee therefore has no ability to force the property owner to retrofit their property. Although the Copermittee could potentially implement programs to "facilitate" implementation, such a program would still be limited by the rights of the individual property owner. Even if a Copermittee were to attempt to purchase a privately owned existing development for the purposes of retrofit (a step going far beyond any requirements in the CWA or the Porter-Cologne Act), such a process can take many years, and if the owner is unwilling to sell, the retrofit project could never be realized. In any scenario, the process to facilitate such "retrofits" is extremely costly and lengthy, with no guarantee of a benefit to water quality. Retrofits should only be undertaken where the Copermittee identifies it as a necessary step to addressing the MS4 contributions to Receiving Water problems to the MEP. Otherwise, it forces the Copermittee to utilize resources very ineffectively, which is contrary to the goals of the WQIP and may actually be detrimental to water quality.
- Permitting: Aside from the limitations discussed above, stream/channel/habitat restorations have the additional complexities of requiring other regulatory permits that are not the discretion of the San Diego Water Board nor the Copermittees to issue. Such projects can take many decades to implement, and thus, are not expected to be highly effective at addressing the goals of the WQIP, except in rare circumstances.

Redline edits have been provided to clarify that these strategies and programs should only be used when, and to the extent directed by the strategies developed in the WQIP.

3.10.2 Comments in support of specific changes

E.5.b.(1)(b) and (d)

BMP implementation requirements of Provision E.5.b.(1)(b) and (d) have been clarified in the Redline to require the Copermittee to implement BMPs on their existing development, and require implementation of BMPs on private existing development.

E.5.c.(1)(a)(iv)

The Riverside County Copermittees request deletion of this Provision. The Copermittees should be provided the flexibility to schedule inspections as they see fit, provided that the schedules they establish pursuant to E.5.c.(1)(a), and the minimum frequency in E.5.c.(1)(a)(i) are met. Requiring 20% every year will be difficult to track as businesses may be opened or closed throughout the year and throughout the permit term.

Additionally, the Riverside Copermittees understand that other Copermittees may be recommending that E.5.c.(1)(a)(i) be changed to 'once per permit term'. The Riverside Copermittees believe that the current language of 'once every five years' is more appropriate for two reasons: 1) not all Copermittees (i.e. OC and Riverside) will be enrolled into the permit at the beginning of the 'permit term', and 2) not all businesses will be in existence at the beginning of the permit term. Accordingly it is more appropriate to simply require the minimum to be once every five years, that way a program manager can simply look at the last time a facility was inspected, and use that date to schedule the next inspection.

3.11 Provision E.6, Enforcement Response Plans

3.11.1 Overview of Key Issues

The Riverside County Copermittees' edits and comments are shown in the Redline and discussed below.

3.11.2 Comments in support of specific changes

E.6.d.

The terminology in this Provision was changed in the Redline from 'escalated' enforcement to 'progressive' enforcement. The proposed language better reflects the nature of enforcement actions, which are not simply 'escalated' or 'not escalated', as implied by Provision E.6.d.(2), but are progressive as needed in response to the severity of the violation. Since every violation comes with a unique set of circumstances, it is not reasonable to presume that a single set of 'triggers' will universally result in the same level of enforcement.

3.12 Provision E.7, Public Education

3.12.1 Overview of Key Issues

The Riverside County Copermittees' edits and comments are shown in the Redline.

3.13 Provision, E.8 Fiscal Analysis

3.13.1 Overview of Key Issues

The requirement that the Copermittees "must secure all the resources necessary to comply with this Order" exceeds the requirements of the CWA and illegally intrudes on the home rule authority of municipalities to govern themselves. This must be deleted. Please also see Legal Comments.

With regard to other provisions, the Riverside County Copermittees' edits and comments are shown in the Redline.

3.14 Provision F

3.14.1 Overview of Key Issues

- F.1 – WQIP Submittal
  - Based on the schedule for the initial submittal of the Priority Water Quality Conditions and Numeric Goals, and the subsequent 60-day public review, only one month would be left for the Copermittees to finalize strategies based on those conditions and goals and the public input received. This is an insufficient amount of time. The Redline requests modifications to the schedule that would provide for the submittal of the final WQIP within 24 months (instead of 18), to provide additional time for the development of strategies.
- F.1 and F.2.
  - The schedules for submittals should be linked to the receipt of comments on prior submittals, or the approval of prior submittals, rather than the permit adoption date. If it is tied to the permit adoption date, the submittal dates could become out of sync with the comment periods or San Diego Water Board approvals if any unexpected delays occur (for example if the San Diego Water Board is delayed in approving a document, or posting a document online for public comment). The Redline requests appropriate modifications.
  - Implementation dates for the plans are unclear / undefined. The Redline clarifies this issue.
- F.3. Progress Reports
  - The reporting requirements across the transitional period were unclear. Redlines are provided to clarify and consolidate.
  - The Regional Monitoring and Assessment Report language was revised to be consistent with the requirements of the Integrated Assessment of the Water Quality Improvement Plan, rather than an additional, slightly different report, due at the same time.

Administrative Record Page No. 021041

3.15 Attachments B and C

Comments and edits to Attachments B and C are shown in the Redline.

Very truly yours,

for JASON E. UHLEY
Chief of Watershed Protection Division

CP:cw
P8/

Riverside Copermittee Redlines

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE
ORDER NO. R9-2013-0001
NPDES NO. CAS0109266

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) DRAINING THE WATERSHEDS WITHIN THE SAN DIEGO REGION

The San Diego County Copermittees in Table 1a are subject to waste discharge requirements set forth in this Order.

Table 1a. San Diego County Copermittees

Municipal Copermittees	
City of Carlsbad	City of Oceanside
City of Chula Vista	City of Poway
City of Coronado	City of San Diego
City of Del Mar	City of San Marcos
City of El Cajon	City of Santee
City of Encinitas	City of Solana Beach
City of Escondido	City of Vista
City of Imperial Beach	County of San Diego
City of La Mesa	San Diego County Regional Airport Authority
City of Lemon Grove	San Diego Unified Port District
City of National City	

After the San Diego Water Board receives and considers the Orange County Copermittees' Report of Waste Discharge and makes any necessary changes to the Order, the Orange County Copermittees in Table 1b will become subject to waste discharge requirements set forth in this Order after expiration of Order No. R9-2009-0002, NPDES No. CAS0108740 on or after December 16, 2014.

Table 1b. Orange County Copermittees

Municipal Copermittees	
City of Aliso Viejo	City of Rancho Santa Margarita
City of Dana Point	City of San Clemente
City of Laguna Beach	City of San Juan Capistrano
City of Laguna Hills	City of Laguna Woods
City of Laguna Niguel	County of Orange
City of Lake Forest	~~Orange County Flood Control District~~

City of Mission Viejo	
Special District Copermittee	
Orange County Flood Control District	

After the San Diego Water Board receives and considers the Riverside County Copermittees' Report of Waste Discharge and makes any necessary changes to this Order, the Riverside County Copermittees in Table 1c will become subject to waste discharge requirements set forth in this Order after expiration of Order No. R9-2010-0016, NPDES No. CAS0108766 on or after November 10, 2015.

Table 1c. Riverside County Copermittees

Municipal Copermittee	
City of Murrieta	County of Riverside
City of Temecula	~~Riverside County Flood Control and Water Conservation District~~
City of Wildomar	
Special District Copermittee	
Riverside County Flood Control and Water Conservation District	

The Orange County Copermittees and Riverside County Copermittees may become subject to the requirements of this Order at a date earlier than the expiration date of their current Orders subject to the conditions described in Provision F.6 of this Order if the Copermittees in the respective county receive a notification of coverage from the San Diego Water Board.

The term Copermittee in this Order refers to any San Diego County, Orange County, or Riverside County Copermittee covered under this Order, unless specified otherwise.

This Order provides permit coverage for the Copermittee discharges described in Table 2.

Table 2. Discharge Locations and Receiving Waters

Discharge Points	Locations throughout San Diego Region
Discharge Description	Municipal Separate Storm Sewer System (MS4) Discharges
Receiving Waters	Inland Surface Waters, Enclosed Bays and Estuaries, and Coastal Ocean Waters of the San Diego Region

Table 3. Administrative Information

This Order was adopted by the San Diego Water Board on:	**Month Day, 2013**
This Order will become effective on:	**Month Day, 2013**
This Order will expire on:	**Month Day, 2018**
The Copermittees must file a Report of Waste Discharge in accordance with Title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than 180 days in advance of the Order expiration date.	

Riverside Copermittee Redlines

I, David W. Gibson, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on Month Day, 2013.

TENTATIVE

David W. Gibson
Executive Officer

TABLE OF CONTENTS

I. FINDINGS
Jurisdiction 1
Discharge Characteristics and Runoff Management 4
Water Quality Standards 7
Considerations Under Federal and State Law 9
State Water Board Decisions 12
Administrative Findings 13

II. PROVISIONS
A. Prohibitions and Limitations 15
1. Discharge Prohibitions 15
2. Receiving Water Limitations 16
3. Effluent Limitations 18
4. Compliance with Discharge Prohibitions and Receiving Water Limitations 18
B. Water Quality Improvement Plans 21
1. Watershed Management Areas 21
2. Priority Water Quality Conditions 24
3. Water Quality Improvement Strategies and Schedules 30
4. Water Quality Improvement Monitoring and Assessment Program 31
5. Iterative Approach and Adaptive Management Process 31
6. Water Quality Improvement Plan Submittal, Updates, and Implementation 33
C. Action Levels 35
1. Non-Storm Water Action Levels 35
2. Storm Water Action Levels 39
D. Monitoring and Assessment Program Requirements 41
1. Receiving Water Monitoring Requirements 41
2. MS4 Outfall Discharge Monitoring Requirements 50
3. Special Studies 63
4. Assessment Requirements 65
5. Monitoring Provisions 73
E. Jurisdictional Runoff Management Programs 74
1. Legal Authority Establishment and Enforcement 74
2. Illicit Discharge Detection and Elimination 75
3. Development Planning 84
4. Construction Management 108
5. Existing Development Management 112
6. Enforcement Response Plans 123
7. Public Education and Participation 125
8. Fiscal Analysis 127

II. PROVISIONS (Cont'd)

F. Reporting 128
1. Water Quality Improvement Plans 128
2. Updates 130
3. Progress Reporting 131
4. Regional Clearinghouse 135
5. Report of Waste Discharge 136
6. Application for Early Coverage 137
7. Reporting Provisions 137
G. Principal Watershed Copermittee Responsibilities 138
H. Modification of Programs 139
I. Standard Permit Provisions and General Provisions 140

ATTACHMENTS

Attachment A - Discharge Prohibitions and Special Protections A-1
Attachment B - Standard Permit Provisions and General Provisions B-1
Attachment C - Acronyms, Abbreviations and Definitions C-1
Attachment D - Jurisdictional Runoff Management Program Annual Report Form D-1
Attachment E - Specific Provisions for Total Maximum Daily Loads Applicable to Order No. R9-2013-0001 ..... E-1
Attachment F - Fact Sheet / Technical Report for Order No. R9-2013-0001 ..... F-1

Riverside Copermittee Redlines

I. FINDINGS

Comment [A1]: See discussions in section 3.1 of the comment letter

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), finds that:

JURISDICTION

1. **MS4 Ownership or Operation.** Each of the Copermittees owns or operates an MS4, through which it discharges storm water and non-storm water into waters of the U.S. within the San Diego Region. These MS4s fall into one or more of the following categories: (1) a medium or large MS4 that services a population of greater than 100,000 or 250,000 respectively; or (2) a small MS4 that is "interrelated" to a medium or large MS4; or (3) an MS4 which contributes to a violation of a water quality standard; or (4) an MS4 which is a significant contributor of pollutants to waters of the U.S.

Many geographical areas subject to this Order are subject to the threat of periodic catastrophic flooding resulting from natural conditions, specifically the presence of mountains and hilly areas in close proximity to urban development and the effect of period strong Pacific Ocean storms. Such flooding would occur in the absence of development. The Legislature recognized the importance of this issue when it established flood control districts across the state, including in Orange, Riverside and San Diego Counties. Such flooding has in the past, and if not controlled, could in the future result in loss of life and property damage. Such flooding can also mobilize significant Pollutants from industrial, commercial, residential and agricultural lands, damaging watercourses and the beneficial uses thereof, including habitat. MS4s are designed and constructed to mitigate such impacts.

2. Riverside County Flood Control and Water Conservation District.

Comment [A2]: See discussion in section 3.1.1 of the comment letter.

In 1945, the California Legislature enacted the Riverside County Flood Control and Water Conservation District Act, establishing the Riverside County Flood Control and Water Conservation District (District). The objects and purposes of the Act are to provide for the control and conservation of flood and storm waters and for the protection of watercourses, watersheds, public highways, life and property within the District from damage or destruction from flood waters. Among its other powers, the District also has the power to conserve, reclaim and save such waters for beneficial use. However the Act does not provide the District with the power to control the volume or quality of discharges that runs off of private property, which may end up in the District's flood control system. The District is governed by the District's Board of Supervisors as a separate legal entity from the County of Riverside.

Many of the flood management systems that the District operates are defined by the Clean Water Act as an MS4, and include many of the larger MS4s within the Santa Margarita watershed region of Riverside County (SMR). District does not however

own or operate streets, catch basins or storm drains smaller than 36 inches that collect runoff from the incorporated and unincorporated jurisdictions within the SMR, and commonly connect into the District's flood management system. Such systems are typically owned and operated by either the County of Riverside or the incorporated Cities within the SMR.

The waters and pollutants that may enter the regional receiving waters and/or the District's flood management systems come from various sources. These sources can include storm water and non-storm water from the Municipal Copermittees under this permit as well as from other NPDES and non-NPDES permittees, including industrial waste water dischargers, waste water treatment facilities, industrial and construction stormwater dischargers, water suppliers, tribal lands, other state and federal government entities, and Caltrans. Sources can also include discharges from Phase II entities such as school districts and discharges from entities that have been granted waste discharge requirements or waivers of waste discharge requirements, including agricultural operations.

The District does not own or operate any municipal sanitary sewer systems, public streets, roads, or highways. The District has no planning, zoning, development permitting or other land use authority, thus, it has no permitting or governing authority over industrial or commercial facilities, residents, new developments or re-development projects, and development construction sites located in any incorporated or unincorporated areas within its service area, including the SMR. The Copermittees that have such authority are responsible for implementing a storm water management program to address pollutants discharged from such industrial and commercial facilities, residential areas, new development and re-development projects, and development construction sites within their jurisdictional boundaries. Nonetheless, as an owner and operator of an MS4, the District is required to control pollutant discharges into and from its MS4, such as through interagency agreements among Copermittees and other owners of a MS4, the contribution of pollutants from one portion of the MS4 to another portion of the MS4 within their jurisdiction.

2. **Legal and Regulatory Authority.** This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations (Code of Federal Regulations [CFR] Title 40, Part 122 [40 CFR 122]) adopted by the United States Environmental Protection Agency (USEPA), and chapter 5.5, division 7 of the California Water Code (CWC) (commencing with section 13370). This Order serves as an NPDES permit for discharges from MS4s to surface waters. This Order also serves as waste discharge requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the CWC (commencing with section 13260).

   The San Diego Water Board has the legal authority to issue a regional MS4 permit pursuant to its authority under CWA section 402(p)(3)(B) and 40 CFR 122.26(a)(1)(v). The USEPA also made it clear that the permitting authority, in this case the San Diego Water Board, has the flexibility to establish system- or region-wide permits (55 Federal Register [FR] 47990, 48039-48042). The regional nature of this Order will ensure consistency of regulation within watersheds and is expected

to result in overall cost savings for the Copermittees and San Diego Water Board.

The federal regulations make it clear that the Copermittees need only comply with permit conditions relating to discharges from the MS4s for which they are operators (40 CFR 122.26(a)(3)(vi)). This Order does not require the Copermittees to manage storm water outside of their jurisdictional boundaries, but rather to work collectively to improve storm water management within watersheds.

3. **CWA NPDES Permit Conditions.** Pursuant to CWA section 402(p)(3)(B), NPDES permits for storm water discharges from MS4s must include requirements to effectively prohibit non-storm water discharges into MS4s, and require controls to reduce the discharge of pollutants from the MS4s ~~in storm water~~ to the maximum extent practicable (MEP), and to require other provisions as the San Diego Water Board determines are appropriate to control such pollutants. This Order prescribes conditions to assure compliance with the CWA requirements for owners and operators of MS4s to effectively prohibit non-storm water discharges in to the MS4s, and require controls to reduce the discharge of pollutants ~~in storm water~~ from the MS4s to the MEP.

Comment [A3]: See discussion in section 3.1.2 of the comment letter.

4. **CWA and CWC Monitoring Requirements.** CWA section 308(a) and 40 CFR 122.41(h),(j)-(l) and 122.48 require that NPDES permits must specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements in 40 CFR 122.26(d)(1)(iv)(D), 122.26(d)(1)(v)(B), 122.26(d)(2)(i)(F), 122.26(d)(2)(iii)(D), 122.26(d)(2)(iv)(B)(2) and 122.42(c). CWC section 13383 authorizes the San Diego Water Board to establish monitoring, inspection, entry, reporting and recordkeeping requirements. This Order establishes monitoring and reporting requirements to implement federal and State requirements.

5. **Total Maximum Daily Loads.** CWA section 303(d)(1)(A) requires that "[e]ach state shall identify those waters within its boundaries for which the effluent limitations…are not stringent enough to implement any water quality standard applicable to such waters." The CWA also requires states to establish a priority ranking of impaired water bodies known as Water Quality Limited Segments and to establish Total Maximum Daily Loads (TMDLs) for such waters. This priority list of impaired water bodies is called the Clean Water Act Section 303(d) List of Water Quality Limited Segments, commonly referred to as the 303(d) List. The CWA requires the 303(d) List to be updated every two years.

   TMDLs are numerical calculations of the maximum amount of a pollutant that a water body can assimilate and still meet water quality standards. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point sources (waste load allocations or WLAs) and non-point sources (load allocations or LAs), background contribution, plus a margin of safety. Discharges from MS4s are point source discharges. The federal regulations (40 CFR 122.44(d)(1)(vii)(B)) require that NPDES permits to incorporate water quality based effluent limitations (WQBELs) developed to protect a narrative water quality criterion, a numeric water

quality criterion, or both, consistent with the assumptions and requirements of any available WLA for the discharge. Requirements of this Order implement the TMDLs adopted by the San Diego Water Board and approved by USEPA.

6. **Non-Storm Water Discharges.** Pursuant to CWA section 402(p)(3)(B)(ii), this Order requires each Copermittee to effectively prohibit discharges of non-storm water into its MS4. Nevertheless, non-storm water discharges into and from the MS4s continue to be reported to the San Diego Water Board by the Copermittees and other persons. Monitoring conducted by the Copermittees, as well as the 303(d) List, have identified dry weather, non-storm water discharges from the MS4s as a source of pollutants causing or contributing to receiving water quality impairments in the San Diego Region. The federal regulations (40 CFR 122.26(d)(2)(iv)(B)(1)) require the Copermittees to have a program to prevent illicit discharges to the MS4. The federal regulations, however, allow for specific categories of non-storm water discharges or flows to be addressed as illicit discharges only where such discharges are identified as sources of pollutants to waters of the U.S.

7. **In-Stream Treatment Systems.** Pursuant to federal regulations (40 CFR 131.10(a)), in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of a runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Runoff treatment must occur prior to the discharge of runoff into receiving waters. Treatment control best management practices (BMPs) must not be constructed in waters of the U.S. Construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body.

DISCHARGE CHARACTERISTICS AND RUNOFF MANAGEMENT

8. **Point Source Discharges of Pollutants.** Discharges from the MS4s may contain waste, as defined in the CWC, and pollutants that adversely affect the quality of the waters of the state. A discharge from an MS4 is a "discharge of pollutants from a point source" into waters of the U.S. as defined in the CWA. Storm water and non-storm water discharges from the MS4s may contain pollutants that cause or threaten to cause a violation of surface water quality standards, as outlined in the Water Quality Control Plan for the San Diego Basin (Basin Plan). ~~Storm water and non-storm water discharges from the MS4s are subject to the conditions and requirements established in the Basin Plan for point source discharges.~~

9. **Potential Beneficial Use Impairment.** The discharge of pollutants and/or increased flows from MS4s may cause or threaten to cause the concentration of pollutants to exceed applicable receiving water quality objectives and impair or threaten to impair designated beneficial uses or which may result~~ing~~ in a condition of pollution, contamination, or nuisance. In addition, the reduction of flows below the

existing condition may impact negatively impact beneficial uses.

10. **Pollutants Generated by Land Development.** Land development has created and continues to create new sources of non-storm water discharges and pollutants in storm water discharges as human population density increases. This brings higher levels of car emissions, car maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, and trash. Pollutants from these sources are dumped or washed off the surface by non-storm water or storm water flows into and from the MS4s. When development converts natural vegetated pervious ground cover to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving a developed area without BMPs that can maintain pre-development conditions will contain greater pollutant loads and have significantly greater runoff volume, velocity, and peak flow rate than pre-development runoff from the same area.

11. **Runoff Discharges to Receiving Waters.** The MS4s discharge runoff into lakes, drinking water reservoirs, rivers, streams, creeks, bays, estuaries, coastal lagoons, the Pacific Ocean, and tributaries thereto within the eleven hydrologic units comprising the San Diego Region. ~~Historic and current development makes use of natural drainage patterns and features as conveyances for runoff. Rivers, streams and creeks in developed areas used in this manner are part of the Copermittees' MS4s regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the rivers, streams and creeks in the developed areas of the Copermittees' jurisdictions are both an MS4 and receiving water.~~ Numerous receiving water bodies and water body segments have been designated as impaired by the San Diego Water Board pursuant to CWA section 303(d).

Comment [A4]: See discussion in section 3.1.2 of the comment letter.

Pollutants in Runoff. The most common pollutants in runoff discharged from the MS4s include total suspended solids, sediment, pathogens (e.g., bacteria, viruses, protozoa), heavy metals (e.g., cadmium, copper, lead, and zinc), petroleum products and polynuclear aromatic hydrocarbons, synthetic organics (e.g., pesticides, herbicides, and PCBs), nutrients (e.g., nitrogen and phosphorus), oxygen-demanding substances (e.g., decaying vegetation, animal waste), detergents, and trash. ~~As operators of the MS4s, the Copermittees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not effectively prohibit or otherwise control.~~ These discharges may cause or contribute to a condition of pollution or a violation of water quality standards. California law requires downstream landowners, including owners and operators of MS4, to accept upstream flows, even if that flow contains Pollutants. Failure to do can create conditions.

Comment [A5]: See discussion in section 3.1.2 of the comment letter.

Limitation on Powers of Copermittees. This Order regulates the discharge of non-stormwater into and Pollutants from non-agricultural Anthropogenic sources from the MS4s owned and/or operated by the Copermittees. The Copermittees lack legal

Comment [A6]: This finding is based on Findings I.B and I.C in Order R8-2010-33, applicable to portions of Riverside County within the Santa Ana region.

jurisdiction over discharges into their MS4 from agricultural activities, State and federal facilities, public schools and hospitals, utilities, railroads, special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Water Board. The Water Board recognizes that the Copermittees should not be held responsible for discharges from such facilities or Pollutants in those discharges. Also, certain activities and sources that generate pollutants present in urban runoff may be beyond the ability of the Copermittees to prevent or eliminate. Examples of these activities and sources include, but are not limited to: emissions from internal combustion engines, brake pad wear and tear, atmospheric deposition, non-Anthropogenic sources of bacteria (including wildlife and feral cats and dogs), the regulation of pesticides and leaching of naturally occurring nutrients and minerals from local soils. This Order is not intended to address background or naturally occurring Pollutants or flows.

12.

13. **Human Health and Aquatic Life Impairment.** Pollutants in runoff discharged from the MS4s can threaten and adversely affect human health and aquatic organisms. Adverse responses of organisms to chemicals or physical agents in runoff range from physiological responses such as impaired reproduction or growth anomalies to mortality. Increased volume, velocity, rate, and duration of storm water runoff greatly accelerate the erosion of downstream natural channels. This alters stream channels and habitats and can adversely affect aquatic and terrestrial organisms.

14. **Water Quality Effects.** The Copermittees' water quality monitoring data submitted to date documents various persistent exceedances of Basin Plan water quality objectives for runoff-related pollutants at various watershed monitoring stations. Persistent toxicity has also been observed at several watershed monitoring stations. In addition, bioassessment data indicate that the majority of the monitored receiving waters have Poor to Very Poor Index of Biological Integrity (IBI) ratings. ~~These findings indicate that runoff discharges are causing or contributing to water quality impairments, and are a leading cause of such impairments in the San Diego Region. Non-storm water discharges from the MS4s have been shown to contribute significant levels of pollutants and flow in arid, developed Southern California watersheds, and contribute significantly to exceedances of applicable receiving water quality objectives.~~

Comment [A7]: These statements are completely unsubstantiated.

15. ~~**Non-Storm Water and Storm Water Discharges.** Non-storm water discharges from the MS4s are not considered storm water discharges and therefore are not subject to the MEP standard of CWA section 402(p)(3)(B)(iii), which is explicitly for "Municipal … *Stormwater Discharges* (emphasis added)" from the MS4s. Pursuant to CWA 402(p)(3)(B)(ii), non-storm water discharges into the MS4s must be effectively prohibited.~~

Comment [A8]: See discussion in section 3.1.2 of the comment letter.

16. **Best Management Practices.** Waste and pollutants which are deposited and accumulate in MS4 drainage structures may~~will~~ be discharged from these structures

Riverside Copermittee Redlines

to waters of the U.S. unless they are removed. These discharges may cause or contribute to, or threaten to cause or contribute to, a condition of pollution in receiving waters. For this reason, pollutants in storm water discharges from the MS4s can be and must be effectively reduced in runoff by the application of a combination of pollution prevention, source control, and treatment control BMPs. Pollution prevention is the reduction or elimination of pollutant generation at its source and is the best "first line of defense". Source control BMPs (both structural and non-structural) minimize the contact between pollutants and runoff, therefore keeping pollutants onsite and out of receiving waters. Treatment control BMPs remove pollutants that have been mobilized by storm water or non-storm water flows.

17. **BMP Implementation.** Runoff needs to be addressed during the three major phases of development (planning, construction, and use) in order to reduce the discharge of storm water pollutants to the MEP, effectively prohibit non-storm water discharges, and protect receiving waters. Development which is not guided by water quality planning policies and principles can result in increased pollutant load discharges, flow rates, and flow durations which can negatively affect receiving water beneficial uses. Construction sites without adequate BMP implementation result in sediment runoff rates which greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters. Existing development can generate substantial pollutant loads which are discharged in runoff to receiving waters. Retrofitting areas of existing development with storm water pollutant control and hydromodification management BMPs may in many cases be ~~is~~ necessary to address storm water discharges from existing development that may cause or contribute to a condition of pollution or a violation of water quality standards.

Comment [A9]: It is not necessary in all cases.

18. **Long Term Planning and Implementation.** Federal regulations require municipal storm water permits to expire 5 years from adoption, after which the permit must be renewed and reissued. The San Diego Water Board recognizes that the degradation of water quality and impacts to beneficial uses of the waters in the San Diego Region occurred over several decades. The San Diego Water Board further recognizes that a decade or more may be necessary to realize demonstrable improvement to the quality of waters in the Region. This Order includes a long term planning and implementation approach that will require more than a single permit term to complete.

WATER QUALITY STANDARDS

19. **Basin Plan.** The San Diego Water Board adopted the Water Quality Control Plan for the San Diego Basin (Basin Plan) on September 8, 1994 that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for receiving waters addressed through the plan. The Basin Plan was subsequently approved by the State Water

Resources Control Board (State Water Board) on December 13, 1994. Subsequent revisions to the Basin Plan have also been adopted by the San Diego Water Board and approved by the State Water Board. Requirements of this Order implement the Basin Plan.

The Basin Plan identifies the following existing and potential beneficial uses for inland surface waters in the San Diego Region: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PROC), Industrial Service Supply (IND), Ground Water Recharge (GWR), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), Freshwater Replenishment (FRSH), Hydropower Generation (POW), and Preservation of Biological Habitats of Special Significance (BIOL). The following additional existing and potential beneficial uses are identified for coastal waters of the San Diego Region: Navigation (NAV), Commercial and Sport Fishing (COMM), Estuarine Habitat (EST), Marine Habitat (MAR), Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Shellfish Harvesting (SHELL).

20. **Ocean Plan.** The State Water Board adopted the Water Quality Control Plan for Ocean Waters of California, California Ocean Plan (Ocean Plan) in 1972 and amended it in 1978, 1983, 1988, 1990, 1997, 2000, and 2005. The State Water Board adopted the latest amendment on April 21, 2005 and it became effective on February 14, 2006. The Ocean Plan is applicable, in its entirety, to point source discharges to the ocean. Requirements of this Order implement the Ocean Plan.

    The Ocean Plan identifies the following beneficial uses of ocean waters of the state to be protected: Industrial water supply; water contact and non-contact recreation, including aesthetic enjoyment; navigation; commercial and sport fishing; mariculture; preservation and enhancement of designated Areas of Special Biological Significance; rare and endangered species; marine habitat; fish spawning and shellfish harvesting

21. **Sediment Quality Control Plan**. On September 16, 2008, the State Water Board adopted the Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (Sediment Quality Control Plan). The Sediment Quality Control Plan became effective on August 25, 2009. The Sediment Quality Control Plan establishes: 1) narrative sediment quality objectives for benthic community protection from exposure to contaminants in sediment and to protect human health, and 2) a program of implementation using a multiple lines of evidence approach to interpret the narrative sediment quality objectives. Requirements of this Order implement the Sediment Quality Control Plan.

22. **National Toxics Rule and California Toxics Rule.** USEPA adopted the National Toxics Rule (NTR) on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, USEPA adopted the California Toxics Rule (CTR). The CTR promulgated

new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants.

23. **Antidegradation Policy.** This Order is in conformance with the federal Antidegradation Policy described in 40 CFR 131.12, and State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*. Federal regulations at 40 CFR 131.12 require that the State water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. State Water Board Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. State Water Board Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies.

CONSIDERATIONS UNDER FEDERAL AND STATE LAW

24. **Coastal Zone Act Reauthorization Amendments.** Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point source pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point source pollution: agriculture, silviculture, urban, marinas, and hydromodification. This Order addresses the management measures required for the urban category, with the exception of septic systems. The runoff management programs developed pursuant to this Order fulfills the need for coastal cities to develop a runoff non-point source plan identified in the Non-Point Source Program Strategy and Implementation Plan. The San Diego Water Board addresses septic systems through the administration of other programs.

25. **Endangered Species Act.** 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 sections 2050 to 2097) or the Federal Endangered Species Act (16 USC sections 1531 to 1544). This Order requires compliance with receiving water limits, and other requirements to protect the beneficial uses of waters of the State. The Copermittees are responsible for meeting all requirements of the applicable Endangered Species Act.

26. **Report of Waste Discharge Process.** The waste discharge requirements set forth in this Order are based upon the Report of Waste Discharge submitted by the San Diego County Copermittees prior to the expiration of Order No. R9-2007-0001 (NPDES No. CAS0109266). The Orange County and Riverside County Copermittees are not immediately covered by the waste discharge requirements in this Order. The San Diego Water Board understands that each municipality is

unique although the Counties share watersheds and geographical boundaries. The Order will continue to use the Report of Waste Discharge process prior to initially making Orange County or Riverside County Copermittees subject to the requirements of this Order.

The federal regulations (40 CFR 122.21(d)(2)) and CWC section 13376 impose a duty on the Copermittees to reapply for continued coverage through submittal of a Report of Waste Discharge no later than 180 days prior to expiration of a currently effective permit. This requirement is set forth in the Orange County Copermittees' and Riverside County Copermittees' currently effective permits at Provisions K.2.b and K.2.c, respectively. The Orange County Permit, Order No. R9-2009-0002 (NPDES No. CAS0108740) expires on December 16, 2014 and the Riverside County MS4 Permit, Order No. R9-2010-0016 (NPDES No. CAS0108766) expires on November 10, 2015.

Unless the Orange County or Riverside County Copermittees apply for and receive early coverage under this Order, the Orange County Copermittees' and the Riverside County Copermittees' respective permits will be superseded by this Order upon expiration of their respective permits, subject to any necessary revisions to the requirements of this Order made after the San Diego Water Board considers their respective Reports of Waste Discharge through the public process provided in 40 CFR 124.

Comment [A10]: Please see Comment Letter and Legal Comments regarding regional permit authority,

27. **Integrated Report and Clean Water Act Section 303(d) List.** The San Diego Water Board and State Water Board submit an Integrated Report to USEPA to comply with the reporting requirements of CWA sections 303(d), 305(b) and 314, which lists the attainment status of water quality standards for water bodies in the San Diego Region. USEPA issued its *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act* on July 29, 2005, which advocates the use of a five category approach for classifying the attainment status of water quality standards for water bodies in the Integrated Report. Water bodies included in Category 5 in the Integrated Report indicate at least one beneficial use is not being supported or is threatened, and a TMDL is required. Water bodies included in Category 5 in the Integrated Report are placed on the 303(d) List.

Water bodies with available data and/or information that indicate at least one beneficial use is not being supported or is threatened, but a TMDL is not required, are included in Category 4 in the Integrated Report. Impaired surface water bodies may be included in Category 4 if a TMDL has been adopted and approved (Category 4a); if other pollution control requirements required by a local, state or federal authority are stringent enough to implement applicable water quality standards within a reasonable period of time (Category 4b); or, if the failure to meet an applicable water quality standard is not caused by a pollutant, but caused by other types of pollution (Category 4c).

Implementation of the requirements of this Order may allow the San Diego Water Board to include surface waters impaired by discharges from the Copermittees'

MS4s in Category 4 in the Integrated Report for consideration during the next 303(d) List submittal by the State to USEPA.

28. **Economic Considerations.** The California Supreme Court has ruled that although CWC section 13263 requires the State and Regional Water Boards (collectively Water Boards) to consider factors set forth in CWC section 13241 when issuing an NPDES permit, the Water Board may not consider the factors to justify imposing pollutant restrictions that are less stringent than the applicable federal regulations require. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 618, 626-627.) However, when pollutant restrictions in an NPDES permit are more stringent than federal law requires, CWC section 13263 requires that the Water Boards consider the factors described in CWC section 13241 as they apply to those specific restrictions.

Comment [A11]: See discussion in section 3.1.2 of the Comment Letter and also Legal Comments..

As noted in the following finding, the San Diego Water Board finds that the requirements in this permit are not more stringent than the minimum federal requirements. Therefore, a CWC section 13241 analysis is not required for permit requirements that implement the effective prohibition on the discharge of non-storm water into the MS4 or for controls to reduce the discharge of pollutants ~~in storm water~~ to the MEP, or other provisions that the San Diego Water Board has determined appropriate to control such pollutants, as those requirements are mandated by federal law. Notwithstanding the above, the San Diego Water Board has developed an economic analysis of the requirements in this Order. The economic analysis is provided in the Fact Sheet.

29. ~~**Unfunded Mandates.** This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, Section (6) of the California Constitution for several reasons, including, but not limited to, the following:~~

Comment [A12]: See discussion in section 3.1.2 of the comment letter and in the Legal Comments.

~~**a.** This Order implements federally mandated requirements under CWA section 402 (33 USC section 1342(p)(3)(B)).~~

~~**b.** The local agency Copermittees' obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental and new dischargers who are issued NPDES permits for storm water and non-storm water discharges.~~

~~**c.** The local agency Copermittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order.~~

~~**d.** The Copermittees have requested permit coverage in lieu of compliance with the complete effective prohibition against the discharge of pollutants contained in CWA section 301(a) (33 USC section 1311(a)) and in lieu of numeric restrictions on their MS4 discharges (i.e. effluent limitations).~~

~~**e.** The local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under State law predates the enactment of Article XIIIB, Section (6) of the California Constitution.~~

Riverside Copermittee Redlines

~~f. The provisions of this Order to implement TMDLs are federal mandates. The CWA requires TMDLs to be developed for water bodies that do not meet federal water quality standards (33 USC section 1313(d)). Once the USEPA or a state develops a TMDL, federal law requires that permits must contain water quality based effluent limitations consistent with the assumptions and requirements of any applicable wasteload allocation (40 CFR 122.44(d)(1)(vii)(B)).~~

~~See the Fact Sheet for further discussion of unfunded mandates.~~

30. **California Environmental Quality Act.** The issuance of waste discharge requirements and an NPDES permit for the discharge of runoff from MS4s to waters of the U.S. is exempt from the requirement for preparation of environmental documents under the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, Chapter 3, section 21000 et seq.) in accordance with CWC section 13389.

STATE WATER BOARD DECISIONS

31. **Compliance with Prohibitions and Limitations.** The receiving water limitation language specified in this Order is consistent with language recommended by the USEPA and established in State Water Board Order WQ 99-05, *Own Motion Review of the Petition of Environmental Health Coalition to Review Waste Discharge Requirements Order No. 96-03, NPDES Permit No. CAS0108740*, adopted by the State Water Board on June 17, 1999. The receiving water limitation language in this Order requires storm water discharges from MS4s to not cause or contribute to a violation of water quality standards, which is to be achieved through an iterative approach requiring the implementation of improved and better-tailored BMPs over time. Implementation of the iterative approach to comply with receiving water limitations based on applicable water quality standards is necessary to ensure that Pollutant ~~storm water~~ discharges from the MS4 will not ultimately cause or contribute to violations of water quality standards and will not create conditions of pollution, contamination, or nuisance.

Comment [A13]: See discussion in section 3.1.2 of the comment letter.

Comment [A14]: Please see discussion in section 3.1.2 of the Comment Letter and Legal Comments.

32. **Special Conditions for Areas of Special Biological Significance.** On March 20, 2012, the State Water Board approved Resolution No. 2012-0012 approving an exception to the Ocean Plan effective prohibition against discharges to Areas of Special Biological Significance (ASBS) for certain nonpoint source discharges and NPDES permitted municipal storm water discharges. State Water Board Resolution No. 2012-0012 requires monitoring and testing of marine aquatic life and water quality in several ASBS to protect California's coastline during storms when rain water overflows into coastal waters. Specific terms, effective prohibitions, and special conditions were adopted to provide special protections for marine aquatic life and natural water quality in ASBS. The City of San Diego's municipal storm water discharges to the San Diego Marine Life Refuge in La Jolla, and the City of Laguna Beach's municipal storm water discharges to the Heisler Park ASBS are subject terms and conditions of State Water Board Resolution No. 2012-0012. The Special

Protections contained in Attachment B to Resolution No. 2012-0012, applicable to these discharges, are hereby incorporated into this Order as if fully set forth herein.

ADMINISTRATIVE FINDINGS

33. **Executive Officer Delegation of Authority.** The San Diego Water Board by prior resolution has delegated all matters that may legally be delegated to its Executive Officer to act on its behalf pursuant to CWC section 13223. Therefore, the Executive Officer is authorized to act on the San Diego Water Board's behalf on any matter within this Order unless such delegation is unlawful under CWC section 13223 or this Order explicitly states otherwise.

34. **Standard Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with 40 CFR 122.41, and additional conditions applicable to specified categories of permits in accordance with 40 CFR 122.42, are provided in Attachment B to this Order.

35. **Fact Sheet.** The Fact Sheet for this Order contains background information, regulatory and legal citations, references and additional explanatory information and data in support of the requirements of this Order. The Fact Sheet is hereby incorporated into this Order and constitutes part of the Findings of this Order.

36. **Public Notice.** In accordance with State and federal laws and regulations, the San Diego Water Board notified the Copermittees, and interested agencies and persons of its intent to prescribe waste discharge requirements for the control of discharges into and from the MS4s to waters of the U.S. and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet.

37. **Public Hearing.** The San Diego Water Board held a public hearing on Month Day, 2013 and heard and considered all comments pertaining to the terms and conditions of this Order. Details of the public hearing are provided in the Fact Sheet.

38. **Effective Date.** This Order serves as an NPDES permit pursuant to CWA section 401 or amendments thereto, and becomes effective fifty (50) days after the date of its adoption, provided that the Regional Administrator, USEPA, Region IX, does not object to this Order.

39. **Review by the State Water Board.** Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050, et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the San Diego Water Board action, except that if the thirtieth day following the action falls on a Saturday, Sunday or State holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the

Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED that the Copermittees, in order to meet the provisions contained in division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA and regulations adopted thereunder, must each comply with the following:

II. PROVISIONS

A. PROHIBITIONS AND LIMITATIONS

Comment [A15]: See discussion in section 3.2 of the comment letter.

The purpose of this provision is to describe the conditions under which storm water and non-storm water discharges into and from MS4s are to be effectively prohibited or limited. The goal of the prohibitions and limitations is to protect the water quality and designated beneficial uses of waters of the state from adverse impacts caused or contributed to by MS4 discharges. This goal will be accomplished through the implementation of water quality improvement strategies and runoff management programs that effectively prohibit non-storm water discharges into the Copermittees' MS4s, and reduce pollutants in ~~storm water~~ discharges from the Copermittees' MS4s to the MEP. The process for determination of compliance with the Discharge Prohibitions (A.1), Receiving Water Limitations (A.2), and Effluent Limitations (A.3) is defined in Provisions A.3.b and A.4.

1. Discharge Prohibitions

a. Discharges from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance in receiving waters ~~of the state~~ are to be ~~prohibited.~~ effectively prohibited, unless the Regional Board determines such discharges are addressed by the Copermittee through A.3.b or A.4, including any modifications.~~prohibited.~~

Comment [A16]: See discussion in section 3.2.2 of the comment letter.

b. Non-storm water discharges into MS4s are to be effectively prohibited through a program consistent with the requirements of provision E.2. of this order, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the MS4, unless such discharges are either authorized by a separate NPDES permit, or the discharge is a category of non-storm water discharges or flows that must be addressed pursuant to Provisions E.2.a.(1)-(5) of this Order.

Comment [A17]: See discussion in section 3.2.2 of the comment letter.

c. Discharges from MS4s are subject to all applicable waste discharge prohibitions in the Basin Plan, included in Attachment A to this Order, unless the Regional Board determines such discharges are addressed by the Copermittee through A.3.b or A.4, including any modifications.

Comment [A18]: See discussion in section 3.2.2 of the comment letter.

d. Storm water discharges from the City of San Diego's MS4 to the San Diego Marine Life Refuge in La Jolla, and the City of Laguna Beach's MS4 to the Heisler Park ASBS are authorized under this Order subject to the Special Protections contained in Attachment B to State Water Board Resolution No.

2012-0012 applicable to these discharges, included in Attachment A to this Order. All other discharges from the Copermittees' MS4s to ASBS are ~~to be effectively~~ prohibited.

2. Receiving Water Limitations

Comment [A19]: See discussion in section 3.2.2 of the comment letter.

a. Discharges from MS4s must not cause or contribute to the violation of water quality standards in any receiving waters, including but not limited to all applicable provisions ~~contained in:~~below, unless the Regional Board determines such discharges are addressed by the Copermittee through A.3.b or A.4::~~contained in:~~

(1) The San Diego Water Board's Basin Plan, including beneficial uses, water quality objectives, and implementation plans;

(2) State Water Board plans for water quality control including the following:

(a) Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries (Thermal Plan), and

(b) The Ocean Plan, including beneficial uses, water quality objectives, and implementation plans;

(3) State Water Board policies for water and sediment quality control including the following:

(a) Water Quality Control Policy for the Enclosed Bays and Estuaries of California,

(b) Sediment Quality Control Plan which includes the following narrative objectives for bays and estuaries:

(i) Pollutants in sediments shall not be present in quantities that, alone or in combination, are toxic to benthic communities, and

(ii) Pollutants shall not be present in sediments at levels that will bioaccumulate in aquatic life to levels that are harmful to human health,

(c) The Statement of Policy with Respect to Maintaining High Quality of Waters in California;[1]

(4) Priority pollutant criteria promulgated by the USEPA through the following:

[1] State Water Board Resolution No. 68-16

(a) National Toxics Rule (NTR)[2] (promulgated on December 22, 1992 and amended on May 4, 1995), and

(b) California Toxics Rule (CTR).[3,4]

b. Discharges from MS4s composed of storm water runoff must not alter natural ocean water quality in an ASBS.

[2] 40 CFR 131.36
[3] 65 Federal Register 31682-31719 (May 18, 2000), adding Section 131.38 to 40 CFR
[4] If a water quality objective and a CTR criterion are in effect for the same priority pollutant, the more stringent of the two applies.

3. Effluent Limitations

a. TECHNOLOGY BASED EFFLUENT LIMITATIONS

Comment [A20]: See discussion in section 3.2.2 of the comment letter.

Pollutants in ~~storm water~~ discharges from MS4s must be reduced to the MEP.[5]

b. WATER QUALITY BASED EFFLUENT LIMITATIONS

This Order establishes water quality based effluent limitations (WQBELs) consistent with the assumptions and requirements of all available TMDL waste load allocations (WLAs) assigned to discharges from the Copermittees' MS4s. Each Copermittee must comply with applicable WQBELs established for the TMDLs in Attachment E to this Order, pursuant to the applicable TMDL compliance schedules.

4. Compliance with Discharge Prohibitions and Receiving Water Limitations

Comment [A21]: See discussion in section 3.2.2 of the comment letter.

Each Copermittee must achieve compliance with Provisions A.1.a~~,~~ through A.1.c and A.2.a of this Order through timely implementation of control measures and other actions as specified in Provisions B and E of this Order, including any modifications. The Water Quality Improvement Plans required under Provision B must be designed and adapted to ultimately achieve compliance with Provisions A.1.a~~,~~ through A.1.c and A.2.a~~.~~, as described in Provision B.2.~~.~~

a. If exceedance(s) of water quality standards persist in receiving waters notwithstanding implementation of this Order, the Copermittees must comply with the following procedures:

(1) For exceedance(s) of a water quality standard in the process of being addressed by the Water Quality Improvement Plan, the Copermittee(s) must implement the Water Quality Improvement Plan as accepted by the San Diego Water Board, and update the Water Quality Improvement Plan, as necessary, pursuant to Provision F.2.c;

(2) Upon a determination by either the Copermittees or the San Diego Water Board that discharges from the MS4 are causing or contributing to a new exceedance of an applicable water quality standard not addressed by the Water Quality Improvement Plan, the Copermittees must submit the following updates to the Water Quality Improvement Plan pursuant to Provision F.2.c or as part of the Annual Report required under Provision F.3.b, unless the San

[5] This does not apply to MS4 discharges which receive subsequent treatment to reduce pollutants in storm water discharges to the MEP prior to entering receiving waters (e.g., low flow diversions to the sanitary sewer). Runoff treatment must occur prior to the discharge of runoff into receiving waters per Finding 7.

Diego Water Board directs an earlier submittal:

(a) The water quality improvement strategies being implemented that are effective and will continue to be implemented,

(b) Water quality improvement strategies (i.e. BMPs, retrofitting projects, stream and/or habitat rehabilitation or restoration projects, adjustments to jurisdictional runoff management programs, etc.) that will be implemented to reduce or eliminate any pollutants or conditions that are causing or contributing to the exceedance of water quality standards,

(c) Updates to the schedule for implementation of the existing and additional water quality improvement strategies, and

(d) Updates to the monitoring and assessment program to track progress toward achieving compliance with Provisions A.1.a, A.1.c and A.2.a of this Order;

(3) The San Diego Water Board may require the incorporation of additional modifications to the Water Quality Improvement Plan required under Provision B. The applicable Copermittees must submit any modifications to the update to the Water Quality Improvement Plan within 90 days of notification that additional modifications are required by the San Diego Water Board, or as otherwise directed;

(4) Within 90 days of the San Diego Water Board determination that the update to the Water Quality Improvement Plan meets the requirements of this Order, the applicable Copermittees must revise the jurisdictional runoff management program documents to incorporate the updated water quality improvement strategies that have been and will be implemented, the implementation schedule, and any additional monitoring required; and

(5) Each Copermittee must implement the updated Water Quality Improvement Plan.

b. The procedure set forth above to achieve compliance with Provisions A.1.a, A.1.c and A.2.a of this Order do not have to be repeated for continuing or recurring exceedances of the same water quality standard(s) following implementation of scheduled actions unless directed to do otherwise by the San Diego Water Board.

c. Nothing in Provisions A.4.a and A.4.b prevents the San Diego Water Board from enforcing any of provisions B through I of this Order while the applicable Copermittees prepare and implement the above update to the Water Quality Improvement Plan and jurisdictional runoff management programs.

Riverside Copermittee Redlines

B. WATER QUALITY IMPROVEMENT PLANS

The purpose of this provision is to develop Water Quality Improvement Plans (WQIPs) that guide the Copermittees' jurisdictional runoff management programs towards achieving the outcome of improved water quality in MS4 discharges and receiving waters. The goal of the Water Quality Improvement Plans is to ~~protect, preserve, enhance, and restorerestore the~~address the impacts of MS4 discharges so that such discharges do not impair water quality and designated beneficial uses of receiving waters~~. of the state.~~ Therefore, implementation of the WQIPs also provides the basis for complying with Provisions II.A.1, II.A.2, and II.A.3, as described in Provision II.A.4. This goal will be accomplished through an adaptive planning and management process that identifies the highest priority water quality conditions within a watershed and implements strategies through the jurisdictional runoff management programs to achieve improvements in the quality of discharges from the MS4s ~~and~~ to receiving waters. As such, the requirements outlined in Provision E may be modified for consistency with the WQIP priorities for the applicable Watershed Management Area, if appropriate justification is provided approved within the WQIP.

Comment [A22]: See section 3.3 of the comment letter for discussions of the changes requested herein.

Comment [A23]: See discussion in section 3.3.2 of the comment letter.

1. Watershed Management Areas

The Copermittees must develop a Water Quality Improvement Plan for each of the Watershed Management Areas in Table B-1. A total of ten Water Quality Improvement Plans must be developed for the San Diego Region.

Development of the Water Quality Improvement Plan for the Santa Margarita River Watershed Management Area shall commence upon notification of coverage of the Riverside County Copermittees under this Order. Until this time, the County of San Diego shall use the water quality priorities in the Santa Margarita River Watershed Urban Runoff Management Plan, developed pursuant to Order No. R9-2007-0001, to guide implementation of Provisions D and E within its jurisdiction

Comment [A24]: See discussion in section 3.3.2 of the comment letter.

Table B-1. Watershed Management Areas

Hydrologic Unit(s)	Watershed Management Area	Major Surface Water Bodies	Responsible Copermittees
San Juan (901.00)	South Orange County	- Aliso Creek - San Juan Creek - San Mateo Creek - Pacific Ocean - Heisler Park ASBS	- City of Aliso Viejo[1] - City of Dana Point[1] - City of Laguna Beach[1] - City of Laguna Hills[1] - City of Laguna Niguel[1] - City of Laguna Woods[1] - City of Lake Forest[1] - City of Mission Viejo[1] - City of Rancho Santa Margarita[1] - City of San Clemente[1] - City of San Juan Capistrano[1] - County of Orange[1] - Orange County Flood Control District[1]

Riverside Copermittee Redlines

Table B-1. Watershed Management Areas

Hydrologic Unit(s)	Watershed Management Area	Major Surface Water Bodies	Responsible Copermittees
Santa Margarita (902.00)	Santa Margarita River	- Murrieta Creek - Temecula Creek - Santa Margarita River - Santa Margarita Lagoon - Pacific Ocean	- City of Murrieta[2] - City of Temecula[2] - City of Wildomar[2] - County of Riverside[2] - County of San Diego[3] - Riverside County Flood Control and Water Conservation District[2]
San Luis Rey (903.00)	San Luis Rey River	- San Luis Rey River - San Luis Rey Estuary - Pacific Ocean	- City of Oceanside - City of Vista - County of San Diego
Carlsbad (904.00)	Carlsbad	- Loma Alta Slough - Buena Vista Lagoon - Agua Hedionda Lagoon - Batiquitos Lagoon - San Elijo Lagoon - Pacific Ocean	- City of Carlsbad - City of Encinitas - City of Escondido - City of Oceanside - City of San Marcos - City of Solana Beach - City of Vista - County of San Diego
San Dieguito (905.00)	San Dieguito River	- San Dieguito River - San Dieguito Lagoon - Pacific Ocean	- City of Del Mar - City of Escondido - City of Poway - City of San Diego - City of Solana Beach - County of San Diego
Penasquitos (906.00)	Penasquitos	- Los Penasquitos Lagoon - Pacific Ocean	- City of Del Mar - City of Poway - City of San Diego - County of San Diego
	Mission Bay	- Mission Bay - Pacific Ocean - San Diego Marine Life Refuge ASBS	- City of San Diego
San Diego (907.00)	San Diego River	- San Diego River - Pacific Ocean	- City of El Cajon - City of La Mesa - City of San Diego - City of Santee - County of San Diego
Pueblo San Diego (908.00) Sweetwater (909.00) Otay (910.00)	San Diego Bay	- Sweetwater River - Otay River - San Diego Bay - Pacific Ocean	- City of Chula Vista - City of Coronado - City of Imperial Beach - City of La Mesa - City of Lemon Grove - City of National City - City of San Diego - County of San Diego - San Diego County Regional Airport Authority - San Diego Unified Port District
Tijuana (911.00)	Tijuana River	- Tijuana River - Tijuana Estuary - Pacific Ocean	- City of Imperial Beach - City of San Diego - County of San Diego

Notes:
1. The Orange County Copermittees will be covered under this Order after expiration of Order No. R9-2009-0002, or earlier if the Orange County Copermittees meet the conditions in Provision F.6.
2. The Riverside County Copermittees will be covered under this Order after expiration of Order No. R9-2010-0016, or earlier if the Riverside County Copermittees meet the conditions in Provision F.6.
3. The County of San Diego is required to implement the requirements of Provision B for its jurisdiction within the Santa

Margarita River Watershed Management Area until the Riverside County Copermittees have been notified of coverage under this Order.

2. Priority Water Quality Conditions

The Copermittees must identify the water quality priorities within each Watershed Management Area that will be addressed by the Water Quality Improvement Plan. Where appropriate, Watershed Management Areas may be separated into subwatersheds to focus water quality prioritization and jurisdictional runoff management program implementation efforts by receiving water.

a. ASSESSMENT OF RECEIVING WATER CONDITIONS

The Copermittees must consider the following, at a minimum, to identify water quality priorities based on impacts of MS4 discharges on receiving water beneficial uses:

(1) Receiving waters listed as impaired on the CWA Section 303(d) List of Water Quality Limited Segments (303(d) List);

(2) TMDLs adopted and under development by the San Diego Water Board;

(3) Receiving waters recognized as sensitive or highly valued by the Copermittees, including estuaries designated under the National Estuary Program under CWA section 320, wetlands defined by the State or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands, and receiving waters identified as ASBS subject to the provisions of Attachment B to State Water Board Resolution No. 2012-0012 (Attachment A);

(4) The receiving water limitations of Provision A.2;

(5) Known historical versus current physical, chemical, and biological water quality conditions;

(6) Available, relevant, and appropriately collected and analyzed physical, chemical, and biological receiving water monitoring data, including, but not limited to, data describing:

(a) Chemical constituents,

(b) Water quality parameters (i.e. pH, temperature, conductivity, etc.),

(c) Toxicity Identification Evaluations for both receiving water column and sediment,

(d) Trash impacts,

(e) Bioassessments, and

(f) Physical habitat;

(7) Available evidence of erosional impacts in receiving waters due to accelerated flows (i.e. hydromodification);

(8) Available evidence of adverse impacts to the chemical, physical, and biological integrity of receiving waters; and

(9) The potential improvements in the overall condition of the Watershed Management Area that can be achieved.

b. ASSESSMENT OF IMPACTS FROM MS4 DISCHARGES

The Copermittees must consider the following, at a minimum, to identify the potential impacts to receiving waters that may be caused or contributed to by discharges from the Copermittees' MS4s:

(1) The discharge prohibitions of Provision A.1 and effluent limitations of Provision A.3; and

(2) Available, relevant, and appropriately collected and analyzed storm water and non-storm water monitoring data from the Copermittees' MS4 outfalls;

(3) Locations of each Copermittee's MS4 outfalls that discharge to receiving waters;

(4) Locations of MS4 outfalls that are known to persistently discharge non-storm water to receiving waters likely causing or contributing to impacts on receiving water beneficial uses;

(5) Locations of MS4 outfalls that are known to discharge pollutants in storm water causing or contributing to impacts on receiving water beneficial uses; and

(6) The potential improvements in the quality of discharges from the MS4 that can be achieved.

c. IDENTIFICATION OF PRIORITY WATER QUALITY CONDITIONS

(1) The Copermittees must use the information gathered for Provisions B.2.a and B.2.b to develop a list of priority water quality conditions as pollutants, stressors and/or receiving water conditions that are the highest threat to receiving water quality or that most adversely affect the physical, chemical, and biological integrity of receiving waters. The list must include the following information for each priority water quality condition:

(a) The beneficial use(s) associated with the priority water quality condition;

(b) The geographic extent of the priority water quality condition within the Watershed Management Area, if known;

(c) The temporal extent of the priority water quality condition (e.g., dry weather and/or wet weather);

(d) The Copermittees with MS4s discharges that may cause or contribute to the priority water quality condition; and

(e) An assessment of the adequacy of and data gaps in the monitoring data to characterize the conditions causing or contributing to the priority water quality condition, including a consideration of spatial and temporal variation.

(2) The Copermittees must identify the highest priority water quality conditions to be addressed by the Water Quality Improvement Plan, and provide a rationale for selecting a subset of the water quality conditions identified pursuant to Provision B.2.c.(1) as the highest priorities.

d. IDENTIFICATION OF MS4 SOURCES OF POLLUTANTS AND/OR STRESSORS

The Copermittees must identify and prioritize known and suspected sources of storm water and non-storm water pollutants and/or other stressors within their jurisdiction, associated with MS4 discharges that cause or contribute to the highest priority water quality conditions identified under Provision B.2.c. ~~The identification of known and suspected sources of pollutants and/or stressors that cause or contribute to the highest priority water quality conditions as identified for Provision B.2.c must~~ considering the following:

(1) Pollutant generating facilities, areas, and/or activities within the Watershed Management Area, including:

(a) Each Copermittee's inventory of construction sites, commercial facilities or areas, industrial facilities, municipal facilities, and residential areas,

(b) Publicly owned parks and/or recreational areas,

(c) Open space areas,

(d) All currently operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste,,, and

(e) Areas not within the Copermittees' jurisdictions (e.g., Phase II MS4s, tribal lands, state lands, federal lands) that are known or suspected to be discharging to the Copermittees' MS4s;

(2) Locations of the Copermittees' MS4s, including the following:

(a) All major MS4 outfalls [per 40CFR 122.26 (b)(5)] that discharge to receiving waters, and

(b) Locations of major structural controls for storm water and non-storm water (e.g., retention basins, detention basins, major infiltration devices, etc.);

(3) Other known and suspected sources of non-storm water or pollutants in storm water discharges to receiving waters within the Watershed Management Area, including the following:

(a) Other MS4 outfalls (e.g., Phase II Municipal and Caltrans),

(b) Other NPDES permitted discharges,

(c) Any other discharges that may be considered point sources (e.g., private outfalls), and

(d) Any other discharges that may be considered non-point sources (e.g., agriculture, wildlife or other natural sources);

(4) Review of available data, including but not limited to:

(a) Findings from the Copermittees' illicit discharge detection and elimination programs,

(b) Findings from the Copermittees' MS4 outfall discharge monitoring,

(c) Findings from the Copermittees' receiving water monitoring,

(d) Findings from the Copermittees' MS4 outfall discharge and receiving water assessments, and

(e) Other available, relevant, and appropriately collected data, information, or studies related to pollutant sources and/or stressors that contribute to the highest priority water quality conditions as identified for Provision B.2.c.

(5) The adequacy of the available data to identify and prioritize sources and/or stressors associated with MS4 discharges that cause or contribute to the highest priority water quality conditions identified under Provision B.2.c.

e. NUMERIC GOALS AND SCHEDULES

Comment [A25]: See discussion in section 3.3.2 of the comment letter.

The Copermittees must develop and incorporate action levels, interim and final numeric goals[6] and schedules into the Water Quality Improvement Plan. Numeric goals must be used to support Water Quality Improvement Plan implementation and measure progress towards addressing the highest priority water quality conditions identified under Provision B.2.c. . Action Levels, Numeric goals are not enforceable compliance standards, effluent limitations, or receiving water limitations. When establishing numeric goals and corresponding schedules, the Copermittees must consider the following:

(1) Final numeric goals must be based on measureable criteria or indicators, to be achieved in ~~the receiving waters and/or~~ MS4 discharges for the highest priority water quality conditions which will ~~be capable of demonstrating the achievement of the restoration and/or protection~~ comply with the Receiving Water Limitations (A.2) of this Order; ~~water quality standards in receiving waters;~~

(2) Interim numeric goals must be based on measureable criteria or indicators capable of demonstrating incremental progress toward achieving the final numeric goals in the receiving waters and/or MS4 discharges; and

(3) Schedules must be adequate for measuring progress toward achieving the interim and final numeric goals required for Provisions B.2.e.(1) and B.2.e.(2). Schedules must incorporate the following:

(a) Interim dates for achieving the interim numeric goals,

(b) Compliance schedules for any applicable TMDLs in Attachment E to this Order,

(c) Compliance schedules for any ASBS subject to the provisions of Attachment B to State Water Board Resolution No. 2012-0012 (see Attachment A),

(d) Achievement of the final numeric goals in the receiving waters and/or MS4 discharges for the highest water quality priorities must be as soon as possible, and

[6] Interim and final numeric goals may take a variety of forms such as TMDL established WQBELs, action levels, pollutant concentration, load reductions, number of impaired water bodies delisted from the List of Water Quality Impaired Segments, Index of Biotic Integrity (IBI) scores, or other appropriate metrics. Interim and final numeric goals are not necessarily limited to one criterion or indicator, but may include multiple criteria and/or indicators. Except for TMDL established WQBELs, interim and final numeric goals and corresponding schedules may be revised through the adaptive management process under Provision B.5.

(e) Final dates for achieving the final numeric goals must not initially extend more than 10 years beyond the effective date of this Order, unless a longer period of time is authorized by the San Diego Water Board Executive Officer through an approved WQIP or the schedule includes an applicable TMDL in Attachment E to this Order[7].

Comment [A26]: Clarify that a longer period can be granted through the WQIP process.

[7] Achievement of final numeric goals within 10 years represents progress towards attainment of water quality standards, but is not a requirement to fully attain all applicable water quality standards or all priority receiving water conditions within 10 years.

3. Water Quality Improvement Strategies and Schedules

Comment [A27]: See discussion in section 3.3.2 of the comment letter.

The Copermittees must develop specific water quality improvement strategies to address the highest priority water quality conditions identified within a Watershed Management Area. The water quality improvement strategies must address the highest priority water quality conditions by ensuring the effective prohibition of~~preventing or eliminating~~ non-storm water discharges to and from the MS4, reducing pollutants in ~~storm water~~ discharges from the MS4 to the MEP, as applicable to the priority water quality conditions established per provision B.2. ~~and restoring and/or protecting the water quality standards of receiving waters~~.

a. Water Quality Improvement Strategies

The Copermittees must identify and prioritize water quality improvement strategies based on their likely effectiveness and efficiency, and design the JRMP programs to focus resources on those strategies to~~implement strategies to effectively prohibit non-storm water discharges to the MS4, reduce pollutants in storm water discharges from the MS4 to the MEP, improve the physical, chemical, and biological receiving water conditions, and~~ achieve the interim and final numeric goals in accordance with the schedules required for Provision B.2.e.(3). The following water quality improvement strategies must be included and described in the Water Quality Improvement Plan:

(1) Specific strategies and/or activities that may be implemented by one or more Copermittees within their jurisdictions through the jurisdictional runoff management programs that will address the highest priority water quality conditions within the Watershed Management Area, in accordance with the following requirements:

(a) Strategies and/or activities must, at a minimum, be described for each jurisdictional runoff management program component where strategies to address the highest priority water quality conditions are required under Provision E;

(b) The Water Quality Improvement Plan must describe the circumstances or conditions when and where the strategies or/activities should be or will be implemented, but specific details about how each Copermittee will implement the strategies and/or activities within its jurisdiction are not required; and

(c) Descriptions of strategies and/or activities must include any monitoring, information collection, special studies, and/or data analysis that is necessary to assess the effectiveness of the strategy and/or activity toward addressing the highest priority water quality conditions.

(2) Additional strategies and/or activities that may be implemented within the Watershed Management Area on a jurisdictional, sub-watershed, or watershed scale by one or more Copermittees, not specifically required under

Provision E, which are designed to achieve the interim and final numeric goals identified in Provisions B.2.e.(1) and B.2.e.(2);

b. IMPLEMENTATION SCHEDULES

(1) The Copermittees must develop schedules for implementing the water quality improvement strategies identified under Provision B.3.a to achieve the interim and final numeric goals identified under Provision B.2.e.(1) and B.2.e.(2). Schedules must be developed for both the water quality improvement strategies implemented by each Copermittee within its jurisdiction and for strategies that the Copermittees choose to implement on a collaborative basis.

(2) The Copermittees must incorporate the implementation compliance schedules for any ASBS subject to the provisions of Attachment B to State Water Board Resolution No. 2012-0012 (see Attachment A).

4. Water Quality Improvement Monitoring and Assessment Program

a. The Copermittees in each Watershed Management Area must develop and incorporate an integrated monitoring and assessment program into the Water Quality Improvement Plan that assesses: 1) the progress toward achieving the numeric goals and schedules, 2) the progress toward addressing the highest priority water quality conditions for each Watershed Management Area, and 3) each Copermittee's overall efforts to implement the Water Quality Improvement Plan.

b. The monitoring and assessment program must incorporate the monitoring and assessment requirements of Provision D, which may allow the Copermittees to modify the program to be consistent with and focus on the highest priority water quality conditions for each Watershed Management Area.

c. For Watershed Management Areas with applicable TMDLs, the monitoring and assessment program must incorporate the specific monitoring and assessment requirements of Attachment E.

d. For Watershed Management Areas with any ASBS, the water quality monitoring and assessment program must incorporate the monitoring requirements of Attachment B to State Water Board Resolution No. 2012-0012 (see Attachment A).

5. Iterative Approach and Adaptive Management Process

Comment [A28]: See discussion in section 3.3.2 of the comment letter.

The Copermittees in each Watershed Management Area must implement the iterative approach pursuant to Provision A.4 to adapt the Water Quality Improvement Plan, monitoring and assessment program, and jurisdictional runoff management

programs to become more effective toward achieving compliance with Provisions A.1, A.2, and A.3.~~A.1.a, A.1.c and A.2.a~~, and must include the following:

a. RE-EVALUATION OF PRIORITY WATER QUALITY CONDITIONS

The priority receiving water quality conditions, and numeric goals and corresponding schedules, included in the Water Quality Improvement Plan pursuant to Provisions B.2.c and B.2.e, may be re-evaluated by the Copermittees as needed during the term of this Order as part of the Annual Report. Re-evaluation and recommendations for modifications to the priority water quality conditions, and numeric goals and corresponding schedules must be provided in the Regional Monitoring and Assessment Report pursuant to F.3.c~~Report of Waste Discharge~~, and must consider the following:

(1) Achieving the outcome of improved water quality in MS4 discharges and receiving waters through implementation of the water quality improvement strategies identified in the Water Quality Improvement Plan;

(2) Progress toward achieving interim and final numeric goals in receiving waters and/or MS4 discharges for the highest priority water quality conditions in the Watershed Management Area,

(3) Progress toward achieving outcomes according to established schedules;

(4) New information developed when the requirements of Provisions B.2.a-c have been re-evaluated;

(5) New policies or regulations that may affect identified numeric goals;

(6) Spatial and temporal accuracy of monitoring data collected to inform prioritization of water quality conditions and implementation strategies to address the highest priority water quality conditions;

(7) Availability of new information and data from sources other than the jurisdictional runoff management programs within the Watershed Management Area that informs the effectiveness of the actions implemented by the Copermittees;

(8) San Diego Water Board recommendations; and

(9) Recommendations for modifications solicited through a public participation process.

b. ADAPTATION OF STRATEGIES AND SCHEDULES

The water quality improvement strategies and schedules, included in the Water Quality Improvement Plan pursuant to Provisions B.3, must be re-evaluated and adapted as new information becomes available to result in more effective and efficient measures to achieve the numeric goals established pursuant to

Provision B.2.e. Re-evaluation of and modifications to the water quality improvement strategies, if determined to be necessary, must be provided in the applicable Annual Report per F.3.b.(3)., and must consider the following:

(1) Modifications to the priority water quality conditions, and numeric goals and corresponding schedules based on Provision B.5.a;

(2) Measurable or demonstrable reductions of non-storm water discharges to and from each Copermittee's MS4;

(3) Measurable or demonstrable reductions of pollutants in ~~storm water~~ discharges from each Copermittee's MS4 to the MEP;

(4) New information developed when the requirements of Provisions B.2.b and B.2.d have been re-evaluated;

(5) Efficiency in implementing the Water Quality Improvement Plan;

(6) San Diego Water Board recommendations; and

(7) Recommendations for modifications solicited through a public participation process.

c. ADAPTATION OF MONITORING AND ASSESSMENT PROGRAM

The water quality improvement monitoring and assessment program, included in the Water Quality Improvement Plan pursuant to Provisions B.4, must be re-evaluated and adapted when new information becomes available. Re-evaluation and recommendations for modifications to the monitoring and assessment program, pursuant to the requirements of Provision D, may be provided in the Annual Report, but must be provided in the Report of Waste Discharge.

6. Water Quality Improvement Plan Submittal, Updates, and Implementation

a. The Copermittees must submit the Water Quality Improvement Plans in accordance with the requirements of Provision F.1.

b. The Copermittees must submit proposed updates to the Water Quality Improvement Plan for acceptance by the San Diego Water Board Executive Officer in accordance with the requirements of Provision F.2.c.

c. The Copermittees must commence with implementation of the Water Quality Improvement Plans ~~immediately after acceptance by the San Diego Water Board, in accordance with the schedules, or subsequently updated schedules, within the Water Quality Improvement Plan.~~in accordance with Provision F.1.b.(5).

C. ACTION LEVELS

Comment [A29]: See comment letter section 3.4 for a discussion of the redlines shown herein.

The purpose of this provision is for the Copermittees to incorporate numeric non-stormwater action levels (NALs) and stormwater action levels (SALs) in the Water Quality Improvement Plans (Provision B), and numeric non-stormwater action levels (NALs) in the Illicit Discharge Detection and Elimination (IDDE) program (Provision E.2.).

- For the purposes of the WQIPs, ~~T~~the goal of the action levels is to guide ~~Water Quality Improvement Plan~~ the implementation efforts and measure progress towards the protection of the identified high priority water quality conditions and associated designated beneficial uses of waters of the state from adverse impacts caused or contributed to by MS4 discharges. This goal will be accomplished through monitoring and assessing the quality of the MS4 discharges during the implementation of the Water Quality Improvement Plans.

- For the purposes of the IDDE program, the goal of the non-stormwater action levels is to assist in determining whether a persistent non-stormwater discharge into or from the MS4 contains pollutants at levels that have the potential to negatively affect the identified high priority water quality conditions.

Action levels will be developed and incorporated into the WQIP (Provision B) and the IDDE Program (Provision E). Depending upon the goals/objectives for the use of the action levels and the priority receiving water conditions, the constituents and values at which they are set may differ between watersheds. Copermittees may develop Watershed Management Area specific numeric action levels for non-stormwater and stormwater MS4 discharges using an approach approved by the Regional Board or use the default non-stormwater and stormwater action levels prescribed in C.1 and C.2 below.

The Copermittees will submit the action levels as a part of the WQIP and JRMP submittals. The action levels currently established will serve as the interim action levels until revised action levels are completed and approved. Exceedances of the action levels are not subject to enforcement or non-compliance actions under this Order.

1. Default Non-Storm Water Action Levels[8]

~~The Copermittees must develop and incorporate numeric non-storm water action levels (NALs) into the Water Quality Improvement Plan to: 1) support the development and prioritization of water quality improvement strategies for addressing non-storm water discharges to and from the MS4s, 2) assess the effectiveness of the water quality improvement strategies toward addressing MS4~~

Comment [A30]: As discussed in section 2.4 of the Riverside comment letter.

[8] NALs are not ~~considered by the San Diego Water Board to be~~ enforceable limitations under this Order.

~~non-storm water discharges, required pursuant to Provision D.4.b.(1), and 3) support the detection and elimination of non-storm water and illicit discharges to and from the MS4, required pursuant to Provision E.2.~~[9]

a. The following NALs must be incorporated as applicable to the WMA and the Copermittees' MS4 discharges,~~:~~ if the Copermittees do not establish numeric action levels within the WQIP based on watershed priorities:

(1) Non-Storm Water Discharges from MS4s to Ocean Surf Zone

Table C-1. Non-Storm Water Action Levels for Discharges from MS4s to Ocean Surf Zone

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Total Coliform	MPN/100 ml	1,000	-	10,000/1,000[1]	OP
Fecal Coliform	MPN/100 ml	200[2]	-	400	OP
Enterococci	MPN/100 ml	35	-	104[3]	OP

Abbreviations/Acronyms
AMAL – average monthly action level
OP – Ocean Plan water quality objective
MDAL – maximum daily action level
MPN/100 ml – most probable number per 100 milliliters

Notes:
1. Total coliform density NAL is 1,000 MPN/100 ml when the fecal/total coliform ratio exceeds 0.1.
2. Fecal coliform density NAL is 200 MPN per 100 ml during any 30 day period.
3. This value has been set to the Basin Plan water quality objective for saltwater "designated beach areas."

[9] ~~The Copermittees may utilize NALs or other benchmarks currently established by the Copermittees as interim NALs until the Water Quality Improvement Plans are accepted by the San Diego Water Board Executive Officer.~~

Riverside Copermittee Redlines

(2) Non-Storm Water Discharges from MS4s to Bays, Harbors, and Lagoons/Estuaries

Table C-2. Non-Storm Water Action Levels for Discharges from MS4s to Bays, Harbors, and Lagoons/Estuaries

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Turbidity	NTU	75	-	225	OP
pH	Units	Within limit of 6.0 to 9.0 at all times			OP
Fecal Coliform	MPN/100 ml	200[1]	-	400[2]	BP
Enterococci	MPN/100 ml	35	-	104[3]	BP
Priority Pollutants	ug/L	See Table C-3			

Abbreviations/Acronyms:
AMAL – average monthly action level
OP – Ocean Plan water quality objective
NTU – Nephelometric Turbidity Units
ug/L – micrograms per liter
MDAL – maximum daily action level
BP – Basin Plan water quality objective
MPN/100 ml – most probable number per 100 milliliters

Notes:
1. Based on a minimum of not less than five samples for any 30-day period.
2. The NAL is reached if more than 10 percent of total samples exceed 400 MPN per 100 ml during any 30 day period.
3. This value has been set to the Basin Plan water quality objective for saltwater "designated beach areas" and is not applicable to waterbodies that are not designated with the water contact recreation (REC-1) beneficial use.

Table C-3. Non-Storm Water Action Levels for Priority Pollutants

Parameter	Units	Freshwater (CTR)		Saltwater (CTR)	
		MDAL	AMAL	MDAL	AMAL
Cadmium	ug/L	**	**	16	8
Copper	ug/L	*	*	5.8	2.9
Chromium III	ug/L	**	**	-	-
Chromium VI	ug/L	16	8.1	83	41
Lead	ug/L	*	*	14	2.9
Nickel	ug/L	**	**	14	6.8
Silver	ug/L	*	*	2.2	1.1
Zinc	ug/L	*	*	95	47

Abbreviations/Acronyms:
CTR – California Toxic Rule
AMAL – average monthly action level
ug/L – micrograms per liter
MDAL – maximum daily action level

Notes:
* Action levels developed on a case-by-case basis (see below)
** Action levels developed on a case-by-case basis (see below), but calculated criteria are not to exceed Maximum Contaminant Levels (MCLs) under the California Code of Regulations, Title 22, Division 4, Chapter 15, Article 4, Section 64431

The Cadmium, Copper, Chromium (III), Lead, Nickel, Silver and Zinc NALs for MS4 discharges to freshwater receiving waters will be developed on a case-by-case basis because the freshwater criteria are based on site-specific water quality data (receiving water hardness). For these priority pollutants, refer to ~~the following equations (~~40 CFR 131.38.b.2 ~~for details) will be required~~:

~~Cadmium (Total Recoverable) = exp(0.7852[ln(hardness)] - 2.715)~~
~~Chromium III (Total Recoverable) = exp(0.8190[ln(hardness)] + 0.6848)~~
~~Copper (Total Recoverable) = exp(0.8545[ln(hardness)] - 1.702)~~
~~Lead (Total Recoverable) = exp(1.273[ln(hardness)] - 4.705)~~
~~Nickel (Total Recoverable) = exp(.8460[ln(hardness)] + 0.0584)~~
~~Silver (Total Recoverable) = exp(1.72[ln(hardness)] - 6.52)~~
~~Zinc (Total Recoverable) = exp(0.8473[ln(hardness)] + 0.884)~~

Comment [A31]: Consistent with SD Permittee recommendations.

Riverside Copermittee Redlines

(3) Non-Storm Water Discharges from MS4s to Inland Surface Waters

Table C-4. Non-Storm Water Action Levels for Discharges from MS4s to Inland Surface Waters

Parameter	Units	AMAL	MDAL	Instantaneous Maximum	Basis
Dissolved Oxygen	mg/L	Not less than 5.0 in WARM waters and not less than 6.0 in COLD waters			BP
Turbidity	NTU	-	20	See MDAL	BP
pH	Units	Within limit of 6.5 to 8.5 at all times			BP
Fecal Coliform	MPN/100 ml	200[1]	-	400[2]	BP
Enterococci	MPN/100 ml	33	-	61[3]	BP
Total Nitrogen	mg/L	-	1.0	See MDAL	BP
Total Phosphorus	mg/L	-	0.1	See MDAL	BP
MBAS	mg/L	-	0.5	See MDAL	BP
Iron	mg/L	-	0.3	See MDAL	BP
Manganese	mg/L	-	0.05	See MDAL	BP
Priority Pollutants	ug/L	See Table C-3			

Abbreviations/Acronyms:

AMAL – average monthly action level
BP – Basin Plan water quality objective
COLD – cold freshwater habitat beneficial use
NTU – Nephelometric Turbidity Units
mg/L – milligrams per liter
MDAL – maximum daily action level
WARM – warm freshwater habitat beneficial use
MBAS – Methylene Blue Active Substances
MPN/100 ml – most probable number per 100 milliliters
ug/L – micrograms per liter

Notes:

1. Based on a minimum of not less than five samples for any 30-day period.
2. The NAL is reached if more than 10 percent of total samples exceed 400 MPN per 100 ml during any 30 day period.
3. This value has been set to the Basin Plan water quality objective for freshwater "designated beach areas" and is not applicable to waterbodies that are not designated with the water contact recreation (REC-1) beneficial use.

b. NALs must be identified, developed and incorporated in the Water Quality Improvement Plan for any pollutants or waste constituents that cause or contribute, or are threatening to cause or contribute to a condition of pollution or nuisance in Receiving waters ~~of the state~~ associated with the highest priority water quality conditions related to non-storm water discharges from the MS4s. NALs must be based on:

(1) Applicable water quality standards which may be dependent upon site-specific or receiving water-specific conditions or assumptions to be identified by the Copermittees; or

(2) Applicable numeric WQBELs required to meet the WLAs established for the TMDLs in Attachment E to this Order.

c. ~~For the NALs incorporated into the Water Quality Improvement Plan, the Copermittees may develop and incorporate secondary NALs specific to the Watershed Management Area at levels greater than the NALs required by Provisions C.1.a and C.1.b which can be utilized to further refine the prioritization and assessment of water quality improvement strategies for addressing non-~~

~~storm water discharges to and from the MS4s, as well as the detection and elimination of non-storm water and illicit discharges to and from the MS4. The secondary NALs may be developed using an approach acceptable to the San Diego Water Board.~~

d. Dry weather monitoring data from MS4 outfalls collected in accordance with Provision D.2.b may be utilized to develop or revise NALs based on watershed-specific data, subject to San Diego Water Board Executive Officer approval.

2. Default Storm Water Action Levels[10]

The Copermittees must develop and incorporate numeric storm water action levels (SALs) in the Water Quality Improvement Plans to: 1) support the development and prioritization of water quality improvement strategies for reducing pollutants in storm water discharges from the MS4s, and 2) assess the effectiveness of the water quality improvement strategies toward reducing pollutants in storm water discharges, required pursuant to Provision D.4.b.(2).[11]

a. The following SALs for discharges of storm water from the MS4 must be incorporated~~:~~ if the Copermittees do not establish stormwater action levels within the WQIP based on watershed priorities::~~:~~

Table C-5. Storm Water Action Levels for Discharges from MS4s to Receiving Waters

Parameter	Units	Action Level
Turbidity	NTU	126
Nitrate & Nitrite (Total)	mg/L	2.6
Phosphorus (Total P)	mg/L	1.46
Cadmium (Total Cd)*	µg/L	3.0
Copper (Total Cu)*	µg/L	127
Lead (Total Pb)*	µg/L	250
Zinc (Total Zn)*	µg/L	976

Abbreviations/Acronyms:
NTU – Nephelometric Turbidity Units
mg/L – milligrams per liter
ug/L – micrograms per liter

Notes:
* The sampling must include a measure of receiving water hardness at each MS4 outfall. If a total metal concentration exceeds the corresponding metals SAL in Table C-5, that concentration must be compared to the California Toxics Rule criteria and the USEPA 1-hour maximum concentration for the detected level of receiving water hardness associated with that sample. If it is determined that the sample's total metal concentration for that specific metal exceeds that SAL, but does not exceed the applicable USEPA 1-hour maximum concentration criterion for the measured level of hardness, then the sample result will not be considered above the SAL for that measurement.

[10] SALs are not ~~considered by the San Diego Water Board to be~~ enforceable limitations under this Order.
[11] The Copermittees may utilize SALs or other benchmarks currently established by the Copermittees as interim SALs until the Water Quality Improvement Plans are accepted by the San Diego Water Board Executive Officer.

b. SALs must be identified, developed and incorporated in the Water Quality Improvement Plan for pollutants or waste constituents that cause or contribute, or are threatening to cause or contribute to a condition of pollution or nuisance in Receiving waters ~~of the state~~ associated with the highest water quality priorities related to storm water discharges from the MS4s. SALs must be based on:

(1) Federal and State water quality guidance and/or water quality standards; and

(2) Site-specific or receiving water-specific conditions; or

(3) Applicable numeric WQBELs required to meet the WLAs established for the TMDLs in Attachment E to this Order.

c. ~~For the SALs incorporated into the Water Quality Improvement Plan, the Copermittees may develop and incorporate secondary SALs specific to the Watershed Management Area at levels greater than the SALs required by Provisions C.2.a and C.2.b which can be utilized to further refine the prioritization and assessment of water quality improvement strategies for reducing pollutants in storm water discharges from the MS4s. The secondary SALs may be developed based on the approaches recommended by the State Water Board's Storm Water Panel[12] or using an approach acceptable to the San Diego Water Board.~~

d. Wet weather monitoring data from MS4 outfalls collected in accordance with Provision D.2.c may be used to develop or revise SALs based upon watershed-specific data, subject to San Diego Water Board Executive Officer approval.

~~[12] Storm Water Panel Recommendations to the California State Water Resources Control Board: The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (June 2006)~~

D. MONITORING AND ASSESSMENT PROGRAM REQUIREMENTS

Comment [A32]: See discussion in section 3.5 of the comment letter.

The purpose of this provision is for the Copermittees to monitor and assess the impact on the chemical, physical, and biological conditions of receiving waters caused by discharges from the Copermittees' MS4s under wet weather and dry weather conditions. The goal of the monitoring and assessment program is to inform the Copermittees about the nexus between the health of receiving waters and the water quality condition of the discharges from their MS4s to those receiving waters.~~.~~ This goal will be accomplished through monitoring and assessing the conditions of the receiving waters, discharges from the MS4s to those receiving waters, pollutant sources and/or stressors, and effectiveness of the water quality improvement strategies implemented as part of the Water Quality Improvement Plans.

1. Receiving Water Monitoring Requirements

The Copermittees must develop and conduct a program to monitor the condition of the receiving waters in each Watershed Management Area during dry weather and wet weather. Following acceptance of the Water Quality Improvement Plans for each Watershed Management Area, the Copermittees must conduct long-term receiving water monitoring during implementation of the Water Quality Improvement Plan to assess the long term trends and determine if water quality conditions in receiving waters are improving. Any available monitoring data not collected specifically for this Order that meet the quality assurance criteria of the Copermittees and the monitoring requirements of this Order may be utilized by the Copermittees. The Copermittees must conduct the following receiving water monitoring procedures:

a. TRANSITIONAL RECEIVING WATER MONITORING

Beginning October 1st or May 1st (whichever is sooner) following enrollment under this order and until~~Until~~ the monitoring requirements of Provisions D.1.b-e are incorporated into a Water Quality Improvement Plan that is accepted by the San Diego Water Board pursuant to Provision F.1, the Copermittees must conduct the following receiving water monitoring in the Watershed Management Area:

(1) Continue the receiving water monitoring programs required in Order Nos. R9-2007-0001~~,~~ (Attachment A, Section II. A. 1-5),~~,~~ R9-2009-0002, and R9-2010-0016;

(2) Continue the monitoring in the Hydromodification Management Plans approved by the San Diego Water Board;

(3) Participate in the following regional receiving water monitoring programs, as applicable to the Watershed Management Area and each Copermittees' MS4 discharges:

Comment [A33]: See discussion in section 3.5.3 of the comment letter.

(a) Storm Water Monitoring Coalition Regional Monitoring,

(b) Southern California Bight Regional Monitoring, and

(c) Sediment Quality Monitoring;

(4) Implement the monitoring programs developed as part of any implementation plans or load reduction plans (e.g. Bacteria Load Reduction Plans, Comprehensive Load Reduction Plans) for the TMDLs in Attachment E to this Order; and

(5) For Watershed Management Areas with ASBS, implement the monitoring requirements of Attachment B to State Water Board Resolution No. 2012-0012, included in Attachment A to this Order.

b. LONG-TERM RECEIVING WATER MONITORING STATIONS

The Copermittees must select at least one long-term receiving water monitoring station from among the existing mass loading stations, temporary watershed assessment stations, bioassessment stations, and stream assessment stations previously established by the Copermittees to be representative of the receiving water quality in the Watershed Management Area. Additional or alternative long-term receiving water monitoring stations may~~must~~ be selected where necessary to support the implementation and adaptation of the Water Quality Improvement Plan.

Comment [A34]: See discussion in section 3.5.3 of the comment letter.

c. DRY WEATHER RECEIVING WATER MONITORING

During the term of the Order, the Copermittees must perform monitoring during at least three dry weather monitoring events at each of the long-term receiving water monitoring stations. At least one monitoring event must be conducted during the dry season (May 1 – September 30) and at least one monitoring event must be conducted during a dry weather period during the wet season (October 1 – April 30), after the first wet weather event of the season, with an antecedent dry period of at least 72 hours following a storm event producing measureable rainfall of greater than 0.1 inch.

(1) Dry Weather Receiving Water Field Observations

For each dry weather monitoring event, the Copermittees must record field observations consistent with Table D-1 at each long-term receiving water monitoring station.

Table D-1. Field Observations for Receiving Water Monitoring Stations

Field Observations
• Station identification and location • Presence of flow, or pooled or ponded water • If flow is present: - Flow estimation (i.e. width of water surface, approximate depth of water, approximate flow velocity, flow rate) - Flow characteristics (i.e. presence of floatables, surface scum, sheens, odor, color) • If pooled or ponded water is present: - Characteristics of pooled or ponded water (i.e. presence of floatables, surface scum, sheens, odor, color) • Assessment of any observed connectivity of MS4 discharges to a flowing receiving water. • Station description (i.e. deposits or stains, vegetation condition, structural condition, and observable biology) • Presence and assessment of trash in and around station

Comment [A35]: See discussion in section 3.5.3 of the comment letter.

(2) Dry Weather Receiving Water Field Monitoring

For each dry weather monitoring event, if conditions allow the collection of the data, the Copermittees must monitor and record the parameters in Table D-2 at each long-term receiving water monitoring station.

Table D-2. Field Monitoring Parameters for Receiving Water Monitoring Stations

Parameters
• pH • Temperature • Specific conductivity • Dissolved oxygen • Turbidity

(3) Dry Weather Receiving Water Analytical Monitoring

For each dry weather monitoring event, the Copermittees must collect and analyze samples from each long-term receiving water monitoring station as follows:

(a) Analytes that are field measured are not required to be analyzed by a laboratory;

(b) The Copermittees must implement consistent sample collection methods for regional comparability of data, unless site-specific conditions indicate the need for alternate methods;

(c) Grab samples may be collected for pH, temperature, specific conductivity,

dissolved oxygen, turbidity, hardness, and indicator bacteria Grab samples may also be collected for the analyses described in (f) where MS4 discharge runoff constitutes less than ten percent of the flow;

Comment [A36]: The receiving water stations in Riverside County either do not receive runoff from MS4 discharges or receive deminimus flows during dry weather conditions. The flow at these stations during dry weather consists virtually entirely of rising groundwater. Background receiving water quality conditions In such cases composite samples of receiving waters not affected by MS4 discharges is not warranted.

(d) For all other constituents where runoff constitutes more than ten percent of the flow, composite samples must be collected for a duration adequate to be representative of changes in pollutant concentrations and runoff flows using one of the following techniques:

(i) Time-weighted composites composed of 24 discrete hourly samples, which may be collected through the use of automated equipment, or

(ii) Flow-weighted composites collected over a typical 24-hour period, which may be collected through the use of automated equipment;

(e) Only one analysis of the composite of aliquots is required;

(f) Analysis for the following constituents is required:

(i) Constituents contributing to the highest priority water quality conditions identified in the Water Quality Improvement Plan,

(ii) Constituents listed as a cause for impairment of receiving waters in the Watershed Management Area listed on the CWA section 303(d) List,

(iii) Constituents for implementation plans or load reduction plans (e.g. Bacteria Load Reduction Plans, Comprehensive Load Reduction Plans) developed for watersheds where the Copermittees are listed responsible parties under the TMDLs in Attachment E to this Order,

(iv) Applicable NAL constituents, and

(v) Constituents listed in Table D-3.

Table D-3. Analytical Monitoring Constituents for Receiving Water Monitoring Stations

Conventionals, Nutrients	Metals (Total and Dissolved)	Pesticides	Indicator Bacteria
• Total Dissolved Solids • Total Suspended Solids • Turbidity • Total Hardness • Total Organic Carbon • Dissolved Organic Carbon • Sulfate • Methylene Blue Active Substances (MBAS) • Total Phosphorus • Orthophosphate • Nitrite[1]	• Arsenic • Cadmium • Chromium • Copper • Iron • Lead • Mercury • Nickel • Selenium • Thallium • Zinc	• Organophosphate Pesticides • Pyrethroid Pesticides	• Total Coliform • Fecal Coliform[2] • *Enterococcus*

• Nitrate[1] • Total Kjeldhal Nitrogen • Ammonia			

Notes:
1. Nitrite and nitrate may be combined and reported as nitrite+nitrate.
2. *E. Coli* may be substituted for Fecal Coliform.

(4) Dry Weather Receiving Water Toxicity Monitoring

For each dry weather monitoring event, the Copermittees must collect grab or composite samples from each long-term receiving water monitoring station to be analyzed for toxicity in accordance with Table D-4:

Table D-4. Dry Weather Toxicity Testing for Receiving Water Monitoring Stations

Freshwater Organism	Test Approach	USEPA Protocol[2]
Pimephales promelas	1 acute 1 chronic[1]	EPA-821-R-02-012
Hyalella Azteca	1 acute 1 chronic[1]	EPA-821-R-02-012
Psuedokirchneriella subcapitata	1 acute 1 chronic[1]	EPA-821-R-02-013

Notes:
1. Chronic toxicity testing is not required at receiving water monitoring stations located at mass loading stations if the channel flows are diverted year-round during dry weather conditions to the sanitary sewer for treatment.
2. USEPA protocols must be utilized for toxicity testing unless alternate toxicity testing protocols have been approved by the San Diego Water Board.

(5) Dry Weather Receiving Water Bioassessment Monitoring

Bioassessment monitoring for each long-term receiving water monitoring station is required at least once during the term of this Order. The Copermittees must conduct bioassessment monitoring during at least one dry weather monitoring event at each long-term receiving water monitoring station as follows:

(a) The following bioassessment samples and measurements must be collected:

(i) Macroinvertebrate samples must be collected in accordance with the "Reachwide Benthos (Multihabitat) Procedure" in the most current Surface Water Ambient Monitoring Program (SWAMP) Bioassessment Standard Operating Procedures (SOP), and amendments, as applicable;[13]

(ii) The "Full" suite of physical habitat characterization measurements

[13] Ode, P.R.. 2007. Standard operating procedures for collecting macroinvertebrate samples and associated physical and chemical data for ambient bioassessments in California. California State Water Resources Control Board Surface Water Ambient Monitoring Program (SWAMP) Bioassessment SOP 001. http://www.swrcb.ca.gov/water_issues/programs/swamp/tools.shtml#monitoring

must be collected in accordance with the most current SWAMP Bioassessment SOP, and as summarized in the SWAMP Stream Habitat Characterization Form – Full Version;[14] and

(iii) Freshwater algae samples must be collected in accordance with the SWAMP Standard Operating Procedures for Collecting Algae Samples.[15] Analysis of samples must include algal taxonomic composition (diatoms and soft algae) and algal biomass.

(b) The bioassessment samples, measurements, and appropriate water chemistry data must be used to calculate the following:

(i) An Index of Biological Integrity (IBI) for macroinvertebrates for each monitoring station where bioassessment monitoring was conducted, based on the most current calculation method;[16] and

(ii) An IBI for algae for each monitoring station where bioassessment monitoring was conducted, when a calculation method is developed.[17]

(c) In lieu of the requirements of Provision D.1.c.(5)(a), the Copermittees may conduct the bioassessment monitoring in accordance with the "Triad" assessment approach[18] to calculate the IBIs required for Provision D.1.c.(5)(b). The Copermittees must conduct sampling, analysis, and reporting of specified in-stream biological and habitat data according to the protocols specified in the SCCWRP Technical Report No. 539, or subsequent protocols, if developed.

(6) Dry Weather Receiving Water Hydromodification Monitoring

In addition to the hydromodification monitoring conducted as part of the Copermittees' Hydromodification Management Plans, hydromodification monitoring for each long-term receiving water monitoring station is required at least once during the term of this Order. The Copermittees must collect the

[14] Available at: http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/reports/fieldforms_fullversion052908.pdf
[15] Fetscher et al. 2009. Standard Operating Procedures for Collecting Stream Algae Samples and Associated Physical Habitat and Chemical Data for Ambient Bioassessments in California.
[16] The most current calculation method at the time the Order was adopted is outlined in "A Quantitative Tool for Assessing the Integrity of Southern California Coastal Streams" (Ode, et al. 2005. Environmental Management. Vol. 35, No. 1, pp. 1-13). If an updated or new calculation method is developed, either both (i.e. current and updated/new) methods must be used, or historical IBIs must be recalculated with the updated or new calculation method.
[17] When a calculation method is developed, IBIs must be calculated for all available and appropriate historical data.
[18] Stormwater Monitoring Coalition Model Monitoring Technical Committee, 2004. Model Monitoring Program for Municipal Separate Storm Sewer Systems in Southern California. Technical Report #419. August 2004.

following hydromodification monitoring observations and measurements within an appropriate domain of analysis during at least one dry weather monitoring event for each long-term receiving water monitoring station:

(a) Channel conditions, including:

(i) Channel dimensions,

(ii) Hydrologic and geomorphic conditions, and

(iii) Presence and condition of vegetation and habitat;

(b) Location of discharge points;

(c) Habitat integrity;

(d) Photo documentation of existing erosion and habitat impacts, with location (i.e. latitude and longitude coordinates) where photos were taken;

(e) Measurement or estimate of dimensions of any existing channel bed or bank eroded areas, including length, width, and depth of any incisions; and

(f) Known or suspected cause(s) of existing downstream erosion or habitat impact, including flow, soil, slope, and vegetation conditions, as well as upstream land uses and contributing new and existing development.

d. WET WEATHER RECEIVING WATER MONITORING

During the term of the Order, the Copermittees must perform monitoring during at least three wet weather monitoring events at each long-term receiving water monitoring station. At least one wet weather monitoring event must be conducted during the first wet weather event of the wet season (October 1 – April 30), and at least one wet weather monitoring event during a wet weather event that occurs after February 1.

(1) Wet Weather Receiving Water Field Observations

For each wet weather monitoring event, the following narrative descriptions and observations must be recorded at each long-term receiving water monitoring station:

(a) A narrative description of the station that includes the location, date and duration of the storm event(s) sampled, rainfall estimates of the storm event, and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(b) The flow rates and volumes measured or estimated (data from nearby

USGS gauging stations may be utilized, or flow rates may be measured or estimated in accordance with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), section 3.2.1, or other method proposed by the Copermittees that is acceptable to the San Diego Water Board);

(c) Station condition (i.e. deposits or stains, vegetation condition, structural condition, observable biology); and

(d) Presence and assessment of trash in and around station.

(2) Wet Weather Receiving Water Field Monitoring

For each wet weather monitoring event, the Copermittees must monitor and record the parameters in Table D-2 at each long-term receiving water monitoring station.

(3) Wet Weather Receiving Water Analytical Monitoring

For each wet weather monitoring event, the Copermittees must collect and analyze samples from each long-term receiving water monitoring station as follows:

(a) Analytes that are field measured are not required to be analyzed by a laboratory;

(b) The Copermittees must implement consistent sample collection methods for regional comparability of data, unless site-specific conditions indicate the need for alternate methods;

(c) Grab samples may be collected for pH, temperature, specific conductivity, dissolved oxygen, turbidity, hardness, and indicator bacteria;

(d) For all other constituents, composite samples must be collected for a duration adequate to be representative of changes in pollutant concentrations and runoff flows using one of the following techniques:

(i) Time-weighted composites composed of 24 discrete hourly samples, which may be collected through the use of automated equipment, or

(ii) Flow-weighted composites collected over the length of the storm event or a typical 24-hour period, which may be collected through the use of automated equipment;

(e) Only one analysis of the composite of aliquots is required;

(f) Analysis for the following constituents is required:

(i) Constituents contributing to the highest priority water quality conditions identified in the Water Quality Improvement Plan,

(ii) Constituents listed as a cause for impairment of receiving waters in the Watershed Management Area listed on the CWA section 303(d) List,

(iii) Constituents for implementation plans or load reduction plans (e.g. Bacteria Load Reduction Plans, Comprehensive Load Reduction Plans) developed for watersheds where the Copermittees are listed responsible parties under the TMDLs in Attachment E to this Order,

(iv) Applicable SAL constituents, and

(v) Constituents listed in Table D-3.

(4) Wet Weather Receiving Water Toxicity Monitoring

For each wet weather monitoring event, the Copermittees must collect grab or composite samples from each long-term receiving water monitoring station to be analyzed for toxicity in accordance with Table D-5:

Table D-5. Wet Weather Toxicity Testing for Receiving Water Monitoring Stations

Freshwater Organism	Test Approach	USEPA Protocol[1]
Pimephales promelas	1 acute	EPA-821-R-02-012
Hyalella Azteca	1 acute	EPA-821-R-02-012
Psuedokirchneriella subcapitata	1 acute	EPA-821-R-02-013

Notes:
1. USEPA protocols must be utilized for toxicity testing unless alternate toxicity testing protocols have been approved by the San Diego Water Board.

e. OTHER RECEIVING WATER MONITORING REQUIREMENTS

(1) Regional Monitoring

The Copermittees must participate in the following regional receiving waters monitoring programs, as applicable to the Watershed Management Area and the Copermittee's MS4 discharges:

(a) Storm Water Monitoring Coalition Regional Monitoring; and

(b) Southern California Bight Regional Monitoring.

(2) Sediment Quality Monitoring

The applicable Copermittees must perform sediment monitoring to assess compliance with sediment quality receiving water limits applicable to MS4

discharges to enclosed bays and estuaries. The monitoring may be performed either by individual or multiple affected Copermittees to assess compliance with receiving water limits, or through participation in a water body monitoring coalition. The Copermittees must identify sediment sampling stations that are spatially representative of the sediment within the water body segment or region of interest. Sediment quality monitoring must be conducted in conformance with the monitoring requirements set forth in the State Water Board Sediment Quality Control Plan.

(3) ASBS Monitoring

For Watershed Management Areas with ASBS, the applicable Copermittees must implement the monitoring requirements of Attachment B to State Water Board Resolution No. 2012-0012, included in Attachment A to this Order.

f. ALTERNATIVE WATERSHED MONITORING REQUIREMENTS

The San Diego Water Board may direct the Copermittees to participate in an effort to develop alternative watershed monitoring with other regulated entities, other interested parties, and the San Diego Water Board to refine, coordinate, and implement regional monitoring and assessment programs to determine the status and trends of water quality conditions in 1) coastal waters, 2) enclosed bays, harbors, estuaries, and lagoons, and/or 3) streams. As directed by the San Diego Water Board, such alternative watershed monitoring would be done in place and stead of the commensurate requirements set forth in Provision D.1.

2. MS4 Outfall Discharge Monitoring Requirements

The Copermittees must develop and conduct a program to monitor the discharges from the major MS4 outfalls to receiving waters in each Watershed Management Area during dry weather and wet weather. Following acceptance of the Water Quality Improvement Plans and schedule for implementation of monitoring for each Watershed Management Area, the Copermittees must conduct MS4 outfall discharge monitoring during implementation of the Water Quality Improvement Plan to assess the effectiveness of their jurisdictional runoff management programs toward effectively prohibiting non-storm water discharges into the MS4 and reducing pollutants in ~~storm water~~ discharges ~~to and~~ from their MS4s to the MEP. Any available monitoring data not collected specifically for this Order that meet the quality assurance criteria of the Copermittees and the monitoring requirements of this Order may be utilized by the Copermittees. The Copermittees must conduct the following MS4 outfall monitoring procedures:

Comment [A37]: Suggest same edits for SD and OC.

a. TRANSITIONAL MS4 OUTFALL DISCHARGE MONITORING

Beginning October 1st or May 1st (whichever is sooner) following enrollment under this order and until~~Until~~ the monitoring requirements of Provisions D.2.b-c

are incorporated into a Water Quality Improvement Plan and schedule for implementation of monitoring that is accepted by the San Diego Water Board pursuant to Provision F.1, the Copermittees must conduct the following monitoring of MS4 outfall discharges to flowing receiving waters ~~monitoring~~ in the Watershed Management Area:

(1) MS4 Outfall Discharge Monitoring Station Inventory

Each Municipal Copermittee must identify all major MS4 outfalls (including those operated by a Special District Copermittee) that discharge directly to receiving waters within its jurisdiction and geo-locate those outfalls on a map of the MS4 pursuant to Provision E.2.b.(1). This information must be compiled into a MS4 outfall discharge monitoring station inventory, and must include the following information:

(a) Latitude and longitude of MS4 outfall point of discharge;

(b) Watershed Management Area;

(c) Hydrologic subarea;

(d) Outlet size;

(e) Accessibility (i.e. safety and without disturbance of critical habitat);

(f) Approximate drainage area; and

(g) Classification of whether the MS4 outfall is known to have persistent dry weather flows, transient dry weather flows, no dry weather flows, or unknown dry weather flows.

(2) Transitional Dry Weather MS4 Outfall ~~Discharge~~ Field Screening ~~Monitoring~~

Until the monitoring requirements of Provision D.2.b are incorporated into a Water Quality Improvement Plan that is accepted by the San Diego Water Board pursuant to Provision F.1, each Municipal Copermittee must perform the following dry weather MS4 outfall field screening monitoring to identify non-storm water and illicit discharges being discharged from MS4s within its jurisdiction in accordance with Provision E.2.c, to determine which discharges are transient ~~flows~~ and which are persistent discharges to flowing receiving waters~~flows~~, and prioritize the dry weather MS4 discharges that will be investigated and eliminated in accordance with Provision E.2.d. ~~Each Copermittee must conduct the following dry weather MS4 outfall discharge field screening monitoring within its jurisdiction:~~

Comment [A38]: Suggested change of title to better characterize the requirements of this section, compared to that of D.2.b.

Comments in this section are discussed in section 3.5.3 of the comment letter.

Comment [A39]: Duplicative of previous sentence

(a) Transitional Dry Weather MS4 Outfall Discharge Field Screening Monitoring Frequency

Each Municipal Copermittee must field screen the accessible MS4 outfalls in its inventory developed pursuant to Provision D.2.a.(1) as follows:

(i) ~~For Copermittees with less than 125 major MS4 outfalls that discharge to receiving waters within a Watershed Management Area, at least 80 percent of the outfalls must be visually inspected two times per year during dry weather conditions.~~

(ii) For Municipal Copermittees with ~~125 major MS4 outfalls or more, but~~ less than or equal to 500 MS4 outfalls~~,~~ that discharge to receiving waters within a Watershed Management Area, ~~all~~ at least 80 percent of the accessible outfalls must be visually inspected at least annually during dry weather conditions.

(iii) For Municipal Copermittees with more than 500 major MS4 outfalls that discharge to receiving waters within a Watershed Management Area, at least 500 outfalls must be visually inspected at least annually during dry weather conditions. Copermittees with more than 500 major MS4 outfalls within a Watershed Management Area must identify and prioritize at least 500 outfalls to be inspected considering the following:

[a] Assessment of connectivity of the discharge to a flowing receiving water;
[b] Reported exceedances of NALs in water quality monitoring data;
[c] Surrounding land uses;
[d] Presence of constituents listed as a cause for impairment of receiving waters in the Watershed Management Area listed on the CWA section 303(d) List; and
[e] Flow rate.

(iv) Municipal Copermittees with more than 500 major MS4 outfalls within its jurisdiction that are located in more than one Watershed Management Area, at least 500 major MS4 outfalls within its inventory must be visually inspected at least annually during dry weather conditions. Copermittees with more than 500 major MS4 outfalls in more than one Watershed Management Area must identify and prioritize at least 500 outfalls to be inspected considering the following:

[a] Assessment of connectivity of the discharge to a flowing receiving water;
[b] Reported exceedances of NALs in water quality monitoring data;
[c] Surrounding land uses;

[d] Presence of constituents listed as a cause for impairment of receiving waters in the Watershed Management Area listed on the CWA section 303(d) List; and

[e] Flow rate.

(v) Inspections of major MS4 outfalls conducted in response to public reports and staff or contractor reports and notifications may count toward the required visual inspections of MS4 outfall discharge monitoring stations.

(b) Transitional Dry Weather MS4 Outfall Discharge Field Screening Visual Observations

(i) An antecedent dry period of at least 72 hours following any storm event producing measurable rainfall greater than 0.1 inch is required prior to conducting field screening visual observations during a field screening monitoring event.

(ii) During the field screening monitoring event, each Municipal Copermittee must record visual observations consistent with Table D-6 at each MS4 outfall discharge monitoring station inspected.

Table D-6. Field Screening Visual Observations for MS4 Outfall Discharge Monitoring Stations

Field Observations
• Station identification and location • Presence of flow, or pooled or ponded water • If flow is present: - Flow estimation (i.e. width of water surface, approximate depth of water, approximate flow velocity, flow rate) - Flow characteristics (i.e. presence of floatables, surface scum, sheens, odor, color) - Flow source(s) suspected or identified from non-storm water source investigation - Flow source(s) eliminated during non-storm water source identification • If pooled or ponded water is present: - Characteristics of pooled or ponded water (i.e. presence of floatables, surface scum, sheens, odor, color) - Known or suspected source(s) of pooled or ponded water • Assessment of any observed MS4 discharge ~~with~~ to a flowing receiving water. • Station description (i.e. deposits or stains, vegetation condition, structural condition, observable biology) • Presence and assessment of trash in and around station • Evidence or signs of illicit connections or illegal dumping

(iii) Each Municipal Copermittee must implement the requirements of Provisions E.2.d.(2)(c)-(e) based on the field observations.

(iv) Each Copermittee must evaluate field observations together with existing information available from prior reports, inspections and monitoring results to determine whether any observed flowing,

pooled, or ponded waters are likely to be transient or persistent flow.[19]

Comment [A40]: See footnote edits

(c) Transitional Dry Weather MS4 Outfall Discharge Field Screening ~~Monitoring~~ Records

Based upon the results of the transitional dry weather MS4 outfall discharge field screening monitoring conducted pursuant to Provisions D.2.a.(2)(a)-(b), each Municipal Copermittee must update its MS4 outfall discharge monitoring station inventory, compiled pursuant to Provision D.2.a.(1), with any new information on the classification of whether the MS4 outfall produces persistent flow, transient flow, or no dry weather flow.

(3) Transitional Wet Weather MS4 Outfall Discharge Monitoring

Comment [A41]: See discussion in section 3.5.3 of the comment letter.

Until the monitoring requirements of Provision D.2.c are incorporated into a Water Quality Improvement Plan that is accepted by the San Diego Water Board pursuant to Provision F.1, the Copermittees must conduct the following wet weather MS4 outfall discharge monitoring within the Watershed Management Area:

(a) Transitional Wet Weather MS4 Outfall Discharge Monitoring Stations

The Copermittees must select at least five wet weather MS4 outfall discharge monitoring stations from the inventories developed pursuant to Provision D.2.a.(1) that are representative of storm water discharges from areas consisting primarily of residential, commercial, industrial, and typical mixed-use land uses present within the Watershed Management Area.

(b) Transitional Wet Weather MS4 Outfall Discharge Monitoring Frequency

Each wet weather MS4 outfall discharge monitoring station selected pursuant to Provision D.2.a.(3)(a) must be monitored twice during the wet season (October 1 – April 30~~)).~~) in the transitional period. The~~). One~~ wet weather monitoring ~~event~~events shall be selected to be representative of the range of hydrologic conditions experienced in the region. At least 10% of samples~~event~~ must be conducted during the first wet weather event of the wet season, ~~and~~to include~~and one wet weather monitoring event~~ at least one such sample in each Watershed Management Area~~, a month after the first wet weather event of the wet season.~~

[19] Persistent flow, for the purposes of provision II.D.2.b.(2) is defined as the presence of an MS4 discharge that is hydraulically connected to a flowing receiving~~, pooled, or ponded~~ water more than 72 hours after a measureable rainfall event of 0.1 inch or greater, during three consecutive monitoring and/or inspection events. All other flowing, pooled, or ponded water is considered transient.

(c) Transitional Wet Weather MS4 Outfall Discharge Field Observations

For each wet weather monitoring event, the following narrative descriptions and observations must be recorded of the flow from~~at~~ each wet weather MS4 outfall discharge monitoring station:

(i) A narrative description of the station that includes the location, date and duration of the storm event(s) sampled, rainfall estimates of the storm event, and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and

(ii) The flow rates and volumes measured or estimated from the outfall (data from nearby USGS gauging stations may be utilized, or flow rates may be measured or estimated in accordance with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), section 3.2.1, or other method proposed by the Copermittees that is acceptable to the San Diego Water Board);

(iii) ~~Station condition (i.e. deposits or stains, vegetation condition, structural condition, observable biology); and~~

(iv) Presence ~~and assessment~~ of trash in and around station.

Comment [A42]: This isn't appropriate for a wet weather event.

Comment [A43]: This isn't appropriate for a wet weather event.

(d) Transitional Wet Weather MS4 Outfall Discharge Field Monitoring

For each wet weather monitoring event, the Copermittees must monitor and record the parameters in Table D-2 at each wet weather MS4 outfall discharge monitoring station.

(e) Transitional Wet Weather MS4 Outfall Discharge Analytical Monitoring

For each wet weather monitoring event, the Copermittees must collect and analyze samples from each wet weather MS4 outfall discharge monitoring station as follows:

(i) Analytes that are field measured are not required to be analyzed by a laboratory;

(ii) The Copermittees must implement consistent sample collection methods for regional comparability of data, unless site-specific conditions indicate the need for alternate methods;

(iii) Grab samples may be collected for pH, temperature, specific conductivity, dissolved oxygen, turbidity, and indicator bacteria;

(iv) For all other constituents, composite samples must be collected for a duration adequate to be representative of changes in pollutant

concentrations and runoff flows using one of the following techniques:

[a] Time-weighted composites composed of 24 discrete hourly samples, which may be collected through the use of automated equipment, or
[b] Flow-weighted composites collected over the length of the storm event or a typical 24 hour period, whichever is shorter, which may be collected through the use of automated equipment, or
[c] If automated compositing is not feasible, a composite sample may be collected using a minimum of 4 grab samples, collected during the first 24 hours of the storm water discharge, or for the entire storm water discharge if the storm event is less than 24 hours;

(v) Only one analysis of the composite of aliquots is required;

(vi) The samples must be analyzed for the following constituents:

[a] Constituents listed as a cause for impairment of receiving waters in the Watershed Management Area listed on the CWA section 303(d) List,
[b] Constituents for implementation plans or load reduction plans (e.g. Bacteria Load Reduction Plans, Comprehensive Load Reduction Plans) developed for watersheds where the Copermittees are listed responsible parties under the TMDLs in Attachment E to this Order, and
[c] Constituents listed in in Table D-7.

Table D-7. Analytical Monitoring Constituents for Wet Weather MS4 Outfall Discharge Monitoring Stations

Conventionals, Nutrients	Metals (Total and Dissolved)	Indicator Bacteria
• Total Dissolved Solids • Total Suspended Solids • Turbidity • Total Hardness • Total Organic Carbon • Dissolved Organic Carbon • Sulfate • Methylene Blue Active Substances (MBAS) • Total Phosphorus • Orthophosphate • Nitrite[1] • Nitrate[1] • Total Kjeldhal Nitrogen • Ammonia	• Arsenic • Cadmium • Chromium • Copper • Iron • Lead • Nickel • Selenium • Thallium • Zinc	• Total Coliform • Fecal Coliform[2] • *Enterococcus*

Notes:
1. Nitrite and nitrate may be combined and reported as nitrite+nitrate.
2. *E. Coli* may be substituted for Fecal Coliform.

(f) Other Transitional Wet Weather MS4 Outfall Discharge Monitoring

The San Diego County Copermittees must continue the wet weather MS4 outfall monitoring program developed under Order No. R9-2007-0001, as approved by the San Diego Water Board, through its planned completion.

b. DRY WEATHER MS4 OUTFALL DISCHARGE MONITORING

Each Municipal Copermittee must perform the following dry weather MS4 outfall monitoring within its jurisdiction to identify non-storm water and illicit discharges within its jurisdiction pursuant to Provision E.2.c, and to prioritize the dry weather MS4 discharges that will be investigated and eliminated pursuant to Provision E.2.d. ~~Each Copermittee must conduct the following dry weather MS4 outfall discharge monitoring within its jurisdiction:~~

Comment [A44]: Repetitive of previous sentence

(1) Dry Weather MS4 Outfall Discharge Field Screening Monitoring

Comment [A45]: See discussion in section 3.5.3 of the comment letter.

Each Municipal Copermittee must continue to perform the dry weather MS4 outfall discharge field screening monitoring in accordance with the requirements of Provision D.2.a.(2). ~~The~~ however the Municipal Copermittee may adjust the field screening monitoring frequencies and locations for the MS4 outfalls in its inventory, as needed, to identify and eliminate sources of persistent ~~flow~~ non-storm water illegal discharges from the MS4 to flowing receiving waters in accordance with the highest priority water quality conditions identified in the Water Quality Improvement Plan. ~~provided the~~

~~number of visual inspections performed is equivalent to the number of visual inspections required under Provision D.2.a.(2)(a).~~

Comment [A46]: See comments in comment letter

(2) Non-Storm Water Persistent Flow MS4 Outfall Discharge Monitoring

Each Municipal Copermittee must perform the following non-storm water monitoring of MS4 outfalls that persistently ~~flow MS4 outfall~~ discharge to flowing receiving waters ~~monitoring~~ to determine which persistent non-storm water discharges contain concentrations of pollutants below NALs, and which persistent non-storm water discharges impact receiving water quality during dry weather. ~~Each Copermittee must conduct the following non-storm water persistent flow MS4 outfall discharge monitoring within its jurisdiction:~~

Comment [A47]: Repetitive of previous sentence.

(a) Prioritization of Non-Storm Water Persistent Flow MS4 Outfalls

Based upon the dry weather MS4 outfall discharge field screening monitoring records developed pursuant to Provision D.2.a.(2)(c), each Municipal Copermittee must identify and prioritize the MS4 outfalls within its jurisdiction that have~~with~~ persistent discharges to flowing receiving waters ~~flows~~ based on the highest priority water quality conditions identified in the Water Quality Improvement Plan and any additional criteria developed by the Copermittee, which may include historical data and data from sources other than what the Copermittee collects.

(b) Non-Storm Water Persistent Flow MS4 Outfall Discharge Monitoring Frequency

Comment [A48]: See comment letter section 3.5.3

(i) Based on the prioritization of major MS4 outfalls developed under Provision D.2.b.(2)(a), each Municipal Copermittee must identify, at a minimum, the top 10 percent of the~~10~~ highest priority major MS4 outfalls with non-storm water persistent flows that the Copermittee will monitor within each Watershed Management Area within its jurisdiction, with a minimum of one persistent ~~flow~~discharge outfall, and a maximum of 5 required per WMA. The location of the selected highest priority non-storm water persistent ~~flow~~ discharge MS4 outfall monitoring stations must be identified on the map required pursuant to Provision E.2.b.(1).

(ii) Each of the highest priority non-storm water persistent flow MS4 outfall monitoring stations identified pursuant to Provision D.2.b.(2)(b)(i) must be monitored under dry weather conditions at least ~~semi~~ annually until one of the following occurs:

[a] The non-storm water discharges have been effectively eliminated (i.e. no flowing, pooled, or ponded water) for three consecutive dry weather monitoring events; or

[b] The source(s) of the persistent flows has been identified as a category of non-storm water discharges that does not require an NPDES permit and does not have to be addressed as an illicit discharge because it was not identified as a source of pollutants (i.e. constituents in non-storm water discharge do not exceed NALs), and the persistent flow can be re-prioritized to a lower priority; or

[c] The constituents in the persistent flow non-storm water discharge do not exceed NALs, and the persistent flow can be re-prioritized to a lower priority; or

[d] The source(s) of the persistent flows has been identified as a non-storm water discharge authorized by a separate NPDES permit.

(iii) Where the criteria under Provision D.2.b.(2)(c)(ii) are not met, but the threat to water quality has been reduced by the Copermittee, the highest priority persistent flow MS4 outfall monitoring stations may be reprioritized accordingly for continued dry weather MS4 outfall discharge field screening monitoring required pursuant to Provision D.2.b.(1).

(iv) Each Municipal Copermittee must document removal or re-prioritization of the highest priority persistent flow MS4 outfall monitoring stations identified under Provision D.2.b.(2)(b) in the Annual Report. Persistent flow MS4 outfall monitoring stations that have been removed must be replaced with the next highest prioritized MS4 major outfall in the Watershed Management Area within its jurisdiction, unless there are no remaining qualifying major MS4 outfalls within the Copermittee's jurisdiction in the Watershed Management Area.

(c) Non-Storm Water Persistent Flow MS4 Outfall Discharge Field Observations

During each semi-annual monitoring event, each Municipal Copermittee must record field observations consistent with Table D-6 at each of the highest priority persistent flow MS4 outfall monitoring stations within its jurisdiction.

(d) Non-Storm Water Persistent Flow MS4 Outfall Discharge Field Monitoring

During each ~~semi-annual~~ monitoring event, if conditions allow the collection of the data, each Municipal Copermittee must monitor and record the parameters in Table D-2 at each of the highest priority persistent flow MS4 outfall monitoring stations within its jurisdiction.

(e) Non-Storm Water Persistent Flow MS4 Outfall Discharge Analytical Monitoring

Comment [A49]: See discussion in section 3.5.3 of the comment letter.

During each semi-annual monitoring event in which measurable flow from the MS4 outfall to a flowing receiving water is present, each Municipal Copermittee must collect and analyze samples from each of the highest priority persistent flow MS4 outfall monitoring stations within its jurisdiction as follows:

(i) Analytes that are field measured are not required to be analyzed by a laboratory;

(ii) The Copermittees must implement consistent sample collection methods for regional comparability of data, unless site-specific conditions indicate the need for alternate methods;

(iii) During development of the WQIP, for each WMA, consider the following sources to select constituents for collection of~~Collect~~ grab or composite samples to be analyzed at a qualified analytical laboratory::~~for the following constituents:~~

[a] Constituents contributing to the highest priority water quality conditions identified in the Water Quality Improvement Plan,
[b] Constituents listed as a cause for impairment of receiving waters in the Watershed Management Area listed on the CWA section 303(d) List,
[c] Constituents for implementation plans or load reduction plans (e.g. Bacteria Load Reduction Plans, Comprehensive Load Reduction Plans) developed for watersheds where the Copermittees are listed responsible parties under the TMDLs in Attachment E to this Order,
[d] Applicable NAL constituents, and
[e] Constituents listed in Table D-8, unless the Copermittee has historical data that can demonstrate or provide justification that the analysis of the constituent is not necessary.

(iv) Copermittees may adjust the analytical list for a given WMA in successive monitoring events to add or eliminate constituents based on data that can demonstrate or provide justification regarding need or lack of need for the analysis of specific constituents.

Table D-8. Analytical Monitoring Constituents for Persistent Flow MS4 Outfall Discharge Monitoring Stations

Conventionals, Nutrients	Metals (Total and Dissolved)	Indicator Bacteria
• Total Dissolved Solids • Total Suspended Solids • Total Hardness • Total Phosphorus • Orthophosphate • Nitrite[1] • Nitrate[1] • Total Kjeldhal Nitrogen	• Cadmium • Copper • Lead • Zinc	• Total Coliform • Fecal Coliform[2] • *Enterococcus*

• Ammonia		

Notes:
1. Nitrite and nitrate may be combined and reported as nitrite+nitrate.
2. *E. Coli* may be substituted for Fecal Coliform.

~~(iv)~~(v) If the Copermittee identifies and eliminates the source of the persistent flow non-storm water discharge, analysis of the sample is not required.

c. WET WEATHER MS4 OUTFALL DISCHARGE MONITORING

The Copermittees must perform wet weather MS4 outfall monitoring to identify sources areas of pollutants in ~~storm water~~ discharges from the MS4s in the Watershed Management Area. The Copermittees must conduct the following wet weather MS4 outfall discharge monitoring within the Watershed Management Area:

(1) Wet Weather MS4 Outfall Discharge Monitoring Stations

The Copermittees may adjust the wet weather MS4 outfall discharge monitoring locations and frequencies in the Watershed Management Area, as needed, to identify sources of pollutants in storm water discharges from MS4s in the Watershed Management Area in accordance with the highest priority water quality conditions identified in the Water Quality Improvement Plan, provided the number of stations is at least equivalent to the number of stations required under Provision D.2.a.(3)(a).

(2) Wet Weather MS4 Outfall Discharge Monitoring Frequency

The Copermittees must monitor the wet weather MS4 outfall discharge monitoring stations in the Watershed Management Area at an appropriate frequency to identify source areas of pollutants in ~~storm water~~ discharges from the MS4s causing or contributing to the highest priority water quality conditions identified in the Water Quality Improvement Plan.

(3) Wet Weather MS4 Outfall Discharge Field Observations

For each wet weather monitoring event, the following narrative descriptions and observations must be recorded at each wet weather MS4 outfall discharge monitoring station:

(a) A narrative description of the station that includes the location, date and duration of the storm event(s) sampled, rainfall estimates of the storm event, and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and

(b) The flow rates and volumes measured or estimated (data from nearby USGS gauging stations may be utilized, or flow rates may be measured or

estimated in accordance with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), section 3.2.1, or other method proposed by the Copermittees that is acceptable to the San Diego Water Board);

~~(c) Station condition (i.e. deposits or stains, vegetation condition, structural condition, observable biology); and~~

~~(d) Presence and assessment of trash in and around station.~~

Comment [A50]: These are inappropriate for wet weather observations.

(4) Wet Weather MS4 Outfall Discharge Field Monitoring

For each wet weather monitoring event, the Copermittees must monitor and record the parameters in Table D-2 at each wet weather MS4 outfall discharge monitoring station.

(5) Wet Weather MS4 Outfall Discharge Analytical Monitoring

For each wet weather monitoring event, the Copermittees must collect and analyze samples from each wet weather MS4 outfall discharge monitoring station as follows:

(a) Analytes that are field measured are not required to be analyzed by a laboratory;

(b) The Copermittees must implement consistent sample collection methods for regional comparability of data, unless site-specific conditions indicate the need for alternate methods;

(c) Grab samples may be collected for pH, temperature, specific conductivity, dissolved oxygen, turbidity, hardness, and indicator bacteria;

(d) For all other constituents, composite samples must be collected for a duration adequate to be representative of changes in pollutant concentrations and runoff flows using one of the following techniques:

(i) Time-weighted composites composed of 24 discrete hourly samples, which may be collected through the use of automated equipment, or

(ii) Flow-weighted composites collected over the length of the storm event or a typical 24 hour period, whichever is shorter, which may be collected through the use of automated equipment, or

(iii) If automated compositing is not feasible, a composite sample may be collected using a minimum of 4 grab samples, collected during the first 24 hours of the storm water discharge, or for the entire storm water discharge if the storm event is less than 24 hours.

(e) Only one analysis of the composite of aliquots is required;

(f) Analysis for the following constituents is required:

(i) Constituents contributing to the highest priority water quality conditions identified in the Water Quality Improvement Plan,

(ii) Constituents listed as a cause for impairment of receiving waters in the Watershed Management Area listed on the CWA section 303(d) List,

(iii) Constituents for implementation plans or load reduction plans (e.g. Bacteria Load Reduction Plans, Comprehensive Load Reduction Plans) developed for watersheds where the Copermittees are listed responsible parties under the TMDLs in Attachment E to this Order, and

(iv) Applicable SAL constituents.

3. Special Studies

Comment [A51]: See discussion in section 3.5.3 of the comment letter.

a. Within the term of this Order, the Copermittees must initiate~~develop and implement~~ the following special studies:

(1) At least two~~three~~ special studies in each Watershed Management Area to address pollutant and/or stressor data gaps and/or develop information necessary to more effectively address the pollutants and/or stressors that cause or contribute to highest priority water quality conditions identified in the Water Quality Improvement Plan.

(2) At least one~~two~~ special study~~studies~~ for the San Diego Region to address pollutant and/or stressor data gaps and/or develop information necessary to more effectively address the pollutants and/or stressors that are impacting receiving waters on a regional basis in the San Diego Region.

(3) One of the two~~three~~ special studies in each Watershed Management Area may be replaced by a special study implemented pursuant to Provision D.3.a.(2).

b. The special studies must, at a minimum, be in conformance with the following criteria:

(1) The special studies must be related to the highest priority water quality conditions identified by the Copermittees in the Watershed Management Area and/or for the entire San Diego Region;

(2) The special studies developed pursuant to Provision D.3.a.(1) must:

(a) Be implemented within the applicable Watershed Management Area, and

(b) Require some form of participation by all the Copermittees within the Watershed Management Area;

(3) The special studies developed pursuant to Provision D.3.a.(2) must:

(a) Be implemented within the San Diego Region, and

(b) Require some form of participation by all Copermittees covered under the requirements of this Order.

c. Special studies developed to identify sources of pollutants and/or stressors should be pollutant and/or stressor specific and based on historical monitoring data and monitoring performed pursuant to Provisions D.1 and D.2. Development of source identification special studies should include the following:

(1) A compilation of known information on the specific pollutant and/or stressor, including data on potential sources and movement of the pollutant and/or stressor within the watershed. Data generated by the Copermittees and others, as well as information available from a literature research on the pollutant and/or stressor should be compiled and analyzed as appropriate.

(2) An identification of data gaps, based on the compiled information generated on the specific pollutant and/or stressor in Provision D.3.d.(1). Source identification special studies should be developed to fill identified data gaps.

(3) A monitoring plan that will collect and provide data the Copermittees can utilize to do the following:

(a) Quantify the relative loading or impact of a pollutant and/or stressor from a particular source or pollutant generating activity;

(b) Improve understanding of the fate of a pollutant and/or stressor in the environment;

(c) Develop an inventory of known and suspected sources of a pollutant and/or stressor in the Watershed Management Area; and/or

(d) Prioritize known and suspected sources of a pollutant and/or stressor based on relative magnitude in discharges, geographical distribution (i.e.,

regional or localized), frequency of occurrence in discharges, human health risk, and controllability.

d. Special studies initiated prior to the term~~acceptance~~ of ~~the~~this Order~~the Water Quality Improvement Plan~~ that meet the requirements of Provision D.3.b and are implemented~~completed~~ during the term of this Order may be utilized to fulfill the special study requirements of Provision D.3.a.

e. The Copermittees must submit the monitoring plans for the special studies in the Water Quality Improvement Plans required pursuant to Provision F.1.

f. The Copermittees are encouraged to share the results of the special studies regionally among the Copermittees to provide information useful in improving and adapting the management of non-storm water and storm water runoff through the implementation of the Water Quality Improvement Plans.

4. Assessment Requirements

Each Copermittee must evaluate the data collected pursuant to Provisions D.1, D.2 and D.3, and information collected during the implementation of the jurisdictional runoff management programs required pursuant to Provision E, to assess the progress of the water quality improvement strategies in the Water Quality Improvement Plan toward achieving compliance with Provisions A.1.a, A.1.c and A.2.a. Assessments must be performed as described in the following provisions:

a. RECEIVING WATERS ASSESSMENTS

(1) The Copermittees must assess and report the conditions of the receiving waters in the Watershed Management Area as follows:

(a) Based on data collected pursuant to Provision D.1.a, the assessments under Provision D.4.a.(2) must be included in the transitional~~first~~ Annual Report required pursuant to Provision F.3.b.(2~~1~~).

Comment [A52]: See our edits to that section

(b) Based on the data collected pursuant to Provisions D.1.a-e, the assessments required under Provision D.4.a.(2) must be included in the Report of Waste Discharge required pursuant to Provision F.5.b.

(2) The Copermittees must assess the status and trends of receiving water quality conditions in 1) coastal waters, 2) enclosed bays, harbors, estuaries, and lagoons, and 3) streams under dry weather and wet weather conditions, as those conditions are affected by discharges from the Copermittees' MS4, to determine the progress towards meeting interim or final goals of the Water Quality Implementation Plan for the Watershed Management Area~~.~~ For each of the three types of receiving waters that are present in each Watershed Management Area the applicable Copermittees must:

Comment [A53]: See discussion in section 3.5.3 of the comment letter.

(a) Determine whether or not the conditions of the receiving waters are meeting any applicable numeric goals established pursuant to provision B.2.e.~~protective of the designated beneficial uses~~;

~~(b) Identify the most critical beneficial uses that must be protected or restored to ensure overall health of the receiving water;~~

~~(c) Determine whether or not those critical beneficial uses are being protected and where those beneficial used must be restored;~~

~~(d)~~(b) Identify short-term and/or long-term improvements or degradation of Receiving Water conditions related to those numeric goals~~those critical beneficial uses~~;

~~(e)~~(c) Identify data gaps in the monitoring data necessary to assess Provisions D.4.a.(2)(a)-(d).

b. MS4 OUTFALL DISCHARGES ASSESSMENTS

(1) Non-Storm Water Discharges Reduction Assessments

Comment [A54]: See discussion in section 3.5.3 of the comment letter for key changes. Other changes are described in comments below.

(a) ~~Each Copermittee must assess and report the progress of its illicit discharge detection and elimination program, required to be implemented pursuant to Provision E.2, toward reducing and effectively prohibiting non-storm water and illicit discharges into the MS4 within its jurisdiction as follows:~~

~~(i) Based on data collected pursuant to Provisions D.2.a.(2), the assessments under Provision D.4.b.(1)(b) must be included when complete in the Annual Report required pursuant to Provision F.3.b.(1).~~

~~(ii) Based on the data collected pursuant to Provisions D.2.b, the assessments required under Provision D.4.b.(1)(c) must be included in the first Annual Report required pursuant to Provision F.3.b.(1), and annually thereafter.~~

~~(iii) Based on the data collected pursuant to Provisions D.2.b, the assessment required under Provision D.4.b.(1)(c) must be included in the Report of Waste Discharge required pursuant to F.5.b.~~

Comment [A55]: For clarity and simplicity, these timelines were integrated into the following sections.

(b) Based on the transitional dry weather MS4 outfall discharge field screening monitoring required pursuant to Provision D.2.a.(2), each

Municipal Copermittee must assess and report the following, as applicable to discharges from the MS4 (including Special District Copermittee MS4s) to flowing receiving waters within their jurisdiction, in the Annual Report required pursuant to Provision F.3.b.(2):~~:~~

(i) Identify the known and suspected controllable sources (e.g. facilities, areas, land uses, pollutant generating activities) of transient and persistent flow discharges to flowing receiving waters~~flows~~ within the Copermittee's jurisdiction in the Watershed Management Area;

(ii) Identify sources of transient and persistent flow discharges to flowing receiving waters~~flows~~ within the Copermittee's jurisdiction in the Watershed Management Area that have been reduced or eliminated; and

(iii) Identify modifications to the field screening monitoring locations and frequencies for the MS4 outfalls in its inventory necessary to identify and eliminate sources of persistent flow non-storm water discharges to flowing receiving waters, pursuant to Provision D.2.b.(1).

(c) Based on the dry weather MS4 outfall discharge field screening monitoring required pursuant to Provision D.2.b, each Municipal Copermittee must assess and report the following, as applicable to discharges from the MS4 (including Special District Copermittee MS4s) within their jurisdiction, in each Annual Report required pursuant to F.3.b.(3) and in the Report of Waste Discharge required pursuant to Provision F.5.b.:~~:~~

(i) The assessments required pursuant to Provision D.4.b.(1)(a~~b~~);

(ii) Based on the data collected and applicable NALs in the Water Quality Improvement Plan, rank the MS4 outfalls in the Copermittee's jurisdiction according to potential threat to receiving water quality, and produce a prioritized list of major MS4 outfalls for follow-up action to update the Water Quality Improvement Plan, with the goal of eliminating persistent flow non-storm water discharges to flowing receiving waters and/or pollutant loads in order of the ranked priority list through targeted programmatic actions and source investigations;

(iii) For the highest priority major MS4 outfalls with persistent flow discharges to a flowing receiving water~~flows~~ that are in exceedance of NALs, identify the known and suspected sources within the Copermittee's jurisdiction in the Watershed Management Area that may cause or contribute to the NAL exceedances;

(iv) Each Copermittee must analyze the data collected pursuant to Provision D.2.b.(2), and: ~~utilize a model or other method, to calculate or estimate the non-storm water volumes and pollutant loads collectively discharged from all the major MS4s outfalls in its jurisdiction identified as having persistent dry weather flows during~~

Comment [A56]: Per edits to that section

Comment [A57]: Per edits to that section

Comment [A58]: Per edits above

Comment [A59]: Edits to this section (and sub-sections) is different than SD edits.

~~the monitoring year. These calculations or estimates must be updated annually. Each Copermittee must calculate or estimate:~~

[a] Calculate or estimate annual non-storm water volumes and pollutant loads (associated with the priority constituents identified in the WQIP) collectively discharged from the monitored persistently flowing ~~Copermittee's~~ major MS4 outfalls discharging to flowing receiving waters within the Copermittee's jurisdiction, or discharged into another Copermittee's MS4 as demonstrated through provision E.2.d.~~with an estimate of the percent contribution from each known and suspected source for each MS4 outfall~~;

[b] Identify ~~identify~~ and quantify, where feasible, known sources of non-stormwater flows not ~~[b] Annual non-storm water volumes and pollutant loads from areas or facilities~~ subject to the Copermittee's legal authority that are discharged from the Copermittee's major MS4 outfalls to downstream receiving waters.

(v) Each Copermittee must review the data collected pursuant to Provision D.2.b and findings from the assessments required pursuant to Provision D.4.b.(1)(c)(i)-(iv) ~~once per Permit termon an annual basis, and then report~~ within the Regional Monitoring and Assessment Report per Provision F.3.c., the following ~~to~~:

[a] Identify reductions and progress in achieving reductions in non-storm water and illicit discharges to the Copermittee's MS4 in the Watershed Management Area;

[b] Assess the effectiveness of water quality improvement strategies being implemented by the Copermittees within the Watershed Management Area toward reducing or eliminating non-storm water and pollutant loads discharging from the MS4 to receiving waters within its jurisdiction, with an estimate, if possible, of the non-storm water volume and/or pollutant load reductions attributable to specific water quality strategies implemented by the Copermittee; and

[c] Identify modifications necessary to increase the effectiveness of the water quality improvement strategies implemented by the Copermittee in the Watershed Management Area toward reducing or eliminating non-storm water and pollutant loads discharging from the MS4 to receiving waters within its jurisdiction.

(vi) Identify data gaps in the monitoring data necessary to assess Provisions D.4.b.(2)(c)(i)-(v).

(2) Storm Water Pollutant Discharges Reduction Assessments

(a) ~~The Copermittees must assess and report the progress of the water quality improvement strategies, required to be implemented pursuant to~~

Comment [A60]: This is to help ensure jurisdictional accountability for what is being discharged from their jurisdiction.

~~Provisions B and E, toward reducing pollutants in storm water discharges from the MS4s within the Watershed Management Area as follows:~~

~~(i) Based on data collected pursuant to Provisions D.2.a.(3), the assessments under Provision D.4.b.(2)(b) must be included in the first Annual Report required pursuant to Provision F.3.b.(1).~~

~~Based on the data collected pursuant to Provisions D.2.c, the assessments required under ProvisionProvision first Annual Report required pursuant to Provision F.3.b.(1), and annually thereafter.~~

~~Based on the data collected pursuant to Provisions D.2.c, the assessment required under Provisions D.4.b.(2)(c)-(d) must be included in the Report of Waste Discharge required pursuant to F.5.b.~~

(b) Based on the transitional wet weather MS4 outfall discharge monitoring required pursuant to Provision D.2.a.(3) the Copermittees must assess and report the following in the Transitional Period Monitoring Report required pursuant to Provision F.3.b.(2):

(i) The Copermittees must analyze the monitoring data collected pursuant to Provision D.2.a.(3), and utilize a watershed model or other method, to calculate or estimate: ~~storm water volumes and pollutant loads discharged from the MS4s in each Copermittee's jurisdiction within the Watershed Management Area. The Copermittees must calculate or estimate the following for each monitoring year:~~

[a] The average storm water runoff coefficient for each land use type within the Watershed Management Area;

[b] The volume of storm water and pollutant loads discharged from each of the Copermittee's monitored major MS4 outfalls in its jurisdiction to receiving waters within the Watershed Management Area for each monitored storm event with measurable rainfall greater than 0.1 inch, for each of the priority water quality constituents identified in the WQIP;

[c] The total volume and pollutant loads potentially discharged from each Municipal Copermittee's jurisdiction within the watershed management area, for each monitored event, extrapolated from the data produced from the monitored outfalls.

~~The pollutant loads discharged from each of the Copermittee's major MS4 outfalls in its jurisdiction to receiving waters within the Watershed Management Area for each storm event with measurable rainfall greater than 0.1 inch; and~~

~~[d] The percent contribution of storm water volumes and pollutant loads discharged from each land use type within the drainage basin to each of the Copermittee's major MS4 outfalls in its~~

Comment [A61]: See discussion in section 3.5.3 of the comment letter.

Comment [A62]: Removed as this was confusing as it was duplicative of the subsections below.

Comment [A63]: There is no need to perform this analysis for other pollutants not identified as priorities in the WQIP.

~~jurisdiction to receiving waters within the Watershed Management Area for each storm event with measurable rainfall greater than 0.1 inch.~~

(ii) Identify modifications to the wet weather MS4 outfall discharge monitoring locations and frequencies necessary to identify ~~sources~~ pollutants in storm water discharges from the MS4s in the Watershed Management Area pursuant to Provision D.2.c.(1).

(c) Based on the wet weather MS4 outfall discharge monitoring required pursuant to Provision D.2.c the Copermittees must assess and report (i) and (ii) below in the annual reports required per F.3.b.(3), and (i) through (iv) below in the Regional Monitoring and Assessment Report required per F.3.c. ~~the following~~:

(i) The assessments required pursuant to Provision D.4.b.(2)(a~~b~~);

(ii) Based on the data collected and applicable SALs in the Water Quality Improvement Plan, analyze and compare the monitoring data to the analyses and assumptions used to develop the Water Quality Improvement Plans, including strategies developed per Provision B.3, and evaluate whether ~~,rank the MS4 outfalls in the Watershed Management Area according to potential threat to receiving water quality, and produce a prioritized list of major MS4~~ there is a need to update the Water Quality Improvement Plan;

(iii) The Copermittees must review the data collected pursuant to Provision D.2.c and findings from the assessments required pursuant to Provisions D.4.b.(2)(c)(i)-(ii) ~~on an annual basis~~ to:

[a] Identify reductions and progress in achieving reductions in pollutant concentrations and/or pollutant loads from different land uses and/or drainage areas discharging from the Copermittees' MS4s in the Watershed Management Area;

[b] Assess the effectiveness of water quality improvement strategies being implemented by the Copermittees within the Watershed Management Area toward reducing pollutants in ~~storm water~~ discharges from the MS4s to receiving waters within the Watershed Management Area to the MEP, with an estimate, if possible, of the pollutant load reductions attributable to specific water quality strategies implemented by the Copermittees; and

[c] Identify modifications necessary to increase the effectiveness of the water quality improvement strategies implemented by the Copermittees in the Watershed Management Area toward reducing pollutants in ~~storm water~~ discharges from the MS4s to receiving waters in the Watershed Management Area to the MEP.

(iv) Identify data gaps in the monitoring data necessary to assess Provisions D.4.b.(2)(c)(i)-(iii).

Comment [A64]: See discussion in section 3.5.3 of the comment letter.

Comment [A65]: Per edits to that section

Comment [A66]: Per edits above

(d) Within the Regional Monitoring and Assessment report required pursuant to F.3.c.~~The~~ Copermittees must evaluate all the data collected pursuant to Provision D.2.c, and incorporate new outfall monitoring data into time series plots for each long-term monitoring constituent for the Watershed Management Area, and perform statistical trends analysis on the cumulative long-term wet weather MS4 outfall discharge water quality data set.

c. SPECIAL STUDIES ASSESSMENTS

The Copermittees must in the applicable annual report required pursuant to F.3.b.,~~annually~~ evaluate the results and findings from the special studies developed and implemented pursuant to Provision D.3, and assess their relevance to the Copermittees' efforts to characterize receiving water conditions, understand sources of pollutants and/or stressors, and control and reduce the discharges of pollutants from the MS4 outfalls to receiving waters in the Watershed Management Area. The Copermittees must report the results of the special studies assessments applicable to the Watershed Management Area, and identify any necessary modifications or updates to the Water Quality Improvement Plan based on the results in the Annual Reports required pursuant to Provision F.3.b.

d. INTEGRATED ASSESSMENT OF WATER QUALITY IMPROVEMENT PLAN

As part of the iterative approach and adaptive management process required for the Water Quality Improvement Plan pursuant to Provision B.5, the Copermittees in each Watershed Management Area must integrate the data collected pursuant to Provisions D.1-D.3, the findings from the assessments required pursuant to Provisions D.4.a-c, and information collected during the implementation of the jurisdictional runoff management programs required pursuant to Provision E to assess the effectiveness of, and identify necessary modifications to, the Water Quality Improvement Plan as follows:

(1) The Copermittees must re-evaluate the priority water quality conditions and numeric goals for the Watershed Management Area, as needed, during the term of this Order pursuant to Provision B.5.a. The re-evaluation and recommendations for modifications to the priority water quality conditions, and/or numeric goals and corresponding schedules may be provided in the Annual Reports required pursuant to Provision F.3.b, but must at least be provided in the Regional Monitoring and Assessment Report ~~of Waste Discharge~~ pursuant to Provision F.3.c~~5.b~~. The priority water quality conditions and numeric goals for the Watershed Management Area must be re-evaluated as follows:

(a) Re-evaluate the receiving water conditions in the Watershed Management Area in accordance with Provision B.2.a;

(b) Re-evaluate the impacts on receiving waters in the Watershed Management Area from MS4 discharges in accordance with Provision B.2.b;

(c) Re-evaluate the identification of MS4 sources of pollutants and/or stressors in accordance with Provision B.2.d;

(d) Identify beneficial uses of the receiving waters that are protected or must be restored in accordance with Provision D.4.a;

(e) Evaluate the progress toward achieving the interim and final numeric goals for restoring impacted beneficial uses in the receiving waters.

(2) The Copermittees must re-evaluate the water quality improvement strategies for the Watershed Management Area during the term of this Order pursuant to Provision B.5.b. The re-evaluation and recommendations for modifications to the water quality improvement strategies and schedules may be provided in the Annual Reports required pursuant to Provision F.3.b, but must at least be provided in the Regional Monitoring and Assessment Report pursuant to Provision F.3.c~~must be provided in the Annual Reports required pursuant to Provision F.3.b, and provided in the Report of Waste Discharge pursuant to Provision F.5.b~~. The water quality improvement strategies for the Watershed Management Area must be re-evaluated as follows:

(a) Identify the non-storm water and storm water pollutant loads from the Copermittees' MS4 outfalls in the Watershed Management Area, calculated or estimated pursuant to Provisions D.4.b;

(b) Identify the non-storm water and storm water pollutant load reductions, or other improvements to receiving water or water quality conditions, that are necessary to attain the interim and final numeric goals identified in the WQIP~~for restoring impacted beneficial uses in the receiving waters~~;

(c) Identify any~~the~~ non-storm water and storm water pollutant load reductions, or other improvements to the quality of MS4 discharges, that are necessary for the Copermittees to ~~demonstrate that non-storm water and storm water~~ reduce discharges of pollutants from their MS4s that have been demonstrated to be~~are not~~ causing or contributing to exceedances of receiving water limitations;

Comment [A67]: See discussion in section 3.5.3 of the comment letter.

(d) Evaluate the progress of the water quality improvement strategies toward achieving the interim and final numeric goals identified in the WQIP~~for restoring impacted beneficial uses in the receiving waters~~.

(3) The Copermittees must re-evaluate and adapt the water quality monitoring and assessment program for the Watershed Management Area when new information becomes available to improve the monitoring and assessment

program pursuant to Provision B.5.c. The re-evaluation and recommendations for modifications to the monitoring and assessment program may be provided in the Annual Reports required pursuant to Provision F.3.b, but must at least be provided in the Regional Monitoring and Assessment Report ~~of Waste Discharge~~ pursuant to Provision F.3.c~~5.b~~. Modifications to the water quality monitoring and assessment program must be consistent with the requirements of Provision D.1-D.3. The re-evaluation of the water quality monitoring and assessment program for the Watershed Management Area must consider the data gaps identified by the assessments required pursuant to Provisions D.4.a-b, and results of the special studies implemented pursuant to Provision D.4.c.

5. Monitoring Provisions

Each Copermittee must comply with all the monitoring, reporting, and recordkeeping provisions of the Standard Permit Provisions and General Provisions contained in Attachment B to this Order.

E. JURISDICTIONAL RUNOFF MANAGEMENT PROGRAMS

The purpose of this provision is for each Copermittee to implement a program to control the contribution of pollutants to and the discharges from the MS4 within its jurisdiction. The goal of the jurisdictional runoff management programs is to implement strategies that effectively prohibit non-storm water discharges to the MS4 and reduce the discharge of pollutants in ~~storm water~~ to the MEP. This goal will be accomplished through implementing the jurisdictional runoff management programs in accordance with the strategies identified in the Water Quality Improvement Plans.

Each Copermittee must update its jurisdictional runoff management program document, in accordance with Provision F.2.a, to incorporate all the requirements of Provision E, consistent with their legal authority. Until the Copermittee has updated its jurisdictional runoff management program document with the applicable requirements of Provision E, the Copermittee must continue implementing its current jurisdictional runoff management program.

Modification of Jurisdictional Runoff Management Program Requirements

Modifications shall be considered and where selected, proposed according to the process in Provision B.5. Proposed modifications may increase, decrease, and/or replace minimum requirements identified in Provision E.

1. Legal Authority Establishment and Enforcement

Comment [A68]: See discussion in section 3.6 of the comment letter.

a. Each Copermittee must establish, maintain, and enforce adequate legal authority within its jurisdiction to control pollutant discharges into and from its MS4 through statute, ordinance, permit, or series of contracts, ~~order, or similar means~~ which~~. This legal authority must~~, at a minimum, authorize the Copermittee to:

(1) Effectively prohibit through ordinance, order or other similar means~~Prohibit and eliminate all~~ illicit discharges ~~and illicit connections~~ to its MS4;

(2) Control, through ordinance, permit, contract, order or similar means the contribution of pollutants in discharges to the MS4 by storm water discharges ~~of runoff~~ associated with industrial and construction activity~~ to its MS4~~, and ~~control~~ the quality of storm water discharges ~~runoff~~ from sites of industrial and construction activity~~sites~~, whose discharges have not been separately authorized through~~ that do not, including industrial and construction sites which~~ have coverage under the statewide General Permit for Discharges of Storm Water Associated with Industrial Activities (Industrial General Permit) or General Permit for Discharges of Storm Water Associated with Construction Activities (Construction General Permit)~~, as well as to those sites which do not;~~

Comment [A69]: See discussion in section 3.6.2 of the comment letter.

(3) Control, through ordinance, order or similar means the discharge to the MS4 of spills, dumping, or disposal of materials other than storm water~~ into its~~

Comment [A70]: See discussion in section 3.6.2 of the comment letter.

MS4;

(4) Control through interagency agreements among Copermittees the contribution of pollutants from one portion of the MS4 to another portion of the MS4;

(5) Control, by coordinating and cooperating with other owners of the MS4 such as Caltrans, the U.S. federal government, or sovereign Native American Tribes through interagency agreements, where possible, the contribution of from their portion of the MS4 to the portion of the MS4 within the Copermittee's jurisdiction;

(6) Require compliance with conditions in its statutes, ordinances, permits, contracts, or orders, or similar means to hold dischargers to its MS4 accountable for their contributions of pollutants and flows;

(7) Require the use of BMPs to prevent or reduce the discharge of pollutants in storm water from its MS4 to the MEP;

(8) Require documentation on the effectiveness of BMPs implemented to prevent or reduce the discharge of pollutants in storm water from its MS4 to the MEP;

(9) Utilize enforcement mechanisms to require compliance with its statutes, ordinances, permits, contracts, orders, or similar means; and

(10) Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditionsits statutes, ordinances, permits, contracts, orders, or similar means and with the requirements of this Order, including the prohibition of illicit discharges and connections to its MS4; the Copermittee must also have authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from industrial facilities, including construction sites, discharging into its MS4.

b. With the first Annual Report required pursuant to Provision F.3.b, each Copermittee must submit a statement certified by its Principal Executive Officer, Ranking Elected Official, or Duly Authorized Representative that the Copermittee has taken the necessary steps to obtain and maintain full legal authority within its jurisdiction to implement and enforce each of the requirements contained in this Order.

2. Illicit Discharge Detection and Elimination

Each Copermittee must implement a program to actively detect and eliminate illicit discharges and improper disposal into the MS4, or otherwise require the discharger

Comment [A71]: See discussion in section 3.6.2 of the comment letter.

Comment [A72]: See discussion in section 3.6.2 of the comment letter.

Comment [A73]: See discussion in section 3.6.2 of the comment letter.

Comment [A74]: See discussion in section 3.6.2 of the comment letter.

Comment [A75]: See discussion in section 3.7 of the comment letter.

to apply for and obtain a separate NPDES permit. The illicit discharge detection and elimination program must be implemented in accordance with the strategies identified in the Water Quality Improvement Plan and include, at a minimum, the following requirements:

STRATEGIES TO ADDRESS THE HIGHEST PRIORITY WATER QUALITY CONDITIONS

Each Copermittee must describe in its jurisdictional runoff management program document the strategies and/or activities that will be implemented as part of the illicit discharge detection and elimination program to address ~~non-storm water and~~ illicit discharges and connections that the Copermittee has identified as potential sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area as follows:

(1) Provide specific details about how the strategies and/or activities will be implemented (e.g. designate~~ additional~~ BMPs, focus education, and/or increase/decrease frequency of inspections in specific areas); and

(2) The strategies and/or activities ~~must~~ may be modified from ~~consistent with~~ the default requirements of Provisions E.2.b-e~~a-d~~ ~~and~~ to be consistent with the strategies identified in the Water Quality Improvement Plan;

(3) The requirements of the programs as outlined in the following sub-provisions may be modified and prioritized as appropriate for consistency with the highest water quality priorities and strategies as identified in the corresponding Water Quality improvement Plan(s).

a. NON-STORM WATER DISCHARGES

To the extent allowable by law, each~~Each~~ Copermittee must address all non-storm water discharges ~~from~~into the MS4 as illicit discharges, where the likelihood exists that they are a source of pollutants to the Receiving Waters, unless ~~a non-storm water~~the discharge is either identified as a discharge authorized by a separate NPDES permit, or identified as a category of non-storm water discharges or flows that is consistent with~~must be addressed pursuant to~~ the following requirements:

(1) ~~Discharges of non-storm water to the MS4 from the following categories must be addressed as illicit dischargeunless the discharge has coverage under NPDES Permit No. CAG919001 (Order No. R9-2007-0034, or subsequent order) for discharges to San Diego Bay, or NPDES Permit No. CAG919002 (Order No. R9-2008-0002, or subsequent order) for discharges to surface waters other than San Diego Bay.~~

Comment [A76]: See discussion in section 3.7.2 of the comment letter.

~~(a) Uncontaminated pumped ground water;~~

~~(b) Discharges from foundation drains;~~[20]

~~(c) Water from crawl space pumps; and~~

~~(d) Water from footing drains.~~[19]

(2) Discharges of non-storm water from water line flushing and water main breaks to the MS4 must be addressed as illicit discharges unless the discharge has coverage under a valid NPDES Permit, ~~No. CAG 679001~~ (Order No. R9-2010-0003, or a subsequent order). This category includes potable water line flushing ~~and water main break~~ discharges from water purveyors issued a water supply permit by the California Department of Public Health or federal military installations. Discharges from recycled or reclaimed water lines to the MS4 must be addressed as illicit discharges, unless the discharges have coverage under a separate NPDES permit.

Comment [A77]: See discussion in section 3.7.2 of the comment letter.

(3) Discharges of non-storm water into the MS4 from the following categories must be addressed by the Copermittee as illicit discharges only if the Copermittee or the San Diego Water Board identifies the individual discharge as a source of pollutants to receiving waters:

Comment [A78]: See discussion in section 3.7.2 of the comment letter.

(a) Diverted stream flows;

(b) Rising ground waters;

(c) Uncontaminated ground water infiltration to MS4s;

(d) Uncontaminated pumped ground water;

(e) Springs;

(f) Water from crawl space pumps;

~~(c)~~(g) Flows from riparian habitats and wetlands;

(h) Landscape irrigation;

(i) Irrigation water;

(j) Lawn watering;

Comment [A79]: See Legal Comments discussion.

[20] ~~Provision E.2.a.(1) only applies to this category on non-storm water if the system is designed to be located at or below the highest historical groundwater table to actively or passively extract groundwater during any part of the year.~~

~~(d)~~(k) Discharges from potable water sources;

~~(e)~~(l) Discharges from foundation drains;[21] ~~and~~

(m)Discharges from footing drains. .[21]

(4) Discharges of non-storm water into the MS4 from the following categories must be controlled by the requirements given below through statute, ordinance, permit, contract, order, or similar means. ~~Discharges of non-storm water to the MS4 from the following categories not controlled by the requirements given below through~~ If such statutes, ordinances, permits, contracts, orders, or similar means have not been enacted by the Copermittee, the applicable categories below must be addressed by the Copermittee as illicit discharges.

Comment [A80]: See discussion in section 3.7.2 of the comment letter.

(a) Air conditioning condensation

The discharge of air conditioning condensation should~~must~~ be directed to landscaped areas or other pervious surfaces where feasible.

(b) Individual residential vehicle washing

(i) The discharge of wash water ~~must~~ should be directed to landscaped areas or other pervious surfaces where feasible; and

(ii) Minimize the use of water for vehicle washing, use as little washing detergent and other vehicle wash products as possible, wash vehicles at commercial wash facilities, and implement other practices or behaviors that will prevent the discharge of pollutants associated with individual residential vehicle washing from entering the MS4.

(c) Dechlorinated swimming pool discharges

(i) Eliminate residual chlorine, algaecide, filter backwash, or other pollutants from swimming pools prior to discharging to the MS4; and

(ii) The discharge of saline swimming pool water must be directed to the sanitary sewer, landscaped areas, or other pervious surfaces that can accommodate the volume of water, unless the saline swimming pool water can be discharged via a pipe or concrete channel directly to a naturally saline water body (e.g. Pacific Ocean).

(5) Firefighting discharges to the MS4 must be addressed by the Copermittee as

Comment [A81]: See discussion in section 3.7.2 of the comment letter.

~~[21] Provision E.2.a.(3) only applies to this category of non-storm water discharge if the system is designed to be located above the highest historical groundwater table at all times of the year, and the system is only expected to discharge non-storm water under unusual circumstances.~~

follows:illicit discharges only if the Copermittee or the San Diego Water Board identifies the discharge as a significant source of pollutants to receiving waters. Firefighting discharges to the MS4 not identified as a significant source of pollutants to receiving waters, must be addressed, at a minimum, as follows:

(a) Non-emergency firefighting discharges

(i) Building fire suppression system maintenance discharges (e.g.., sprinkler line flushing) to the MS4 must be addressed as illicit discharges unless appropriate BMPs are implemented.

(ii) Non-emergency firefighting discharges (i.e., discharges from controlled or practice blazes, firefighting training, and maintenance activities not associated with building fire suppression systems) must be addressed by a program, to be developed and implemented by the Copermittee in conjunction with the local Fire Authority/District, to reduce or eliminate pollutants in such discharges from entering the MS4.

(b) Emergency firefighting discharges (i.e., flows necessary for the protection of life or property) do not require BMPs and need not be prohibited.

Each Copermittee should develop and encourage implementation of BMPs to reduce or eliminate pollutants in emergency firefighting discharges to the MS4s and receiving waters within its jurisdiction. During emergency situations, priority of efforts should be directed toward life, property, and the environment (in descending order). BMPs should not interfere with immediate emergency response operations or impact public health and safety.

(6) If the Copermittee or San Diego Water Board identifies any category of non-storm water discharges listed under Provisions E.2.a.(1)-(4) as a source of pollutants to receiving waters, the category must be effectively prohibited through ordinance, order, or similar means and addressed as an illicit discharge.

(7) Each Copermittee must, where feasible, reduce or eliminate non-storm water discharges listed under Provisions E.2.a.(1)-(4) into its MS4 whether or not the non-storm water discharge has been identified as an illicit discharge, unless a non-storm water discharge is identified as a discharge authorized by a separate NPDES permit.

Comment [A82]: See discussion in section 3.7.2 of the comment letter.

b. Prevent And Detect Illicit Discharges And Connections

Each Copermittee must include the following measures within its program to prevent and detect illicit discharges to the MS4:

(1) Each Copermittee must maintain an updated map of its entire MS4 and the corresponding drainage areas. The accuracy of the MS4 map must be confirmed during the field screening required pursuant to Provision E.2.c. The MS4 map must be included as part of the jurisdictional runoff management program document. Any geographic information system (GIS) layers or files used by the Copermittee to maintain the MS4 map must be made available to the San Diego Water Board upon request. The MS4 map must identify the following:

(a) All segments of the MS4 owned, operated, and maintained by the Copermittee;

(b) All known locations of inlets that discharge and/or collect runoff into the Copermittee's MS4;

(c) All known locations of connections with other MS4s not owned or operated by the Copermittee (e.g. Caltrans MS4s);

(d) All known locations of major MS4 outfalls as defined by 40 CFR §122.26(b)(5-6) ~~and private outfalls,~~ that discharge runoff collected from areas within the Copermittee's jurisdiction;

Comment [A83]: See discussion in section 3.7.2 of the comment letter.

(e) All segments of receiving waters within the Copermittee's jurisdiction that receive and convey runoff discharged from the Copermittee's MS4 outfalls;

(f) Locations of the MS4 outfalls, identified pursuant to Provision D.2.a.(1), within its jurisdiction; and

(g) Locations of the non-storm water persistent flow MS4 outfall discharge monitoring stations, identified pursuant to Provision D.2.b.(2)(b), within its jurisdiction.

(2) Each Copermittee must use Copermittee personnel and contractors to assist in identifying and reporting illicit discharges and connections during their daily employment activities.

(3) Each Copermittee must promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges to or from the MS4, including the following methods for public reporting:

(a) Operate a public hotline, which can be Copermittee-specific or shared by the Copermittees, and must be capable of receiving reports in both English and Spanish 24 hours per day and seven days per week; and

(b) Designate an e-mail address for receiving electronic reports from the public, which can be Copermittee-specific or shared by the Copermittees, and must be prominently displayed on the Copermittee's webpage and the Regional Clearinghouse required pursuant to Provision F.4.

(4) Each Copermittee must implement practices and procedures (including a notification mechanism) to prevent, respond to, contain, and clean up any spills that may discharge into the MS4 within its jurisdiction from any source. Such practices and procedures may include the coordination with other parties, such as sanitary sewer operators. The Copermittee must coordinate, to the extent possible, with spill response teams to prevent entry of spills into the MS4~~, and prevent contamination of surface water, ground water, and soil.~~ The Copermittee must coordinate spill prevention, containment, and response activities throughout all appropriate internal~~Copermittee~~ departments, programs, and agencies.

Comment [A84]: See discussion in section 3.7.2 of the comment letter.

(5) Each Copermittee must implement practices and procedures to ~~prevent~~ control and limit infiltration of seepage from sanitary sewers owned by a Copermittee agency (including private laterals and failing septic systems) to the MS4.

(6) Each Copermittee shall~~must~~ coordinate, when necessary, with upstream Copermittees and/or entities to prevent illicit discharges from upstream sources into the MS4 within its jurisdiction.

c. FIELD SCREENING

Each Copermittee must conduct field screening (i.e. visual observations, field testing, and/or analytical testing) of MS4 outfalls and other portions of its MS4 within its jurisdiction to detect non-storm water and illicit discharges and connections to the MS4 in accordance with the dry weather MS4 outfall discharge monitoring requirements in Provisions D.2.a.(2) and D.2.b.(1).

d. INVESTIGATE AND ELIMINATE ILLICIT DISCHARGES AND CONNECTIONS

Each Copermittee must include the following measures within its program to investigate and eliminate illicit discharges to the MS4 to comply with provision A.1.b:

(1) Each Copermittee must prioritize and determine when follow-up investigations will be performed in response to visual observations and/or water quality monitoring data collected during an investigation of a detected non-storm water ~~or~~ illicit discharge into or from the MS4. The criteria for prioritizing investigations must consider the following:

(a) Pollutants identified as causing or contributing to the highest water quality

priorities identified in the Water Quality Improvement Plan;

(b) Pollutants identified as causing or contributing, or threatening to cause or contribute to impairments in water bodies on the 303(d) List and/or in environmentally sensitive areas (ESAs), located within its jurisdiction;

(c) Pollutants identified from sources or land uses known to exist within the area, drainage basin, or watershed that discharges to the portion of the MS4 within its jurisdiction included in the investigation;

(d) Pollutants identified as causing or contributing to an exceedance of a NAL in the Water Quality Improvement Plan, where the source has not been identified as natural or otherwise permitted; and

(e) Pollutants identified as an immediate and significant threat to human health or the environment.

(2) Each Copermittee must implement procedures to investigate and inspect portions of its MS4 that, based on reports or notifications, field screening, or other appropriate information, indicate a reasonable potential of receiving, containing, or discharging pollutants due to illicit discharges, or illicit connections~~, or other sources of non-storm water~~. The procedures must include the following:

(a) Each Copermittee must develop criteria to:

(i) Assess the validity of each report or notification received; and

(ii) Prioritize the response to each report or notification received.

(b) Each Copermittee must prioritize and respond to each valid report or notification (e.g., public reports, staff or contractor reports and notifications, etc.) of an incident in a timely manner.

(c) ~~Each~~In accordance with the procedures defined in Provision E.2.d.(1), each~~Each~~ Copermittee must investigate and seek to identify the source(s) of discharges of non-storm water illicit discharges or illicit connections ~~where flows are~~ observed into and from the MS4 during the field screening required pursuant to Provision D.2.b.(1) as follows:

(i) Obvious illicit discharges (i.e., unusual color or odor) must be immediately investigated to identify the source(s) of non-storm water illegal discharges;

(ii) The investigation must include field investigations to identify sources or potential sources for the discharge, unless the source or potential source has already been identified during previous investigations; and

(iii) The investigation may include follow-up field investigations and/or reviewing Copermittee inventories and other land use data to identify potential sources of the discharge.

(d) Each Copermittee must maintain records and a database of the following information:

(i) Location of incident, including hydrologic subarea, portion of MS4 receiving the non-storm water ~~or~~ illicit discharge, and point of discharge or potential discharge from MS4 to receiving water;

(ii) Source of information initiating the investigation (e.g., public reports, staff or contractor reports and notifications, field screening, etc.);

(iii) Date the information used to initiate the investigation was received;

(iv) Date the investigation was initiated;

(v) Dates of follow-up investigations;

(vi) Identified or suspected source of the illicit discharge or connection, if determined;

(vii) Known or suspected related incidents, if any;

(viii) Result of the investigation; and

(ix) If a source cannot be identified and the investigation is not continued, a rationale for why a discharge does not pose a threat to water quality and/or does not require additional investigation.

(e) Each Copermittee must ~~track~~ document, and where feasible quantify, any readily~~and seek to~~ identifiable~~y~~ the source(s) of non-storm water illegal discharges from the MS4 where there is evidence of non-storm water ~~having been discharged~~illegal discharges or connections into or from the MS4 (e.g., pooled water), in accordance with MS4 outfall discharge monitoring requirements in Provisions D.2.a.(2) and D.2.b.

Comment [A85]: See discussion in section 3.7.2 of the comment letter.

(3) Each Copermittee must initiate the implementation of procedures, in a timely manner, to eliminate all detected and identified illicit discharges and connections within its jurisdiction. The procedures must include the following responses:

(a) Each Copermittee must enforce its legal authority, as required under Provision E.1, to eliminate illicit discharges and connections to the MS4.

(b) If the Copermittee identifies the source as a controllable source of non-storm water ~~or~~ illicit discharge or connection, the Copermittee must implement its Enforcement Response Plan pursuant to Provision E.6 and enforce its legal authority to effectively prohibit and with the goal of eliminating~~e~~ illicit discharges and connections to its MS4.

(c) If the Copermittee identifies the source of the discharge as a category of non-storm water discharges in Provision E.2.a, and the discharge is in exceedance of NALs in the Water Quality Improvement Plan, then the Copermittee must determine if: (1) this is an isolated incident or set of circumstances that will be addressed through its Enforcement Response Plan pursuant to Provision E.6, or (2) the category of discharge must be addressed through the effective prohibition of that category of discharge as an illicit discharge pursuant to Provision E.2.a.(6).

(d) If the Copermittee suspects the source of the non-storm water discharge as natural in origin (i.e. non-anthropogenically influenced) and in conveyance into the MS4, then the Copermittee must document and provide the data and evidence necessary to demonstrate to the San Diego Water Board that it is natural in origin and does not require further investigation.

(e) If the Copermittee identifies that the discharge is coming from another Copermittees' jurisdiction, the receiving Copermittee must document and provide the findings to the upstream Copermittee. The obligation to implement the requirements of provision E.2.d.(3) are thenceforth the responsibility of the upstream Copermittee.

(f) If the Copermittee identifies the source as a non-storm water discharge that has been separately authorized by the San Diego Water Board, or that is contributing pollutants to the MS4 and that may require coverage under a WDR from the San Diego Water Board, the Copermittee shall provide all relevant findings to the San Diego Water Board and may back charge the Regional Board for the entire cost of conducting the source investigation.

Comment [A86]: See discussion in section 3.7.2 of the comment letter.

~~(e)~~(g) If the Copermittee is unable to identify and document the source of a recurring non-storm water discharge to or from the MS4, then the Copermittee must ~~address the discharge as an illicit discharge and~~ update its jurisdictional runoff management program to address the common and suspected sources of the non-storm water discharge within its jurisdiction in accordance with the Copermittee's priorities.

(4) Each Copermittee must submit a summary of the non-storm water discharges and illicit discharges and connections investigated and eliminated within its jurisdiction with each Annual Report required under Provision F.3.b of this Order.

3. Development Planning

Comment [A87]: See discussion in section 3.8 of the comment letter.

Each Copermittee must, within their jurisdiction, use their land use and planning

authorities, to the extent that they may lawfully impose requirements, to implement a development planning program in accordance with the strategies identified in the Water Quality Improvement Plan and includes, at a minimum, the following requirements:

STRATEGIES TO ADDRESS THE HIGHEST PRIORITY WATER QUALITY CONDITIONS

Comment [A88]: See discussion in section 3.8.2 of the comment letter.

Each Copermittee must describe in its jurisdictional runoff management program document the strategies and/or activities that will be implemented as part of the development planning program to address development and redevelopment projects that may become sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area as follows:

(1) Provide specific details about how the strategies and/or activities will be implemented (e.g. designate additional or alternative BMPs, focus education, increase frequency of verifications and/or inspections, alternative compliance options);

(2) Each Copermittee must identify areas within its jurisdiction where Priority Development Projects may be allowed or should be encouraged to implement or contribute toward the implementation of alternative compliance retrofitting and/or stream, channel, or habitat rehabilitation projects;

(3) Each Copermittee should collaborate and cooperate with other Copermittees and/or entities in the Watershed Management Area to identify regional alternative compliance projects that Priority Development Projects may be allowed or should be encouraged to implement or participate in implementing; and

(4) The requirements of the programs as outlined in the following sub-provisions may be modified and prioritized as appropriate for consistency with the highest water quality priorities and strategies as identified in the corresponding Water Quality improvement Plan(s).~~The strategies and/or activities must be consistent with the requirements of Provisions E.3.a-c and E.3.e-f and the strategies identified in the Water Quality Improvement Plan.~~

a. BMP REQUIREMENTS FOR ALL DEVELOPMENT PROJECTS

Each Copermittee, as practical and feasible, must prescribe the following BMP requirements during the planning process (i.e. prior to project approval and issuance of local permits) for all development projects (regardless of project type or size), where local permits are issued, including unpaved roads and flood management projects, except emergency / public safety projects implemented for the protection of persons and property:

(1) General Requirements

(a) Onsite BMPs must be located so as to remove pollutants from runoff prior to its discharge to any receiving waters, and as close to the source as possible; and

(b) Structural BMPs must not be constructed within a waters of the U.S.. ~~or waters of the state.~~

(2) Source Control BMP Requirements

The following source control BMPs must be implemented at all development projects where applicable and feasible:

(a) Prevention of illicit discharges into the MS4;

(b) Storm drain system stenciling or signage;

(c) Properly designed outdoor material storage areas;

(d) Properly designed outdoor work areas;

(e) Properly designed trash storage areas; and

(f) Any additional BMPs determined necessary by the Copermittee to minimize pollutant generation at each project.

(3) Low Impact Development (LID) ~~BMP Requirements~~Principles

Comment [A89]: See discussion in section 3.8.2 of the comment letter.

The following LID ~~BMPs~~ Principles must be implemented at all development projects where applicable and feasible:

(a) Maintenance or restoration of natural storage reservoirs and drainage corridors (including topographic depressions, areas of permeable soils, natural swales, and ephemeral and intermittent streams);[22]

(b) Buffer zones for natural water bodies (where buffer zones are technically infeasible, require project applicant to include other buffers such as trees, access restrictions, etc.);

(c) Conservation of natural areas within the project footprint including existing trees, other vegetation, and soils;

[22] Development projects proposing to dredge or fill materials in waters of the U.S. must obtain a CWA Section 401 Water Quality Certification. Projects proposing to dredge or fill waters of the state must obtain waste discharge requirements.

(d) Construction of streets, sidewalks, or parking lot aisles to the minimum widths necessary, provided public safety is not compromised;

(e) Minimization of the impervious footprint of the project;

(f) Minimization of soil compaction to landscaped areas;

(g) Disconnection of impervious surfaces through distributed pervious areas;

(h) Landscaped or other pervious areas designed and constructed to effectively receive and infiltrate, retain and/or treat runoff from impervious areas, prior to discharging to the MS4;

(i) Small collection strategies located at, or as close as possible to, the source (i.e. the point where storm water initially meets the ground) to minimize the transport of runoff and pollutants to the MS4 and receiving waters;

(j) Use of permeable materials for projects with low traffic areas and appropriate soil conditions;

(k) Landscaping with native or drought tolerant species; and

(l) Harvesting and using precipitation.

b. PRIORITY DEVELOPMENT PROJECTS

(1) Definition of Priority Development Project

Priority Development Projects include the following:

(a) All new development projects that fall under the Priority Development Project categories listed under Provision E.3.b.(2) (where a new development project feature, such as a parking lot, falls into a Priority Development Project category, the entire project footprint is subject to Priority Development Project requirements); and

(b) Those redevelopment projects that create, add, or replace at least 5,000 square feet of impervious surfaces on an already developed site, and the redevelopment project is a Priority Development Project category listed under Provision E.3.b.(2) (where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject to Priority Development Project requirements, the performance requirements of Provisions E.3.c.(1) and E.3.c.(2) apply only to the addition or replacement, and not to the entire development; where redevelopment

results in an increase of more than fifty percent of the impervious surfaces of a previously existing development, the performance requirements of Provisions E.3.c.(1) and E.3.c.(2) apply to the entire development).

(c) Projects where redevelopment results in an increase of more than fifty percent of impervious surfaces of a previously existing development, and the existing development *was* subject to previous Priority Project Development Requirements, only the altered portion of development is subject to the new Priority Development Project requirements.

Comment [A90]: See discussion in section 3.8.2 of the comment letter.

(2) Priority Development Project Categories

Comment [A91]: See discussion in section 3.8.2 of the comment letter.

(a) New development projects that create 10,000 square feet or more of impervious surfaces (collectively over the entire project site). This category includes commercial, industrial, residential, mixed-use, and public development projects on public or private land which fall under the planning and building authority of the Copermittee.

(b) New development projects that create 5,000 square feet or more of impervious surfaces (collectively over the entire project site), and are designed for support one or more of the following uses (see Appendix for definitions):

(i) Automotive repair shop
(ii) Restaurant
(iii) Parking lot[23]
(iv) Street, road, highway, freeway
(v) Retail gasoline outlet (RGO)

Comment [A92]: See footnote

~~(b) Automotive repair shops. This category is defined as a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.~~

~~(c) Restaurants. This category is defined as a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC code 5812), where the land area for development is 5,000 square feet or more.~~

~~(d) Hillside development projects. This category includes any development which creates 5,000 square feet or more of impervious surface which is~~

[23] Excluding parking lots that are not subject to runoff, such as but not limited to covered or subterranean parking lots

located in an area with known erosive soil conditions, where the development will grade on any natural slope that is twenty-five percent or greater.

(e)(c) New development projects that create 2,500 square feet or more of impervious surfaces (collectively over the entire project site), and are Environmentally sensitive areas (ESAs). This category includes any development located within, directly adjacent to, or discharging directly to an ESA, which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of imperviousness of a proposed project site to 10 percent or more of its naturally occurring condition. "Directly adjacent to" means situated within 200 feet of the ESA. "Discharging directly to" means outflow from a drainage conveyance system that collects runoff from the subject development or redevelopment site and terminates at or in receiving waters within the ESA and is not commingled with flows from adjacent or other upstream lands.

(f) Parking lots. This category is defined as a land area or facility for the temporary parking or storage of motor vehicles used personally, for business, or for commerce that has 5,000 square feet or more of impervious surface.

(g) Streets, roads, highways, freeways, and driveways. This category is defined as any paved impervious surface that is 5,000 square feet or more used for the transportation of automobiles, trucks, motorcycles, and other vehicles.

(h) Retail gasoline outlets (RGOs). This category includes RGOs that meet the following criteria: (a) 5,000 square feet or more or (b) a projected Average Daily Traffic (ADT) of 100 or more vehicles per day.

(i)(d) Large development projects. This category includes any post-construction pollutant-generating new development projects that result in the permanent disturbance of one acre or more of land.

(3) Priority Development Project Exemptions

Comment [A93]: See discussion in section 3.8.2 of the comment letter.

Each Copermittee has the discretion to exempt the following projects from being defined as Priority Development Projects:

(a) New paved sidewalks, driveways, parking lots, bicycle lanes, or trails that meet the following criteria:

(i) Designed and constructed to direct storm water runoff to adjacent vegetated areas, or other non-erodible permeable areas; OR

(ii) Designed and constructed to be hydraulically disconnected from paved streets or roads; OR

(iii) Designed and constructed with permeable pavements or surfaces in accordance with USEPA Green Streets guidance.[24]

(b) Any impervious surface that is 5,000 square feet or more used for the transportation of automobiles, trucks, motorcycles, and other vehicles that is designed and constructed to the Maximum Extent Practicable in accordance with the USEPA Green Streets Guidance "Managing Wet Weather with Green Infrastructure: Green Streets"[25]. ~~Retrofitting of existing paved alleys, streets or roads that meet the following criteria:~~

~~(i) Must be two lanes or less; AND~~

~~(ii) Must be a retrofitting project implemented as part of an alternative compliance project option under Provision E.3.c.(3)(b)(v) to achieve the performance requirements of Provisions E.3.c.(1) and/or E.3.c.(2) for a Priority Development Project; AND~~

~~(iii) Designed and constructed in accordance with the USEPA Green Streets guidance.[26]~~

(c) Single-family residential projects that meet the following criteria:

(i) Must not be constructed as part of a larger development or proposed subdivision;

(ii) Successfully incorporate and document that they have incorporated, each of the applicable Source Control and LID BMP strategies identified in provisions E.3.a.(2)-(3) to the MEP.

~~(c) New single family residences that meet the following criteria:~~

~~(i) Must not be constructed as part of a larger development or proposed subdivision; AND~~

~~(ii) Designed and constructed to be certified under the U.S. Green Building Council (USGCB) Leadership in Energy and Environmental Design (LEED) for Homes green building certification program, receiving at least four (4) Surface Water Management credits under the Sustainable Sites category[27] OR~~

~~Designed and constructed with structural BMPs that will achieve the~~

[24] USEPA. 2008. http://water.epa.gov/infrastructure/greeninfrastructure/upload/gi_munichandbook_green_streets.pdf and http://water.epa.gov/infrastructure/greeninfrastructure/gi_policy.cfm#municipalhandbook ~~See "Managing Wet Weather with Green Infrastructure – Municipal Handbook: Green Streets" (USEPA, 2008).~~

~~[26] Ibid.~~

~~[27] See LEED for Homes rating system at http://www.usgbc.org~~

~~performance requirements of Provisions E.3.c.(1) and E.3.c.(2) onsite~~

~~(d) Redevelopment of existing single family residences that meet the following criteria:~~

~~(i) Designed and constructed to be certified under the USGCB LEED for Homes green building certification program, receiving at least four (4) Surface Water Management credits under the Sustainable Sites category;[28] OR~~

~~(ii) Designed and constructed with structural BMPs that will achieve the performance requirements of Provisions E.3.c.(1) and E.3.c.(2) onsite.~~

(d) Watershed Protection Projects that meet the following criteria:

(i) Projects undertaken to rehabilitate or prevent environmental, social, and economic damage to the watershed, including receiving waters, by providing one or more of the following:

- Water quality protection by the proper management of stormwater and floodplains
- Flood risk reduction to adjacent land uses, stored matter and stockpiled material
- Elimination of the comingling of stormwater and hazardous materials
- Erosion Mitigation
- Restoration of Rivers and Ecosystems
- Groundwater Recharge
- Creation of new open space and wetlands
- Programs for water conservation, stormwater capture and management
- Retrofit projects constructed to improve water quality or address hydromodification.

(ii) AND are not expected to be pollutant generating or are designed to reduce existing pollutant loads

(iii) AND incorporate and document that they have incorporated, each of the applicable Source Control and LID BMP strategies identified in provisions E.3.a.(2)-(3) to the MEP.

(e) Emergency public safety projects in any of the Priority Development Categories may be excluded if the delay caused due to the requirement for a SSMP compromises public safety, public health and/or environmental protection

[28] ~~See LEED for Homes rating system at http://www.usgbc.org~~

c. Priority Development Project Structural BMP Performance Requirements

In addition to the BMP requirements listed for all development projects under Provision E.3.a, Priority Development Projects must also implement structural BMPs that conform to performance requirements below. If watershed-specific performance requirements are ~~may be~~ developed as part of a Water Quality Improvement Plan; these requirements would take precedence over the general performance requirements below. The watershed-specific requirement must provide at least equal protection as the general performance requirements below.

(1) Storm Water Pollutant Control BMP Requirements

Comment [A94]: See discussion in section 3.8.2 of the comment letter.

Each Copermittee must require each Priority Development Project to implement onsite structural BMPs to control pollutants in storm water that may be discharged from a project as follows:

(a) Each Priority Development Project must be required to implement LID BMPs that are designed to retain (i.e. intercept, store, infiltrate, evaporate, and evapotranspire) onsite the pollutants contained in the design capture volume. The design capture volume is equivalent to:

(i) The volume of storm water runoff produced from a 24-hour 85th percentile storm event;[29] OR

(ii) The volume of storm water runoff produced from a 24-hour 85th percentile storm event, that would be retained onsite ~~if~~ in the pre-project condition. ~~site was fully undeveloped and naturally vegetated~~, ~~as determined using continuous simulation modeling techniques based on site-specific soil conditions and typical native vegetative cover.~~

(b) A Priority Development Project may be allowed to utilize alternative compliance under Provision E.3.c.(3) in lieu of~~to~~ complying with the storm water pollutant control BMP performance requirements of Provision E.3.c.(1)(a).

~~(c) If a Priority Development project is allowed to utilize alternative compliance pursuant to Provisions E.3.c.(1)(b), flow-thru conventional~~

[29] This volume is not a single volume to be applied to all areas covered by this Order. The size of the 85th percentile storm event is different for various parts of the San Diego Region. The Copermittees are encouraged to calculate the 85th percentile storm event for each of its jurisdictions using local rain data pertinent to its particular jurisdiction. In addition, isopluvial maps may be used to extrapolate rainfall data to areas where insufficient data exists in order to determine the volume of the local 85th percentile storm event in such areas. Where the Copermittees will use isopluvial maps to determine the 85th percentile storm event in areas lacking rain data, the Copermittees must describe their method for using isopluvial maps in its BMP Design Manuals. The volume is a single event-based volume that occurs after an extended dry period.

~~treatment control BMPs must be implemented to treat the portion of the design capture volume that is not retained onsite. Additionally, project applicants must mitigate for the portion of the pollutant load in the design capture volume that is not retained onsite through one or more alternative compliance options under Provision E.3.c.(3). Conventional treatment control BMPs must be sized and designed to:~~

~~(i) Remove pollutants from storm water to the MEP;~~

~~(ii) Filter or treat either: 1) the maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour, for each hour of a storm event, or 2) the maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity (for each hour of a storm event), as determined from the local historical rainfall record, multiplied by a factor of two;~~

~~(iii) Be ranked with high or medium pollutant removal efficiency for the Priority Development Project's most significant pollutants of concern. Conventional treatment control BMPs with a low removal efficiency ranking must only be approved by a Copermittee when a feasibility analysis has been conducted which exhibits that implementation of conventional treatment control BMPs with high or medium removal efficiency rankings are infeasible for a Priority Development Project or portion of a Priority Development Project.~~

(2) Hydromodification Management BMP Requirements

Comment [A95]: See discussion in section 3.8.2 of the comment letter.

Each Copermittee must require each Priority Development Project disturbing greater than one acre to implement management measures~~onsite structural BMPs~~ to ensure ~~manage hydromodification~~ that ~~may be caused by~~ storm water runoff discharged from the~~a~~ project won't cause adverse Hydromodification impacts in the downstream receiving waters as follows:

The Copermittees in each Watershed Management Area may establish within the WQIP, watershed specific mitigation requirements that will apply to priority development projects, based on the susceptibility of the receiving waters to Hydromodification impacts caused by the project, and consistent with the priorities and strategies identified in the WQIP. Such requirements may be uniform across a Hydrologic Unit, or identified at an appropriate smaller scale to ensure that receiving waters are properly protected.

(a) Post-project runoff flow rates and durations must not exceed pre-project ~~development (naturally occurring)~~ runoff flow rates and durations by more than 10 percent (for the range of flows that result in increased potential for erosion, or degraded instream habitat conditions downstream of Priority Development Projects~~)~~.

(i) In evaluating the range of flows that results in increased potential for

erosion of natural (non-hardened) channels, the lower boundary must correspond with the critical channel flow that produces the critical shear stress that initiates channel bed movement or that erodes the toe of channel banks.

~~(ii) For artificially hardened channels, analysis to identify the lower boundary must use characteristics of a natural stream segment similar to that found in the watershed. The lower boundary must correspond with the critical channel flow that produces the critical shear stress that initiates channel bed movement or erodes the toe of the channel banks.~~

~~(iii)~~(ii) The Copermittees may use monitoring results collected pursuant to Provision D.1.a.(2) to re-define the range of flows resulting in increased potential for erosion, or degraded instream habitat conditions, as warranted by the data.

(b) Priority Development Projects ~~Post-project runoff flow rates and durations~~ must implement appropriate measures to minimize the ~~compensate~~ for the loss of sediment supply delivered ~~due~~ to the Receiving Waters, consistent with WQIP priorities, ~~development project,~~ should loss of sediment supply be anticipated to occur as a result of the development project.

(c) A Priority Development Project may be allowed to utilize alternative compliance under Provision E.3.c.(3) in lieu of~~to comply with~~ the performance requirements of Provisions E.3.c.(2)(a)-(b).

(d) Exemptions

Each Copermittee has the discretion to exempt a Priority Development Project from the hydromodification management BMP performance requirements of Provisions E.3.c.(2)(a)-(b) where the project:

(i) Discharges storm water runoff into existing underground storm drains discharging directly to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean;

(ii) Discharges of storm water into conveyance channels whose bed and bank are engineered and maintained for the 10-year ultimate development flow rate all the way from the point of discharge from the project to an water body that is sufficiently resistant to hydromodification (water storage reservoirs, lakes, enclosed embayments, pacific ocean, or other water bodies identified in the WQIP);

~~(ii)~~(iii) Is a redevelopment Priority Development Project that meets the alternative compliance requirements of Provision E.3.c.(3)(b)(ii); or

~~(iii)~~(iv) Discharges storm water runoff into other areas identified by the San Diego Water Board as exempt from the requirements of Provisions E.3.c.(2)(a)-(b), through an approved WQIP.

(3) Alternative Compliance to Onsite Structural BMP Performance Requirements

Comment [A96]: See discussion in section 3.8.2 of the comment letter.

(a) Applicability

At the discretion of each Copermittee, Priority Development Projects may be allowed to implement one or more of the alternative compliance project options described in E.3.c.(3)(b) below, in lieu of complying with the onsite structural BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2), under the following conditions:

(i) The Copermittee must determine that implementation of the alternative compliance option will have an equal or greater overall water quality benefit for the Watershed Management Area than fully complying with the performance requirements of Provisions E.3.c.(1) and E.3.c.(2) onsite;

(ii) The alternative compliance options must be designed by a registered professional engineer, geologist, architect, biologist, hydrologist, landscape architect, or other appropriate certified professional;

(iii) The alternative compliance option must be consistent with the strategies developed within the WQIP, for the highest priority water quality conditions.

(iv) The alternative compliance options must be implemented within the same Watershed Management Area as the Priority Development Project, and preferably within the same hydrologic subarea;

(v) The alternative compliance options must have reliable sources of funding for operation and maintenance.

(b) Alternative Compliance Options

(i) *LID Biofiltration Treatment Control BMPs*

LID biofiltration treatment control BMPs may be used as an alternative compliance option if the BMPs are sized and designed to:

[a] Remove pollutants from storm water to the MEP; AND
[b] Have an appropriate surface loading rate to prevent erosion, scour and channeling; AND
[c] Biofilter at least 1.0 times the design capture volume that is not reliably retained onsite

(ii) *LEED Certified Redevelopment Projects*

Priority Development Projects that are designed and constructed to be certified under the USGCB LEED for New Construction and Major Renovations green building certification program, or other locally accepted certification of equivalent effectiveness, may be considered as an acceptable alternative compliance option if the project meets the following criteria:

[a] The project is designed to receive at least: One (1) Site Design credit, and Two (2) Stormwater Design credits under the Sustainable Sites category.[30] , and

[b] The existing and future configuration of the receiving water must not be unnaturally altered or adversely impacted by the project.

(iii) *Watershed-Based Planned Development Projects*

Priority Development Projects greater than 100 acres in total project size (or smaller than 100 acres in size yet part of a larger common plan of development that is over 100 acres) may be considered as an acceptable alternative compliance option if the project meets the following conditions:

[a] The Priority Development Project was planned utilizing watershed and/or subwatershed based water quality, hydrologic, and fluvial geomorphologic planning principles that implement regional LID BMPs in accordance with the performance and location criteria of this Order and acceptable to the San Diego Water Board;

[b] Regional LID BMPs may be used provided that the BMPs capture and retain the volume of runoff produced from the design capture volume defined in Provision E.3.c.(1)(a)(i) and that such controls are located upstream of receiving waters;

[c] Regional LID BMPs must clearly exhibit that they will not result in a net impact from pollutant loadings over and above the impact caused by capture and retention of the design capture volume;

[d] Any portion of the design capture volume that is not retained by the regional LID BMPs must be treated using biofiltration BMPs; and

[e] Where regional LID BMPs are demonstrated to the Copermittee as technically infeasible to retain the entire design capture volume, any volume up to and including the design capture volume not retained by regional LID BMPs, nor treated by biofiltration BMPs, must be treated using conventional treatment control BMPs and the project applicant must implement additional alternative compliance project, in-lieu fee and/or water quality

[30] See LEED for New Construction and Major Renovations rating system at http://www.usgbc.org

credit system options below.

(iv) *Offsite Projects*

Offsite Projects, such as but not limited to Regional BMPs; Retrofitting Projects; Channel, Stream or Habitat Rehabilitation Projects; Water Supply Augmentation Projects; or other Offsite Projects proposed by a project proponent, may be considered as an acceptable alternative compliance option if the offsite project meets the following requirements:

- The project must provide a net result of at least the same level of pollutant removal, and/or protection from potential downstream and upstream erosion in the receiving water as would be required to meet the performance requirements of Provision E.3.c.(1) and E.3.c.(2), as applicable.
- The project must be consistent with the strategies identified in the WQIP.
- The project must be constructed and operational prior to occupancy being granted for the PDP.

(v) *Conventional Treatment Control BMPs*

Onsite Conventional Treatment Control BMPs may be used as an alternative compliance option, only if the following criteria have been met:

[a] It has been demonstrated to the satisfaction of the Copermittee that it is technically infeasible to comply with the onsite requirements of E.3.c.(1), AND

[b] It has been demonstrated to the satisfaction of the Copermittee that it is technically infeasible to implement onsite Biofiltration Treatment Control BMPs, AND

[c] The Conventional Treatment Control BMPs will remove pollutants from storm water to the MEP; AND

[d] The Conventional Treatment Control BMPs will filter or treat either: 1) the maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour, for each hour of a storm event, or 2) the maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity (for each hour of a storm event), as determined from the local historical rainfall record, multiplied by a factor of two; AND

[e] The Conventional Treatment Control BMPs are ranked with high or medium pollutant removal efficiency for the Priority Development Project's most significant pollutants of concern. Conventional treatment control BMPs with a low removal

efficiency ranking must only be approved by a Copermittee when a feasibility analysis has been conducted which exhibits that implementation of conventional treatment control BMPs with high or medium removal efficiency rankings are infeasible for a Priority Development Project or portion of a Priority Development Project.

~~(a) Applicability~~

~~At the discretion of each Copermittee, Priority Development Projects may be allowed to utilize an alternative option to comply with the onsite structural BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2) under the following conditions:~~

~~(i) The Copermittee must determine that implementation of the alternative compliance option will have a greater overall water quality benefit for the Watershed Management Area than fully complying with the performance requirements of Provisions E.3.c.(1) and E.3.c.(2) onsite;~~

~~(ii) The alternative compliance options must be designed by a registered professional engineer, geologist, architector landscape architect;~~

~~(iii) The alternative compliance options must be implemented within the same hydrologichydrologic unit as the Priority Development Project, and preferably within the same hydrologic subarea;~~

~~(iv) Receiving waters must not be utilized to convey storm water runoff to the alternative compliance options;~~

~~(v) The pollutants in storm water runoff from the Priority Development Project must be treated to the MEP by the alternative compliance options prior to being discharged to receiving waters;~~

~~(vi) Unless otherwise allowed by Provision E.3.c.(3)(b), the alternative compliance options must have a net result of at least the same level of pollutant removal as would have been achieved if the Priority Development Project had fully complied with the storm water pollutant control BMP performance requirements of Provision E.3.c.(1) onsite;~~

~~(vii) Unless otherwise allowed by Provision E.3.c.(3)(b), the alternative compliance options must have a net result of at least the same level of protection from potential downstream and upstream erosion in the receiving water as would have been achieved if the Priority Development Project had fully complied with the hydromodification management BMP performance requirements of Provision E.3.c.(2) onsite; and~~

~~(viii) The alternative compliance options utilized by the Priority Development Project must have reliable sources of funding for operation and maintenance.~~

~~(b) Alternative Compliance Project Options~~

~~The Copermittee may allow implementation of one or more of the following project options as part of an alternative approach to complying with the onsite structural BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2):~~

~~(i) *Onsite LID Biofiltration Treatment Control BMPs*~~

~~The Copermittee may allow Priority Development Projects to utilize onsite LID biofiltration treatment control BMPs to comply with the storm water pollutant control BMP performance requirements of Provision E.3.c.(1). Onsite LID biofiltration treatment control BMPs must be sized and designed to:~~

~~[a] Remove pollutants from storm water to the MEP; AND~~
~~[b] Have an appropriate surface loading rate to prevent erosion, scour and channeling within the BMP; AND~~
~~[c] Biofilter at least 1.5 times the design capture volume that is not reliably retained onsite; OR~~
~~[d] Biofilter up to the design capture volume that is not reliably retained onsite, AND 1) treat the remaining portion of the design capture volume not retained onsite with conventional treatment control BMPs in accordance with Provision E.3.c.(1)(c), and 2) if necessary, mitigate for the portion of the pollutant load in the design capture volume not retained onsite through one or more alternative compliance project, in-lieu fee and/or water quality credit system options below.~~

~~(ii) *LEED Certified Redevelopment Projects*~~

~~The Copermittee may allow redevelopment Priority Development Projects to comply with designed and constructed to be certified under the USGCB LEED for New Construction and Major Renovations green building certification program. The Priority Development Project must receive at least one (1) Site Design credit and two (2) Stormwater Design credits under the Sustainable Sites category.[31] In addition, the existing and future configuration of the receiving water must not be unnaturally altered or adversely impacted by storm water flow rates and durations discharged from the site.~~

~~(iii) *Watershed Based Planned Development Projects*~~

~~The Copermittee may allow Priority Development Projects greater than 100 acres in total project size (or smaller than 100 acres in size~~

~~[31] See LEED for New Construction and Major Renovations rating system at http://www.usgbc.org~~

~~yet part of a larger common plan of development that is over 100 acres) to comply with the onsite structural BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2). The Priority Development Project must comply with the following conditions:~~

~~[a] The Priority Development Project was planned utilizing watershed and/or subwatershed based water quality, hydrologic, and fluvial geomorphologic planning principles that implement regional LID BMPs in accordance with the performance and location criteria of this Order and acceptable to the San Diego Water Board;~~

~~[b] Regional LID BMPs may be used provided that the BMPs capture and retain the volume of runoff produced from the design capture volume defined in Provision E.3.c.(1)(a)(i) and that such controls are located upstream of receiving waters;~~

~~[c] Regional LID BMPs must clearly exhibit that they will not result in a net impact from pollutant loadings over and above the impact caused by capture and retention of the design capture volume;~~

~~[d] Any portion of the design capture volume that is not retained by the regional LID BMPs must be treated using biofiltration BMPs; and~~

~~[e] Where regional LID BMPs are demonstrated to the Copermittee as technically infeasible to retain the entire design capture volume, any volume up to and including the design capture volume not retained by regional LID BMPs, nor treated by biofiltration BMPs, must be treated using conventional treatment control BMPs and the project applicant must implement additional alternative compliance project, in-lieu fee and/or water quality credit system options below.~~

~~(iv) *Offsite Regional BMPs*~~

~~[a] The Copermittee may allow Priority Development Projects to utilize offsite regional BMPs to comply with the storm water pollutant control BMP performance requirements of Provision E.3.c.(1) if the offsite regional BMPs have the capacity to receive and retain at least 1.1 times the design capture volume that is not reliably retained onsite.~~

~~[b] The Copermittee may allow Priority Development Projects to utilize offsite regional BMPs to comply with the hydromodification management BMP performance requirements of Provision E.3.c.(2) if the offsite regional BMPs have the capacity to manage the storm water flows rates and durations from the site such that the receiving waters are protected from the potential for increased erosion that would be caused if the unmanaged portion of the runoff was discharged from the site.~~

~~(v) *Offsite Retrofitting Projects*~~

~~The Copermittee may allow Priority Development Projects to utilize offsite retrofitting projects to comply with the storm water pollutant control and hydromodification management BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2) if the retrofitting projects have been identified within the strategies included in the Water Quality Improvement Plan, or identified as potential retrofitting projects by the Copermittee pursuant to Provision E.5.~~

~~(vi) *Offsite Channel, Stream, or Habitat Rehabilitation Projects*~~

~~The Copermittee may allow Priority Development Projects to utilize offsite channel, stream, or habitat rehabilitation projects to comply with the hydromodification management BMP performance requirements of Provision E.3.c.(2) if the rehabilitation projects have been identified within the strategies included in the Water Quality Improvement Plan, or identified as potential channel rehabilitation projects by the Copermittee pursuant to Provision E.5. The channel, stream, or habitat rehabilitation project cannot be utilized for pollutant treatmentexcept where artificial wetlands areand located upstream of receiving waters.~~

~~(vii) *Offsite Regional Water Supply Augmentation Projects*~~

~~The Copermittee may allow Priority Development Projects to utilize offsite regional water supply augmentation projects (i.e. groundwater recharge, recycled water, storm water harvesting) to comply with the storm water pollutant control and hydromodification management BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2) if the projects have been identified within the strategies included in the Water Quality Improvement Plan.~~

~~(viii) *Project Applicant Proposed Alternative Compliance Projects*~~

~~The Copermittee may allow one or more Priority Development Project applicant(s) to propose and implement alternative compliance projects to comply with the storm water pollutant control and hydromodification management BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2) if the alternative compliance projects are consistent with, and will address the highest water quality priorities of the Water Quality Improvement Plan, and comply with the requirements of Provision E.3.c.(3)(a).~~

(c) Alternative Compliance In-Lieu Fee Option

The Copermittee may develop and implement an alternative compliance in-lieu fee option, individually or with other Copermittees and/or entities, as a means for designing, developing, constructing, operating and/or maintaining offsite alternative compliance projects under Provision E.3.c.(3)(b). Priority Development Projects allowed to utilize the

alternative compliance in-lieu fee option must comply with the following conditions:

(i) The in-lieu fee must be collected and held in accordance with the Mitigation Fee Act and all other applicable development fee laws. ~~transferred to the Copermittee (for public projects) or an escrow account (for private projects) prior to the date construction of the Priority Development Project is initiated~~.

Comment [A97]: Please see Legal Comments.

(ii) If the in-lieu fee is applied to the development, design, ~~and~~ construction, operation and maintenance of offsite alternative compliance projects, the following conditions must be met:

[a] The offsite alternative compliance projects must meet ~~allow~~ the criteria identified within E.3.c.(3)(b)-, for each Priority Development Project relying on~~to comply with~~ the alternative compliance project;~~onsite BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2);~~

[b] The offsite alternative compliance projects must be constructed as soon as possible, but no later than 4 years after the certificate of occupancy is granted for the first Priority Development Project that contributed funds toward the construction of the offsite alternative compliance projects, unless a longer period of time is provided for in an approved WQIP~~authorized by the San Diego Water Board Executive Officer~~;

~~[c] The in-lieu fee for the Priority Development Project must include mitigation of the pollutant loads and increased storm water flow rates and durations that are allowed to discharge from the site before the offsite alternative compliance projects are constructed; and~~

[d] The in-lieu fee must also include the cost to operate and maintain the offsite alternative compliance projects for the anticipated life of the constructed priority development project.

(iii) If the in-lieu fee applies only~~is applied~~ to the operation and maintenance of offsite alternative compliance projects that have already been constructed, the offsite alternative compliance projects must meet~~allow~~ the requirements of E.3.c.(3)(a)(iv) and (v) as applicable, for each Priority Development Project relying on~~to comply with~~ the alternative compliance project..~~onsite structural BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2).~~

(d) Alternative Compliance Water Quality Credit System Option

The Copermittee may develop and implement an alternative compliance water quality credit system option, individually or with other Copermittees

and/or entities, provided that such a credit system clearly exhibits that it will not allow discharges from Priority Development Projects to cause or contribute to a net impact over and above the impact caused by projects meeting the onsite structural BMP performance requirements of Provisions E.3.c.(1) and E.3.c.(2). Any credit system that a Copermittee chooses to implement must be submitted to the San Diego Water Board Executive Officer for review and acceptance as part of the Water Quality Improvement Plan.

(4) Long-Term Structural BMP Maintenance

Each Copermittee must require the project applicant to submit proof of the mechanism under which ongoing long-term maintenance of all structural BMPs will be conducted.

(5) Infiltration and Groundwater Protection

(a) Structural BMPs designed to primarily function as large, centralized infiltration devices (such as large infiltration trenches and infiltration basins) must not cause or contribute to an exceedance of an applicable groundwater quality objective. At a minimum, such infiltration BMPs must be in conformance with the design criteria listed below, unless the development project applicant demonstrates to the Copermittee that one or more of the specific design criteria listed below are not necessary to protect groundwater quality. The design criteria listed below do not apply to small infiltration systems dispersed throughout a development project.

(i) Runoff must undergo pretreatment such as sedimentation or filtration prior to infiltration;

(ii) Pollution prevention and source control BMPs must be implemented at a level appropriate to protect groundwater quality at sites where infiltration BMPs are to be used;

(iii) Infiltration BMPs must be adequately maintained to remove pollutants in storm water to the MEP;

(iv) The vertical distance from the base of any infiltration BMP to the seasonal high groundwater mark must be at least 10 feet. Where groundwater basins do not support beneficial uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained;

(v) The soil through which infiltration is to occur must have physical and chemical characteristics (e.g., appropriate cation exchange capacity, organic content, clay content, and infiltration rate) which are adequate for proper infiltration durations and treatment of runoff for the protection of groundwater beneficial uses;

(vi) Infiltration BMPs must not be used for areas of industrial or light

industrial activity, and other high threat to water quality land uses and activities as designated by each Copermittee, unless first treated or filtered to remove pollutants prior to infiltration; and

(vii) Infiltration BMPs must be located a minimum of 100 feet horizontally from any water supply wells.

(b) The Copermittee may develop, individually or with other Copermittees, alternative mandatory design criteria to that listed above for infiltration BMPs which are designed to primarily function as centralized infiltration devices. Before implementing the alternative design criteria in the development planning process the Copermitee(s) must:

(i) Notify the San Diego Water Board of the intent to implement the alternative design criteria submitted; and

(ii) Comply with any conditions set by the San Diego Water Board.

d. BMP DESIGN MANUAL UPDATE

Each Copermittee must update and implement its BMP Design Manual[32] pursuant to Provision F.2.b. ~~Until the Copermittee has updated its BMP Design Manual with the requirements of Provisions E.3.a-c, the Copermittee must continue implementing its current BMP Design Manual. Unless directed otherwise by the San Diego Water Board, the Copermittee must implement the BMP Design Manual within 180 days of completing the update.~~ The update of the BMP Design Manual must include the following:

Comment [A98]: This info was incorporated into F.2.b.

(1) Updated procedures to determine the nature and extent of storm water requirements applicable to a potential development or redevelopment projects. These procedures must inform project applicants of the storm water management requirements applicable to their project including, but not limited to, general requirements for all development projects, structural BMP design procedures and requirements, hydromodification management requirements, requirements specific to phased projects, and procedures specific to private developments and public improvement projects;

(2) Updated procedures to identify ~~pollutants and conditions of concern for selecting~~ the most appropriate structural BMPs that consider, at a minimum, the following:

(a) The requirements of E.3.c.(1) and (2)

~~(a)~~(b) Receiving water quality (including pollutants for which receiving waters are listed as impaired under the CWA section 303(d) List);

[32] The BMP Design Manual was formerly known as the Standard Storm Water Mitigation Plan under Order Nos. R9-2007-0001, R9-2009-0002, and R9-2010-0016.

~~(b)~~(c) Pollutants, stressors, and/or receiving water conditions that cause or contribute to the highest priority water quality conditions identified in the Water Quality Improvement Plan;

~~(c)~~(d) Land use type of the project and pollutants associated with that land use type; and

~~(d)~~(e) Pollutants expected to be present onsite.

(3) Updated procedures for designing structural BMPs, including any updated performance requirements to be consistent with the requirements of Provision E.3.c for all structural BMPs listed in the BMP Design Manual;

(4) Long-term maintenance criteria for each structural BMP listed in the BMP Design Manual; and

(5) Alternative compliance criteria, in accordance with the requirements under Provision E.3.c.(3), if the Copermittee elects to allow Priority Development Projects within its jurisdiction to utilize alternative compliance.

e. PRIORITY DEVELOPMENT PROJECT BMP IMPLEMENTATION AND OVERSIGHT

Each Copermittee must implement a program that requires and confirms structural BMPs on all Priority Development Projects are designed, constructed, and maintained to remove pollutants in storm water to the MEP.

(1) Structural BMP Approval and Verification Process

(a) Each Copermittee must require and confirm that for all Priority Development Project applications that have not received prior lawful approval by the Copermittee by 18 months after the commencement of coverage under this Order, the requirements of Provision E.3 are implemented. For project applications that have received prior lawful approval by 18 months after the commencement of coverage under this Order, the Copermittee may allow previous land development requirements to apply.

(b) Each Copermittee must identify the roles and responsibilities of their various municipal departments in implementing the structural BMP requirements, including each stage of a project from application review and approval through BMP maintenance and inspections.

(c) Each Copermittee must require and confirm that appropriate easements and ownerships are properly recorded in public records and the information is conveyed to all appropriate parties when there is a change in project or site ownership.

(d) Each Copermittee must require and confirm that prior to occupancy and/or intended use of any portion of the Priority Development Project, each structural BMP is inspected to verify that it has been constructed and is operating in compliance with all of its specifications, plans, permits, ordinances, and the requirements of this Order.

(2) Priority Development Project Inventory and Prioritization

(a) Each Copermittee must develop, maintain, and update ~~at~~regularly~~at least annually~~, a watershed-based database to track and inventory all constructed Priority Development Projects and associated structural BMPs within its jurisdiction. Inventories must be accurate and complete beginning from January 2002 for the San Diego County Copermittees, February 2003 for the Orange County Copermittees, and July 2005 for the Riverside County Copermittees~~.~~, where data is available.~~.~~ The use of an automated database system, such as GIS, is highly recommended. The database must include, at a minimum, the following information:

(i) Priority Development Project location (address and hydrologic subarea);

(ii) Descriptions of structural BMP type(s);

(iii) Date(s) of construction;

(iv) Party responsible for structural BMP maintenance;

(v) Dates and findings of structural BMP maintenance verifications; and

(vi) Corrective actions and/or resolutions when applicable.

(b) Each Copermittee must prioritize the Priority Development Projects with structural BMPs within its jurisdiction. The designation of Priority Development Projects as high priority must consider the following:

(i) The highest water quality priorities identified in the Water Quality Improvement Plan;

(ii) Receiving water quality;

(iii) Number and sizes of structural BMPs;

(iv) Recommended maintenance frequency of structural BMPs;

(v) Likelihood of operation and maintenance issues of structural BMPs;

(vi) Land use and expected pollutants generated; and

(vii) Compliance record.

(3) Structural BMP Maintenance Verifications and Inspections

Each Copermittee is required to verify that structural BMPs on each Priority

Development Project are adequately maintained, and continue to operate effectively to remove pollutants in storm water to the MEP through inspections, self-certifications, surveys, or other equally effective approaches.

(a) All (100 percent) of the structural BMPs at Priority Development Projects that are designated as high priority must be inspected directly by the Copermittee annually prior to each rainy season;

(b) For verifications performed through a means other than direct Copermittee inspection, adequate documentation must be required by the Copermittee to provide assurance that the required maintenance of structural BMPs at each Priority Development Project has been completed; and

(c) Appropriate follow-up measures (including re-inspections, enforcement, etc.) must be conducted to ensure that structural BMPs at each Priority Development Project continue to reduce pollutants in storm water to the MEP as originally designed.

f. DEVELOPMENT PROJECT ENFORCEMENT

Each Copermittee must enforce its legal authority established pursuant to Provision E.1 for all development projects, as necessary, to achieve compliance with the requirements of this Order, in accordance with its Enforcement Response Plan pursuant to Provision E.6.

g. ~~STRATEGIES TO ADDRESS THE HIGHEST PRIORITY WATER QUALITY CONDITIONS~~

Comment [A99]: This section was moved to the beginning of provision E.3.

~~Each Copermittee must describe in its jurisdictional runoff management program document the strategies and/or activities that will be implemented as part of the development planning program to address development and redevelopment projects that may become sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area as follows:~~

~~(5) Provide specific details about how the strategies and/or activities will be implemented (e.g. designate additional BMPs, focus education, increase frequency of verifications and/or inspections, alternative compliance options);~~

~~(6) Each Copermittee must identify areas within its jurisdiction where Priority Development Projects may be allowed or should be encouraged to implement or contribute toward the implementation of alternative compliance retrofitting and/or stream, channel, or habitat rehabilitation projects;~~

~~(7) Each Copermittee should collaborate and cooperate with other Copermittees and/or entities in the Watershed Management Area to identify regional alternative compliance projects that Priority Development Projects may be allowed or should be encouraged to implement or participate in implementing; and~~

~~(8) The strategies and/or activities must be consistent with the requirements of Provisions E.3.a-c and E.3.e-f and the strategies identified in the Water Quality Improvement Plan.~~

4. Construction Management

Each Copermittee must implement a construction management program in accordance with the strategies identified in the Water Quality Improvement Plan and includes, at a minimum, the following requirements:

STRATEGIES TO ADDRESS THE HIGHEST PRIORITY WATER QUALITY CONDITIONS

Comment [A100]: This section was moved from provision E.4.f, Changes are shown in Redline

Each Copermittee must describe in its jurisdictional runoff management program document the strategies and/or activities that will be implemented as part of the construction management program to address construction sites that the Copermittee has identified as potential sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area as follows:

(1) Provide specific details about how the strategies and/or activities will be implemented (e.g. designate additional BMPs, focus education, and/or increase/decrease frequency of inspections for specific types of sites and/or activities); and

(2) The strategies and/or activities must be consistent with the requirements of Provisions E.4.c-e and the strategies identified in the Water Quality Improvement Plan.

(3) The requirements of the programs as outlined in the following sub-provisions may be modified and prioritized as appropriate for consistency with the highest water quality priorities and strategies as identified in the corresponding Water Quality improvement Plan(s).

a. PROJECT APPROVAL PROCESS

Prior to issuance of any local permit(s) that allows the commencement of construction projects that involve ground disturbance or soil disturbing activities that has the reasonable potential to discharge a pollutant load to and from the MS4, as defined in each Copermittees' JRMP~~can potentially generate pollutants in storm water runoff~~, each Copermittee must:

(1) Require a ~~site-specific~~ Pollution Control Plan~~pollution control~~, construction BMP, and/or erosion and sediment control plan, to be submitted by the project applicant to the Copermittee;

(2) Confirm the Pollution Control Plan~~pollution control~~, construction BMP, and/or erosion and sediment control plan, complies with the local grading ordinance, other applicable local ordinances, and the requirements of this Order;

(3) Confirm the Pollution Control Plan~~pollution control~~, construction BMP, and/or erosion and sediment control plan, includes seasonally appropriate and effective BMPs and management measures described in Provision E.4.c, as applicable to the project; and

(4) Verify that the project applicant has obtained coverage under ~~applicable permits, including, but not limited to~~ the Construction General Permit~~, Clean Water Act Section 401 Water Quality Certification and Section 404 Permit, and California Department of Fish and Game Streambed Alteration Agreement~~.

b. CONSTRUCTION SITE INVENTORY AND TRACKING

(1) Each Copermittee must maintain, and update ~~at least monthly~~regularly, a watershed-based inventory of all construction projects issued a local permit that allows ground disturbance or soil disturbing activities that can potentially generate pollutants in storm water runoff. The use of an automated database system, such as GIS, is highly recommended. The inventory must include:

(a) Relevant contact information for each site (e.g., name, address, phone, and email for the owner and contractor);

(b) The basic site information including location (address and hydrologic subarea), Waste Discharge Identification (WDID) number (if applicable), size of the site, and approximate area of disturbance;

(c) Whether or not the site is considered a high threat to water quality, as defined in Provision E.4.b.(2) below;

(d) The project start and ~~anticipated~~ completion dates;

~~(e) Current construction phase;~~

~~(f)~~(e) The required inspection frequency, as defined in the Copermittee's jurisdictional runoff management program document;

~~(g)~~(f) The date the Copermittee accepted and/or approved the ~~site-specific~~ pollution control plan, construction BMP, and/or erosion and sediment control plan; and

~~(h)~~(g) Whether or not there are ongoing enforcement actions administered to the site.

Comment [A101]: Some of the info can only be updated based on an inspection, which may or may not be monthly year round for all sites.

Comment [A102]: The anticipated completion date is often unknown and can fluctuate based on unpredictable and unforeseen circumstances. Keeping track of accurate dates in an inventory would be difficult and would not add significant value to the database. Construction Inspectors keep a close eye on the progress of projects and would not need to rely on inventory data to achieve effective stormwater management and oversight. Once a project is completed, the date can be entered into the database,.

(2) Each Copermittee must identify all construction sites within its jurisdiction that represent a high threat to downstream surface water quality. The designation of construction sites as high threat to water quality must consider the following:

(a) Sites located within a hydrologic subarea where sediment is known or suspected to contribute to the highest priority water quality conditions identified in the Water Quality Improvement Plan;

(b) Sites located within the same hydrologic subarea and tributary to a water body segment listed as impaired for sediment on the CWA section 303(d) List;

(c) Sites located within, directly adjacent to, or discharging directly to a receiving water within an ESA; and

(d) Other sites determined by the Copermittees or the San Diego Water Board as a high threat to water quality.

c. CONSTRUCTION SITE BMP IMPLEMENTATION

Comment [A103]: See discussion in section 3.9.1 of the comment letter.

Each Copermittee must implement, or require the implementation of effective BMPs (for Copermittee construction sites and private construction sites, respectively) to reduce discharges of pollutants in ~~storm water~~ runoff from construction sites to the MEP, and effectively prohibit~~prevent~~ non-storm water discharges from construction sites into the MS4. These BMPs must be site specific, seasonally appropriate, and construction phase appropriate. BMPs must be implemented at each construction site year round. Dry season BMP implementation must plan for and address unseasonal rain events that may occur during the dry season (May 1 through September 30). Copermittees must implement, or require the implementation of, BMPs in the following categories:

(1) Project Planning;

(2) Good Site Management “Housekeeping”, including waste management;

(3) Non-storm Water Management;

(4) Erosion Control;

(5) Sediment Control;

(6) Run-on and Run-off Control; and

(7) Active/Passive Sediment Treatment Systems, where applicable.

d. CONSTRUCTION SITE INSPECTIONS

Each Copermittee must conduct construction site inspections to require and confirm compliance with its local permits and applicable local ordinances, and the requirements of this Order. Priority for site inspections must consider threat to water quality pursuant to Provision E.4.b as well as the nature of the construction activity, topography, and the characteristics of soils and receiving water quality.

(1) Inspection Frequency

(a) Each Copermittee must conduct inspections at all inventoried sites, including high threat to water quality sites, at an appropriate frequency for each phase of construction to confirm~~ensure~~ the site reduces the discharge of pollutants in runoff~~storm water~~ from construction sites to the MEP, and effectively prevents non-storm water discharges from entering the MS4.

(b) Each Copermittee must establish appropriate inspection frequencies for high threat to water quality sites, and all other sites, for each phase of construction. Inspection frequencies appropriate for addressing the highest water quality priorities identified in the Water Quality Improvement Plan, and for complying with the requirements of this Order must be identified in each Copermittee's jurisdictional runoff management program document.

(c) Based upon inspection findings, each Copermittee must implement all follow-up actions (i.e., re-inspection, enforcement) necessary to require and confirm site compliance with its local permits and applicable local ordinances, and the requirements of this Order.

(2) Inspection Content

Inspections of construction sites by the Copermittee must include, at a minimum:

(a) Verification of coverage under the Construction General Permit (Notice of Intent (NOI) and/or WDID number) during initial inspections, when applicable;

(b) Assessment of compliance with its local permits and applicable local ordinances related to pollution prevention, including the implementation and maintenance of applicable BMPs;

(c) Assessment of BMP adequacy and effectiveness;

(d) Visual observations of actual non-storm water discharges;

(e) Visual observations of actual or potential discharge of sediment and/or construction related materials from the site;

(f) Visual observations of actual or potential illicit connections; and

(g) If any violations are found and BMP corrections are needed, inspectors must take and document appropriate actions in accordance with the Enforcement Response Plan pursuant to Provision E.6.

(3) Inspection Tracking and Records

Each Copermittee must track all inspections and re-inspections at all inventoried construction sites. The Copermittee must retain all inspection records in an electronic database or tabular format, which must be made available to the San Diego Water Board upon request. Inspection records must include, at a minimum:

(a) Site name, location (address and hydrologic subarea), and WDID number (if applicable);

(b) Inspection date;

(c) Weather condition during~~Approximate amount of rainfall since last~~ inspection;

(d) Description of problems observed with BMPs and indication of need for BMP addition/repair/replacement and any scheduled re-inspection, and date of re-inspection;

(e) Descriptions of any other specific inspection comments which must, at a minimum, include rationales for longer compliance time;

(f) Description of enforcement actions issued in accordance with the Enforcement Response Plan pursuant to Provision E.6; and

(g) Resolution of problems noted and date problems fixed.

e. CONSTRUCTION SITE ENFORCEMENT

Each Copermittee must enforce its legal authority established pursuant to Provision E.1 for all its inventoried construction sites, as necessary, to achieve compliance with the requirements of this Order, in accordance with its Enforcement Response Plan pursuant to Provision E.6.

5. Existing Development Management

Comment [A104]: See discussion in section 3.10 of the comment letter.

Each Copermittee must implement an existing development management program in accordance with the strategies identified in the Water Quality Improvement Plan. and includes, at a minimum, the following requirements:

STRATEGIES TO ADDRESS THE HIGHEST PRIORITY WATER QUALITY CONDITIONS

Comment [A105]: Moved from sub-provision e. Changes shown in redline

Each Copermittee must implement the water quality improvement strategies, where necessary, to address areas of existing development within its jurisdiction that are identified as sources of pollutants and/or stressors contributing to the highest priority water quality conditions in the Watershed Management Area. For the existing development management program, the following strategies must be implemented:

(1) Specific Existing Development Management Program Strategies

Each Copermittee must describe in its jurisdictional runoff management program document the strategies and/or activities that will be implemented within its jurisdiction to address areas of existing development that the Copermittee has identified as sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area as follows:

(a) Provide specific details about how the strategies and/or activities will be implemented (e.g. designate additional BMPs, focus education, and/or increase/decrease frequency of inspections for specific types of facilities, areas and/or activities);

(b) The facilities and/or areas within the Copermittee's jurisdiction where the strategies and/or activities will be implemented; and

(2) The requirements of the programs as outlined in the following sub-provisions may be modified and prioritized as appropriate for consistency with the highest water quality priorities and strategies as identified in the corresponding Water Quality improvement Plan(s).~~The strategies and/or activities must be consistent with the requirements of Provisions E.5.b-d and the strategies identified in the Water Quality Improvement Plan.~~

a. EXISTING DEVELOPMENT INVENTORY AND TRACKING

Each Copermittee must maintain, and update at least annually, a watershed-based inventory of the existing development within its jurisdiction that ~~may~~has the reasonable potential to~~may~~ discharge a high priority pollutant load to and from the MS4, as defined in the Copermittee's JRMP. The use of an automated database system, such as GIS, is highly recommended. The inventory must, at a minimum, evaluate and include the following if identified as a source of a high priority pollutant~~include~~:

(1) Name, location (hydrological subarea and address, if applicable) of the following types of existing development with its jurisdiction:

(a) Commercial facilities or areas;

(b) Industrial facilities;

(c) Copermittee owned Municipal facilities, including:

(i) MS4 and related structures,[33]

(ii) Roads, streets, and highways,

(iii) Parking facilities,

(iv) Municipal airfields,

(v) Parks and recreation facilities,

(vi) Flood management projects and flood control devices and structures,

(vii) Operating or closed municipal landfills,

(viii) Publicly owned treatment works (including water and wastewater treatment plants) and sanitary sewer collection systems,

(ix) Corporate yards, including maintenance and storage yards for materials, waste, equipment, and vehicles,

(x) Hazardous waste collection facilities,

(xi) Other treatment, storage or disposal facilities for municipal waste, and

(xii) Other Copermittee owned municipal facilities that the Copermittee determines may contribute a significant high priority pollutant load to the MS4; and

(d) Residential areas, which may be designated by one or more of the following:

(i) Residential management area,

(ii) Drainage basin or area,

(iii) Land use (e.g., single family, multi-family, rural),

(iv) Neighborhood,

[33] The inventory may refer to the MS4 map required to be maintained pursuant to Provision E.2.b.(1).

(v) Common Interest Area,

(vi) Home Owner Association,

(vii) Mobile home park, and/or

(viii) Other designations accepted by the San Diego Water Board Executive Officer.

(2) A description of the facility or area, including the following information:

(a) Classification as commercial, industrial, municipal, or residential;

(b) Status of facility or area as active or inactive;

(c) Identification if a business is a mobile business;

(d) SIC Code or NAICS Code, if applicable;

(e) Industrial General Permit NOI and/or WDID number, if applicable;

(f) Identification if a residential area is or includes a Common Interest Area / Home Owner Association, or mobile home park;

(g) Identification of pollutants generated and potentially generated by the facility or area;

(h) Whether the facility or area is adjacent to an ESA;

(i) Whether the facility or area is tributary to and within the same hydrologic subarea as a water body segment listed as impaired on the CWA section 303(d) List and generates pollutants for which the water body segment is impaired; and

(j) Whether the facility or area contributes or potentially contributes to the highest priority water quality conditions identified in the Water Quality Improvement Plan.

(3) An annually updated map showing the location of inventoried existing development, watershed boundaries, and water bodies.

b. EXISTING DEVELOPMENT BMP IMPLEMENTATION AND MAINTENANCE

Each Copermittee must designate a minimum set of BMPs required for all inventoried existing development, including special event venues. The designated minimum BMPs must be specific to facility or area types and pollutant generating activities, as appropriate.

(1) Commercial, Industrial, and Municipal Facilities and Areas

(a) Pollution Prevention

Each Copermittee must require the use of appropriate pollution prevention methods by the commercial, industrial, and municipal facilities and areas in its inventoried existing development, as determined necessary by the Copermittee to address the priorities and strategies addressed in the WQIP.

(b) BMP Implementation

Comment [A106]: See discussion in section 3.10.2 of the comment letter.

Each Copermittee must ~~implement, or~~ require the implementation of, designated BMPs at commercial facilities and areas, industrial facilities, and implement designated BMPs at municipal facilities in its inventoried existing development, as determined necessary by the Copermittee to address the priorities and strategies addressed in the WQIP.

(c) BMP Operation and Maintenance

(i) Each Copermittee must properly operate and maintain, or require the proper operation and maintenance of designated BMPs at commercial facilities and areas, industrial facilities, and municipal facilities in its inventoried existing development.

(ii) Each Copermittee must implement a schedule of operation and maintenance activities for its MS4 and related structures (including but not limited to catch basins, storm drain inlets, detention basins, etc.), and verify proper operation of all its municipal structural treatment controls designed to reduce pollutants (including floatables) in storm water discharges to or from its MS4s and related drainage structures. Operation and maintenance activities may include, but is not limited to, the following:

[a] Inspections of the MS4 and related structures;
[b] Cleaning of the MS4 and related structures; and
[c] Proper disposal of materials removed from cleaning of the MS4 and related structures.

(iii) Each Copermittee must implement a schedule of operation and maintenance for public streets, unpaved roads, paved roads, and paved highways and freeways within its jurisdiction to minimize pollutants that can be discharged in storm water.

(iv) Each Copermittee must implement the following controls to prevent infiltration of sewage into the MS4 from leaking sanitary sewers:

[a]~~.~~ Copermittees that operate both a municipal sanitary sewer system and a MS4 must implement controls and measures to

prevent and eliminate seeping sewage from infiltrating the MS4.

[b]- Copermittees that do not operate both a municipal sanitary sewer system and a MS4 must coordinate with sewering agencies to keep themselves informed of relevant and appropriate maintenance activities and sanitary sewage projects in their jurisdiction that may cause or contribute to seepage of sewage into the MS4.

(d) Pesticides, Herbicides, and Fertilizers BMPs

Comment [A107]: See discussion in section 3.10.2 of the comment letter.

Each Copermittee must ~~implement BMPs, or~~ require the implementation of BMPs, to reduce pollutants in runoff~~storm water~~ discharges to the MEP and effectively prohibit non-storm water discharges associated with the application, storage, and disposal of pesticides, herbicides and fertilizers from commercial facilities and areas, industrial facilities;~~,~~ and implement such BMPs at municipal facilities in its inventoried existing development. Such BMPs must include, as appropriate, educational activities, permits, certifications and other measures for applicators and distributors.

(2) Residential Areas

(a) Pollution Prevention

Each Copermittee must promote and encourage the use of pollution prevention methods, where appropriate, by the residential areas in its inventoried existing development.

(b) BMP Implementation

Each Copermittee must promote and encourage the implementation of designated BMPs at residential areas in its inventoried existing development.

(c) BMP Operation and Maintenance

Each Copermittee must properly operate and maintain, or require the proper operation and maintenance of designated BMPs at residential areas in its inventoried existing development.

(d) Pesticides, Herbicides, and Fertilizers BMPs

Each Copermittee must promote and encourage the implementation of BMPs to reduce pollutants in runoff~~storm water~~ discharges to the MEP and effectively prohibit non-storm water discharges associated with the application, storage, and disposal of pesticides, herbicides and fertilizers from residential areas in its inventoried existing development.

c. EXISTING DEVELOPMENT INSPECTIONS

Each Copermittee must conduct inspections of inventoried existing development that have been identified by the Copermittee as having the reasonable potential to discharge pollutant loads from their MS4, to ensure compliance with applicable local ordinances and permits, and the requirements of this Order.

(1) Inspection Frequency

(a) Each Copermittee must establish appropriate inspection frequencies for inventoried existing development in accordance with the following requirements:

(i) At a minimum, inventoried existing development must be inspected once every five years utilizing one or more of the following methods:

[a] Drive-by inspections by Copermittee municipal and contract staff,
[b] Onsite inspections by Copermittee municipal and contract staff, and/or
[c] Inspections by volunteer monitoring or patrol programs trained by the Copermittee;

(ii) The frequency of inspections must be appropriate to confirm that BMPs are being implemented to reduce the discharge of pollutants in runoff~~storm water~~ from the MS4 to the MEP and effectively prohibit non-storm water discharges to the MS4;

(iii) The frequency of inspections must be based on the potential for a facility or area to discharge non-storm water and pollutants in storm water, and should reflect the priorities set forth in the Water Quality Improvement Plan;

~~(iv) Each Copermittee must annually perform onsite inspections of an equivalent of at least 20 percent of the commercial facilities and areas, industrial facilities, and municipal facilities in its inventoried existing development;[34] and~~

~~(v)~~(iv) Inventoried existing development must be inspected by the Copermittee, as needed, in response to valid public complaints and findings from the Copermittee's municipal and contract staff or volunteer monitoring or patrol program inspections.

(b) Based upon inspection findings, each Copermittee must implement all follow-up actions (i.e. education and outreach, re-inspection, enforcement) necessary to require and confirm compliance with its applicable local

Comment [A108]: Recommend keeping this instead of SD proposed 'during the permit term'. The 'during the permit term' language is problematic for businesses that are added to the inventory during the permit term. For example, if a business is added to the inventory one month before the expiration of the permit, it may not be reasonable to expect it to be immediately inspected. It is also problematic for Riverside (and OC?), who may be added to the permit less than two years before the end of the permit term.

Comment [A109]: See discussion in section 3.10.2 of the comment letter.

~~[34] If any commercial, industrial, or municipal facilities or areas require multiple onsite inspections during any given year, those additional inspection may count toward the total annual inspection requirement. This requirement excludes linear municipal facilities (i.e., MS4, streets, roads and highways).~~

ordinances and permits and the requirements of this Order, in accordance with its Enforcement Response Plan pursuant to Provision E.6.

(2) Inspection Content

(a) Inspections of existing development by the Copermittee or volunteer monitoring or patrol programs must include, at a minimum:

(i) Visual inspections for actual non-storm water discharges, if present;

(ii) Visual inspections for actual or potential discharge of pollutants, if present;

(iii) Visual inspections for actual or potential illicit connections, if present; and

(iv) Verification that the description of the facility or area in the inventory, required pursuant to Provision E.5.a.(2), has not changed.

(b) Onsite inspections of existing development by the Copermittee must include, at a minimum:

(i) Assessment of compliance with its applicable local ordinances and permits related to non-storm water and storm water discharges and runoff;

(ii) Assessment of the implementation of the designated BMPs;

(iii) Verification of coverage under the Industrial General Permit, when applicable; and

(iv) If any problems or violations are found, inspectors must take and document appropriate actions in accordance with the Enforcement Response Plan pursuant to Provision E.6.

(3) Inspection Tracking and Records

Each Copermittee must track all inspections and re-inspections at all inventoried existing development. The Copermittee must retain all inspection records in an electronic database or tabular format, which must be made available to the San Diego Water Board upon request. Inspection records must include, at a minimum:

(a) Name and location of facility or area (address and hydrologic subarea) consistent with the inventory name and location, pursuant to Provision E.5.a.(1);

(b) Inspection and re-inspection date(s);

(c) Inspection method(s) (i.e. drive-by, onsite);

(d) Observations and findings from the inspection(s);

(e) For onsite inspections of existing development by Copermittee municipal or contract staff, the records must also include, as applicable:

(i) Description of any problems or violations found during the inspection(s),

(ii) Description of enforcement actions issued in accordance with the Enforcement Response Plan pursuant to Provision E.6, and

(iii) The date problems or violations were resolved.

d. EXISTING DEVELOPMENT ENFORCEMENT

Each Copermittee must enforce its legal authority established pursuant to Provision E.1 for all its inventoried existing development, as necessary, to achieve compliance with the requirements of this Order, in accordance with its Enforcement Response Plan pursuant to Provision E.6.

e. RETROFITTING AND REHABILITATION~~STRATEGIES TO ADDRESS THE HIGHEST PRIORITY WATER QUALITY CONDITIONS~~

~~Each Copermittee must implement the water quality improvement strategies, where necessary, to address areas of existing development within its jurisdiction that are identified as sources of pollutants and/or stressors contributing to the highest priority water quality conditions in the Watershed Management Area. For the existing development management program, the following strategies must be implemented:~~

~~(3) Specific Existing Development Management Program Strategies~~

~~Each Copermittee must describe in its jurisdictional runoff management program document the strategies and/or activities that will be implemented within its jurisdiction to address areas of existing development that the Copermittee has identified as sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area as follows:~~

~~(a) Provide specific details about how the strategies and/or activities will be implemented (e.g. designate additional BMPs, focus education, and/or increase/decrease frequency of inspections for specific types of facilities, areas and/or activities);~~

~~(b) The facilities and/or areas within the Copermittee's jurisdiction where the strategies and/or activities will be implemented; and~~

~~(c)~~(a) ~~The strategies and/or activities must be consistent with the requirements of Provisions E.5.b-d and the strategies identified in the Water Quality Improvement Plan.~~

~~(4)~~(3) Retrofitting Areas of Existing Development

Where identified in the WQIP as a required strategy to address the highest priority water quality conditions, each~~Each~~ Copermittee must describe in its jurisdictional runoff management program document, a program to retrofit areas of existing development within its jurisdiction to address identified sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area. The program must be implemented as follows:

(a) Each Copermittee must, where necessary pursuant to the strategies identified in the WQIP, identify areas of existing development as candidates for retrofitting, focusing on areas where retrofitting will address pollutants and/or stressors that contribute to the highest priority water quality conditions identified in the Water Quality Improvement Plan;

(b) Candidates for retrofitting projects may be utilized to reduce pollutants that may be discharged in storm water from areas of existing development, and/or address storm water runoff flows and durations from areas of existing development that cause or contribute to hydromodification in receiving waters;

(c) Each Copermittee must develop a strategy to facilitate the implementation of retrofitting projects, where needed in areas of existing development identified as candidates;

(d) Each Copermittee should identify areas of existing development where Priority Development Projects may be allowed or should be encouraged to implement or contribute toward the implementation of alternative compliance retrofitting projects; and

(e) Where retrofitting projects within specific areas of existing development are determined to be infeasible to address the highest priority water quality conditions in the Water Quality Improvement Plan, the Copermittee should collaborate and cooperate with other Copermittees and/or entities in the Watershed Management Area to identify, develop, and implement regional retrofitting projects (i.e. projects that can receive and/or treat storm water from one or more areas of existing development and will result in a net benefit to water quality and the environment) adjacent to and/or downstream of the areas of existing development.

~~(5)~~(4) Stream, Channel and/or Habitat Rehabilitation in Areas of Existing Development

Where identified in the WQIP as a required strategy to address the highest priority water quality conditions, each~~Each~~ Copermittee must describe in its jurisdictional runoff management program document, a program to rehabilitate streams, channels, and/or habitats in areas of existing development within its jurisdiction to address the highest priority water quality conditions in the Watershed Management Area. The program must be implemented as follows:

(a) Each Copermittee must, where necessary pursuant to the strategies identified in the WQIP, identify streams, channels, and/or habitats in areas of existing development as candidates for rehabilitation, focusing on areas where stream, channel, and/or habitat rehabilitation projects will address the highest priority water quality conditions identified in the Water Quality Improvement Plan;

(b) Candidates for stream, channel, and/or habitat rehabilitation projects may be utilized to address storm water runoff flows and durations from areas of existing development that cause or contribute to hydromodification in receiving waters, rehabilitate channelized or hydromodified streams, restore wetland and riparian habitat, restore watershed functions, and/or ~~restore~~ protect beneficial uses of receiving waters;

(c) Each Copermittee must develop a strategy to facilitate the implementation of stream, channel, and/or habitat rehabilitation projects, where needed, in areas of existing development identified as candidates;

(d) Each Copermittee should identify areas of existing development where Priority Development Projects may be allowed or should be encouraged to implement or contribute toward the implementation of alternative compliance stream, channel, and/or habitat rehabilitation projects; and

(e) Where stream, channel, and/or habitat rehabilitation projects within specific areas of existing development are determined to be infeasible to address the highest priority water quality conditions in the Water Quality Improvement Plan, the Copermittee should collaborate and cooperate with other Copermittees and/or entities in the Watershed Management Area to identify, develop, and implement regional stream, channel, and/or habitat rehabilitation projects (i.e. projects that can receive storm water from one or more areas of existing development and will result in a net benefit to water quality and the environment).

(5) Upon Regional Board Executive Officer approval the Copermittees may reallocate resources in the WQIPs for retrofit and rehabilitation project(s).

6. Enforcement Response Plans

Each Copermittee must develop and implement an Enforcement Response Plan as part of its jurisdictional runoff management program document. The Enforcement Response Plan must describe the applicable approaches and options to enforce its legal authority established pursuant to Provision E.1, as necessary, to achieve compliance with the requirements of this Order. Copermittees may continue to utilize and implement established, equivalent guidelines and procedures for enforcement. If such equivalent guidelines and procedures have not been developed, Tthe Enforcement Response Plan must include the following:

a. ENFORCEMENT RESPONSE PLAN COMPONENTS

The Enforcement Response Plan must include the following individual components:

(1) Illicit Discharge Detection and Elimination Enforcement Component;

(2) Development Planning Enforcement Component;

(3) Construction Management Enforcement Component; and

(4) Existing Development Enforcement Component.

b. ENFORCEMENT RESPONSE APPROACHES AND OPTIONS

Each component of the Enforcement Response Plan must describe the enforcement response approaches that the Copermittee will implement to compel compliance with its statutes, ordinances, permits, contracts, orders, or similar means, and the requirements of this Order. The description must include the protocols for implementing progressively stricter enforcement responses. The enforcement response approaches must include appropriate sanctions, as legally appropriate, to compel compliance, including, at a minimum, the following tools or their equivalent:

(1) Verbal and written notices of violation;

(2) Cleanup requirements;

(3) Fines;

(4) Bonding requirements;

(5) Administrative and criminal (if intentional or criminally negligent) penalties;

(6) Liens;

(7) Stop work orders; and

(8) Permit and occupancy denials.

c. CORRECTION OF VIOLATIONS

(1) Violations must be corrected in a timely manner with the goal of correcting the violations within 30 calendar days after the violations are discovered, or prior to the next predicted rain event, whichever is sooner.

(2) The status of the enforcement actions~~If more than 30 calendar days are required to achieve compliance, then a rationale~~ must be recorded and updated in the applicable electronic database or tabular system used to track violations.

Comment [A110]: This is just asking for paperwork violations if someone forgets to write a specific justification – even if all appropriate steps are being diligently pursued. Request alternatively to simply require that the status be updated as appropriate.

d. ~~ESCALATED~~ PROGRESSIVE ENFORCEMENT

Comment [A111]: See discussion in section 3.11.2 of the comment letter.

(1) The Enforcement Response Plan must include a definition of "~~escalated~~ progressive enforcement." ~~Escalated~~ Progressive enforcement must include a series of enforcement actions that match the severity of the violations and include distinct, progressive steps. ~~any enforcement scenario where a violation or other non-compliance is determined to cause or contribute to the highest priority water quality conditions identified in the Water Quality Improvement Plan~~. ~~Escalated~~ Progressive enforcement may be defined differently for development planning, construction sites, commercial facilities or areas, industrial facilities, municipal facilities, and/or residential areas.

(2) Where the Copermittee determines ~~escalated~~ the identified progressive enforcement steps ~~is~~are not required, a rationale must be recorded in the applicable electronic database or tabular system used to track violations.

(3) ~~Escalated~~ Progressive enforcement actions must continue to increase in severity, as necessary, to compel compliance as soon as possible.

e. REPORTING OF NON-COMPLIANT SITES

(1) Each Copermittee must notify the San Diego Water Board in writing within ~~22~~5 calendar~~2 working~~ days of issuing escalated enforcement (as defined in the Copermittee's Enforcement Response Plan) to a construction site that poses a significant threat to water quality as a result of violations or other non-compliance with its permits and applicable local ordinances, and the requirements of this Order. Written notification may be provided electronically by email.

(2) Each Copermittee must notify the San Diego Water Board of non-filers under the Industrial General Permit and Construction General Permit by email to Nonfilers_R9@waterboards.ca.gov.

7. Public Education and Participation

Each Copermittee must implement, individually or with other Copermittees, a public education and participation program in accordance with the strategies identified in the Water Quality Improvement Plan to promote and encourage the development of programs, management practices, and behaviors that reduce the discharge of pollutants in runoff~~storm water~~ to the MEP, prevent controllable non-storm water discharges from entering the MS4, and protect water quality standards in receiving waters.

STRATEGIES TO ADDRESS THE HIGHEST PRIORITY WATER QUALITY CONDITIONS

Comment [A112]: Recommended move from (c)

Each Copermittee must describe in its jurisdictional runoff management program document the strategies and/or activities that will be implemented within its jurisdiction, as applicable, to educate the public and encourage public participation to address potential sources of pollutants and/or stressors that contribute to the highest priority water quality conditions in the Watershed Management Area as follows:

(1) The target audiences and/or areas within the Copermittee's jurisdiction where the strategies and/or activities will be implemented;

(2) Provide specific details about how the strategies and/or activities will be implemented (e.g. educational topics, materials and/or activities, public outreach and participation programs and/or opportunities);

(3) Each Copermittee should collaborate and cooperate with other Copermittees and/or entities in the Watershed Management Area to identify and implement regional public education and participation activities, programs and opportunities;

(4) Each Copermittee must incorporate a mechanism for evaluating and assessing educational and other public outreach activities, as needed, to identify progress and incorporate modifications necessary to increase the effectiveness of the public education and participation program.

(5) The requirements of the programs as outlined in the following sub-provisions

may be modified and prioritized as appropriate for consistency with the highest water quality priorities and strategies as identified in the corresponding Water Quality improvement Plan(s).

a. PUBLIC EDUCATION

The public education program component implemented within the Copermittee's jurisdiction must include, at a minimum, the following:

(1) Educational activities, public information activities, and other appropriate outreach activities intended to reduce pollutants associated with the ~~application of pesticides, herbicides and fertilizer- and other pollutants of concern in storm water discharges to and from its MS4 to the MEP, as determined and prioritized by the Copermittee(s) by jurisdiction and/or watershed to address the~~ highest priority water quality conditions identified in the Water Quality Improvement Plan;

(2) Educational activities, public information activities, and other appropriate outreach activities to facilitate the proper management and disposal of used oil and toxic materials; and

(3) Appropriate education and training measures for specific target audiences, such as construction site operators, residents, underserved target audiences and school-aged children, as determined and prioritized by the Copermittee(s) by jurisdiction and/or watershed, based on high risk behaviors and pollutants of concern.

b. PUBLIC PARTICIPATION

The public participation program component implemented within the Copermittee's jurisdiction must include, at a minimum, the following:

(1) A process for members of the public to participate in updating the highest priority water quality conditions, numeric goals, and water quality improvement strategies in the Water Quality Improvement Plan.

(2) Opportunities for members of the public to participate in providing the Copermittee recommendations for improving the effectiveness of the water quality improvement strategies implemented within its jurisdiction.

(3) Opportunities for members of the public to participate in programs and/or activities that can result in the prevention or elimination of non-storm water discharges to the MS4, reduction of pollutants in ~~storm wate~~r discharges from

the MS4, and/or ~~restoration and~~ protection of the quality of receiving waters.

8. Fiscal Analysis

a. ~~Each Copermittee must secure the resources necessary to meet all the requirements of this Order~~.

b. Each Copermittee must conduct an annual fiscal analysis of its jurisdictional runoff management program in its entirety. The fiscal analysis must include the following:

(1) Identification of the various categories of expenditures necessary to implement the requirements of this Order, including a description of the specific capital, operation and maintenance, and other expenditure items to be accounted for in each category of expenditures;

(2) The staff resources needed and allocated to meet the requirements of this Order, including any development, implementation, and enforcement activities required;

(3) The estimated expenditures for Provisions E.8.b.(1) and E.8.b.(2) for the current fiscal year; and

(4) The source(s) of funds that are proposed to meet the necessary expenditures described in Provisions E.8.b.(1) and E.8.b.(2), including legal restrictions on the use of such funds, for the current fiscal year and next fiscal year.

c. Each Copermittee must submit a summary of the annual fiscal analysis with each Annual Report required pursuant to Provision F.3.b.

d. Each Copermittee must provide the documentation used to develop the summary of the annual fiscal analysis upon request by the San Diego Water Board.

Comment [A113]: Since the monitoring period is different than a fiscal year, we won't be able to consistently and accurately report monitoring costs incurred by the Copermittees. (which are a big part of overall budgets)

Comment [A114]: Please see Legal Comments.

F. REPORTING

Comment [A115]: See discussion in section 3.14 of the comment letter.

The purpose of this provision is to determine and document compliance with the requirements set forth in this Order. The goal of reporting is to communicate to the San Diego Water Board and the people of the State of California the implementation status of each jurisdictional runoff management program and compliance with the requirements of this Order. This goal is to be accomplished through the submittal of specific deliverables to the San Diego Water Board by the Copermittees.

1. Water Quality Improvement Plans

Comment [A116]: See discussion in section 3.14.1 of the comment letter.

The Copermittees for each Watershed Management Area must develop and submit the Water Quality Improvement Plan in accordance with the following requirements:

a. WATER QUALITY IMPROVEMENT PLAN DEVELOPMENT

Each Water Quality Improvement Plan must be developed in accordance with the following process:

(1) Priority Water Quality Conditions and Numeric Goals

(a) The Copermittees must implement a public participation process to solicit data and information to be utilized in the development and identification of the priority water quality conditions for the Watershed Management Area.

(b) The Copermittees are encouraged to involve the public and key stakeholders as early and often as possible during the development of the priority water quality conditions and numeric goals to be included in the Water Quality Improvement Plan.

(c) Within 6 months after the commencement of coverage under this Order, the Copermittees must develop and submit the Water Quality Improvement Plan requirements of Provision B.2 to the San Diego Water Board. The San Diego Water Board will issue a public notice and solicit public comments on the Water Quality Improvement Plan for a minimum of 60 days.

(d) The Copermittees must revise the priority water quality conditions and numeric goals based on comments received and/or recommendations or direction from the San Diego Water Board Executive Officer.

(2) Water Quality Improvement Strategies and Schedules

(a) The Copermittees are encouraged to involve the public and key stakeholders as early and often as possible during the development of the water quality improvement strategies and schedules to be included in the Water Quality Improvement Plan.

(b) Within 9 months after receipt~~the commencement~~ of public comments and/or recommendations from the Executive Officer per (1)(c) above~~coverage under this Order~~, the Copermittees must develop and submit the Water Quality Improvement Plan requirements of Provision B.3 to the San Diego Water Board. The San Diego Water Board will issue a public notice and solicit public comments on the Water Quality Improvement Plan for a minimum of 60 days.

(c) The Copermittees must revise the water quality improvement strategies and schedules based on comments received and/or recommendations or direction from the San Diego Water Board Executive Officer.

b. WATER QUALITY IMPROVEMENT PLAN SUBMITTAL

(1) Within 6~~18~~ months after receipt~~the commencement~~ of public comments and/or recommendations from the Executive Officer per (2)(c) above~~coverage under this Order~~, the Copermittees for each Watershed Management Area must submit a complete Water Quality Improvement Plan in accordance with the requirements of Provision B to the San Diego Water Board. The San Diego Water Board will issue a public notice and solicit public comments on the Water Quality Improvement Plan for a minimum of 30 days.

(2) Based on the comments received, the San Diego Water Board will determine whether to hold a public hearing or to limit public input to submittal of written comments. If no hearing is held the San Diego Water Board will notify the Copermittees within 6 months that the Water Quality Improvement Plan has been accepted as complete following its review and determination that the Water Quality Improvement Plan meets the requirements of this Order.

(3) The Copermittees must revise the Water Quality Improvement Plan based on comments received and/or recommendations or direction from the San Diego Water Board Executive Officer.

(4) The Water Quality Improvement Plan must be made available on the Regional Clearinghouse required pursuant to Provision F.4 within 30 days of acceptance by the San Diego Water Board.

(5) Copermittees must commence with implementation of the BMP strategies identified in the Water Quality Improvement Plan no later than the fiscal year (July 1) following San Diego Water Board approval of the Water Quality Improvement Plan, and the monitoring strategies identified in the Water Quality Improvement Plan no later than October 1st (or May 1st, whichever is sooner) following the San Diego Water Board approval of the Water Quality Improvement Plan.

2. Updates

Comment [A117]: See discussion in section 3.14.1 of the comment letter.

a. Jurisdictional Runoff Management Program Document Updates

Each Copermittee must update its jurisdictional runoff management program document in accordance with the following requirements:

(1) Each Copermittee is encouraged to involve the public and key stakeholders as early and often as possible to solicit recommendations for updates to its jurisdictional runoff management program document.

(2) Each Copermittee must update its jurisdictional runoff management program document to incorporate the requirements of Provision E and the strategies identified in the applicable WQIPs no later than 6~~18~~ months after approval~~the commencement~~ of the applicable Water Quality Improvement Plans (or updates thereto).~~coverage under this Order.~~

(3) The updated JRMP document must be implemented beginning July 1st following completion of the update, unless directed otherwise by the Executive Officer.

~~(3)~~(4) Each Copermittee must submit any subsequent updates to its jurisdictional runoff management program, with a rationale for the modifications, either in the Annual Report required pursuant to Provision F.3.b, or as part of the Report of Waste Discharge required pursuant to Provision F.5.b.

~~(4)~~(5) The Copermittee must revise the modifications as directed by the San Diego Water Board Executive Officer.

~~(5)~~(6) Updated jurisdictional runoff management program documents must be made available on the Regional Clearinghouse required pursuant to Provision F.4 within 30 days of submitting the Annual Report.

b. BMP Design Manual Updates

Each Copermittee must update its BMP Design Manual in accordance with the following requirements:

(1) Each Copermittee must update its BMP Design Manual to incorporate the requirements of Provisions E.3.a-d, and E.3.g. no later than 6~~18~~ months after approval~~the commencement~~ of the applicable Water Quality Improvement Plans..

Comment [A118]: This is necessary for the WQIP strategies to inform the Development Planning process

(2) Unless directed otherwise by the San Diego Water Board, the Copermittee must implement the updated BMP Design Manual within 180 days of

Comment [A119]: An implementation date was missing from the Tentative Order

completing updates to the BMP Design Manual.

~~(1)~~(3) Until the Copermittee begins implementation of its updated BMP Design Manual, the Copermittee must continue implementing its current BMP Design Manual~~coverage under this Order~~.

Comment [A120]: This was moved to here

~~(2)~~(4) Subsequent updates must be consistent with the requirements of Provisions E.3.a-d and must be submitted as part of the Annual Reports required pursuant to Provision F.3.b, or as part of the Report of Waste Discharge required pursuant to Provision F.5.b.

~~(3)~~(5) Updated BMP Design Manuals must be made available on the Regional Clearinghouse required pursuant to Provision F.4 within 30 days of completing the update.

c. WATER QUALITY IMPROVEMENT PLAN UPDATES

The Water Quality Improvement Plans must be updated in accordance with the following process:

(1) The Copermittees must implement a public participation process to solicit data and information to be utilized in updating the Water Quality Improvement Plan.

(2) The Copermittees are encouraged to involve the public and key stakeholders as early and often as possible during the updates to the Water Quality Improvement Plan.

(3) The Copermittees for each Watershed Management Area must submit requested updates to the Water Quality Improvement Plan, with the public input received and the rationale for the requested updates, either in the Annual Reports required pursuant to Provision F.3.b, or as part of the Report of Waste Discharge required pursuant to Provision F.5.b. The requested updates are considered accepted by the San Diego Water Board if no response is provided to the Copermittee after 3 months of submitting the request.

(4) The Copermittees must revise the requested updates as directed by the San Diego Water Board Executive Officer.

(5) Updated Water Quality Improvement Plans must be made available on the Regional Clearinghouse required pursuant to Provision F.4 within 30 days of acceptance of the requested updates by the San Diego Water Board.

3. Progress Reporting

Comment [A121]: See discussion in section 3.14.1 of the comment letter.

a. PROGRESS REPORT PRESENTATIONS

The Copermittees for each Watershed Management Area must appear before the San Diego Water Board, as requested by the San Diego Water Board, to provide progress reports on the implementation of the Water Quality Improvement Plan and jurisdictional runoff management programs.

b. ANNUAL REPORTS

Comment [A122]: See discussion in section 3.14.1 of the comment letter.

(1) Transitional Period JRMP Reports: Each Copermittee must complete and submit a Jurisdictional Runoff Management Program Annual Report Form (Attachment D or accepted revision) no later than October 31 of each year prior to the implementation of updated JRMP programs pursuant to F.2.a. Each Copermittee must submit the information on the Jurisdictional Runoff Management Program Annual Report Form specific to the area within its jurisdiction in each Watershed Management Area.

(2) Transitional Period Monitoring Report: The transitional period monitoring conducted pursuant to D.1.a and D.2.a. shall be reported in a single report that covers the entire reporting period from the initiation of the transitional period monitoring (as described in D.1.a and D.2.a.), through September 30th following approval of the Water Quality Improvement Plan. The Transitional Period Monitoring Report shall include the assessments required per D.4.a.(1)(a), D.4.b.(1)(a) and D.4.b.(2)(a); and be submitted by January 31st following completion of the above mentioned transitional period.

~~(1)~~(3) Post-Transitional Annual Reports – Following the initial transitional period after enrollment into this Order, the~~The~~ Copermittees for each Watershed Management Area must submit an combined Annual Report for each reporting period no later than January 31 of the following year. The annual reporting period consists of two periods: 1) July 1 to June 30 of the following year for the jurisdictional runoff management programs, 2) October 1 to September 30 of the following year for the monitoring and assessment programs~~. The first Annual Report must be prepared for the reporting period beginning July 1 after commencement of coverage under this Order, and upon San Diego Water Board determination that the Water Quality Improvement Plan meets the requirements of this Order to June 30 in the following year for the jurisdictional runoff management programs, and September 30 in the following year for the monitoring and assessment programs.~~ Annual Reports must be made available on the Regional Clearinghouse required pursuant to Provision F.4. Each Annual Report must include the following:

(a) The receiving water and MS4 outfall discharge monitoring data collected pursuant to Provisions D.1 and D.2, summarized and presented in tabular and graphical form;

(b) Progress of the special studies required pursuant to Provision D.3, and the results or findings when a special study, or each phase of a special study, is completed;

(c) The findings from the applicable assessments required pursuant to Provision D.4;

Comment [A123]: Not all are required annually.

(d) The progress of implementing the Water Quality Improvement Plan, including, but not limited to, the following:

(i) The progress toward achieving the interim and final numeric goals for the highest water quality priorities for the Watershed Management Area,

(ii) The water quality improvement strategies that were implemented and/or no longer implemented by each of the Copermittees during the reporting period and previous reporting periods, and are planned to be implemented during the next reporting period,

(iii) Proposed modifications to the water quality improvement strategies, with public input received and rationale for the proposed modifications,

(iv) Previously proposed modifications or updates incorporated into the Water Quality Improvement Plan and/or each Copermittee's jurisdictional runoff management program document and implemented by the Copermittees in the Watershed Management Area, and

(v) Proposed modifications or updates to the Water Quality Improvement Plan and/or each Copermittee's jurisdictional runoff management program document;

(e) A completed Jurisdictional Runoff Management Program Annual Report Form (Attachment D or accepted revision) for each Copermittee in the Watershed Management Area, certified by a Principal Executive Officer, Ranking Elected Official, or Duly Authorized Representative.

~~(2) Each Copermittee must complete and submit a Jurisdictional Runoff Management Program Annual Report Form (Attachment D or accepted revision) no later than October 31 of each year until the first Annual Report is required to be submitted. Each Copermittee must submit the information on the Jurisdictional Runoff Management Program Annual Report Form specific to the area within its jurisdiction in each Watershed Management Area.~~

Comment [A124]: Adapted into new section (1)

~~(3)~~(4) Each Copermittee must provide any data or documentation utilized in

developing the Annual Report upon request by the San Diego Water Board. ~~AnyAny~~Copermittee~~Any~~ monitoring data utilized in developing the Annual Report must be uploaded to the California Environmental Data Exchange Network (CEDEN).[35] Any Copermittee monitoring and assessment data utilized in developing the Annual Report must be provided on the Regional Clearinghouse required pursuant to Provision F.4.

C. Regional Monitoring and Assessment Report

(1) The Copermittees must submit a Regional Monitoring and Assessment Report no later than 180 days in advance of the expiration date of this Order. The Regional Monitoring and Assessment Report may be submitted as part of the Report of Waste Discharge required pursuant to Provision F.5.b. The Regional Monitoring and Assessment Report shall incorporate the Integrated Assessment of the Water Quality Improvement Plan per D.4.d.

~~(1) The Copermittees must review the receiving water and MS4 outfall discharge monitoring data collected pursuant to Provisions D.1 and D.2, and findings from the assessments required pursuant to Provision D.4, to assess the following:~~

~~(2)~~

~~(3) The beneficial uses of the receiving waters within the San Diego Region that are protected or must be restored;~~

~~(4)~~

~~(5) The progress toward restoring impacted beneficial uses in the receiving waters within the San Diego Region; and~~

~~(6)~~

~~(7) Pollutants or conditions of emerging concern that may impact beneficial uses in the receiving waters within the San Diego Region.~~

~~(8)~~

~~(9) The Regional Monitoring and Assessment Report must include recommendations for improving the implementation and assessment of the Water Quality Improvement Plans and jurisdictional runoff management programs.~~

(2) Each Copermittee must provide any data or documentation utilized in developing the Regional Monitoring and Assessment Report upon request by the San Diego Water Board. Any monitoring and assessment data utilized in developing the Regional Monitoring and Assessment Report must be provided on the Regional Clearinghouse required pursuant to Provision F.4.

[35] Data must be uploaded to CEDEN Southern California Regional Data Center (http://www.sccwrp.org/Data/DataSubmission/SouthernCaliforniaRegionalDataCenter.aspx) using the templates provided on the CEDEN website.

4. Regional Clearinghouse

The Copermittees must develop, update, and maintain an internet-based Regional Clearinghouse that is made available to the public no later than 18 months after the effective date of this Order.[36]

a. The Copermittees, through the Regional Clearinghouse, must make the following documents and data available, organized by Watershed Management Area, which may be linked to other internet-based data portals and databases where the original documents are stored:

(1) Water Quality Improvement Plan for the Watershed Management Area, and all updated versions with date of update;

(2) Annual Reports for the Watershed Management Area;

(3) Jurisdictional Runoff Management Program document for each Copermittee within the Watershed Management Area, and all updated versions with date of update;

(4) BMP Design Manual for each Copermittee within the Watershed Management Area, and all updated versions with date of update;

(5) Reports from special studies (e.g. source identification, BMP effectiveness assessment) conducted in the Watershed Management Area;

(6) Monitoring data collected pursuant to Provision D for each Watershed Management Area must be uploaded to CEDEN,[37] with links to the uploaded data; and

(7) Available GIS data, layers, and/or shapefiles used to develop the maps generated and maintained by the Copermittees for the Water Quality Improvement Plans, Annual Reports, and jurisdictional runoff management program documents.

b. The Copermittees, through the Regional Clearinghouse, must make the following information and documents available:

(1) Contact information (point of contact, phone number, email address, and mailing address) for each Copermittee;

[36] The Copermittee may elect to develop and maintain the clearinghouse(s) provided by other Copermittees or agencies.

[37] Data must be uploaded to CEDEN Southern California Regional Data Center (http://www.sccwrp.org/Data/DataSubmission/SouthernCaliforniaRegionalDataCenter.aspx) using the templates provided on the CEDEN website.

(2) Public hotline number for reporting non-storm water and illicit discharges for each Copermittee;

(3) Email address for reporting non-storm water and illicit discharges for each Copermittee;

(4) Link to each Copermittee's website, if available, where the public may find additional information about the Copermittee's storm water management program and for requesting records for the implementation of its program;

(5) Information about opportunities for the public to participate in programs and/or activities that can result in the prevention or elimination of non-storm water discharges to the MS4, reduction of pollutants in ~~storm water~~ discharges from the MS4, and/or restoration and protection of the quality of receiving waters; and

(6) Reports from regional monitoring programs in which the Copermittees participate (e.g. Southern California Monitoring Coalition, Southern California Coastal Water Research Project Bight Monitoring);

(7) Regional Monitoring and Assessment Reports; and

(8) Any other information, data, and documents the Copermittees determine as appropriate for making available to the public.

5. Report of Waste Discharge

a. The Orange County Copermittees and the Riverside County Copermittees are required to submit a complete Report of Waste Discharge pursuant to the requirements of their current Orders. The San Diego Water Board will review and consider the Reports of Waste Discharge to determine whether modification to this Order, pursuant to the requirements of Provision H, will be required prior the Orange County Copermittees and/or Riverside County Copermittees becoming covered under this Order. The current Orders for the Orange County Copermittees and Riverside County Copermittees are rescinded upon notification of coverage under this Order except for enforcement purposes.

b. The Copermittees subject to the requirements of this Order must submit to the San Diego Water Board a complete Report of Waste Discharge as an application for the re-issuance of this Order and NPDES permit. The Report of Waste Discharge must be submitted no later than 180 days in advance of the expiration date of this Order. The Report of Waste Discharge must contain the following minimum information:

(1) Names and addresses of the Copermittees;

(2) Names and titles of the primary contacts of the Copermittees;

(3) Proposed changes to the Copermittees' Water Quality Improvement Plans and the supporting justification;

(4) Proposed changes to the Copermittees' jurisdictional runoff management programs and the supporting justification;

(5) Any other information necessary for the re-issuance of this Order;

(6) Any information to be included as part of the Report of Waste Discharge pursuant to the requirements of this Order; and

(7) Any other information required by federal regulations for NPDES permit reissuance.

6. Application for Early Coverage

a. The Orange County Copermittees, collectively, or Riverside County Copermittees, collectively, may apply for early coverage under this Order by submitting a Report of Waste Discharge Form 200, with a written request for early coverage under this Order.

Comment [A125]: This form requests information that is not applicable to MS4s.

b. The San Diego Water Board will review the application for early coverage. A notification of coverage under this Order will be issued to the Copermittees in the respective county by the San Diego Water Board upon completion of the early coverage application requirements. The effective coverage date will be specified in the notification of coverage. The Copermittees in the respective county are authorized to have MS4 discharges pursuant to the requirements of this Order starting on the effective coverage date specified in the notification of coverage. The existing Order for the respective county is rescinded upon the effective coverage date specified in the notification of coverage except for enforcement purposes.

7. Reporting Provisions

Each Copermittee must comply with all the reporting and recordkeeping provisions of the Standard Permit Provisions and General Provisions contained in Attachment B to this Order.

G. PRINCIPAL WATERSHED COPERMITTEE RESPONSIBILITIES

1. The Copermittees within each Watershed Management Area must designate a Principal Watershed Copermittee and notify the San Diego Water Board of the name of the Principal Watershed Copermittee. ~~An individual Copermittee should not be designated a Principal Watershed Copermittee for more than two Watershed Management Areas.~~ The notification may be submitted with the Water Quality Improvement Plan required pursuant to Provision F.1 of this Order.

2. The Principal Watershed Copermittee is responsible for, at a minimum, the following:

a. Serving as liaison between the Copermittees in the Watershed Management Area and the San Diego Water Board on general permit issues, and when necessary and appropriate, representing the Copermittees in the Watershed Management Area before the San Diego Water Board.

b. Facilitating the development of the Water Quality Improvement Plan in accordance with the requirements of Provision B of this Order

c. Coordinating the submittal of the deliverables required by Provisions F.1, F.2, F.3.a, and F.3.b of this Order.

d. Coordinating the development of~~and developing~~, with the other Principal Watershed Copermittees, the requirements of Provisions F.3.c, F.4, and F.5.b of this Order.

Riverside Copermittee Redlines

H. MODIFICATION OF PROGRAMS

1. Modifications of the Order may be initiated by the San Diego Water Board or by the Copermittees, including as part of the ROWD process applicable to the Orange County and Riverside County Copermittees. Requests by Copermittees must be made to the San Diego Water Board.

2. Minor modifications to the Order may be made by the San Diego Water Board Executive Officer, where the proposed modification complies with all the effective prohibitions and limitations, and other requirements of this Order.

3. Proposed modifications to the Order outside of the WQIP process that are not minor require amendment of this Order in accordance with this Order's rules, policies, and procedures.

4. The San Diego Water Board may re-open and modify this Order at any time prior to its expiration, after opportunity for public comment and a public hearing, if the State Water Board determines that revisions are warranted to those provisions of the Order addressing compliance with water quality standards in the receiving water and/or those provisions of the Order establishing an iterative process for implementation of management practices to assure compliance with water quality standards in the receiving water.

I. STANDARD PERMIT PROVISIONS AND GENERAL PROVISIONS

Each Copermittee must comply with all the Standard Permit Provisions and General Provisions contained in Attachment B to this Order.

Riverside Copermittee Redlines

ATTACHMENT A

DISCHARGE PROHIBITIONS AND SPECIAL PROTECTIONS

1. Basin Plan Waste Discharge Prohibitions

California Water Code Section 13243 provides that a Regional Water Board, in a water quality control plan, may specify certain conditions or areas where the discharge of waste or certain types of waste is not permitted. The following waste discharge effective prohibitions in the Water Quality Control Plan for the San Diego Basin (Basin Plan) are applicable to any person, as defined by Section 13050(c) of the California Water Code, who is a citizen, domiciliary, or political agency or entity of California whose activities in California could affect the quality of waters of the state within the boundaries of the San Diego Region.

1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited.

2. The discharge of waste to land, except as authorized by waste discharge requirements or the terms described in California Water Code Section 13264 is prohibited.

3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) is prohibited.

4. Discharges of recycled water to lakes or reservoirs used for municipal water supply or to inland surface water tributaries thereto are prohibited, unless this San Diego Water Board issues a NPDES permit authorizing such a discharge; the proposed discharge has been approved by the State Department of Health Services (DHS) and the operating agency of the impacted reservoir; and the discharger has an approved fail-safe long-term disposal alternative.

5. The discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with applicable receiving water quality objectives, is prohibited. Allowances for dilution may be made at the discretion of the San Diego Water Board. Consideration would include streamflow data, the degree of treatment provided and safety measures to ensure reliability of facility performance. As an example, discharge of secondary effluent would probably be permitted if streamflow provided 100:1 dilution capability.

6. The discharge of waste in a manner causing flow, ponding, or surfacing on lands not owned or under the control of the discharger is prohibited, unless the discharge is authorized by the San Diego Water Board.

7. The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the San Diego Water Board.

8. Any discharge to a storm water conveyance system that is not composed entirely of "*storm water*" is effectively prohibited unless authorized by the San Diego Water Board. [The federal regulations, 40 CFR 122.26(b)(13), define storm water as storm water runoff, snow melt runoff, and surface runoff and drainage. 40 CFR 122.26(b)(2) defines an illicit discharge as any discharge to a storm water conveyance system that is not composed entirely of storm water except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities.] [§122.26 amended at 56 FR 56553, November 5, 1991; 57 FR 11412, April 2, 1992].

9. The unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.

10. The discharge of industrial wastes to conventional septic tank/subsurface disposal systems, except as authorized by the terms described in California Water Code Section 13264, is prohibited.

11. The discharge of radioactive wastes amenable to alternative methods of disposal into the waters of the state is prohibited.

12. The discharge of any radiological, chemical, or biological warfare agent into waters of the state is prohibited.

13. The discharge of waste into a natural or excavated site below historic water levels is prohibited unless the discharge is authorized by the San Diego Water Board.

14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

15. The discharge of treated or untreated sewage from vessels to Mission Bay, Oceanside Harbor, Dana Point Harbor, or other small boat harbors is prohibited.

16. The discharge of untreated sewage from vessels to San Diego Bay is prohibited.

17. The discharge of treated sewage from vessels to portions of San Diego Bay that are less than 30 feet deep at mean lower low water (MLLW) is prohibited.

18. The discharge of treated sewage from vessels, which do not have a properly functioning US Coast Guard certified Type I or Type II marine sanitation device, to portions of San Diego Bay that are greater than 30 feet deep at mean lower low water (MLLW) is prohibited.

Riverside Copermittee Redlines

2. Attachment B to State Water Board Resolution 2012-0012

Special Protections for Areas of Special Biological Significance, Governing Point Source Discharges of Storm Water and Nonpoint Source Waste Discharges

I. PROVISIONS FOR POINT SOURCE DISCHARGES OF STORM WATER AND NONPOINT SOURCE WASTE DISCHARGES

The following terms, effective prohibitions, and special conditions (hereafter collectively referred to as special conditions) are established as limitations on point source storm water and nonpoint source discharges. These special conditions provide Special Protections for marine aquatic life and natural water quality in Areas of Special Biological Significance (ASBS), as required for State Water Quality Protection Areas pursuant to California Public Resources Code Sections 36700(f) and 36710(f). These Special Protections are adopted by the State Water Board as part of the California Ocean Plan (Ocean Plan) General Exception.

The special conditions are organized by category of discharge. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards) will determine categories and the means of regulation for those categories [e.g., Point Source Storm Water National Pollutant Discharge Elimination System (NPDES) or Nonpoint Source].

A. PERMITTED POINT SOURCE DISCHARGES OF STORM WATER

1. General Provisions for Permitted Point Source Discharges of Storm Water

   a. Existing storm water discharges into an ASBS are allowed only under the following conditions:

      (1) The discharges are authorized by an NPDES permit issued by the State Water Board or Regional Water Board;

      (2) The discharges comply with all of the applicable terms, effective prohibitions, and special conditions contained in these Special Protections; and

      (3) The discharges:

         (i) Are essential for flood control or slope stability, including roof, landscape, road, and parking lot drainage;

         (ii) Are designed to prevent soil erosion;

         (iii) Occur only during wet weather;

         (iv) Are composed of only storm water runoff.

   b. Discharges composed of storm water runoff shall not alter natural ocean water quality in an ASBS.

   c. The discharge of trash is effectively prohibited.

Riverside Copermittee Redlines

d. Only discharges from existing storm water outfalls are allowed. Any proposed or new storm water runoff discharge shall be routed to existing storm water discharge outfalls and shall not result in any new contribution of waste to an ASBS (i.e., no additional pollutant loading). "Existing storm water outfalls" are those that were constructed or under construction prior to January 1, 2005. "New contribution of waste" is defined as any addition of waste beyond what would have occurred as of January 1, 2005. A change to an existing storm water outfall, in terms of re-location or alteration, in order to comply with these special conditions, is allowed and does not constitute a new discharge.

e. Non-storm water discharges are effectively prohibited except as provided below:

(1) The term "non-storm water discharges" means any waste discharges from a municipal separate storm sewer system (MS4) or other NPDES permitted storm drain system to an ASBS that are not composed entirely of storm water.

(2) (i) The following non-storm water discharges are allowed, provided that the discharges are essential for emergency response purposes, structural stability, slope stability or occur naturally:

(a) Discharges associated with emergency fire fighting operations.

(b) Foundation and footing drains.

(c) Water from crawl space or basement pumps.

(d) Hillside dewatering.

(e) Naturally occurring groundwater seepage via a storm drain.

(f) Non-anthropogenic flows from a naturally occurring stream via a culvert or storm drain, as long as there are no contributions of anthropogenic runoff.

(ii) An NPDES permitting authority may authorize non-storm water discharges to an MS4 with a direct discharge to an ASBS only to the extent the NPDES permitting authority finds that the discharge does not alter natural ocean water quality in the ASBS.

(3) Authorized non-storm water discharges shall not cause or contribute to a violation of the water quality objectives in Chapter II of the Ocean Plan nor alter natural ocean water quality in an ASBS.

2. Compliance Plans for Inclusion in Storm Water Management Plans (SWMP) and Storm Water Pollution Prevention Plans (SWPPP).

The discharger shall specifically address the effective prohibition of non-storm water runoff and the requirement to maintain natural water quality for storm water discharges to an ASBS in an ASBS Compliance Plan to be included in its SWMP or a SWPPP, as appropriate to permit type. If a statewide permit includes a SWMP, then the discharger shall prepare a stand-alone compliance plan for ASBS discharges. The ASBS Compliance Plan is subject to approval by the Executive Director of the State Water Board (statewide permits) or

Executive Officer of the Regional Water Board (for permits issued by Regional Water Boards).

a. The Compliance Plan shall include a map of surface drainage of storm water runoff, showing areas of sheet runoff, prioritize discharges, and describe any structural Best Management Practices (BMPs) already employed and/or BMPs to be employed in the future. Priority discharges are those that pose the greatest water quality threat and which are identified to require installation of structural BMPs. The map shall also show the storm water conveyances in relation to other features such as service areas, sewage conveyances and treatment facilities, landslides, areas prone to erosion, and waste and hazardous material storage areas, if applicable. The SWMP or SWPPP shall also include a procedure for updating the map and plan when changes are made to the storm water conveyance facilities.

b. The ASBS Compliance Plan shall describe the measures by which all non-authorized non-storm water runoff (e.g., dry weather flows) has been eliminated, how these measures will be maintained over time, and how these measures are monitored and documented.

c. For Municipal Separate Storm Sewer System (MS4s), the ASBS Compliance Plan shall require minimum inspection frequencies as follows:

   (1) The minimum inspection frequency for construction sites shall be weekly during rainy season;

   (2) The minimum inspection frequency for industrial facilities shall be monthly during the rainy season;

   (3) The minimum inspection frequency for commercial facilities (e.g., restaurants) shall be twice during the rainy season; and

   (4) Storm water outfall drains equal to or greater than 18 inches (457 mm) in diameter or width shall be inspected once prior to the beginning of the rainy season and once during the rainy season and maintained to remove trash and other anthropogenic debris.

d. The ASBS Compliance Plan shall address storm water discharges (wet weather flows) and, in particular, describe how pollutant reductions in storm water runoff, that are necessary to comply with these special conditions, will be achieved through BMPs. Structural BMPs need not be installed if the discharger can document to the satisfaction of the State Water Board Executive Director (statewide permits) or Regional Water Board Executive Officer (Regional Water Board permits) that such installation would pose a threat to health or safety. BMPs to control storm water runoff discharges (at the end-of-pipe) during a design storm shall be designed to achieve on average the following target levels:

   (1) Table B Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan; or

   (2) A 90% reduction in pollutant loading during storm events, for the applicant's total discharges. The baseline for the reduction is the effective date of the Exception. The

baseline for these determinations is the effective date of the Exception, and the reductions must be achieved and documented within four (4) years of the effective date.

e. The ASBS Compliance Plan shall address erosion control and the prevention of anthropogenic sedimentation in ASBS. The natural habitat conditions in the ASBS shall not be altered as a result of anthropogenic sedimentation.

f. The ASBS Compliance Plan shall describe the non-structural BMPs currently employed and planned in the future (including those for construction activities), and include an implementation schedule. The ASBS Compliance Plan shall include non-structural BMPs that address public education and outreach. Education and outreach efforts must adequately inform the public that direct discharges of pollutants from private property not entering an MS4 are effectively prohibited. The ASBS Compliance Plan shall also describe the structural BMPs, including any low impact development (LID) measures, currently employed and planned for higher threat discharges and include an implementation schedule. To control storm water runoff discharges (at the end-of-pipe) during a design storm, permittees must first consider using LID practices to infiltrate, use, or evapotranspirate storm water runoff on-site.

g. The BMPs and implementation schedule shall be designed to ensure that natural water quality conditions in the receiving water are achieved and maintained by either reducing flows from impervious surfaces or reducing pollutant loading, or some combination thereof.

h. If the results of the receiving water monitoring described in IV.B. of these special conditions indicate that the storm water runoff is causing or contributing to an alteration of natural ocean water quality in the ASBS, the discharger shall submit a report to the State Water Board and Regional Water Board within 30 days of receiving the results.

(1) The report shall identify the constituents in storm water runoff that alter natural ocean water quality and the sources of these constituents.

(2) The report shall describe BMPs that are currently being implemented, BMPs that are identified in the SWMP or SWPPP for future implementation, and any additional BMPs that may be added to the SWMP or SWPPP to address the alteration of natural water quality. The report shall include a new or modified implementation schedule for the BMPs.

(3) Within 30 days of the approval of the report by the State Water Board Executive Director (statewide permits) or Regional Water Board Executive Officer (Regional Water Board permits), the discharger shall revise its ASBS Compliance Plan to incorporate any new or modified BMPs that have been or will be implemented, the implementation schedule, and any additional monitoring required.

(4) As long as the discharger has complied with the procedures described above and is implementing the revised SWMP or SWPPP, the discharger does not have to repeat the same procedure for continuing or recurring exceedances of natural ocean water quality conditions due to the same constituent.

(5) Compliance with this section does not excuse violations of any term, effective prohibition, or condition contained in these Special Protections.

3. Compliance Schedule

a. On the effective date of the Exception, all non-authorized non-storm water discharges (e.g., dry weather flow) are effectively prohibited.

b. Within one year from the effective date of the Exception, the discharger shall submit a written ASBS Compliance Plan to the State Water Board Executive Director (statewide permits) or Regional Water Board Executive Officer (Regional Water Board permits) that describes its strategy to comply with these special conditions, including the requirement to maintain natural water quality in the affected ASBS. The ASBS Compliance Plan shall include a time schedule to implement appropriate non-structural and structural controls (implementation schedule) to comply with these special conditions for inclusion in the discharger's SWMP or SWPPP, as appropriate to permit type.

c. Within 18 months of the effective date of the Exception, any non-structural controls that are necessary to comply with these special conditions shall be implemented.

d. Within four (4) years of the effective date of the Exception, any structural controls identified in the ASBS Compliance Plan that are necessary to comply with these special conditions shall be operational.

e. Within four (4) years of the effective date of the Exception, all dischargers must comply with the requirement that their discharges into the affected ASBS maintain natural ocean water quality. If the initial results of post-storm receiving water quality testing indicate levels higher than the 85th percentile threshold of reference water quality data and the pre-storm receiving water levels, then the discharger must re-sample the receiving water, pre- and post-storm. If after re-sampling the post-storm levels are still higher than the 85th percentile threshold of reference water quality data, and the pre-storm receiving water levels, for any constituent, then natural ocean water quality is exceeded. See attached Flowchart.

f. The Executive Director of the State Water Board (statewide permits) or Executive Officer of the Regional Water Board (Regional Water Board permits) may only authorize additional time to comply with the special conditions d. and e., above if good cause exists to do so. Good cause means a physical impossibility or lack of funding.

If a discharger claims physical impossibility, it shall notify the Board in writing within thirty (30) days of the date that the discharger first knew of the event or circumstance that caused or would cause it to fail to meet the deadline in d. or e. The notice shall describe the reason for the noncompliance or anticipated noncompliance and specifically refer to this Section of this Exception. It shall describe the anticipated length of time the delay in compliance may persist, the cause or causes of the delay as well as measures to minimize the impact of the delay on water quality, the measures taken or to be taken by the discharger to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The discharger shall adopt all reasonable measures to avoid and minimize such delays and their impact on water quality.

The discharger may request an extension of time for compliance based on lack of funding. The request for an extension shall require:

(1) for municipalities, a demonstration of significant hardship to discharger ratepayers, by showing the relationship of storm water fees to annual household income for residents within the discharger's jurisdictional area, and the discharger has made timely and complete applications for all available bond and grant funding, and either no bond or grant funding is available, or bond and/or grant funding is inadequate; or
(2) for other governmental agencies, a demonstration and documentation of a good faith effort to acquire funding through that agency's budgetary process.

B. NONPOINT SOURCE DISCHARGES

[NOT INCLUDED]
[PROVISIONS FOR NONPOINT SOURCE DISCHARGES NOT APPLICABLE]

II. ADDITIONAL REQUIREMENTS FOR PARKS AND RECREATION FACILITIES

[NOT INCLUDED]
[ADDITIONAL REQUIREMENTS FOR PARKS AND RECREATION FACILITIES NOT APPLICABLE]

III. ADDITIONAL REQUIREMENTS – WATERFRONT AND MARINE OPERATIONS

[NOT INCLUDED]
[ADDITIONAL REQUIREMENTS FOR WATERFRONT AND MARINE OPERATIONS NOT APPLICABLE]

IV. MONITORING REQUIREMENTS

Monitoring is mandatory for all dischargers to assure compliance with the Ocean Plan. Monitoring requirements include both: (A) core discharge monitoring, and (B) ocean receiving water monitoring. The State and Regional Water Boards must approve sampling site locations and any adjustments to the monitoring programs. All ocean receiving water and reference area monitoring must be comparable with the Water Boards' Surface Water Ambient Monitoring Program (SWAMP).

Safety concerns: Sample locations and sampling periods must be determined considering safety issues. Sampling may be postponed upon notification to the State and Regional Water Boards if hazardous conditions prevail.

Analytical Chemistry Methods: All constituents must be analyzed using the lowest minimum detection limits comparable to the Ocean Plan water quality objectives. For metal analysis, all samples, including storm water effluent, reference samples, and ocean receiving water samples, must be analyzed by the approved analytical method with the lowest minimum detection limits (currently Inductively Coupled Plasma/Mass Spectrometry) described in the Ocean Plan.

Riverside Copermittee Redlines

A. CORE DISCHARGE MONITORING PROGRAM

1. General sampling requirements for timing and storm size:

   Runoff must be collected during a storm event that is greater than 0.1 inch and generates runoff, and at least 72 hours from the previously measurable storm event. Runoff samples shall be collected when post-storm receiving water is sampled, and analyzed for the same constituents as receiving water and reference site samples (see section IV B) as described below.

2. Runoff flow measurements

   a. For municipal/industrial storm water outfalls in existence as of December 31, 2007, 18 inches (457mm) or greater in diameter/width (including multiple outfall pipes in combination having a width of 18 inches, runoff flows must be measured or calculated, using a method acceptable to and approved by the State and Regional Water Boards.
   b. This will be reported annually for each precipitation season to the State and Regional Water Boards.

3. Runoff samples – storm events

   a. For outfalls equal to or greater than 18 inches (0.46m) in diameter or width:

      (1) samples of storm water runoff shall be analyzed during the same storm as receiving water samples for oil and grease, total suspended solids, and, within the range of the southern sea otter indicator bacteria or some other measure of fecal contamination, ; and

      (2) samples of storm water runoff shall be analyzed for critical life stage chronic toxicity (one invertebrate or algal species) at least once during each storm season when receiving water is sampled in the ASBS

      (3) If an applicant has no outfall greater than 36 inches, then storm water runoff from the applicant's largest outfall shall be further analyzed during the same storm as receiving water samples for Ocean Plan Table B metals for protection of marine life, Ocean Plan polynuclear aromatic hydrocarbons (PAHs), current use pesticides (pyrethroids and OP pesticides), and nutrients (ammonia, nitrate and phosphates).

   b. For outfalls equal to or greater than 36 inches (0.91m) in diameter or width:

      (1) samples of storm water runoff shall be analyzed during the same storm as receiving water samples for oil and grease, total suspended solids, and, within the range of the southern sea otter indicator bacteria or some other measure of fecal contamination; and

      (2) samples of storm water runoff shall be further analyzed during the same storm as receiving water samples for Ocean Plan Table B metals for protection of marine life, Ocean Plan polynuclear aromatic hydrocarbons (PAHs), current use pesticides

(pyrethroids and OP pesticides), and nutrients (ammonia, nitrate and phosphates) and

(3) samples of storm water runoff shall be analyzed for critical life stage chronic toxicity (one invertebrate or algal species) at least once during each storm season when receiving water is sampled in the ASBS.

c. For an applicant not participating in a regional monitoring program [see below in Section IV (B)] in addition to (a.) and (b.) above, a minimum of the two largest outfalls or 20 percent of the larger outfalls, whichever is greater, shall be sampled (flow weighted composite samples) at least three times annually during wet weather (storm event) and analyzed for all Ocean Plan Table A constituents, Table B constituents for marine aquatic life protection (except for toxicity, only chronic toxicity for three species shall be required), DDT, PCBs, Ocean Plan PAHs, OP pesticides, pyrethroids, nitrates, phosphates, and Ocean Plan indicator bacteria. For parties discharging to ASBS in more than one Regional Water Board region, at a minimum, one (the largest) such discharge shall be sampled annually in each Region.

4. The Executive Director of the State Water Board (statewide permits) or Executive Officer of the Regional Water Board (Regional Water Board permits) may reduce or suspend core monitoring once the storm runoff is fully characterized. This determination may be made at any point after the discharge is fully characterized, but is best made after the monitoring results from the first permit cycle are assessed.

B. OCEAN RECEIVING WATER AND REFERENCE AREA MONITORING PROGRAM

In addition to performing the Core Discharge Monitoring Program in Section II.A above, all applicants having authorized discharges must perform ocean receiving water monitoring. In order to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within their ASBS, dischargers may choose either (1) an individual monitoring program, or (2) participation in a regional integrated monitoring program.

1. Individual Monitoring Program: The requirements listed below are for those dischargers who elect to perform an individual monitoring program to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within the affected ASBS. In addition to Core Discharge Monitoring, the following additional monitoring requirements shall be met:

   a. Three times annually, during wet weather (storm events), the receiving water at the point of discharge from the outfalls described in section (IV)(A)(3)(c) above shall be sampled and analyzed for Ocean Plan Table A constituents, Table B constituents for marine aquatic life, DDT, PCBs, Ocean Plan PAHs, OP pesticides, pyrethroids, nitrates, phosphates, salinity, chronic toxicity (three species), and Ocean Plan indicator bacteria.

      The sample location for the ocean receiving water shall be in the surf zone at the point of discharges; this must be at the same location where storm water runoff is sampled. Receiving water shall be sampled at approximately the same time prior to (pre-storm) and during (or immediately after) the same storm (post storm). Reference water quality shall also be sampled and analyzed for the same constituents pre-storm and post-storm, during the same storms when receiving water is sampled. Reference stations will be

determined by the State Water Board's Division of Water Quality and the applicable Regional Water Board(s).

b. Sediment sampling shall occur at least three times during every five (5) year period. The subtidal sediment (sand or finer, if present) at the discharge shall be sampled and analyzed for Ocean Plan Table B constituents for marine aquatic life, DDT, PCBs, PAHs, pyrethroids, and OP pesticides. For sediment toxicity testing, only an acute toxicity test using the amphipod Eohaustorius estuarius must be performed.

c. A quantitative survey of intertidal benthic marine life shall be performed at the discharge and at a reference site. The survey shall be performed at least once every five (5) year period. The survey design is subject to approval by the Regional Water Board and the State Water Board's Division of Water Quality. The results of the survey shall be completed and submitted to the State Water Board and Regional Water Board at least six months prior to the end of the permit cycle.

d. Once during each five (5) year period, a bioaccumulation study shall be conducted to determine the concentrations of metals and synthetic organic pollutants at representative discharge sites and at representative reference sites. The study design is subject to approval by the Regional Water Board and the State Water Board's Division of Water Quality. The bioaccumulation study may include California mussels (Mytilus californianus) and/or sand crabs (Emerita analoga or Blepharipoda occidentalis). Based on the study results, the Regional Water Board and the State Water Board's Division of Water Quality, may adjust the study design in subsequent permits, or add or modify additional test organisms (such as shore crabs or fish), or modify the study design appropriate for the area and best available sensitive measures of contaminant exposure.

e. Marine Debris: Representative quantitative observations for trash by type and source shall be performed along the coast of the ASBS within the influence of the discharger's outfalls. The design, including locations and frequency, of the marine debris observations is subject to approval by the Regional Water Board and State Water Board's Division of Water Quality.

f. The monitoring requirements of the Individual Monitoring Program in this section are minimum requirements. After a minimum of one (1) year of continuous water quality monitoring of the discharges and ocean receiving waters, the Executive Director of the State Water Board (statewide permits) or Executive officer of the Regional Water Board (Regional Water Board permits) may require additional monitoring, or adjust, reduce or suspend receiving water and reference station monitoring. This determination may be made at any point after the discharge and receiving water is fully characterized, but is best made after the monitoring results from the first permit cycle are assessed.

2. Regional Integrated Monitoring Program: Dischargers may elect to participate in a regional integrated monitoring program, in lieu of an individual monitoring program, to fulfill the requirements for monitoring the physical, chemical, and biological characteristics of the ocean receiving waters within their ASBS. This regional approach shall characterize natural water quality, pre- and post-storm, in ocean reference areas near the mouths of identified open space watersheds and the effects of the discharges on natural water quality (physical, chemical, and toxicity) in the ASBS receiving waters, and should include benthic marine aquatic life and bioaccumulation components. The design of the ASBS stratum of a regional integrated monitoring program may deviate from the otherwise prescribed individual

monitoring approach (in Section IV.B.1) if approved by the State Water Board's Division of Water Quality and the Regional Water Boards.

a. Ocean reference areas shall be located at the drainages of flowing watersheds with minimal development (in no instance more than 10% development), and shall not be located in CWA Section 303(d) listed waterbodies or have tributaries that are 303(d) listed. Reference areas shall be free of wastewater discharges and anthropogenic non-storm water runoff. A minimum of low threat storm runoff discharges (e.g. stream highway overpasses and campgrounds) may be allowed on a case-by-case basis. Reference areas shall be located in the same region as the ASBS receiving water monitoring occurs. The reference areas for each Region are subject to approval by the participants in the regional monitoring program and the State Water Board's Division of Water Quality and the applicable Regional Water Board(s). A minimum of three ocean reference water samples must be collected from each station, each from a separate storm. A minimum of one reference location shall be sampled for each ASBS receiving water site sampled per responsible party. For parties discharging to ASBS in more than one Regional Water Board region, at a minimum, one reference station and one receiving water station shall be sampled in each region.

b. ASBS ocean receiving water must be sampled in the surf zone at the location where the runoff makes contact with ocean water (i.e. at "point zero"). Ocean receiving water stations must be representative of worst-case discharge conditions (i.e. co-located at a large drain greater than 36 inches, or if drains greater than 36 inches are not present in the ASBS then the largest drain greater than18 inches.) Ocean receiving water stations are subject to approval by the participants in the regional monitoring program and the State Water Board's Division of Water Quality and the applicable Regional Water Board(s). A minimum of three ocean receiving water samples must be collected during each storm season from each station, each from a separate storm. A minimum of one receiving water location shall be sampled in each ASBS per responsible party in that ASBS. For parties discharging to ASBS in more than one Regional Water Board region, at a minimum, one reference station and one receiving water station shall be sampled in each region.

c. Reference and receiving water sampling shall commence during the first full storm season following the adoption of these special conditions, and post-storm samples shall be collected when annual storm water runoff is sampled. Sampling shall occur in a minimum of two storm seasons. For those ASBS dischargers that have already participated in the Southern California Bight 2008 ASBS regional monitoring effort, sampling may be limited to only one storm season.

d. Receiving water and reference samples shall be analyzed for the same constituents as storm water runoff samples. At a minimum, constituents to be sampled and analyzed in reference and discharge receiving waters must include oil and grease, total suspended solids, Ocean Plan Table B metals for protection of marine life, Ocean Plan PAHs, pyrethroids, OP pesticides, ammonia, nitrate, phosphates, and critical life stage chronic toxicity for three species. In addition, within the range of the southern sea otter, indicator bacteria or some other measure of fecal contamination shall be analyzed.

3. Waterfront and Marine Operations: In addition to the above requirements for ocean receiving water monitoring, additional monitoring must be performed for marinas and boat launch and pier facilities:

a. For all marina or mooring field operators, in mooring fields with 10 or more occupied moorings, the ocean receiving water must be sampled for Ocean Plan indicator bacteria, residual chlorine, copper, zinc, grease and oil, methylene blue active substances (MBAS), and ammonia nitrogen.

   (1) For mooring field operators opting for an individual monitoring program (Section IV.B.1 above), this sampling must occur weekly (on the weekend) from May through October.

   (2) For mooring field operators opting to participate in a regional integrated monitoring program (Section IV.B.2 above), this sampling must occur monthly from May through October on a high use weekend in each month. The Water Boards may allow a reduction in the frequency of sampling, through the regional monitoring program, after the first year of monitoring.

b. For all mooring field operators, the subtidal sediment (sand or finer, if present) within mooring fields and below piers shall be sampled and analyzed for Ocean Plan Table B metals (for marine aquatic life beneficial use), acute toxicity, PAHs, and tributyltin. For sediment toxicity testing, only an acute toxicity test using the amphipod Eohaustorius estuarius must be performed. This sampling shall occur at least three times during a five (5) year period. For mooring field operators opting to participate in a regional integrated monitoring program, the Water Boards may allow a reduction in the frequency of sampling after the first sampling effort's results are assessed.

This page left intentionally blank

Riverside Copermittee Redlines

ATTACHMENT B

STANDARD PERMIT PROVISIONS AND GENERAL PROVISIONS

1. Standard Permit Provisions

Code of Federal Regulations Title 40 Section 122.41 (40 CFR 122.41) includes conditions, or provisions, that apply to all National Pollutant Discharge Elimination System (NPDES) permits. Additional provisions applicable to NPDES permits are in 40 CFR 122.42. All applicable provisions in 40 CFR 122.41 and 40 CFR 122.42 must be incorporated into this Order and NPDES permit. The applicable 40 CFR 122.41 and 40 CFR 122.42 provisions are as follows:

a. DUTY TO COMPLY [40 CFR 122.41(a)]

The Copermittee must comply with all of the provisions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The Copermittee must comply with effluent standards or effective prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or effective prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement. [40 CFR 122.41(a)(1)]

(2) The CWA provides that any person who violates Section 301, 302, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any such sections in a permit issued under Section 402, or any requirement imposed in a pretreatment program approved under Section 402(a)(3) or 402(b)(8) of the CWA, is subject to a civil penalty not to exceed $25,000 per day for each violation. The CWA provides that any person who *negligently* violates Section 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA, or any requirement imposed in a pretreatment program approved under Section 402(a)(3) or 402(b)(8) of the CWA, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates Section 301, 302, 303, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of

not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.
[40 CFR 122.41(a)(2)]

(3) Any person may be assessed an administrative penalty by the San Diego Regional Water Quality Control Board (San Diego Water Board), State Water Resources Control Board (State Water Board), or United States Environmental Protection Agency (USEPA) for violating Section 301, 302, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.
[40 CFR 122.41(a)(3)]

b. DUTY TO REAPPLY [40 CFR 122.41(b)]

If a Copermittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Copermittee must apply for and obtain a new permit.

c. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE [40 CFR 122.41(c)]

It shall not be a defense for a Copermittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

d. DUTY TO MITIGATE [40 CFR 122.41(d)]

The Copermittee must take all reasonable steps to minimize or prevent any discharge or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

e. PROPER OPERATION AND MAINTENANCE [40 CFR 122.41(e)]

The Copermittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Copermittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a Copermittee only when the operation is necessary to achieve compliance with the conditions of this permit.

f. PERMIT ACTIONS [40 CFR 122.41(f)]

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Copermittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

g. PROPERTY RIGHTS [40 CFR 122.41(g)]

This permit does not convey any property rights of any sort, or any exclusive privilege.

h. DUTY TO PROVIDE INFORMATION [40 CFR 122.41(h)]

The Copermittee must furnish to the San Diego Water Board, State Water Board, or USEPA within a reasonable time, any information which the San Diego Water Board, State Water Board, or USPEA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Copermittee must also furnish to the San Diego Water Board, State Water Board, or USPEA upon request, copies of records required to be kept by this permit.

i. INSPECTION AND ENTRY [40 CFR 122.41(i)]

The Copermittee must allow the San Diego Water Board, State Water Board, USEPA, and/or their authorized representative (including an authorized contractor acting as their representative), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the Copermittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit; [40 CFR 122.41(i)(1)]

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit; [40 CFR 122.41(i)(2)]

(3) Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; [40 CFR 122.41(i)(3)] and

(4) Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location. [40 CFR 122.41(i)(4)]

j. MONITORING AND RECORDS [40 CFR 122.41(j)]

(1) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity. [40 CFR 122.41(j)(1)]

(2) Except for records of monitoring information required by this permit related to the Copermittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 40 CFR Part 503), the

Copermittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the San Diego Water Board at any time. [40 CFR 122.41(j)(2)]

(3) Records for monitoring information must include: [40 CFR 122.41(j)(3)]

(a) The date, exact place, and time of sampling or measurements; [40 CFR 122.41(j)(3)(i)]
(b) The individual(s) who performed the sampling or measurements; [40 CFR 122.41(j)(3)(ii)]
(c) The date(s) analyses were performed; [40 CFR 122.41(j)(3)(iii)]
(d) The individual(s) who performed the analyses; [40 CFR 122.41(j)(3)(iv)]
(e) The analytical techniques or methods used; [40 CFR 122.41(j)(3)(v)] and
(f) The results of such analyses. [40 CFR 122.41(j)(3)(vi)]

(4) Monitoring must be conducted according to test procedures under 40 CFR Part 136 unless another method is required under 40 CFR Subchapters N or O. [40 CFR 122.41(j)(4)]

In the case of pollutants for which there are no approved methods under 40 CFR Part 136 or otherwise required under 40 CFR Subchapters N and O, monitoring must be conducted according to a test procedure specified in the permit for such pollutants. [40 CFR 122.44(i)(1)(iv)]

(5) The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. [40 CFR 122.41(j)(5)]

k. SIGNATORY REQUIREMENT [40 CFR 122.41(k)]

(1) All applications, reports, or information submitted to the San Diego Water Board, State Water Board, or USEPA must be signed and certified. (See 40 CFR 122.22) [40 CFR 122.41(k)(1)]

(a) *For a municipality, State, Federal, or other public agency.* [All applications must be signed] [b]y either a principal executive officer or ranking elected official. [40 CFR 122.22(a)(3)]

(b) All reports required by permits, and other information requested by the San Diego Water Board, State Water Board, or USEPA must be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if: [40 CFR 122.22(b)]

(i) The authorization is made in writing by a person described in paragraph (a) of this section; [40 CFR 122.22(b)(1)]

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) [40 CFR 122.22(b)(2)] and,

(iii) The written authorization is submitted to the San Diego Water Board and State Water Board. [40 CFR 122.22(b)(3)]

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the San Diego Water Board prior to or together with any reports, information, or applications to be signed by an authorized representative. [40 CFR 122.22(c)]

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." [40 CFR 122.22(d)]

(2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both. [40 CFR 122.41(k)(2)]

I. REPORTING REQUIREMENTS [40 CFR 122.41(l)]

(1) *Planned changes.* The Copermittee must give notice to the San Diego Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when: [40 CFR 122.41(l)(1)]

(a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); [40 CFR 122.41(l)(1)(i)] or

(b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which

are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1).
[40 CFR 122.41(l)(1)(ii)]

(c) The alteration or addition results in a significant change in the Copermittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan. [40 CFR 122.41(l)(1)(iii)]

(2) *Anticipated noncompliance*. The Copermittee must give advance notice to the San Diego Water Board or State Water Board of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
[40 CFR 122.41(l)(2)]

(3) *Transfers*. This permit is not transferable to any person except after notice to the San Diego Water Board. The San Diego Water Board may require modification or revocation and reissuance of the permit to change the name of the Copermittee and incorporate such other requirements as may be necessary under the CWA.
[40 CFR 122.41(l)(3)]

(4) *Monitoring reports.* Monitoring results must be reported at the intervals specified elsewhere in this permit. [40 CFR 122.41(l)(4)]

(a) Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the San Diego Water Board or State Water Board for reporting results of monitoring of sludge use or disposal practices. [40 CFR 122.41(l)(4)(i)]

(b) If the Copermittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or another method required for an industry-specific waste stream under 40 CFR Subchapters N or O, the results of this monitoring must be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the San Diego Water Board or State Water Board.
[40 CFR 122.41(l)(4)(ii)]

(c) Calculations for all limitations which require averaging of measurements must utilize an arithmetic mean unless otherwise specified in the permit.
[40 CFR 122.41(l)(4)(iii)]

(5) *Compliance schedules*. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date. [40 CFR 122.41(l)(5)]

(6) *Twenty-four hour reporting.*

(a) The Copermittee must report any noncompliance that may endanger health or the environment. Any information must be provided orally within 24 hours from the time the Copermittee becomes aware of the circumstances. A written submission must also be provided within five (5) days of the time the Copermittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. [40 CFR 122.41(l)(6)(i)]

(b) The following must be included as information which must be reported within 24 hours under this paragraph: [40 CFR 122.41(l)(6)(ii)]

(i) Any unanticipated bypass that exceeds any effluent limitation in the permit (See 40 CFR 122.41(g)). [40 CFR 122.41(l)(6)(ii)(A)]
(ii) Any upset which exceeds any effluent limitation in the permit. [40 CFR 122.41(l)(6)(ii)(B)] and,
(iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the San Diego Water Board in the permit to be reported within 24 hours. (See 40 CFR 122.44(g)) [40 CFR 122.41(l)(6)(ii)(C)]

(c) The San Diego Water Board may waive the above-required written report on a case-by-case basis if the oral report has been received within 24 hours. [40 CFR 122.41(l)(6)(iii)]

(7) *Other noncompliance.* The Copermittee must report all instances of noncompliance not reported in accordance with the standard provisions required under 40 CFR 122.41(l)(4), (5), and (6), at the time monitoring reports are submitted. The reports must contain the information listed in the standard provisions required under 40 CFR 122.41(l)(6). [40 CFR 122.41(l)(7))]

(8) *Other information.* When the Copermittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the San Diego Water Board, State Water Board, or USEPA, the Copermittee must promptly submit such facts or information. [40 CFR 122.41(l)(8)]

~~**m. BYPASS** [40 CFR 122.41(m)]~~

~~(1) *Definitions.*~~

~~(a) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. [40 CFR 122.41(m)(1)(i)] or~~

~~(b) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be~~

Comment [A126]: While this is a standard condition for NPDES permits, it is manifestly inapplicable to MS4 permits. Since BMPs constructed to comply with the Order include bypass provisions to protect their entirety, the Copermittees would have to notify the Regional Board whenever a storm was predicted. This provision should be deleted.

~~expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.~~
~~[40 CFR 122.41(m)(1)(ii)]~~

~~(2) *Bypass not exceeding limitations*. The Copermittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the standard provisions required under 40 CFR 122.41(m)(3) and (4).~~
~~[40 CFR 122.41(m)(2)]~~

~~(3) *Notice*.~~

~~(a) *Anticipated bypass*. If the Copermittee knows in advance of the need for a bypass, it must submit a notice, if possible at least ten days before the date of the bypass. [40 CFR 122.41(m)(3)(i)] or~~

~~(b) *Unanticipated bypass*. The Copermittee must submit notice of an unanticipated bypass in accordance with the standard provisions required under 40 CFR 122.41(l)(6) (24 hour notice).~~
~~[40 CFR 122.41(m)(3)(ii)]~~

~~(4) *Prohibition of Bypass*.~~

~~(a) Bypass is prohibited, and the San Diego Water Board may take enforcement action against a Copermittee for bypass, unless:~~
~~[40 CFR 122.41(m)(4)(i)]~~

~~(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; [40 CFR 122.41(m)(4)(i)(A)]~~
~~(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;~~
~~[40 CFR 122.41(m)(4)(i)(B)] and,~~
~~(iii) The Copermittee submitted notice in accordance with the standard provisions required under 40 CFR 122.41(m)(3).~~
~~[40 CFR 122.41(m)(4)(i)(C)]~~

~~(b) The San Diego Water Board may approve an anticipated bypass, after considering its adverse effects, if the San Diego Water Board determines that it will meet the three conditions listed above.~~
~~[40 CFR 122.41(m)(4)(ii)]~~

~~n.~~m. **UPSET** [40 CFR 122.41(n)]

(1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Copermittee. An upset does not

include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. [40 CFR 122.41(n)(1)]

(2) *Effect of an upset*. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the standard provisions required under 40 CFR 122.41(n)(3) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. [40 CFR 122.41(n)(2)]

(3) *Conditions necessary for a demonstration of upset*. A Copermittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: [40 CFR 122.41(n)(3)]

(a) An upset occurred and that the Copermittee can identify the cause(s) of the upset; [40 CFR 122.41(n)(3)(i)]
(b) The permitted facility was at the time being properly operated; [40 CFR 122.41(n)(3)(ii)] and
(c) The Copermittee submitted notice of the upset in accordance with the standard provisions required under 40 CFR 122.41(l)(6)(ii)(B) (24-hour notice). [40 CFR 122.41(n)(3)(iii)]
(d) The Copermittee complied with any remedial measures pursuant to the standard provisions required under 40 CFR 122.41(d). [40 CFR 122.41(n)(3)(iii)]

(4) *Burden of proof*. In any enforcement proceeding, the Copermittee seeking to establish the occurrence of an upset has the burden of proof. [40 CFR 122.41(n)(4)]

~~o.~~n. STANDARD PERMIT PROVISIONS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEMS
[40 CFR 122.42(c)]

The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the San Diego Water Board or State Water Board under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report must include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions; [40 CFR 122.42(c)(1)]

(2) Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes must be consistent with 40 CFR 122.26(d)(2)(iii); [40 CFR 122.42(c)(2)] and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (v); [40 CFR 122.42(c)(3)]

(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year; [40 CFR 122.42(c)(4)]

(5) Annual expenditures and budget for year following each annual report; [40 CFR 122.42(c)(5)]

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; [40 CFR 122.42(c)(6)]

(7) Identification of water quality improvements or degradation. [40 CFR 122.42(c)(7)]

~~p.~~o. **STANDARD PERMIT PROVISIONS FOR STORM WATER DISCHARGES** [40 CFR 122.42(d)]

The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) must require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

2. General Provisions

In addition to the standard provisions required to be incorporated into the Order and NPDES permit pursuant to 40 CFR 122.41 and 40 CFR 122.42, several other general provisions apply to this Order. The general provisions applicable to this Order and NPDES permit are as follows:

a. DISCHARGE OF WASTE IS A PRIVILEGE

No discharge of waste into the waters of the State, whether or not such discharge is made pursuant to waste discharge requirements, shall create a vested right to continue such discharge. All discharges of waste into waters of the State are privileges, not rights. [CWC Section 13263(g)]

b. DURATION OF ORDER AND NPDES PERMIT

(1) *Effective date*. This Order and NPDES permit becomes effective on the 50th day after its adoption provided the USEPA has no objection. If the USEPA objects to its issuance, this Order shall not become effective until such objection is withdrawn. This Order supersedes Order No. R9-2007-0001 upon the effective date of this Order, and supersedes Order Nos. R9-2009-0002 and R9-2010-0016 upon their expiration or earlier notice of coverage.

(2) *Expiration*. This Order and NPDES permit expires five years after its effective date. [40 CFR 122.46(a)]

(3) *Continuation of expired order*. After this Order and NPDES permit expires, the terms and conditions of this Order and NPDES permit are automatically continued pending issuance of a new permit if all requirements of the federal NPDES regulations on the continuation of expired permits (40 CFR 122.6) are complied with.

c. AVAILABILITY

A copy of this Order must be kept at a readily accessible location and must be available to on-site personnel at all times.

d. CONFIDENTIALITY OF INFORMATION

Except as provided for in 40 CFR 122.7, no information or documents submitted in accordance with or in application for this Order will be considered confidential, and all such information and documents shall be available for review by the public at the San Diego Water Board office.

Claims of confidentiality for the following information will be denied:
[40 CFR 122.7(b)]

(1) The name and address of any permit applicant or Copermittee;
[40 CFR 122.7(b)(1)] and

(2) Permit applications and attachments, permits, and effluent data.
[40 CFR 122.7(b)(2)]

e. EFFLUENT LIMITATIONS

(1) *Interim effluent limitations*. The Copermittee must comply with any interim effluent limitations as established by addendum, enforcement action, or revised waste discharge requirements which have been, or may be, adopted by the San Diego Water Board.

(2) *Other effluent limitations and standards*. If any applicable toxic effluent standard or effective prohibition (including any schedule of compliance specified in such effluent standard or effective prohibition) is promulgated under Section 307(a) of the CWA for a toxic pollutant and that standard or effective prohibition is more stringent than any limitation on the pollutant in the permit, the San Diego Water Board shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or effective prohibition. [40 CFR 122.44(b)(1~~)]~~~~)]~~~~)]~~.~~)]~~

f. DUTY TO MINIMIZE OR CORRECT ADVERSE IMPACTS

The Copermittee must take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this Order, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

g. PERMIT ACTIONS

The filing of a request by the Copermittee for modification, revocation and reissuance, or termination of this Order, or a notification of planned change in or anticipated

noncompliance with this Order does not stay any condition of this Order. (See 40 CFR 122.41(f)) In addition, the following provisions apply to this Order:

(1) Upon application by any affected person, or on its own motion, the San Diego Water Board may review and revise the requirements in this Order. All requirements must be reviewed periodically. [CWC Section 13263(e)]

(2) This Order may be terminated or modified for cause, including, but not limited to, all of the following: [CWC Section 13381]

(a) Violation of any condition contained in the requirements of this Order. [CWC Section 13381(a)]

(b) Obtaining the requirements in this Order by misrepresentation, or failure to disclose fully all relevant facts. [CWC Section 13381(b)]

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge. [CWC Section 13381(c)]

(3) When this Order is transferred to a new owner or operator, such requirements as may be necessary under the CWC may be incorporated into this Order.

h. NPDES PERMITTED NON-STORM WATER DISCHARGES

The San Diego Water Board has, in prior years, issued a limited number of individual NPDES permits for non-storm water discharges to MS4s. The San Diego Water Board or State Water Board may in the future, upon prior notice to the Copermittee(s), issue an NPDES permit for any non-storm water discharge (or class of non-storm water discharges) to an MS4. A Copermittee will not be held responsible for pollutants in its MS4 discharge originating from an NPDES-permitted non-storm water discharge.

Comment [A127]: This comment reflects the appropriate responsibility between NPDES dischargers.

i. MONITORING

In addition to the standard provisions required under 40 CFR 122.41(j) and (l)(4), the following general monitoring provisions apply to this Order:

(1) Where procedures are not otherwise specified in Order, sampling, analysis and quality assurance/quality control must be conducted in accordance with the Quality Assurance Management Plan (QAMP) for the State of California's Surface Water Ambient Monitoring Program (SWAMP), adopted by the State Water Resources Control Board (State Water Board).

(2) Pursuant to 40 CFR 122.41(j)(2) and CWC Section 13383(a), each Copermittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five (5) years from the date of the sample, measurement, report or application. This period may be extended by request of the San Diego Water Board at any time.

Comment [A128]: This provision and the provision in Attachment B 1.j(2) conflict. The Water Board should reconcile these provisions or delete one.

(3) All chemical, bacteriological, and toxicity analyses must be conducted at a laboratory certified for such analyses by the California Department of Public Health or a laboratory approved by the San Diego Water Board.

(4) For priority toxic pollutants that are identified in the California Toxics Rule (CTR) (65 Fed. Reg. 31682), the Copermittees must instruct their laboratories to establish calibration standards that are equivalent to or lower than the Minimum Levels (MLs) published in Appendix 4 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). If a Copermittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR Part 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure (assuming that all the method specified sample weights, volumes, and processing steps have been followed) may be used instead of the ML listed in Appendix 4 of the SIP. The Copermittee must submit documentation from the laboratory to the San Diego Water Board for approval prior to raising the ML for any priority toxic pollutant.

j. ENFORCEMENT

(1) The San Diego Water Board is authorized to enforce the terms of this Order under several provisions of the CWC, including, but not limited to, CWC Sections 13385, 13386, and 13387.

(2) Nothing in this Order shall be construed to protect the Copermittee from its liabilities under federal, state, or local laws.

(3) The CWC provides for civil and criminal penalties comparable to, and in some cases greater than, those provided for under the CWA.

(4) Except as provided in the standard conditions required under 40 CFR 122.41(m) and (n), nothing in this Order shall be construed to relieve the Copermittee from civil or criminal penalties for noncompliance.

(5) Nothing in this Order shall be construed to preclude the institution of any legal action or relieve the Copermittee from any responsibilities, liabilities, or penalties to which the Copermittee is or may be subject to under Section 311 of the CWA.

(6) Nothing in this Order shall be construed to preclude institution of any legal action or relieve the Copermittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authoring preserved by Section 510 of the CWA.

k. SEVERABILITY

The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.

l. APPLICATIONS

Any application submitted by a Copermittee for reissuance or modification of this Order must satisfy all applicable requirements specified in federal regulations as well as any additional requirements for submittal of a Report of Waste Discharge specified in the CWC and the California Code of Regulations.

m. IMPLEMENTATION

All plans, reports and subsequent amendments submitted in compliance with this Order must be implemented immediately (or as otherwise specified). All submittals by Copermittees must be adequate to implement the requirements of this Order.

n. REPORT SUBMITTALS

(1) All report submittals must include an executive summary, introduction, conclusion, recommendations, and signed certified statement.

(2) Each Copermittee must submit a signed certified statement covering its responsibilities for each applicable submittal.

(3) The Principal Watershed Copermittee(s) must submit a signed certified statement covering its responsibilities for each applicable submittal and the sections of the submittals for which it is responsible.

(4) Unless otherwise directed, the Copermittees must submit one hard copy and one electronic copy of each report required under this Order to the San Diego Water Board, and one electronic copy to the USEPA.

(5) The Copermittees must submit reports and provide notifications as required by this Order to the following:

EXECUTIVE OFFICER
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 SKY PARK COURT, SUITE 100
SAN DIEGO CA 92123-4340
Telephone: (858) 467-2952 Fax: (858) 571-6972

EUGENE BROMLEY
US ENVIRONMENTAL PROTECTION AGENCY
REGION IX
PERMITS ISSUANCE SECTION (W-5-1)
75 HAWTHORNE STREET
SAN FRANCISCO CA 94105

ATTACHMENT C

ACRONYMS AND ABBREVIATIONS

AMAL	Average Monthly Action Level
ASBS	Area(s) of Special Biological Significance
BMP	Best Management Practice
Basin Plan	Water Quality Control Plan for the San Diego Basin
CEQA	California Environmental Quality Act
CCR	California Code of Regulations
CFR	Code of Federal Regulations
CWA	Clean Water Act
CWC	California Water Code
CZARA	Coastal Zone Act Reauthorization Amendments of 1990
ESAs	Environmentally Sensitive Areas
GIS	Geographic Information System
IBI	Index of Biological Integrity
LID	Low Impact Development
MDAL	Maximum Daily Action Level
MEP	Maximum Extent Practicable
MS4	Municipal Separate Storm Sewer System
NAL	Non-Storm Water Action Level
NAICS	North American Industry Classification System
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
ROWD	Report of Waste Discharge (application for NPDES reissuance)
SAL	Storm Water Action Level
San Diego Water Board	California Regional Water Quality Control Board, San Diego Region
SIC	Standard Industrial Classification Code
State Water Board	State Water Resources Control Board
TMDL	Total Maximum Daily Load
USEPA	United States Environmental Protection Agency
WDID	Waste Discharge Identification Number
WLA	Waste Load Allocation
WQBEL	Water Quality Based Effluent Limitation

DEFINITIONS

Active/Passive Sediment Treatment - Using mechanical, electrical or chemical means to flocculate or coagulate suspended sediment for removal from runoff from construction sites prior to discharge.

Anthropogenic Litter – Trash generated from human activities, not including sediment.

Automotive Repair Shop – a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539 or equivalent NAICS code.

Average Monthly Action Level – The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month, or the geometric mean for bacteria, as applicable.

Beneficial Uses - The uses of water necessary for the survival or wellbeing of man, plants, and wildlife. These uses of water serve to promote tangible and intangible economic, social, and environmental goals. "Beneficial Uses" ~~of the waters of the State~~ that may be protected include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves. Existing beneficial uses are uses that were attained in the surface or ground water on or after November 28, 1975; and potential beneficial uses are uses that would probably develop in future years through the implementation of various control measures. "Beneficial Uses" are equivalent to "Designated Uses" under federal law. [California Water Code Section 13050(f)].

Best Management Practices (BMPs) - Defined in 40 CFR 122.2 as schedules of activities, effective prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. In the case of municipal discharge permits, BMPs may be used in the place of numeric effluent limits.

Bioassessment - The use of biological community information to evaluate the biological integrity of a water body and its watershed. With respect to aquatic ecosystems, bioassessment is the collection and analysis of samples of the benthic macroinvertebrate community together with physical/habitat quality measurements associated with the sampling site and the watershed to evaluate the biological condition (i.e. biotic integrity) of a water body.

Biofiltration - Practices that use vegetation and amended soils to detain and treat runoff from impervious areas. Treatment is through filtration, infiltration, adsorption, ion exchange, and biological uptake of pollutants.

Biological Integrity - Defined in Karr J.R. and D.R. Dudley. 1981. Ecological perspective on water quality goals. *Environmental Management* 5:55-68 as: "A balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of natural habitat of the region." Also referred to as ecosystem health.

BMP Design Manual – A plan developed to eliminate, reduce, or mitigate the impacts of runoff from development projects, including Priority Development Projects.

Channel Rehabilitation and Improvement – Remedial measures or activities for the purpose of improving or restoring the environmental health of streams, channels or river systems. Techniques may vary from in-stream restoration techniques to off-line stormwater management practices installed in the system corridor or upland areas. Rehabilitation techniques may include, but are not limited to the following: riparian zone restoration, constructed wetlands, bank stabilization, channel modifications, and day lighting of drainage systems.

Comment [A129]: This term should be defined in Attachment C given its use in the Order.

Clean Water Act Section 303(d) Water Body - An impaired water body in which water quality does not meet applicable water quality standards and/or is not expected to meet water quality standards, even after the application of technology based pollution controls required by the CWA. The discharge of runoff to these water bodies by the Copermittees is significant because these discharges can cause or contribute to violations of applicable water quality standards.

Construction Site – Any project, including projects requiring coverage under the Construction General Permit, that involves soil disturbing activities greater than 10,000 square feet including, but not limited to, clearing, grading, disturbances to ground such as stockpiling, and excavation. This does not include interior construction activities such as interior remodeling, plumbing, electrical, or mechanical work.

Contamination - As defined in the Porter-Cologne Water Quality Control Act, contamination is "an impairment of the quality of waters of the State by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. 'Contamination' includes any equivalent effect resulting from the disposal of waste whether or not waters of the State are affected."

Copermittee – An incorporated city within the County of Orange, County of Riverside, or County of San Diego in the San Diego Region~~,~~ (Region 9), the County of Orange, the County of Riverside, the County of San Diego, the Orange County Flood Control District, the Riverside County Water Conservation and Flood Control District, the San Diego Regional Airport Authority, or the San Diego Unified Port District. See also "Municipal Copermittee" and "Special District Copermittee".

Comment [A130]: As set forth above, the Riverside County Copermittees make a distinction in these classes of Copermittees based on their respective legal authorities.

Copermittees – All of the individual Copermittees, collectively, unless the obligation in question is directed to one or a sub-group of Copermittees.

Comment [A131]: This clarifies that not all obligations in the Order directed to "Copermittees" are in fact applicable to all Copermittees.

Critical Channel Flow (Qc) – The channel flow that produces the critical shear stress that initiates bed movement or that erodes the toe of channel banks. When measuring Qc, it should be based on the weakest boundary material – either bed or bank.

Daily Discharge – Defined as either: (1) the total mass of the constituent discharged over the calendar day or any 24 hour period that reasonably represents a calendar day for purposes of sampling (as specified in the permit), for a constituent with limitations expressed in units of mass or; (2) the unweighted arithmetic mean measurement of the constituent over the day for a constituent with limitations expressed in other units of measurement (e.g. concentration.)

The Daily Discharge may be determined by the analytical results of a composite sample taken over the course of one day (a calendar day, or other 24 hour period other than a day), or by the arithmetic mean of analytical results from one or more grab samples taken over the course of a

day.

Development Projects - Construction, rehabilitation, redevelopment, or reconstruction of any public or private residential project, industrial~~,~~ or commercial facility, or any other projects designed for post-construction human activity or occupation and involving land disturbance activities.

Comment [A132]: This definition clarifies the nature of Development Projects covered under the Order.

Direct Discharge to an Environmentally Sensitive Area – refers to outflow from a drainage conveyance system that collects runoff from the subject development or redevelopment site and terminates at or in receiving waters within the ESA, and is not commingled with flows from adjacent or other upstream lands.

Dry Season –May 1 to September 30.

Dry Weather – Weather is considered dry if the preceding 72 hours has been without measurable precipitation (>0.1 inch).

Enclosed Bays – Enclosed bays are indentations along the coast that enclose an area of oceanic water within distinct headlands or harbor works. Enclosed bays include all bays where the narrowest distance between the headlands or outermost bay works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. Enclosed bays do not include inland surface waters or ocean waters.

Erosion – When land is diminished or worn away due to wind, water, or glacial ice. Often the eroded debris (silt or sediment) becomes a pollutant via storm water runoff. Erosion occurs naturally but can be intensified by land clearing activities such as farming, development, road building, and timber harvesting. This permit is concerned particularly with non-naturally occurring Erosion that eventually results in a Sediment discharge from MS4s into Receiving Waters.

Environmentally Sensitive Areas (ESAs) - Areas that include but are not limited to all Clean Water Act Section 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance by the State Water Board and San Diego Water Board; State Water Quality Protected Areas; water bodies designated with the RARE beneficial use by the State Water Board and San Diego Water Board; areas designated as preserves or their equivalent under the Natural Communities Conservation Program within the Cities and County of Orange; and any other equivalent environmentally sensitive areas which have been identified by the Copermittees.

Estuaries – Waters, including coastal lagoons, located at the mouth of streams that serve as areas of mixing fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars shall be considered estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and ocean water. Estuaries do not include inland surface waters or ocean waters.

Existing Development – Any area that has been developed and exists for municipal, commercial, industrial, or residential purposes, uses, or activities. May include areas that are not actively used for its originally developed purpose, but may be re-purposed or redeveloped

for another use or activity.

Flow Duration – The long-term period of time that flows occur above a threshold that causes significant sediment transport and may cause excessive erosion damage to creeks and streams (not a single storm event duration). The simplest way to visualize this is to consider a histogram of pre- and post-project flows using long-term records of hourly data. To maintain pre-development flow duration means that the total number of hours (counts) within each range of flows in a flow-duration histogram cannot increase between the pre- and post-development condition. Flow duration within the range of geomorphologically significant flows is important for managing erosion.

Grading - The cutting and/or filling of the land surface to a desired slope or elevation.

Hazardous Material – Any substance that poses a threat to human health or the environment due to its toxicity, corrosiveness, ignitability, explosive nature or chemical reactivity. These also include materials named by the USEPA in 40 CFR 116 to be reported if a designated quantity of the material is spilled into the waters of the U.S. or emitted into the environment.

Hazardous Waste - Hazardous waste is defined as "any waste which, under Section 600 of Title 22 of this code, is required to be managed according to Chapter 30 of Division 4.5 of Title 22 of this code" [CCR Title 22, Division 4.5, Chapter 11, Article 1].

Household Hazardous Waste – Paints, cleaning products, and other hazardous wastes generated during home improvement or maintenance activities.

Hydromodification – The change in the natural watershed hydrologic processes and runoff characteristics (i.e., interception, infiltration, overland flow, and groundwater flow) caused by urbanization or other land use changes that result in increased stream flows and sediment transport. In addition, alteration of stream and river channels, such as stream channelization, concrete lining, installation of dams and water impoundments, and excessive streambank and shoreline erosion are also considered hydromodification, due to their disruption of natural watershed hydrologic processes.

Illicit Connection – Any connection to the MS4 that conveys an illicit discharge.

Illicit Discharge - Any discharge to the MS4 that is not composed entirely of storm water except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities [40 CFR 122.26(b)(2)]. Discharges from natural sources or from conditionally exempt sources described in this Order are not considered Illicit Discharges.

Inactive Areas – Areas of construction activity that are not active and those that have been active and are not scheduled to be re-disturbed for at least 14 days.

Infiltration – Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow [40 CFR 35.2005(20)].

Comment [A133]: Wrong definition. Should be defining infiltration (of stormwater into soil)

Inland Surface Waters – Includes all surface waters of the U.S.~~State~~ that do not include the ocean, enclosed bays, or estuaries.

Jurisdictional Runoff Management Program Document – A written description of the specific jurisdictional runoff management measures and programs that each Copermittee will implement to comply with this Order and ensure that illicit discharges are effectively prohibited, and storm water pollutant discharges in runoff are reduced to the MEP and do not cause or contribute to a violation of water quality standards.

Low Impact Development (LID) – A storm water management and land development strategy that emphasizes conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect pre-development hydrologic functions.

Low Impact Development Best Management Practices (LID BMPs) – LID BMPs include schedules of activities, effective prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States through storm water management and land development strategies that emphasize conservation ~~s~~and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect pre-development hydrologic functions. LID BMPs include retention practices that do not allow runoff, such as infiltration, rain water harvesting and reuse, and evapotranspiration. LID BMPs also include flow-through practices such as biofiltration that may have some discharge of storm water following pollutant reduction.

Major Outfall – As defined in the Code of Federal Regulations, a major outfall is a MS4 outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (i.e. discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than 50 acres); or, for MS4s that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or equivalent), a MS4 outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (i.e. discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

Maximum Daily Action Level (MDAL) –The highest allowable daily discharge of a pollutant, over a calendar day (or 24 hour period). For pollutants with action levels expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with action levels expressed in other units of measurement, the daily discharge is calculated as the arithmetic mean measurement of the pollutant over the day.

Maximum Extent Practicable (MEP) – The technology-based standard established by Congress in CWA section 402(p)(3)(B)(iii) ~~for storm water~~ that operators of MS4s must meet. Technology-based standards establish the level of pollutant reductions that dischargers must achieve, typically by treatment or by a combination of source control and treatment control BMPs. MEP generally emphasizes pollution prevention and source control BMPs primarily (as the first line of defense) in combination with treatment methods serving as a backup (additional line of defense). MEP considers economics and is generally, but not necessarily, less stringent than BAT. A definition for MEP is not provided either in the statute or in the regulations. Instead the definition of MEP is dynamic and will be defined by the following process over time: municipalities propose their definition of MEP by way of their runoff management programs. Their total collective and individual activities conducted pursuant to the runoff management programs becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities (e.g., MEP for street sweeping, or MEP for MS4 maintenance). In the absence of a proposal acceptable to the San Diego Water Board, the San Diego Water Board

defines MEP.

In a memo dated February 11, 1993, entitled "Definition of Maximum Extent Practicable," Elizabeth Jennings, Senior Staff Counsel, SWRCB addressed the achievement of the MEP standard as follows:

> "*To achieve the MEP standard, municipalities must employ whatever Best Management Practices (BMPs) are technically feasible (i.e., are likely to be effective) and are not cost prohibitive. The major emphasis is on technical feasibility. Reducing pollutants to the MEP means choosing effective BMPs, and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, or the BMPs would not be technically feasible, or the cost would be prohibitive. In selecting BMPs to achieve the MEP standard, the following factors may be useful to consider:*
>
> *a. Effectiveness: Will the BMPs address a pollutant (or pollutant source) of concern?*
> *b. Regulatory Compliance: Is the BMP in compliance with storm water regulations as well as other environmental regulations?*
> *c. Public Acceptance: Does the BMP have public support?*
> *d. Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved?*
> *e. Technical Feasibility: Is the BMP technically feasible considering soils, geography, water resources, etc.?*
>
> *The final determination regarding whether a municipality has reduced pollutants to the maximum extent practicable can only be made by the Regional or State Water Boards, and not by the municipal discharger. If a municipality reviews a lengthy menu of BMPs and chooses to select only a few of the least expensive, it is likely that MEP has not been met. On the other hand, if a municipal discharger employs all applicable BMPs except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit derived, it would have met the standard. Where a choice may be made between two BMPs that should provide generally comparable effectiveness, the discharger may choose the least expensive alternative and exclude the more expensive BMP. However, it would not be acceptable either to reject all BMPs that would address a pollutant source, or to pick a BMP based solely on cost, which would be clearly less effective. In selecting BMPs the municipality must make a serious attempt to comply and practical solutions may not be lightly rejected. In any case, the burden would be on the municipal discharger to show compliance with its permit. After selecting a menu of BMPs, it is the responsibility of the discharger to ensure that all BMPs are implemented."*

Monitoring Year – October 1 to September 30

Municipal Copermittee – Any Copermittee, exclusive of Special District Copermittees.

Comment [A134]: This definition clarifies distinction between municipal and special district copermittees.

Municipal Separate Storm Sewer System (MS4) – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designated or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.226. Copermittees need only comply with permit conditions relating to "discharges from the municipal separate storm sewers for which they are operators." 40 CFR 122.26(a)(vi).

Comment [A135]: These changes correct a citation and clarifies the responsibility of the copermittees as to other MS4s.

National Pollutant Discharge Elimination System (NPDES) - The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the CWA.

Non-Storm Water - All discharges to and from a MS4 that do not originate from precipitation events (i.e., all discharges from a MS4 other than storm water). Non-storm water includes illicit discharges and NPDES permitted discharges.

Comment [A136]: This is overly limiting, There are other types of Non-storm discharges that do not fit these two categories (e.g. irrigated agriculture, natural flows, conditionally exempt flows, others). Rather than trying to identify all types of non-stormwater discharges, suggest just deleting this sentence.

Nuisance - As defined in the Porter-Cologne Water Quality Control Act, a nuisance is "anything which meets all of the following requirements: 1) Is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. 2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. 3) Occurs during, or as a result of, the treatment or disposal of wastes."

Ocean Waters – the territorial marine waters of the State as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. Discharges to ocean waters are regulated in accordance with the State Board's California Ocean Plan.

Order – Unless otherwise specified, refers to this Order, Order No. R9-2013-0001 (NPDES No. CAS0109266)

Outfall – *Outfall* means a *point source* as defined by 40 CFR 122.2 at the point where a MS4 discharges to waters of the United States and does not include open conveyances connecting two MS4s, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United. 40 CFR 122.26(b)(9).

Comment [A137]: This federal regulatory definition clarifies the nature of an outfall.

Parking Lot – a land area or facility for the tempraory parking or storage of motor vehicles used personally, for business, or for commerce.

Comment [A138]: Definition placed in Attachment C for consistency.

Persistent Flow - Persistent flow is defined as the presence of an MS4 discharge that is hydraulically connected to a flowing, pooled, or ponded receiving water more than 72 hours after a measureable rainfall event of 0.1 inch or greater during three consecutive monitoring and/or inspection events. All other flowing, pooled, or ponded water is considered transient.

Comment [A139]: Changes reflect the necessity of a connection to flowing receiving waters. Discharges that are pooled are not discharges to waters of the United States. Please see Comment Letter section 3.5.3.

Person - A person is defined as an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof [40 CFR 122.2].

Point Source - Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operations, landfill leachate collection systems, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return

flows from irrigated agriculture or agricultural storm water runoff.

Pollutant - Any agent that may cause or contribute to the degradation of water quality such that a condition of pollution or contamination is created or aggravated.

Pollution - As defined in the Porter-Cologne Water Quality Control Act, pollution is "the alteration of the quality of the waters of the State by waste, to a degree that unreasonably affects the either of the following: 1) The waters for beneficial uses; or 2) Facilities that serve these beneficial uses." Pollution may include contamination.

Pollution Prevention - Pollution prevention is defined as practices and processes that reduce or eliminate the generation of pollutants, in contrast to source control BMPs, treatment control BMPs, or disposal.

Pre-Project~~Development~~ Runoff Conditions – Runoff conditions that exist~~existed~~ onsite immediately before the ~~existing development was constructed, or exists onsite before~~ planned development activities occur. Pre-development is not intended to be interpreted as that period before any human-induced land disturbance has occurred. 64 FR 68761.

Comment [A140]: This definition reflects the exact language used by U.S. EPA in the Federal Register. Moreover, it avoids the constitutional and statutory problems with requiring developers to mitigate for impacts not attributable to their project. It also is consistent with the CEQA standard for project impact mitigation.

Priority Development Projects - New development and redevelopment projects defined under Provision E.3.b of Order No. R9-2012-0011.

Properly Designed – Designed in accordance with the Copermittee's BMP Design Manual and/or any appropriate design requirements set forth by the Copermittee and based on widely accepted design criteria and in accordance with this Order.

Comment [A141]: This definition is required to address this standard, which is mentioned in the Order but not defined.

Rainy Season (aka Wet Season) –October 1 to April 30

Receiving Waters – Waters of the United States.

Receiving Water Limitations - Waste discharge requirements issued by the San Diego Water Board typically include both: (1) "Effluent Limitations" (or "Discharge Limitations") that specify the technology-based or water-quality-based effluent limitations; and (2) "Receiving Water Limitations" that specify the water quality objectives in the Basin Plan as well as any other limitations necessary to attain those objectives. In summary, the "Receiving Water Limitations" provision is the provision used to implement the requirements of CWA section 402(p)(3)(B).

Redevelopment - The creation, addition, and or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road widening, the addition to or replacement of a structure, and creation or addition of impervious surfaces. Replacement of impervious surfaces includes any activity that is not part of a routine maintenance activity where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include trenching and resurfacing associated with utility work; parking lots; resurfacing existing roadways; cutting and reconfiguring of surface parking lots; new sidewalk construction, pedestrian ramps, or bike lane on existing roads; and routine replacement of damaged pavement, such as pothole repair and emergency restoration and public safety projects.

Comment [A142]: The changes requested in this definition appropriately exempts de minimis or emergency/public safety projects.

Reporting Period – The period of information that is reported in the Annual Report. The reporting period consists of two components: 1) July 1 to June 30, consistent with the fiscal

year, for the implementation of the jurisdictional runoff management programs, and 2) October 1 to September 30, consistent with the monitoring year for the monitoring and assessment programs. Together, these two time periods constitute the reporting year for the Annual Report due January 31 following the end of the monitoring year.

Restaurant – a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC code 5812).

Retail gasoline outlet (RGO) – a business that sells automotive or truck fuel to the general public with a projected Average Daily Traffic (ADT) of 100 or more vehicles per day.

Retain –Keep or hold in a particular place, condition, or position without discharge to ~~surface~~ Receiving W~~w~~aters.

Retrofitting – Storm water management practices put into place after development has occurred in watersheds where the practices previously did not exist~~.~~ or are ineffective.~~.~~ Retrofitting of developed areas is intended to improve water quality, protect downstream channels, reduce flooding, or meet other specific objectives. Retrofitting developed areas may include, but is not limited to replacing roofs with green roofs, disconnecting downspouts or impervious surfaces to drain to pervious surfaces, replacing impervious surfaces with pervious surfaces, installing rain barrels, installing rain gardens, and trash area enclosures.

Runoff - All flows in a storm water conveyance system that consists of the following components: (1) storm water (wet weather flows) and (2) non-storm water including dry weather flows.

San Diego Water Board – As used in this document the term "San Diego Water Board" is synonymous with the term "Regional Board" as defined in Water Code section 13050(b) and is intended to refer to the California Regional Water Quality Control Board for the San Diego Region as specified in Water Code Section 13200.

Sediment - Soil, sand, and minerals washed from land into water. Sediment resulting from anthropogenic sources (i.e. human induced land disturbance activities) that is discharged into Receiving Waters is considered a pollutant. This Order regulates only the discharges of sediment from anthropogenic sources into Receiving Waters and does not regulate naturally occurring sources of sediment. Sediment can destroy fish-nesting areas, clog animal habitats, and cloud waters so that sunlight does not reach aquatic plants.

Special District Copermittee – A separate legal entity that may own or operate MS4 systems, but has no land use authorities outside of their MS4. The Riverside County Flood Control and Water Conservation District [and Orange County Flood Control District?] is a [are] Special District Copermittee[s].

Source Control BMP – Land use or site planning practices, or structural or nonstructural measures that aim to prevent runoff pollution by reducing the potential for contamination at the source of pollution. Source control BMPs minimize the contact between pollutants and runoff.

Storm Water – Per 40 CFR 122.26(b)(13), means storm water runoff, snowmelt runoff and surface runoff and drainage. ~~Surface runoff and drainage pertains to runoff and drainage resulting from precipitation events.~~

Comment [A143]: Relocation of definition to Attachment C.

Comment [A144]: Definition added for clarity and consistency with prior redlines

Comment [A145]: Edit clarifies intent of definition.

Stream, Channel, or Habitat Rehabilitation – Measures or activities for the purpose of improving or restoring the environmental health (i.e. physical, chemical and biological integrity) of streams, channels, or river systems. Rehabilitation techniques may include, but are not limited to, riparian zone restoration, constructed wetlands, bank stabilization, channel reconfiguration, and daylighting drainage systems.

Street, Road, Highway, Freeway– Any paved impervious surface that is used for the transportation of automobiles, trucks, motorcycles, and other vehicles, with an ADT of at least 100 vehicles per day.

Comment [A146]: Definition relocated to Attachment C.

Comment [A147]: Consistent with RGO definition.

Structural BMPs - A subset of BMPs which detains, retains, filters, removes, or prevents the release of pollutants to surface waters from development projects in perpetuity, after construction of a project is completed.

Total Maximum Daily Load (TMDL) - The maximum amount of a pollutant that can be discharged into a water body from all sources (point and non-point) and still maintain water quality standards. Under CWA section 303(d), TMDLs must be developed for all water bodies that do not meet water quality standards after application of technology-based controls.

Toxicity - Adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies). The water quality objectives for toxicity provided in the Basin Plan, state in part…"All waters shall be free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life….The survival of aquatic life in surface waters subjected to a waste discharge or other controllable water quality factors, shall not be less than that for the same water body in areas unaffected by the waste discharge".

Treatment Control BMP – Any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

Unpaved Road – Any long, narrow stretch without pavement used for traveling by motor passenger vehicles between two or more points. Unpaved roads are generally constructed of dirt, gravel, aggregate or macadam and may be improved or unimproved.

Waste - As defined in CWC Section 13050(d), "waste includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal."

Article 2 of CCR Title 23, Chapter 15 (Chapter 15) contains a waste classification system that applies to solid and semi-solid waste, which cannot be discharged directly or indirectly to water of the state and which therefore must be discharged to land for treatment, storage, or disposal in accordance with Chapter 15. There are four classifications of waste (listed in order of highest to lowest threat to water quality): hazardous waste, designated waste, non-hazardous solid waste, and inert waste.

Water Quality Objective - Numerical or narrative limits on constituents or characteristics of

water designated to protect designated beneficial uses of the water. [California Water Code Section 13050 (h)]. California's water quality objectives are established by the State and Regional Water Boards in the Water Quality Control Plans. Numeric or narrative limits for pollutants or characteristics of water designed to protect the beneficial uses of the water. In other words, a water quality objective is the maximum concentration of a pollutant that can exist in a receiving water and still generally ensure that the beneficial uses of the receiving water remain protected (i.e., not impaired). Since water quality objectives are designed specifically to protect the beneficial uses, when the objectives are violated the beneficial uses are, by definition, no longer protected and become impaired. This is a fundamental concept under the Porter Cologne Act. Equally fundamental is Porter Cologne's definition of pollution. A condition of pollution exists when the water quality needed to support designated beneficial uses has become unreasonably affected or impaired; in other words, when the water quality objectives have been violated. These underlying definitions (regarding beneficial use protection) are the reason why all waste discharge requirements implementing the federal NPDES regulations require compliance with water quality objectives. (Water quality objectives are also called water quality criteria in the CWA.)

Water Quality Standards - Water quality standards, as defined in Clean Water Act section 303(c) consist of the beneficial uses (e.g., swimming, fishing, municipal drinking water supply, etc.,) of a water body and criteria (referred to as water quality objectives in the California Water Code) necessary to protect those uses. Under the Water Code, the water boards establish beneficial uses and water quality objectives in water quality control or basin plans. Together with an anti-degradation policy, these beneficial uses and water quality objectives serve as water quality standards under the Clean Water Act. In Clean Water Act parlance, state beneficial uses are called "designated uses" and state water quality objectives are called "criteria." Throughout this Order, the relevant term is used depending on the statutory scheme.

Waters of the State - Any water, surface or underground, including saline waters within the boundaries of the State [CWC section 13050 (e)]. The definition of the Waters of the State is broader than that for the Waters of the United States in that all water in the State is considered to be a Waters of the State. ~~regardless of circumstances or condition.~~

Comment [A148]: The intent of the definition is to cover natural water sources, and not anthropogenic structures that collect runoff to reduce volume/velocity or pollutants.

Waters of the United States - As defined in the 40 CFR 122.2, the Waters of the U.S. are defined as: "(a) All waters, which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) All interstate waters, including interstate "wetlands;" (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) Which are used or could be used for industrial purposes by industries in interstate commerce; (d) All impoundments of waters otherwise defined as waters of the United States under this definition: (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) The territorial seas; and (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA."

Watershed - That geographical area which drains to a specified point on a water course, usually a confluence of streams or rivers (also known as drainage area, catchment, or river basin).

Wet Season (aka Rainy Season) –October 1 to April 30

Wet Weather – Weather is considered wet if there is a storm event of 0.1 inches and greater and the following 72 hours, unless otherwise defined by the Copermittee for the purposes of monitoring consistent with the USEPA Storm Water Sampling Guidance Document (EPA-833-B-92-001), or developed pursuant to another regulatory mechanism.

Comment [A149]: This is important as the monitoring requirements require you to sample the first 'Wet Weather' event. 0.1" of rainfall doesn't result in runoff in all watersheds. Copermittees should be able to define mobilization criteria to identify storms that are likely to produce runoff in that drainage area consistent with this EPA guidance.

LEGAL AND FACT SHEET COMMENTS ON TENTATIVE ORDER R9-2013-0001 MADE ON BEHALF OF THE RIVERSIDE COUNTY COPERMITTEES

This document provides comments on various legal issues raised by Tentative Order No. R9-2013-0001 (the "Draft Permit") and associated attachments, including Attachment F, the Fact Sheet/Technical Report ("Fact Sheet"), and are made on behalf of the Riverside County Flood Control & Water Conservation District ("District"), the County of Riverside and the Cities of Murrieta, Temecula and Wildomar (collectively, the "Riverside County Copermittees").

These legal comments are in addition to the other comments on the Draft Permit and attachments made by the Riverside County Copermittees (including the Comment Letter dated January 10, 2013 and signed by Jason E. Uhley, Chief of the District's Watershed Protection Division) and the redline attachment ("Redline"), as well as any comments or testimony which may be offered at the public hearing(s) on the Draft Permit. The Comment Letter and Redline also discuss legal issues. The Riverside County Copermittees appreciate this opportunity to comment and welcome any questions that Water Board staff may have.

These comments are submitted subject to the same reservations set forth in the Comment Letter regarding the Water Board's lack of authority, in the absence of agreement by the Riverside County Copermittees or the filing of a Report of Waste Discharge ("ROWD"), to issue a regional municipal separate storm sewer system ("MS4") permit to the Riverside County Copermittees. Submission of these comments does not waive this objection.

Request for Additional Public Comment

Before turning to comments on the Draft Permit, the Riverside County Copermittees wish to note that in view of the extensive comments made by them, as well as what we anticipate will be extensive comments by the South Orange County and San Diego County Copermittees, as well as from other stakeholders, it would greatly facilitate the permit adoption process if the Water Board were to release a revised Tentative Order for further review and comment prior to final adoption of the Permit. This will enable the Water Board staff to address the comments in a more orderly fashion and provide all parties with the opportunity to see how staff proposes to incorporate the comments in the Draft Permit.

Comments on Findings

Finding 2 and Fact Sheet Section VII.B: This finding recites that the Water Board "has the legal authority to issue a regional MS4 permit pursuant to its authority under Clean Water Act ("CWA") section 402(p)(3)(B) and 40 CFR 122.26(a)(i)(v)." Section VII.B of the Fact Sheet provides a more detailed rationale for this finding (at pages F-22-23).

The Riverside County Copermittees respectfully disagree with this finding and the analysis provided in the Fact Sheet. We do not believe that a regional MS4 permit is authorized under the CWA or the implementing regulations, absent agreement by the copermittees to be bound by such a MS4 permit (as is the case with the Bay Area MS4 permit covering discharges into the Bay).

The CWA itself does not explicitly authorize MS4 permits that, like the Draft Permit, cross county lines. CWA section 402(p)(3)(B) provides only that "[p]ermits for discharges from municipal storm sewers . . . may be issued on a system- or jurisdiction-wide basis." This language, contrary to the conclusion in Finding 2, indicates that a multi-county permit, covering several distinct non-interconnected municipal stormwater "systems" in multiple watersheds with multiple receiving waters, is not one issued on a "system-wide" basis and that an MS4 permit covering multiple jurisdictions in three different counties is not one issued on a "jurisdiction-wide basis." Because neither "system-wide" nor "jurisdiction-wide" are defined in the CWA, however, the CWA regulations must also be reviewed.

The regulatory provision cited in Finding 2, 40 CFR § 122.26(a)(1)(v), does not add clarity, since it merely repeats the "system-wide" and "jurisdiction-wide" language of the Act and the regulations define neither term. The regulations do, however, suggest that "system-wide" is not intended to cover multiple large MS4s in different jurisdictions. The regulations, at 40 CFR § 122.26(a)(1)(v) state that in making the determination to designate a system-wide or jurisdiction-wide basis" the permitting authority should consider the location of the "discharge" with respect to waters of the United States, the size of the discharge, the quantity and nature of the pollutants discharge and other relevant factors.

The Draft Permit covers multiple "discharges" into receiving waters located in three separate counties and the size, quality and nature of the discharges vary widely, due to varying hydrologic and climatic conditions in the three areas.

The Fact Sheet cites 40 CFR § 122.26(a)(3)(iv), which provides, in relevant part, that the Water Board "may issue one systemwide permit covering all, or a portion of all municipal separate storm systems in adjacent or interconnected large or medium municipal separate storm sewer systems." This provision does not, however, authorize issuance of a regional MS4 permit covering multiple counties and multiple watersheds that are not interconnected and which do not share a common receiving water. In fact, the only common fact uniting the various MS4s in the three counties under the Water Board's jurisdiction is that common jurisdiction.

First, even if the subject MS4 facilities otherwise met the criteria specified in the federal regulations (which, as noted below, they do not), the prospective permittees must apply for such a MS4 permit, as set forth in the first sentence of 40 CFR § 122.26(a)(3)(iv): "*One permit application may be submitted for all or a portion of all* municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems." (emphasis supplied). No such application has been filed with respect to the Draft Permit. Only the San Diego County copermittees submitted a ROWD for MS4 facilities within that county.[1]

[1] Moreover, the fact that permittees have the ability to determine the geographic scope of the permit is reinforced by the language in 40 CFR § 122.26(a)(3)(iii)(B), which allows an individual municipality to submit "a distinct permit application which only covers discharges from the [MS4] for which the owner is responsible . . ." If a permittee can "opt out" of a multi-MS4 permit by submitting a individual permit application, a permitting authority such as a water board cannot impose a multi-MS4 permit on that permittee.

Second, this provision requires that the MS4s to be covered in the permit be "adjacent or interconnected." This is not true with respect to the MS4s proposed to be included within the Draft Permit. For example, the MS4 within the Santa Margarita Region of Riverside County is not "interconnected" with any other MS4s except those within that region. This is true also of the MS4s within South Orange County and San Diego County, which are not interconnected. Additionally, none of the MS4s in the three counties is "adjacent" to each other – each is separated by miles of non-urban area. In the SMR for example, the confluence of Temecula and Murrieta Creeks to form the Santa Margarita River is miles upstream of Rainbow Creek, the first discharge from San Diego County to the River. And, the confluence of Temecula and Murrieta Creeks is over 30 miles from the discharge of the Santa Margarita River to the Pacific Ocean.

The next inquiry is whether the three separate county MS4s could be considered, together, to form a single "large municipal separate storm sewer system." The federal MS4 regulations define this term as follows:

> *Large municipal separate storm sewer system* means all municipal separate storm sewers that are either:
>
> (i) Located in an incorporated place with a population of 250,000 or more . . . ."
>
> (ii) Located in the counties listed in Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
>
> (iii) Owned or operated by a municipality other than those described [in paragraphs (i) and (ii)] . . . and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described [in paragraphs (i) and (ii)]. In making this determination the Director may consider the following factors:
>
> (A) Physical interconnections between the municipal separate storm sewers;
>
> (B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in [paragraph (i)];
>
> (C) The quantity and nature of pollutants discharged to waters of the United States;
>
> (D) The nature of the receiving waters; and
>
> (E) Other relevant factors, or
>
> (iv) The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region

> defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described [in paragraphs (i), (ii) or (iii)].

40 CFR § 122.26(b)(4).

None of paragraphs (i), (ii) or (iii) authorizes a regional MS4 permit such as that envisioned in the Draft Permit. The Draft Permit applies beyond a single incorporated place, County or municipality. Of these paragraphs, only paragraph (iv) could arguably be used to define the MS4s in the three Counties as a single MS4 and thus authorize a regional permit. The key limiting language is, however, "within the boundaries of a region **defined by a storm water management regional authority,** based on a jurisdictional, watershed, or other appropriate basis . . . ." A regional water board is not a stormwater management regional authority. This is clear from the MS4 regulations, which provide that a "**regional authority may be responsible for submitting a permit application"** under certain conditions. 40 CFR § 122.26(a)(3)(iii)(C). Clearly, a Water Board is not responsible for submitting MS4 permit applications.

U.S. EPA, in the Preamble to the final Phase I MS4 regulations (55 Fed Reg. 47990, November 16, 1990), further illuminated the meaning of the regulatory language. The Preamble indicates that commenters proposed eight different MS4 permitting options:

> Option 1 – systems owned or operated by incorporated places augmented by integrated discharges; Option 2 – systems owned or operated by incorporated places augmented with significant other municipal discharges; Option 3 – systems owned or operated by counties; Option 4 – systems owned and operated by States or State departments of transportation; Option 5 – systems within the boundaries of an incorporated place; Option 6 – systems within the boundaries of counties; Option 7 – systems in census designated urbanized areas; and Option 8 – systems defined by watershed boundaries.

55 Fed Reg. at 48039. None of these options encompasses the fact pattern presented by the Draft Permit, which covers multiple counties and multiple watersheds, are not interconnected, do not share common receiving waters and are located in separate census designated urbanized areas.

In explaining the derivation of 40 CFR 122.26(b)(4)(iv), U.S. EPA noted that it was "an outgrowth of comments on all options, especially Option 4 (State owned systems/State highways) and Option 8 (watersheds)." 55 Fed. Reg. at 48040. Thus, the Caltrans MS4 permit (which applies statewide) is authorized under paragraph (iv), since the "storm water management regional authority" defining the region to be covered is Caltrans itself. No such single authority exists for the three-county area proposed to be included in the Draft Permit, which also would encompass multiple watersheds.

Moreover, paragraph (iv) provides that the regional authority must "petition" the U.S. EPA Director to have a single MS4 designated within the boundaries of the region defined by the regional authority. Because California has been delegated NPDES permitting authority, a regional authority would presumably need to petition its Water Board to authorize such a regional permit. Since no such regional authority exists to establish the geographical basis for a

three-county MS4 permit, there is no such entity to "petition" the Water Board to establish a regional permit. This is clear from the Preamble to the Phase I regulations, which indicate that "regional storm water authorities" established by "some States or counties" may "petition the Director [or its state designee] to assume a regional role. 55 Fed. Reg. at 48042. It is clear from the Preamble that it is not the Water Board that has the authority to make such a petition, but rather the "storm water authorities" (i.e., municipalities, districts and Caltrans).

It should be noted that the Bay Area Regional MS4 Permit was a joint Bay Area Water Board and copermittee effort, coordinated by the Bay Area Stormwater Agencies Management Association ("BASMAA"). It is not the case that the Bay Area Water Board imposed this regional MS4 permit. The copermittees, coordinated by BASMAA, themselves determined to develop a regional MS4 permit. Further, all of the copermittees to the Bay Area Regional MS4 Permit discharge to a common receiving water, San Francisco Bay. Also, an Alaska MS4 permit cited in a letter from the Office of Chief Counsel to county counsel for Orange and Riverside Counties was issued to several municipalities and entities within a single "borough," which is equivalent in Alaska to a county.

Additionally, neither the Riverside County Copermittees nor those in South Orange County have filed ROWDs with the San Diego Water Board, which serve as the application for an NPDES MS4 permit in California. Water Code § 13260. The current Riverside County MS4 permit for the Santa Margarita Region provides that the ROWD is not required to be filed until May 2015, 180 days prior to the November 10, 2015 expiration date of that permit. Order R9-2010-0016, Part II.K.2.c.

> This ROWD must include:
>
> (1) Proposed changes to the Copermittees' runoff management programs; (2) Proposed changes to monitoring programs; (3) Justification for proposed changes; (4) Name and mailing addresses of the Copermittees; (5) Names and titles of primary contacts of the Copermittees; (6) Any other information necessary for the reissuance of this Order and (7) Any other information required by federal regulations for permit reapplications.

Id. It should be noted that several items of this ROWD are specifically intended to assist in the formulation of a new, SMR-specific MS4 permit, including proposed changes to the runoff management and monitoring programs, as well as justification for such changes, information necessary for "reissuance" of the SMR MS4 permit and information required by the federal regulations for MS4 permit reapplications.

As a simple jurisdictional matter, the Water Board cannot issue a regional MS4 permit to MS4 dischargers that have not applied for it. Moreover, as noted above, the SMR copermittees are entitled to apply for an MS4 permit applicable to their jurisdiction. Further, each individual copermittee has the right to apply for a MS4 permit covering only its discharges, as has the City of Long Beach in the Los Angeles Region.

Finding 3, Finding 15, in Fact Sheet Section VII.A and in Multiple Locations Throughout Draft Permit: In Finding 3, the Fact Sheet and in multiple locations throughout the Draft Permit (which are identified in the redline of the Draft Permit submitted with these comments by the Riverside County Copermittees ("Redline")), it is stated that the maximum extent practicable ("MEP") applies only to "storm water" discharges from the MS4. This is not correct.[2]

In fact, the Clean Water Act does not distinguish between non-stormwater and stormwater in terms of MS4 discharges which must be controlled to the MEP standard. *See* 33 U.S.C. § 1342(p)(3)(B)(iii)(the MS4 permit "shall require controls to reduce the discharge of pollutants to the maximum extent practicable . . . ." While the heading of 33 U.S.C. § 1342(p) refers to "Municipal and industrial stormwater discharges," this is not dispositive, as 33 U.S.C. § 1342(p)(3)(B)(ii), which requires the effective prohibition of "non-stormwater discharges" into the MS4. Thus, the language of this heading does not in fact support the argument that the MEP standard applies only to pollutants in stormwater discharges.

That both non-stormwater and stormwater must be controlled to the MEP standard was made clear by U.S. EPA itself in the preamble to the final Phase I stormwater regulations. In that preamble, U.S. EPA made it clear that "MEP control measures" would be implemented to address not only pollutants in "storm water" but also from "non-storm water discharges." As the preamble states:

> "Permittees are required to develop management programs for four types of pollutant sources which discharge to large and medium municipal storm sewer systems. Discharges from [such systems] are usually expected to be composed primarily of: (1) Runoff from commercial and residential areas; (2) storm water runoff from industrial areas; (3) runoff from construction sites; and (4) *non-storm water discharges*. Part 2 of the permit application has been designed to allow [permittees] the opportunity to propose *MEP control measures for each* of these components of the discharge."

55 Fed. Reg. at 48052 (emphasis supplied).

This language sets forth USEPA's understanding of the plain language of the CWA: "pollutants" must be controlled to the MEP from any MS4 "discharge," not merely pollutants in stormwater.

Finding 11: This finding, in relevant part, states that "[h]istoric and current development makes use of natural drainage patterns and features as conveyances for runoff. Rivers, streams and creeks in developed areas used in this manner are part of the Copermittees' MS4s regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the rivers, streams and creeks in the developed areas of the Copermittees' jurisdictions are both an MS4 and receiving water." This conclusion is legally incorrect.

First, under no circumstance can a natural stream constitute an MS4. The definition of "MS4" in the CWA regulations (a definition found in Attachment C of the Draft Permit) refers to a

[2] Finding 15 also states, erroneously, that the MEP standard "is explicitly for "Municipal . . . *Stormwater Discharges* (emphasis added)" from the MS4.

"conveyance or system of conveyances" "owned or operated" by a municipality. 40 CFR §122.26(b)(8). In California, natural rivers and streams are not "owned" nor "operated" by the municipality through which they flow. Moreover, a municipality obviously cannot "operate" a natural creek or stream. In further support of the point that a MS4 is an artificial, not natural, watercourse, the types of "conveyances" identified in the regulation ("roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains") all refer to anthropogenic structures, not natural streams. 40 CFR § 122.26(b)(8).

Second, a "receiving water" cannot also be an MS4, as is plain from the CWA regulations. An MS4 is itself defined as discharging to waters of the United States. 40 C.F.R. §122.26(b)(8). An MS4 cannot, in essence, discharge to itself. Moreover, an "outfall" from an MS4 (the point at which the discharge enters a receiving water) does not, pursuant to 40 C.F.R §122.26 (b)(9), include conveyances connecting "segments of the same stream or other waters of the United States and are used to convey waters of the United States."

Moreover, U.S. EPA, in the Preamble to the initial version of the MS4 regulations (53 Fed. Reg. 49416 (Dec. 7, 1988)) expressly determined that "streams, wetlands and other water bodies that are waters of the United States are not storm sewers for the purposes of this rule" and that "stream channelization, and stream bed stabilization, which occur in waters of the United States" were not subject to National Pollutant Discharge Elimination System ("NPDES") permits under Section 402 of the CWA. 53 Fed. Reg. at 49442.

Additionally, the United States Supreme Court recently reversed the Ninth Circuit Court of Appeals and ruled that flows from sections of the Los Angeles and San Gabriel Rivers that are comprised of concrete flood control channels are not a "discharge" under the CWA, confirming that such rivers, even if improved, are "receiving waters" along with any natural portions of those rivers. *Los Angeles County Flood Control Dist. v. Natural Resources Defense Council*, 568 U.S. __(January 8, 2013) (slip op.).

The above-cited statement in the finding is incorrect and should be stricken, as recommended in the Redline.

Finding 12: This finding states, in relevant part, that "[a]s operators of the MS4s, the Copermittees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or otherwise control." This statement is legally incorrect, and ignores the salient point that the "discharger" of a pollutant is primarily responsible for controlling/permitting that discharge, under both the CWA and the Porter-Cologne Act. For example, under the Porter-Cologne Act, any persons discharging or proposing to discharge "waste" into waters of the state must file a report of waste discharge and obtain a waste discharge requirement. Water Code §§ 13260, 13263. The operator of the MS4 into which that water eventually flows is not "essentially accepting" responsibility for the discharge. The responsibility of the MS4 operator is established under the CWA, and that is to effectively prohibit non-stormwater discharges into [the MS4] and to control the discharge of pollutants from the MS4 to the MEP.

Moreover, the statement ignores the fact that in California, downstream property owners (including municipalities owning and operating MS4 facilities) must accept the flow of upstream waters. In fact, for a downstream municipality to block such flow would constitute an inverse condemnation or the creation of a nuisance under California law. *See Arreola v. County of Monterey* (2002) 99 Cal.App.4th 722 (obstruction of flood waters by improperly designed highway constituted inverse condemnation and nuisance).

Finding 28 and Fact Sheet Section VI: In the Finding, it is stated that the Water Board "finds that the requirements in this permit are not more stringent than the minimum federal requirements" and that therefore "a CWC section 13241 analysis is not required." The Finding further recites that notwithstanding this fact, "the San Diego Water Board has developed an economic analysis of the requirements in this Order."

For the reasons set forth in the comments of the Riverside County Copermittees, numerous provisions in the Draft Permit are in fact more stringent than the requirements of the CWA and its implementing regulations and therefore require an adequate Water Code § 13241 analysis. Unfortunately, this analysis is not provided in the Fact Sheet.

First, the economic analysis set forth in the Fact Sheet does not meet the requirements of Section 13241, as it does not analyze the six specific factors required to be analyzed under the section. Second, the analysis uses cost data from other sources, only a few of which were from the municipalities proposed to be included under the Draft Permit. These data are also a number of years old; the most recent study referenced in the Fact Sheet, the one done for the State Board by Cal State Sacramento, was dated January 2005 and included decade-old cost data from the City of Encinitas that dated from 2002-2003.

Third, the section of the Fact Sheet discussing the benefits of water quality notes that "there have been no studies for the San Diego Region to quantify the added value that surface waters with healthy water quality can provide." Thus, the Water Board has no evidence with which to compare the costs and benefits of the programs set forth in the Draft Permit. Moreover, the discussion makes the incorrect assumption that the alternative to the programs in the Draft Permit would be no controls on pollutants in urban runoff. As the Fact Sheet correctly notes, the Draft Permit is the fifth term MS4 permit for the copermittees. The previous four permits all contained increasingly complex and expensive control requirements, both structural and non-structural, designed to improve the quality of MS4 discharges. Thus, an appropriate cost analysis must compare the incremental costs of the programs set forth in the Draft Permit and the incremental benefits attributable to that permit. This has not been done in the Fact Sheet. Finally, the analysis does not recognize that the receiving waters provided economic benefits to residents of the San Diego Region long before issuance of the first MS4 permits in 1990. It is thus illogical to suggest that these pre-existing economic benefits would be lost if the Draft Permit is not adopted.

Finding 29 and Fact Sheet Section VII.F: The finding and the supporting argument in the Fact Sheet represents an attempt by Water Board staff to address whether the requirements of the Draft Permit represent an unfunded state mandate. That attempt, however, is beyond the scope of the Water Board's powers, since the *only* agency charged by the Legislature with determining

the presence of a state mandate, and whether that mandate is unfunded, is the Commission on State Mandates. Govt. Code § 17552; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333. The Water Board has no jurisdiction to make a legal finding or discuss in the Fact Sheet that the Draft Permit, in whole or in part, does not constitute an unfunded state mandate.

Additionally fact sheets are required, under the CWA regulations, to provide the legal authority and reasons for each substantive permit provision (40 CFR § 124.8(a)(4); 40 CFR § 124.56(a)). *See also City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region* (2006), 135 Cal.App.4th 1377, 1382 (stating that fact sheets contains "the legal and factual grounds for the Water Board's recommendation to adopt the . . . permit"). Finding 29 and the discussion in Section VII.F of the Fact Sheet do not relate to any Draft Permit provision, nor provide legal authority or justification for the Draft Permit's adoption. As such, the finding and Fact Sheet discussion are surplussage and should be deleted.

The Riverside County Copermittees disagree with each of the arguments set forth in the Finding and Fact Sheet as to why the Draft Permit does not constitute an unfunded state mandate. Nevertheless, because the exclusive arena for such disagreements is the Commission on State Mandates, whose jurisdiction does not commence unless and until a test claim is filed before the Commission, the Copermittees need not and will not address those arguments.

Comments on Provisions in Draft Permit

Provision A and Fact Sheet Section VIII.A:

Lack of True Iterative Compliance Process

As set forth in the Redline and in the Comment Letter, the Riverside County Copermittees believe that to effectuate the iterative approach to compliance with water quality standards and other discharge prohibitions in the Draft Permit, the copermittees must be provided with the means to be in compliance. Based on monitoring, exceedances of water quality standards are occurring in the receiving waters subject to the Draft Permit, as set forth in Table G-14 to the latest 2011-2012 monitoring report submitted by the Riverside County Copermittees. Thus, if the copermittees are not provided an iterative means to be in compliance, which was contemplated by State Board's Order No. 2001-15, the copermittees will be issued an illegal MS4 permit, since it is a permit with which they cannot comply. This violates the intent of Congress in the CWA, which "is presumed not to have intended absurd (impossible) results." *Hughey v. JMS Development Corp.*, 78 F.3d 1523, 1529 (11th Cir. 1996); *accord, Mississippi River Revival v. City of Minneapolis*, 319 F.3d 1013, 1017-1018 (8th Cir. 2003).

With regard to the iterative process, Water Board staff has indicated numerous times during the workshop process that achievement of water quality standards is expected to take many years. The entire WQIP approach is aimed at the eventual attainment of such standards, as are the TMDLs issued to other copermittees, which have final compliance dates years into the future.

This approach is, however, put into jeopardy by the requirement, as expressed in the Fact Sheet at F-39, that the discharge prohibition and receiving water limitation provisions are

"independently applicable, meaning that compliance with one provision does not provide a 'safe harbor' where there is non-compliance with another provision (i.e., compliance with Provision A.4 does not shield a Copermittee who may have violated Provision A.1.a, A.1.c, or A.2.a from an enforcement action." While the Fact Sheet appropriately notes how this process should work through Provision A.4 (which "essentially requires the Copermittees to implement additional BMPs until MS4 discharges no longer cause or contribute to a violation of water quality standards") it also states that despite this iterative process, "the San Diego Water Board retains the discretion to take other appropriate enforcement and the iterative process does not shield dischargers from citizen suits under the CWA." Fact Sheet at F-40.

The consequences of this approach cannot be overemphasized. Despite the copermittees' good faith undertaking to follow the iterative process outlined in Provision A.4, a Water Board enforcement proceeding or a citizen suit can be brought for violations of water quality standards and, if the citizen plaintiff is successful, a federal judge is empowered to use his/her injunctive powers under Section 505(a) of the CWA to throw out the WQIP, JRMP or other compliance efforts of the copermittees and require other efforts. In such a case, the time and money spent by the copermittees in trying to comply with the Draft Permit, as well as the effort spent by the copermittees and Water Board staff in developing the Draft Permit's terms, are completely wasted.

Thus, the essential conundrum of Provision A, as presently drafted, is clearly exposed. Even though a copermittee may spend significant sums and undertake significant tasks under its WQIP or JRMP, be conducting expensive monitoring and special studies, and be in *full compliance* with all of the programmatic requirements of the Draft Permit, it would still face either a Water Board enforcement action or a citizen suit under Section 505 of the CWA. And, such a suit would allege exceedances of water quality standards (some of which are hardly capable of laboratory detection, much less control) that the Water Board acknowledges cannot be achieved for years.

Provision A is not, however, required by the CWA, as held by the Ninth Circuit in *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999). The holding in *Browner* is further reflected in State Board Order WQ 2001-15 (which the Fact Sheet acknowledges incorporates an "iterative process") which states:

> [O]ur [receiving water limitation] language, similar to the U.S. EPA's permit language discussed in the Browner case, **does not require strict compliance with water quality standards.** Our language requires that **storm water management plans be designed to achieve compliance with water quality standards**. **Compliance is to be achieved over time, through an iterative approach requiring improved BMPs**. As pointed out by the Browner court, there is nothing inconsistent between this approach and the determination that the Clean Water Act does not mandate strict compliance with water quality standards.

Order WQ 2001-15 at 7 (emphasis added). Thus, Provision A is inconsistent with the State Board's own precedential order, which requires the iterative approach effectuated by the suggested Redline changes.[3]

In further support, it may be noted that the U.S. EPA-drafted MS4 permit for the District of Columbia does not contain the type of language found in Provision A, but rather requires "an iterative and an adaptive management process for pollutant reduction and for achieving applicable water quality standard and/or total maximum daily load (TMDL) compliance." DC MS4 Permit Fact Sheet, page 5 (attached as Exhibit A).

Also, despite the assertion in the Fact Sheet that the copermittees are seeking a "safe harbor" from liability, this is incorrect. Every provision of an MS4 permit is subject to enforcement; given the complexity of the Draft Permit, the failure by a copermittee to comply with any provision could lead to such enforcement.

As noted above, MS4 discharges may not be achieving compliance with strict water quality standards, as recognized by the Issue Paper released by State Board staff in preparation for a November 20, 2012 workshop on receiving water limitation issues raised by *NRDC v. County of Los Angeles*. That Issue Paper stated that as "the storm water management programs of municipalities have matured, **an increasing body of monitoring data indicates that water quality standards are in fact not being met by many MS4s.**" (State Board Issue Paper, Page 2, emphasis supplied) (*see* Exhibit B.)

Perhaps most importantly, requiring strict and immediate compliance with discharge prohibition and receiving water limitations inhibits, not supports, the philosophy of the Draft Permit, which is to encourage the copermittees to focus on the most significant problems in their watersheds and to prioritize their resources to address those problems. Provision A, by contrast, discourages innovative approaches or prioritization, since all pollutants exceeding water quality standards create liability. Moreover, as discussed above, in the event of a citizen suit being brought such as that in the *NRDC* case, a federal judge could award injunctive relief to a successful plaintiff that could completely ignore or supplant the WQIP and other permit terms.

For additional discussion of receiving water limitations issues, please see Exhibit C, a letter submitted by the District to the State Board in connection with the recent workshop held by the State Board on receiving water limitations language. The Riverside County Copermittees hereby reference and incorporate this Exhibit into these comments.

The Riverside County Copermittees support a true iterative process that requires refinement and amendment of the WQIP and associated BMPs when receiving water limitation violations are recorded. That is the essence of the iterative process; the identification of problems and the development of BMPs to attempt to address those problems.

---

[3] While the Fact Sheet cites as authority *Natural Resources Defense Council v. County of Los Angeles*, discussed above, the Ninth Circuit was simply responding to language in the former Los Angeles County MS4 permit, and did not determine that such non-iterative language was required by the CWA.

The Redline proposes a means to achieve compliance using the WQIPs, which are intended to bring the copermittees into compliance with the discharge prohibition and receiving water limitation provisions of the Draft Permit over time. The Redline links compliance with Provisions A.1, A.2 and A.3 to A.4, which indicates that compliance is obtained through the preparation and updating of the WQIPs.

It must be noted, however, that the Riverside County Copermittees do not agree with the approach suggested by others, that any WQIP-based compliance approach be necessarily accompanied by a "Reasonable Assurance Analysis." Such an analysis could be extremely complex, expensive and time intensive to develop. Generally, such analyses are developed in the preparation of TMDLs and take a number of years to develop and refine. Given that the Santa Margarita Watershed has no adopted TMDLs, there are no comprehensive pollutant transport or BMP models available for the suite of constituents that might be considered for prioritization within a WQIP for that watershed. In the context of a TMDL, such models would be developed by the combined resources of the Water Board, stakeholders and dischargers. Requiring such an exercise to be undertaken solely with the public resources of the residents of the SMR is beyond the Copermittees' financial ability and would shift responsibility for development of TMDLs from the Water Board to the Copermittees.

Discussion in Fact Sheet

The Fact Sheet discussion also contains a number of legal and factual errors. First, the statement on page F-34 that non-stormwater discharges from the MS4 are subject to NPDES permitting requirements is unsupported by the plain language of the CWA, which (as noted above) applies the MEP standard to *all* discharges of pollutants from the MS4, not just those in stormwater. Also, such discharges are not subject to separate requirements under the NPDES program, as suggested on F-34, and non-storm water discharges are not the same, legally, as "illicit discharges." Please see discussion below.

Similarly, the Fact Sheet's conclusion that "Regional Water Boards are not limited by the iterative MEP approach to storm water regulation in crafting appropriate regulations for non-storm water discharges" is incorrect. The Fact Sheet correctly states that MEP has not been defined in the CWA or by U.S. EPA in the CWA regulations. However, the Fact Sheet incorrectly concludes that MEP is "ultimately defined" by the Water Boards or the State Board. What constitutes "MEP" is a question of federal law under the CWA, not a matter for definition by agencies which merely have been delegated the authority to enforce the CWA in California. The only source for such a finding is a memorandum from a State Board attorney, not case authority.

Moreover, Provisions B-E of the Draft Permit, far from establishing a "minimum framework" for the copermittees to achieve the MEP standard, sets forth in many cases requirements that far exceed the plain requirements of the CWA, the implementing regulations and in some cases even state law, or which require the copermittees to undertake steps that are not "practicable." These requirements are identified in the comments of the Riverside County Copermittees. In such respects, those requirements do not represent a "minimum framework" for MEP.

Other Issues

The Riverside County Copermittees also object to the provision in A.1.a and other portions of the Draft Permit that prohibit certain discharges into "waters of the state." The CWA regulates discharges into waters of the United States, which are surface waters. Expanding the prohibition to cover waters of the state expands the scope of the Draft Permit to protect groundwater, as a matter of state law. It should be noted that the recent Los Angeles County MS4 Permit appropriately applies this prohibition to waters of the United States.

Provision B.5: As noted in the Comment Letter, the CWA requires that illegal discharges into the MS4 be addressed by a program of steps taken to address such discharges. The Redline emphasizes that this program be guided by WQIP priorities, which is consistent with the overall intent of the Draft Program.

Provision E.2.a and E.2.a.(7): These provisions require the Copermittees to, as a part of their Illicit Discharge Detection and Elimination (IDDE) program, address all non-stormwater discharges as "illicit discharges," thus requiring the copermittees to "reduce or eliminate non-stormwater discharges" whether or not the discharges have been identified as "illicit."

The Fact Sheet asserts that "Provision E.2.a.(7) is consistent with the requirements of the CWA section 402(p)(3)(B)(ii) and 40CFR 122.26(d)(1)(v)(B). That assertion is not correct. Section 402(p)(3)(B)(ii) of the CWA states that MS4 permits "shall include a requirement to *effectively prohibit* non-stormwater discharges into the storm sewers" (emphasis supplied). The CWA regulations include two provisions designed to begin implementation of the "effective prohibition." The first provision requires MS4 permittees to perform a screening analysis, intended to provide sufficient information to develop priorities for a program to detect and remove illicit discharges. 40 CFR 122.26(d)(1)(iv)(D). The second requires MS4 permittees to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to MS4s. 40 CFR 122.26(d)(1)(iv)(D) and 122.26(d)(2)(B). The MS4 permittees are required to identify the non-stormwater discharge as an illicit discharge prior to having an obligation to effectively prohibit it. There is not otherwise a presumption to reduce or eliminate it.

40 CFR 122.26(d)(1)(v)(B), cited in the Fact Sheet, requires "[a] description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented."

The provision and rationale within the Fact Sheet blur the distinction between the copermittees' need to "effectively" prohibit non-stormwater discharges and to detect and eliminate illicit discharges.

- The requirement is "effectively prohibit" non-stormwater discharges, not "reduce or eliminate" non-stormwater discharges.
- Although copermittees are required to have a program to prevent illicit discharges to the MS4, non-stormwater discharges should only be addressed as illicit discharges where

such discharges are identified as sources of pollutants that may cause or contribute to an exceedance of a water quality objective.

- The IDDE program is established to detect and eliminate "illicit discharges", not non-stormwater discharges in general.

Please see the Redline for modifications to Provision E.2 addressing these issues.

Provision E.2.a.(3): In the Redline, the Riverside County Copermittees request that categories of irrigation runoff discharges (landscape irrigation, irrigation water and lawn watering) be considered as conditionally exempt discharges (not subject to treatment as illicit discharges).

The rationale for not including irrigation runoff discharges lacks a legal and factual basis. As noted in the Comment Letter, the only factual basis for this provision with respect to the Riverside County Copermittees is discussion in a public information informational brochure, which was itself based on a similar document from Orange County. Fact Sheet F-76. Despite assertions to the contrary in the Fact Sheet, this brochure does not represent a determination by the Riverside County Copermittees that irrigation runoff is a category of non-stormwater discharge that must be effectively prohibited. The other evidence in support of prohibiting the conditional exemption for irrigation runoff is entirely from different areas of the region, with different urban development patterns, lithology and hydrology. No specific determination has been made by the Copermittees (or the Water Board) that irrigation runoff in the Santa Margarita Region has actually been shown to be significant source of pollutants to receiving waters in the SMR.

EPA, in the preamble to the federal MS4 regulations, required that a *permittee* must make a finding that the "irrigation water" discharges must be a "source of pollutants to waters of the United States . . . ." 55 Fed. Reg. 48037. Moreover, such discharges must represent a "significant" source of pollutants to waters of the United States "under certain conditions." U.S. EPA, *Guidance Manual for the Preparation of Part 2 of the NPDES Permit Application for Discharges from Municipal Separate Storm Sewer Systems*, November 1992 ("EPA Part 2 Guidance Manual"), at p. 6-33. These conditions require a focus not on an entire category of discharges, but rather a discharger-by-discharger examination.

In the MS4 regulatory preamble, EPA stated that "[i]n general, municipalities will not be held responsible for prohibited some specific components of discharges or flows listed below through their [MS4], even though such components may be considered non-storm water discharges, unless such discharges *are specifically identified on a case-by-case basis as needing to be addressed."* 55 Fed. Reg. 47995 (emphasis supplied). In the Guidance Manual, EPA states:

> If an applicant knows . . . that landscape irrigation water from a ***particular site*** flows through and picks up pesticides **or *excess*** nutrients from fertilizer applications, there may be a reasonable potential for a storm water discharge to result in a water quality impact. In such an event, the applicant should contact the NPDES permitting authority to request that the authority order ***the discharger*** . . . to obtain a separate NPDES permit (or in this case, the discharge could be controlled through the storm water management program of the MS4).

EPA Part 2 Guidance Manual, p. 6-33 (emphasis added). Read in this context of this language, the Water Board has no power greater than a municipality in terms of its ability to identify non-stormwater discharges as "illicit" and thus required to be regulated, and must identify specific discharges, and not entire categories of discharges. *See* 55 Fed. Reg. 48037. This has not been done in the Fact Sheet.

Provision E.3(c): This provision requires the Copermittees to compel development projects that may not result in a hydromodification impact to the applicable receiving waters, to implement on-site or "alternative compliance" hydromodification mitigation measures and to use using "pre-development (naturally occurring)" runoff reference condition as applied to sites that are, in fact, developed.

The Riverside County Copermittees are concerned that implementing these requirements would subject the Copermittees to liability under the takings clauses of the U.S. and California Constitutions as well as under the Mitigation Fee Act because of the questionable nexus between such a project's lack of actual hydromodification impacts upon the receiving waters, and the hydromodification management measures required in the Draft Permit.

When imposing a condition on a development permit, a local government is required under the federal and state constitutions to establish that the condition bears a reasonable relationship to the impacts of the development project. This rule applies even to legislatively enacted requirements and impact fees or exactions.[4] Moreover, fees imposed on a discretionary ad hoc basis are subject to heightened scrutiny under a two-part test. First, local governments must show that there is a substantial relationship between the burden created by the impact of development and any fee or exaction.[5] Second, a development project's impacts must bear a "rough proportionality" to any development fee or exaction.[6] Under California law, the *Nollan/Dolan* heightened scrutiny test also applies to in-lieu fees.[7]

The Legislature has memorialized these requirements in the Mitigation Fee Act, which establishes procedures that local governments must follow to impose impact fees.[8] Irrespective of whether the hydromodification management requirements are implemented by legislative act or on an ad hoc basis, the copermittees' attempt to enforce them as proposed in the Draft Permit would likely result in claims by developers and property owners alleging unconstitutional takings of private property and violations of the Mitigation Fee Act. This is because a developer could argue that limiting hydromodification impacts of already developed property to its "naturally occurring" state, or requiring hydromodification mitigation measures for impacts not imposed by the project, would not have a legally sufficient nexus to the impact of the development project.

In addition, the Copermittees wish to bring the Water Board's attention to a recent case, *Virginia Dept. of Transportation v. United States Environmental Protection Agency*, Civ. Action No.

---

[4] *Building Indus. Ass'n v. City of Patterson* (2009)171 Cal. App. 4th 886, 898.
[5] *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837 (1987).
[6] *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).
[7] *Ehrlich v. City of Culver City* (1996) 12 Cal. 4th 854, 876.
[8] Cal. Gov't Code §§ 66000-66025.

1:12-CV-775 (E.D. Va. January 3, 2013) (slip op.), which is attached for the Water Board's convenience as Exhibit D. In this case, a federal district judge found that the CWA did not authorize U.S. EPA to regulate stormwater itself as a pollutant. The impact of this case is not known at this time, as it will probably be appealed to the Fourth Circuit Court of Appeals. Still, any approach to hydromodification which focuses on flows *per se*, as opposed to pollutants, may not withstand legal scrutiny.

Provision E.3.c.(3)(c)(i): This provision requires the entire alternative compliance in-lieu fee to be transferred to the copermittee or an escrow account prior to construction of a Priority Development Project (PDP). This provision is problematic, as development fees (which would include the in-lieu fees) are collected at the time of building permit issuance. In large-scale projects, permits may be issued (and development fees collected) in phases. Further, for master-planned developments, fees are generally negotiated through a development agreement to be collected based on certain development milestones. Therefore, collecting and holding the entire in-lieu fee prior to construction interferes with the development practice and may violate the Mitigation Fee Act and local development ordinances. The Redline requests that in-lieu fees be collected in accordance with state and local law.

Provision E.5: In addition to other comments on this provision and others in the Draft Permit relating to retrofitting, any requirements in Draft Permit relating to the retrofitting of engineered channels and other structures employed for flood control purposes must be consistent with the judgment of the flood control districts, to which the Legislature has assigned sole authority for the protection of the lives and property of their citizens from flooding. (Please see Comment Letter and proposed new findings in Redline for further discussion). Due to the urbanization of the counties over the past 150 years, as well as the particular topography and weather conditions found in Southern California, there is a great risk of flooding and hence the need for flood control structures and channels. The flood control districts have both the expertise and the sole legal authority to determine whether retrofitting of flood control structures can be accomplished in light of their statutory obligations, and that expertise and authority must be recognized in the Draft Permit.

Provision E.8: As noted in the Redline, the first requirement under Fiscal Analysis, that each "Copermittee must secure the resources necessary to meet all the requirements of this Order" has been deleted. This requirement is not found in the CWA regulations, which require only the conduct of a fiscal analysis. Moreover, this requirement intrudes on the home rule power of cities and counties by requiring, in essence, that municipal budgets must reflect the priority of compliance with the Order over any competing obligation, including police, fire protection and public health. A key issue in complying with stormwater and MS4 obligations is the ability of municipalities to afford the increasing costs associated with those obligations. In California, of course, the ability to raise taxes to pay for such obligations has been severely curtailed through several voter-approved propositions.

The Riverside County Copermittees request that Provision E.8.a be deleted.

EXHIBIT A

NPDES Permit No. DC0000221

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

is authorized to discharge from all portions of the municipal separate storm sewer system owned and operated by the District of Columbia to receiving waters named:

Potomac River, Anacostia River, Rock Creek and stream segments tributary to each such water body

in accordance with the Stormwater Management Program(s) dated February 19, 2009, subsequent updates, and related reports, strategies, effluent limitations, monitoring requirements and other conditions set forth in Parts I through IX herein.

The effective issuance date of this permit is: October 7, 2011.

This permit and the authorization to discharge shall expire at midnight, on: October 7, 2016.

Signed this 30th day of September, 2011.

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency
Region III

1. DISCHARGES AUTHORIZED UNDER THIS PERMIT

1.1 Permit Area

This permit covers all areas within the jurisdictional boundary of the District of Columbia served by, or otherwise contributing to discharges from, the Municipal Separate Storm Sewer System (MS4) owned or operated by the District of Columbia. This permit also covers all areas served by or contributing to discharges from MS4s owned or operated by other entities within the jurisdictional boundaries of the District of Columbia unless those areas have separate NPDES MS4 permit coverage or are specifically excluded herein from authorization under the District's stormwater program. Hereinafter these areas collectively are referred to as "MS4 Permit Area".

1.2 Authorized Discharges

This permit authorizes all stormwater point source discharges to waters of the United States from the District of Columbia's MS4 that comply with the requirements of this permit. This permit also authorizes the discharge of stormwater commingled with flows contributed by process wastewater, non-process wastewater, or stormwater associated with industrial activity provided such discharges are authorized under separate NPDES permits.

This permit authorizes the following non-stormwater discharges to the MS4 when appropriate stormwater activities and controls required through this permit have been applied and which are: (1) discharges resulting from clear water flows, roof drainage, dechlorinated water line flushing, landscape irrigation, ornamental fountains, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation waters, springs, footing drains, lawn watering, individual resident car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, wash water, fire fighting activities, and similar types of activities; and (2) which are managed so that water quality is not further impaired and that the requirements of the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and EPA regulations are met.

1.3 Limitations to Coverage

1.3.1 Non-stormwater Discharges

The permittee, as defined herein, shall effectively prohibit non-stormwater discharges into the MS4, except to the extent such discharges are regulated with an NPDES permit.

1.3.2 Waivers and Exemptions

This permit does not authorize the discharge of any pollutant from the MS4 which arises from or is based on any existing waivers and exemptions that may otherwise apply and are not consistent with the Federal Clean Water Act and other pertinent guidance, policies, and regulations. This narrative prohibition on the applicability of such waivers and exemptions extends to any activity that would otherwise be authorized under District law, regulations or

ordinance but which impedes the reduction or control of pollutants through the use of stormwater control measures and/or prevents compliance with the narrative /numeric effluent limits of this permit. Any such discharge not otherwise authorized may constitute a violation of this permit.

1.4 Discharge Limitations

The permittee must manage, implement and enforce a stormwater management program (SWMP) in accordance with the Clean Water Act and corresponding stormwater NPDES regulations, 40 C.F.R. Part 122, to meet the following requirements:

1.4.1. Effectively prohibit pollutants in stormwater discharges or other unauthorized discharges into the MS4 as necessary to comply with existing District of Columbia Water Quality Standards (DCWQS);

1.4.2. Attain applicable wasteload allocations (WLAs) for each established or approved Total Maximum Daily Load (TMDL) for each receiving water body, consistent with 33 U.S.C. § 1342(p)(3)(B)(iii); 40 C.F.R. § 122.44(k)(2) and (3); and

1.4.3. Comply with all other provisions and requirements contained in this permit, and in plans and schedules developed in fulfillment of this permit.

Compliance with the performance standards and provisions contained in Parts 2 through 8 of this permit shall constitute adequate progress toward compliance with DCWQS and WLAs for this permit term.

2. LEGAL AUTHORITY, RESOURCES AND STORMWATER PROGRAM ADMINSTRATION

2.1 Legal Authority

2.1.1 The permittee shall use its existing legal authority to control discharges to and from the Municipal Separate Storm Sewer System in order to prevent or reduce the discharge of pollutants to achieve water quality objectives, including but not limited to applicable water quality standards. To the extent deficiencies can be addressed through regulation or other Executive Branch action, the permittee shall remedy such deficiencies within 120 days. Deficiencies that can only be addressed through legislative action shall be remedied within 2 years of the effective date of this permit, except where otherwise stipulated, in accordance with the District's legislative process. Any changes to or deficiencies in the legal authority shall be explained in each Annual Report.

2.1.2 No later than 18 months following the effective date of this permit, the District shall update and implement Chapter 5 of Title 21 of District of Columbia Municipal Regulations (Water Quality and Pollution) ("updated DC Stormwater Regulations"), to address the control of stormwater throughout the MS4 Permit Area. Such regulations shall be consistent with this

FACT SHEET

National Pollutant Discharge Elimination System (NPDES)
Municipal Separate Storm Sewer System (MS4)
Permit No. DC0000221 (Government of the District of Columbia)

NPDES PERMIT NUMBER: DC0000221 (Reissuance)

FACILITY NAME AND MAILING ADDRESS:

Government of the District of Columbia
The John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

MS4 ADMINISTRATOR NAME AND MAILING ADDRESS:

Director, District Department of the Environment
1200 First Street, N.E., 6th Floor
Washington, D.C. 20002

FACILITY LOCATION:

District of Columbia's Municipal Separate Storm Sewer System (MS4)

RECEIVING WATERS:

Potomac River, Anacostia River, Rock Creek, and Stream Segments Tributary
To Each Such Water Body

INTRODUCTION:

Today's action finalizes reissuance of the District of Columbia Municipal Separate Storm Sewer System (MS4) Permit. In the Final Permit EPA has continued to integrate the adaptive management approach with enhanced control measures to address the complex issues associated with urban stormwater runoff within the corporate boundaries of the District of Columbia, where stormwater discharges via the Municipal Separate Storm Sewer System (MS4).

Since the United States Environmental Protection Agency, Region III (EPA) issued the District of Columbia (the District) its first MS4 Permit in 2000, the Agency has responded to a number of legal challenges involving both that Permit (as well as amendments thereto) and the second-round MS4 Permit issued in 2004. For the better part of ten years, the Agency has worked with various parties in the litigation, including the District and two non-governmental organizations, Defenders of Wildlife and Friends of the Earth, to address the concerns of the various parties. The Agency has engaged in both litigation and negotiation, including formal

mediation.[1] These activities ultimately led to an enhanced stormwater management strategy in the District, consisting of measurable outputs for addressing the issues raised during the litigation and mediation process.

FACILITY BACKGROUND AND DESCRIPTION:

The Government of the District of Columbia owns and operates its own MS4, which discharges stormwater from various outfall locations throughout the District into its waterways.[2]

On April 21, 2010 EPA public noticed the Draft Permit. The Draft Fact Sheet published with that Draft Permit contains more extensive permit background information, and the reader is referred to that document for the history of the District of Columbia MS4 permit.

The public comment period closed on June 4, 2010. EPA received comments from 21 individual commenters and an additional 53 form letters. The Draft Permit, Draft Fact Sheet, and comments received on those documents are all available at: http://www.epa.gov/reg3wapd/npdes/draft_permits.html. The Final Permit reflects many of the comments received. EPA is simultaneously releasing a responsiveness summary responding to these comments.

ACTION TO BE TAKEN:

EPA is today reissuing the District of Columbia NPDES MS4 Permit. The Final Permit replaces the 2004 Permit, which expired on August 18, 2009 and has been administratively extended since that time. The Final Permit incorporates concepts and approaches developed from studies and pilot projects that were planned and implemented by the District under the 2000 and 2004 MS4 permits and modifying Letters of Agreement, and implements Total Maximum Daily Loads (TMDLs) that have been finalized since the prior permit was issued, including the Chesapeake Bay TMDL. A number of applicable measurable performance standards have been incorporated into the Final Permit. These and other changes between the 2004 Permit and today's Final Permit are reflected in a Comparison Document that is part of today's Permit issuance.

WATER QUALITY IN DISTRICT RECEIVING WATERS:

The District's *2008 Integrated Report to the Environmental Protection Agency and U.S. Congress Pursuant to Sections 305(b) and 303(d) Clean Water Act*[3] documents the serious water

---

1 A procedural history of Permit appeals can be viewed at the EPA Environmental Appeals Board web: http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/b5e5b68e89edabe98525714f00731c6f!OpenDocument&Highlight=2.municipal.

2 Portions of the District are served by a combined sanitary and storm sewer system. The discharges from the combined sewer system are not subject to the MS4 permit, but are covered under NPDES Permit No. xxxx issued to the District of Columbia Water and Sewer Authority.

3 District Department of the Environment, *The District of Columbia Water Quality Assessment, 2008 Integrated Report to the Environmental Protection Agency and U.S. Congress Pursuant to Sections 305(b) and 303(d) Clean Water Act* (hereinafter "2008 Integrated Report").

quality impairments in the surface waters in and around the District. A number of the relevant designated uses are not being met, *e.g.*, aquatic life, fish consumption, and full body contact, and there are a number of specific pollutants of concern that have been identified (for additional discussion on relevant TMDLs *see* Section 4.10 of this Final Fact Sheet).

Commenters on the Draft Permit expressed some frustration over very slow progress or even lack of progress after a decade of implementation of the MS4 program and even longer for other water quality programs. EPA appreciates this concern. Although the District's receiving waters are affected by a range of discharge sources, discharges from the MS4 are a significant contributor of pollutants and cause of stream degradation. EPA also recognizes, however, that stormwater management efforts that achieve a reversal of the ongoing degradation of water quality caused by urban stormwater discharges entail a long term, multi-faceted approach.

Consistent with the federal stormwater regulations for characterizing discharges from the MS4 (40 C.F.R. §122.26(d)(2)(iii)), the first two permit terms for the District's MS4 program required end-of-pipe monitoring to determine the type and severity of pollutants discharging via the system. The monitoring program was not designed to evaluate receiving water quality *per se*, therefore detection of trends or patterns was not reasonably possible. Today's Final Permit includes requirements for a Revised Monitoring Program, and one of the objectives for the program is to use a suite of approaches and indicators to evaluate and track water quality over the long-term (*see* discussion of Section 5.1 in this Final Fact Sheet).
There have been identified improvements in some areas. For example the *2008 Integrated Report* noted improvements in the diversity of submerged aquatic vegetation in the Potomac River, as well as improvements in fish species richness in Rock Creek. Biota metrics are often the best indicators of the integrity of any aquatic system.

EPA also notes that there are a variety of indirect measures indicative of improvement. The federal stormwater regulations foresaw the difficulty, especially in the near-term, of detecting measurable improvement in receiving waters, and relied instead on indirect measures, such as estimates of pollutant load reductions (40 C.F.R. §122.26(d)(2)(v)). The District documents these types of indirect measures in its annual reports, *e.g.*, tons of solids collected from catch basin clean-outs, amount of household hazardous waste collected, number of trees planted, square footage of green roofs installed, and many other measures of success.[4]

EPA believes that documenting trends in water quality, whether improvements, no change, or even further degradation, is an important element of a municipal water quality program. Today's Final Permit recognizes this principle, both in the types of robust measures required as well as the transition to new monitoring paradigms. EPA encourages all interested parties to provide the District with input during the development of these program elements.

THIS FACT SHEET:

(http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/information2/water.reg.leg/DC_IR_2008_Revised_9-9-2008.pdf)

4 District MS4 Annual Reports can be found at: http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,495855.asp

This Final Fact Sheet is organized to correspond with the chronological organization and numbering in today's Final Permit. Where descriptions or discussions may be relevant to more than one element of the Final Permit the reader will be referred to the relevant section(s).

To keep today's Final Fact Sheet of readable length, many of the elements included in the fact sheet published with the Draft Permit (Draft Fact Sheet) on April 21, 2010 have not been repeated, but are referenced. Readers are referred to the Draft Fact Sheet published with the Draft Permit for additional discussion on provisions that have been finalized as proposed.[5] The Final Fact Sheet does discuss significant changes since the 2004 Permit (even if discussed in the Draft Fact Sheet). The Final Fact Sheet also contains additional explanation of the Final Permit where commenters requested additional clarification. In addition, this Final Fact Sheet explains modifications to the Final Permit where provisions were changed in response to comments.

In many cases EPA made a number of very simple modifications to the Final Permit, *e.g.*, a word, phrase, or minor reorganization, simply for purposes of clarification. These modifications were not intended to change the substance of the permit provisions, only to clarify them. Most of those types of edits are not discussed in this Final Fact Sheet, but EPA has provided a Comparison Document of the Draft and Final Permits for readers who would like that level of detail.

Many commenters noted that the Draft Permit was not logically organized. EPA agrees. The major reorganization principles include:

1) There is a new Section 3, Stormwater Management Program (SWMP) Plan consolidating the various plans, strategies and other documents developed in fulfillment of permit requirements.
2) All implementation measures, *i.e.*, those stipulating management measures and implementation policies, are included in Section 4 of today's Final Permit. This includes "Source Identification" elements (Section 3 in the Draft Permit) and "Other Applicable Provisions" elements (Section 8 in the Draft Permit), which included TMDL requirements.
3) All monitoring requirements are consolidated in Section 5 of the Final Permit.
4) All reporting requirements are consolidated in Section 6 of the Final Permit.

EPA also refers readers to the Responsiveness Summary released today along with the Final Permit and Final Fact Sheet, for responses to comments and questions received on the Draft Permit. That document contains additional detailed explanations of the rationale for changes made to the Draft Permit in the Final Permit.

Finally, EPA made significant effort to avoid appending or incorporating by reference other documents containing permit requirements into the Final Permit. In the interest of clarity

5 The Permit and Fact Sheet proposed on April 21, 2010 can be viewed at: http://www.epa.gov/reg3wapd/npdes/draft_permits.html

and transparency EPA, to the extent possible, has included all requirements directly in the permit. Thus, EPA reviewed a variety of documents with relevant implementation measures, *e.g.*, TMDL Implementation Plans and the 2008 Modified Letter of Agreement to the 2004 permit[6], and translated elements of those plans and strategies into specific permit requirements that are now contained in the Final Permit. This Fact Sheet provides an explanation of the sources of provisions that are significant and are a direct result of one of those strategies.

1. DISCHARGES AUTHORIZED UNDER THIS PERMIT

(1.2 Authorized Discharges): The Final Permit authorizes certain non-stormwater discharges, including discharges from water line flushing. One commenter noted that many of these discharges, especially from potable water systems, contain concentrations of chlorine that may exceed water quality standards. EPA agrees, and has therefore clarified that dechlorinated water line flushing is authorized to be discharged under the Final Permit.

(1.4 Discharge Limitations): Comments on the language in Part 1.4 varied widely. Some commenters did not believe it was reasonable to require discharges to meet water quality standards. Other commenters believed this to be an unambiguous requirement of the Clean Water Act.

Today's Final Permit is premised upon EPA's longstanding view that the MS4 NPDES permit program is both an iterative and an adaptive management process for pollutant reduction and for achieving applicable water quality standard and/or total maximum daily load (TMDL) compliance. *See generally,* "National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges," 55 F.R. 47990 (Nov. 16, 1990).

EPA is aware that many permittees, especially those in highly urbanized areas such as the District, likely will be unable to attain all applicable water quality standards within one or more MS4 permit cycles. Rather the attainment of applicable water quality standards as an incremental process is authorized under section 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii), which requires an MS4 permit "to reduce the discharge of pollutants to the maximum extent practicable" (MEP) "and such other provisions" deemed appropriate to control pollutants in municipal stormwater discharges. To be clear, the goal of EPA's stormwater program is attainment of applicable water quality standards, but Congress expected that many municipal stormwater dischargers would need several permit cycles to achieve that goal.

Specifically, the Agency expects that attainment of applicable water quality standards in waters to which the District's MS4 discharges, requires staged implementation and increasingly more stringent requirements over several permitting cycles. During each cycle, EPA will continue to review deliverables from the District to ensure that its activities constitute sufficient progress toward standards attainment. With each permit reissuance EPA will continue to increase

---

6 District Department of the Environment, *Modification to the Letter of Agreement dated November 27, 2007 for the NPDES Municipal Separate Storm Sewer (MS4) Permit DC0000222* (2008) http://www.epa.gov/reg3wapd/npdes/pdf/DCMS4/Letter.PDF

stringency until such time as standards are met in all receiving waters. Therefore today's Final Permit is clear that attainment of applicable water quality standards and consistency with the assumptions and requirements of any applicable WLA are requirements of the Permit, but, given the iterative nature of this requirement under CWA Section 402(p)(3)(B)(iii), the Final Permit is also clear that "compliance with all performance standards and provisions contained in the Final Permit shall constitute adequate progress toward compliance with DCWQS and WLAs for this permit term" (Section 1.4).

EPA believes that permitting authorities have the obligation to write permits with clear and enforceable provisions and thus the determination of what is the "maximum extent practicable" under a permit is one that must be made by the permitting authority and translated into provisions that are understandable and measurable. In this Final Permit EPA has carefully evaluated the maturity of the District stormwater program and the water quality status of the receiving waters, including TMDL wasteload allocations. In determining whether certain measures, actions and performance standards are practicable, EPA has also looked at other programs and measures around the country for feasibility of implementation. Therefore today's Final Permit does not qualify any provision with MEP thus leaving this determination to the discretion of the District. Instead each provision has already been determined to be the maximum extent practicable for this permit term for this discharger.

EPA modified the language in the Final Permit to provide clarity on the expectations consistent with the preceding explanation. Specifically Section 1.4.2 of the Final Permit requires that discharges 'attain' applicable wasteload allocations rather than just 'be consistent' with them, since the latter term is somewhat ambiguous.

In addition, the general discharge limitation 'no increase in pollutant loadings from discharges from the MS4 may occur to receiving waters' was removed because of the difficulty in measuring, demonstrating and enforcing this provision. Instead, consistent with EPA's belief that the Final Permit must include all of the enforceable requirements that would achieve this principle, the following discharge limitation is substituted: "comply with all other provisions and requirements contained in this permit, and in plans and schedules developed in fulfillment of this permit."

In addition, EPA made the following modifications: "Compliance with <u>the</u> performance standards and provisions contained in <u>Parts 2 through 8 of</u> this permit shall constitute adequate progress towards compliance with DCWQS <u>and WLAs for this permit term</u>" (*underlined text added*) (Section 1.4 of the Final Permit). EPA eliminated circularity with the addition of "Parts 2 through 8", clarifying that this requirement does not circle back to include the statements in 1.4.1 and 1.4.2, but rather interprets them. Also, although WLAs are a mechanism for attainment of water quality standards, EPA added the specific language "and WLAs" to make this concept explicit rather than just implicit. In addition this revised language emphasizes that the specific measures contained in the Final Permit, while appropriate for this permit term, will not necessarily constitute full compliance in subsequent permit terms. It is the expectation that with each permit reissuance, additional or enhanced requirements will be included with the objective

of ensuring that MS4 discharges do not cause or contribute to an exceedance of applicable water quality standards, including attainment of relevant WLAs.

2. LEGAL AUTHORITY, RESOURCES, AND STORMWATER PROGRAM ADMINISTRATION

(2.1 Legal Authority): Several commenters pointed out that there were a number of requirements in the Draft Permit without clear compliance schedules or deadlines, or with deadlines that did not correspond well to others in the permit. In the Final Permit, EPA has made several revisions to address these comments. For example, EPA changed a requirement that deficiencies in legal authority must be remedied "as soon as possible" to a 120-day requirement for deficiencies that can be addressed through regulation, and two years for deficiencies that require legislative action (Section 2.1.1). Also, EPA increased the compliance schedule for updating the District's stormwater regulation from twelve months to eighteen months, *id.,* so that this action could be adequately coordinated with the development of the District's new offsite mitigation/payment-in-lieu program (for more discussion see Section 4.1.3 below).

(2.2 Fiscal Resources): One commenter suggested eliminating the reference to the District's Enterprise Fund since funding was likely to come from a number of different budgets within the District. EPA agrees with this comment and has removed this reference.

On the other hand, many commenters noted that the implementation costs of the District's stormwater program will be significant. EPA agrees. The federal stormwater regulations identify the importance of adequate financial resources [40 C.F.R. §122.26(d)(1)(vi) and (d)(2)(vi)]. In addition, after seeing notable differences in the caliber of stormwater programs across the country, EPA recognizes that dedicated funding is critical for implementation of effective MS4 programs.[7,8,9] In 2009 the District established, and in 2010 revised, an impervious-based surface area fee for service to provide core funding to the stormwater program[10] (understanding that stormwater-related financing may still come from other sources as they fulfill multiple purposes, *e.g.,* street and public right-of-way retrofits). In conjunction with the 2010 rule-making to revise the fee the District issued a Frequently Asked Questions document[11] that indicates the intent to restrict this fee to its original purpose, *i.e.*, dedicated funding to implement the stormwater program and comply with MS4 permit requirements. EPA believes this action is essential, and he expects that the District will maintain a dedicated source of funding for the stormwater program.

---

7 National Research Council, *Urban Stormwater Management in the United States* (2009) National Academy of Sciences http://www.nap.edu/catalog.php?record_id=12465

8 National Association of Flood and Stormwater Agencies, Funded by EPA, *Guidance for Municipal Stormwater Funding* (2006) http://www.nafsma.org/Guidance%20Manual%20Version%202X.pdf

9 EPA, *Funding Stormwater Programs* (2008) http://www.epa.gov/npdes/pubs/region3_factsheet_funding.pdf

10 District of Columbia, Rule 21-566 Stormwater Fees, http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleID=474056

11 District of Columbia, FAQ Document *Changes to the District's Stormwater Fee* (2010) http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/information2/water.reg.leg/Stormwater_Fee_FAQ_10-5-10_-final.pdf

EXHIBIT B

CALIFORNIA Water Boards

EDMUND G. BROWN JR. GOVERNOR

MATTHEW RODRIQUEZ SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

State Water Resources Control Board

Issue Paper
Municipal Storm Water Permit Receiving Water Limitations
Board Workshop
November 20, 2012

ISSUE:

The State Water Resources Control Board (State Water Board) has been asked, in public comments received on National Pollutant Discharge Elimination System (NPDES) permits for Municipal Separate Storm Sewer Systems (MS4s), to adopt permit provisions that create a partial or complete exemption from enforcement for violations of water quality standards while a discharger engages in an iterative process of improving controls (commonly referred to as a "safe harbor" provision). The State Water Board has scheduled a public workshop to consider the issue.

DISCUSSION:

Background:

The Clean Water Act generally requires NPDES permits to include technology-based effluent limitations and any more stringent limitations necessary to meet water quality standards. In the context of NPDES permits for MS4s, however, the Clean Water Act does not reference the requirement to meet water quality standards. MS4 discharges must meet a technology-based standard of reducing pollutants in the discharge to the Maximum Extent Practicable (MEP), but requirements to meet water quality standards are at the discretion of the permitting agency.[1] Further, under the Porter-Cologne Water Quality Control Act, waste discharge requirements must implement applicable water quality control plans, including water quality objectives; however, the Porter-Cologne Act also affords the State Water Board and regional water quality control boards (collectively, Water Boards) flexibility to consider other factors, such as economics, when establishing any NPDES permit requirements that are more stringent than required by the Clean Water Act.[2]

The State Water Board has exercised its discretion with regard to requiring compliance with water quality standards in MS4 permits by directing, in precedential orders, that MS4 permits contain provisions requiring discharges to be controlled so as not to cause or contribute to exceedances of water quality standards in receiving waters.[3] However, consistent with federal

[1] 33 U.S.C. § 1342(p); *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159.

[2] Wat. Code, §§ 13241, 13263; *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613.

[3] SWRCB Order WQ 98-01 (*Environmental Health Coalition*), WQ 99-05 (*Environmental Health Coalition)*.

law, the State Water Board has found it appropriate to implement Best Management Practices (BMPs) in lieu of numeric water quality-based effluent limitations to meet water quality standards.[4] Additionally, in lieu of "strict compliance" with water quality standards, the State Water Board has prescribed an iterative process whereby an exceedance of a water quality standard triggers a process of BMP improvements: reporting of the violation, submission of a report describing proposed improvements to BMPs expected to better meet water quality standards, and implementation of these new BMPs.

While the Water Boards have generally directed dischargers to achieve compliance with water quality standards by improving control measures through the iterative process, the iterative process does not provide a "safe harbor" to MS4 permittees: that is, when a discharger is shown to be causing or contributing to an exceedance of water quality standards, that discharger is in violation of the relevant discharge prohibitions and receiving water limitations of the permit and potentially subject to enforcement by the Water Boards or through a citizen suit, even if the discharger is actively engaged in the iterative process. Despite the lack of a safe harbor provision, however, the Water Boards have, as a matter of practice, declined to initiate enforcement actions against MS4 permittees who have been actively engaged in the iterative process. The Water Boards' decisions to decline to include a safe harbor in MS4 permits have been upheld by courts of appeal.[5]

Need for and Purpose of Workshop:

The lack of a safe harbor in the iterative process was recently highlighted by the Ninth Circuit's decision in a citizen suit brought by the Natural Resources Defense Council (NRDC) against the County of Los Angeles and the Los Angeles County Flood Control District for violations of the receiving water limitations of their MS4 permit. The Ninth Circuit confirmed that, as the receiving water limitations of the Water Boards' MS4 permits are currently drafted, engagement in the iterative process does not excuse liability for violations of water quality standards.[6]

As the storm water management programs of municipalities have matured, an increasing body of monitoring data indicates that water quality standards are in fact not being met by many MS4s. MS4s accordingly assert that the receiving water limitations and iterative process provisions of the Water Boards' permits do not afford them with a viable path to compliance for these violations, which may take years of technical efforts to correct, especially for wet weather discharges. MS4s argue that they are increasingly vulnerable to citizen suits and/or Water Board enforcement. This concern has been raised by the California Stormwater Quality Association (CASQA) in comments on the proposed Phase II MS4 permit and by the California Department of Transportation (Caltrans) in comments on the Caltrans MS4 permit adopted

---

[4] *See* SWRCB Orders WQ 91-03 (*Citizens for a Better Environment)*, WQ 98-01 (*Environmental Health Coalition*), WQ 2001-15 (*Building Industry Association of San Diego County*); *See also* 40 C.F.R. § 122.44(k); Interim Permitting Approach for Water Quality-Based Effluent Limitations In Storm Water Permits, USEPA, September 1995. In such orders and guidance, the State Water Board and Environmental Protection Agency acknowledge that the storm water program may evolve over time to incorporate stricter limitations, including improved BMPs to meet water quality standards or numeric water quality based effluent limitations.

[5] *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866; *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377; see also *Natural Resources Defense Council v. County of Los Angeles* (9th Cir. 2011) 673 F.3d 880, 897, n.7.

[6] *Natural Resources Defense Council v. County of Los Angeles, supra*, 673 F.3d at p. 897. On July 13, 2012, the United States Supreme Court granted review of this case on other grounds.

September 19, 2012, as well as by numerous MS4s and interested persons in comments on both permits. The issue is additionally relevant to the Phase I MS4 permits issued by the regional water quality control boards.[7]

At the same time, the environmental community has commented that the iterative process has been underutilized and ineffective to date in bringing MS4 discharges into compliance with water quality standards. Environmental parties argue that direct enforcement of water quality standards is necessary to protect water quality, especially in such second- or third-generation permits where dischargers have already had a number of years to come into compliance.

Because of the broad applicability of any policy decisions regarding the receiving water limitations and iterative process provisions, the State Water Board is holding a public workshop to consider several alternatives in addressing the issue and to seek public input on these alternatives. Following the workshop, the State Water Board may propose revisions to the receiving water limitations in the Caltrans MS4 and Phase II MS4 permits, and as necessary, re-open those permits after public review and comment, to make the revisions.

ALTERNATIVES FOR CONSIDERATION:

The State Water Board may consider the alternatives below, individually or in combination, to address concerns with the receiving water limitations in the Caltrans or Phase II MS4 permits. While the listed alternatives attempt to capture the range of alternatives before the State Water Board, the Board welcomes comments proposing other options and will not be limiting its consideration to the alternatives as listed in this issue paper.

The receiving water limitations language prescribed by State Water Board Order WQ 99-05 is attached as Attachment 1 and forms the basis of Alternative 1. CASQA has submitted specific proposed language for the Receiving Water Limitations provision of the proposed Phase II MS4 permit (CASQA Proposal). The CASQA Proposal is attached as Attachment 2 and is referenced as appropriate in the discussion of the alternatives below.

Alternative 1: Keep the status quo of no safe harbor.

This alternative makes no changes to the existing State Water Board approach or to the current language of the adopted Caltrans MS4 permit or the proposed Phase II MS4 permit. As stated previously, the current MS4 permit provisions laying out the iterative process are based on language set forth in precedential State Water Board orders. (See Attachment 1.) Alternative 1 adheres to the prescribed language. Under this alternative, the Water Boards may choose to exercise their enforcement discretion to refrain from taking action against dischargers engaged in good faith implementation of the iterative process; however, they would not be constrained from enforcing the receiving water limitations when an MS4 causes or contributes to exceedances of water quality standards. As a limitation within an NPDES permit, dischargers who cause or contribute to an exceedance of water quality standards could be subject to citizen suits.

[7] Note that the issue is not relevant to any other NPDES permits, including permits for storm water discharges associated with industrial activity, because all other NPDES permits must include technology-based effluent limitations and any more stringent limitations necessary to meet water quality standards. (33 U.S.C. § 1311(b)(1)(C).)

Alternative 2: No safe harbor, but provide greater clarity and specificity for iterative process implementation and wet weather data analysis.

Greater clarity and specificity in the MS4 permits as to the iterative process requirements may result in increased efforts to improve controls and achieve compliance. Such clarity and specificity may include:

1. Clarification on how compliance with the relevant discharge prohibitions and receiving water limitations is determined, including type and frequency of monitoring;
2. Clarification that dischargers must begin the iterative process after documentation of violations without waiting to be directed to do so by the Water Boards;
3. Specification of the minimum efforts that will constitute meaningful compliance with the iterative process;
4. Specification of the scope of any corrective action, including whether it applies only at the location where exceedances are measured or throughout the relevant watershed;
5. Specification of additional wet weather data analysis to better define and assess the impact of municipal storm water discharges on receiving waters, as well as the efficacy of specific best management practices.

As the MS4 program continues to mature and more data becomes available, this alternative may be enhanced by the development of water quality-based effluent limitations for pollutants, as appropriate, as a means of determining compliance with receiving water limitations. In addition, the enhanced wet weather data could be used to identify surrogates that could be used as a measure of protecting beneficial uses. In time, the data could be used to develop actual wet weather water quality standards or wet weather implementation provisions for existing water quality standards that could be applied consistently on a statewide basis.

Given the nature of storm water discharges and of MS4s, questions such as where and how compliance with water quality standards should be measured and how narrowly or broadly corrective actions should be applied, pose complicated technical issues that require careful study and consideration. These challenges notwithstanding, water quality improvements are more likely to be achieved as the iterative process becomes automatic and dischargers follow clear guidelines for determining and addressing non-compliance with permit terms. Such improvements may dissuade the Water Boards and the public from bringing enforcement actions/citizen suits for all except the most egregious and repeated violations.

In addition to being a stand-alone alternative, Alternative 2 may be considered in combination with Alternatives 3 through 5. The CASQA Proposal incorporates some greater specificity in the iterative process requirements as a component of its proposed receiving water limitations.

Alternative 3: Safe harbor that applies only if a discharger is in compliance with the implementation provisions of an approved TMDL.

Under Alternative 3, the receiving water limitations would be amended to provide a safe harbor for permittees that are in compliance with the implementation provisions of a TMDL. In effect, as long as the permittee is in compliance with the TMDL (including any compliance schedule) the terms of the TMDL would replace the requirement to comply with water quality standards for the pollutants that are covered by the TMDL.

The CASQA Proposal contemplates a safe harbor for dischargers in compliance with a TMDL as a component of the receiving water limitations.

Alternative 4: Safe harbor that applies if a discharger is in compliance with the implementation provisions of an approved TMDL, as in Alternative 3, and, in addition, that applies when the discharger engages in good faith compliance with the iterative process for exceedances caused by wet weather discharges.

In addition to the safe harbor for TMDL implementation, Alternative 4 would provide a safe harbor when dischargers engage in the iterative process in good faith to address violations of permit terms caused by wet weather discharges. Thus, if a storm water discharge from an MS4 is causing or contributing to an exceedance of a water quality standard in the receiving water, the exceedance would not constitute a violation of the permit as long as the discharger was engaged in good faith efforts to address the exceedance through improved controls. Alternative 4 recognizes that wet weather discharges from MS4s frequently cause or contribute to violations of water quality standards and allows the MS4s time to address these violations by improving control measures.

However, the safe harbor would not extend to dry weather discharges. Non-storm water discharges are generally prohibited in MS4 permits and only a few categories of non-storm water discharges are exempted from the prohibition, with the condition that these exempted discharges also be prohibited if they are identified as sources of pollutants to receiving waters.

Alternative 5: Full safe harbor.

This alternative would provide a full safe harbor to dischargers complying with the implementation provisions of a TMDL or engaging in the iterative process to address exceedances caused by wet or dry weather discharges.

The CASQA Proposal attached provides for a full safe harbor.

Attachments Removed

EXHIBIT C

WARREN D. WILLIAMS
General Manager-Chief Engineer

1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
FAX 951.788.9965
www.rcflood.org

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

November 13, 2012

Honorable Members of the State Water Resources Control Board
Attn: Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Honorable Board Members and Ms. Townsend:

Re: Comment Letter – Receiving Water Limitations Language Workshop

I am writing on behalf of the Riverside County Flood Control and Water Conservation District ("District") regarding the State Water Resources Control Board's consideration of Receiving Water Limitations ("RWL") language in MS4 permits. This review was triggered by a decision of the Ninth Circuit United States Court of Appeals in *Natural Resources Defense Council v. County of Los Angeles* (9th Cir. 2011) 673 F.3d 880, *cert granted,* __ U.S. __ (June 25, 2012) ("*NRDC*"). This letter is being submitted in advance of the State Board's November 20, 2012 workshop on reform of the RWL language to be incorporated into MS4 permits as a matter of statewide policy.

The District is the Principal Permittee for three Phase I MS4 permits applicable to municipalities across Riverside County: Order R8-2010-0033, issued by the Santa Ana Regional Water Board to municipalities within the Santa Ana River Region of Riverside County; Order R9-2010-016, issued by the San Diego Regional Water Board to municipalities within the Santa Margarita Region of Riverside County; and Order R7-2008-0001, issued by the Colorado River Regional Water Board to municipalities within the Whitewater River Region of Riverside County. Given our unique perspective as the manager of three Phase 1 MS4 permits, the District and its staff thus, have considerable experience and expertise in developing and administering MS4 permits, and a keen understanding of the issues that the above mentioned court case creates.

The District strongly supports reform of the RWL language to make clear the State Board's often-expressed intention that MS4 Permittees' compliance with RWL be effectuated through an iterative process. However, under the Ninth Circuit's interpretation, any MS4 discharge that causes or contributes to an exceedance of a Water Quality Standard subjects the MS4 Permittee to civil penalty liability, injunctive relief and the payment of attorneys' fees in an action brought by a citizen plaintiff, even where the Permittee is fully implementing the programmatic requirements of their MS4 Permit.

The District supports the California Stormwater Quality Association's ("CASQA") efforts to obtain RWL language that ensures that the iterative process favored by the State Board is honored. The District also supports the comments of the California State Association of Counties, and believes the proposed RWL language attached to those comments is a step in the right direction.

This letter contains additional District comments about the RWL language and the iterative process. We believe that they are best expressed in terms of correcting misperceptions regarding the current RWL language, as interpreted by the Ninth Circuit.

Misperception Number One: Strict compliance with Water Quality Standards is required of MS4 Permittees by the Clean Water Act.

The Clean Water Act provides that MS4 discharges must control pollutants in discharges from the MS4 to the "Maximum Extent Practicable" (33 U.S.C. § 1342(p)(3)(B)(iii)). Unlike the case with other NPDES Permittees, the Clean Water Act does not require that municipalities strictly comply with Water Quality Standards, as determined by the Ninth Circuit in *Browner v. Defenders of Wildlife*. The State Board's own precedential Order WQ 2001-15 recognizes this fact and states that the RWL language was intended to be consistent with the *Browner* case. In that Order, which interpreted RWL language similar to that in *NRDC*, the Board stated:

> *[O]ur language, similar to the U.S. EPA's permit language discussed in the Browner case, does not require strict compliance with water quality standards. Our language requires that storm water management plans be designed to achieve compliance with water quality standards. Compliance is to be achieved over time, through an iterative approach requiring improved BMPs. As pointed out by the Browner court, there is nothing inconsistent between this approach and the determination that the Clean Water Act does not mandate strict compliance with water quality standards. [Order WQ 2001-15 at 7 (emphasis added)].*

Unfortunately, the Ninth Circuit completely disregarded this language, and the Order, in holding that strict compliance was required of MS4 Permittees.

USEPA itself has issued MS4 permits (in non-delegated states) that do not contain RWL language requiring strict compliance with Water Quality Standards. Therefore, it is clear that such compliance is not required by the Clean Water Act nor is such compliance established by USEPA policy. The most prominent example of a recent MS4 permit promulgated by USEPA is that for the District of Columbia ("DC Permit") (relevant portions of which are attached as Exhibit A), which was adopted in 2011.

Part 1.4 of the DC Permit contains the requirements relating to Water Quality Standards and provides, in relevant part: "Compliance with the performance standards and provisions contained in Parts 2 through 8 of the permit shall constitute adequate progress towards compliance with DCWQS [water quality standards] and WLAs [established under TMDLs] for this permit term." The DC Permit Fact Sheet explains the rationale for that language as follows [DC Permit Fact Sheet, Pages 5-6, emphasis added, attached as Exhibit B]:

> *Comments on the language in Part 1.4 varied widely. Some commenters did not believe it was reasonable to require discharges to meet water quality standards. Other commenters believed this to be an unambiguous requirement of the Clean Water Act.*

Administrative Record Page No. 021264

> *Today's Final Permit is premised upon* **EPA's longstanding view that the MS4 NPDES permit program is both an iterative and an adaptive management process for pollutant reduction and for achieving applicable water quality standard and/or total maximum daily load (TMDL) compliance.** *See generally, "National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges," 55 F.R. 47990 (Nov. 16, 1990).*
>
> **EPA is aware that many Permittees, especially those in highly urbanized areas such as the District, likely will be unable to attain all applicable water quality standards within one or more MS4 permit cycles.** *Rather the attainment of applicable water quality standards* **as an incremental process** *is authorized under section 402(p)(3)(B)(iii) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii), which requires an MS4 permit "to reduce the discharge of pollutants to the maximum extent practicable" (MEP) "and such other provisions" deemed appropriate to control pollutants in municipal stormwater discharges.* **To be clear, the goal of EPA's stormwater program is attainment of applicable water quality standards, but Congress expected that many municipal stormwater dischargers would need several permit cycles to achieve that goal.**
>
> *Specifically, the Agency expects that attainment of applicable water quality standards in waters to which the District's MS4 discharges, requires staged implementation and increasingly more stringent requirements over several permitting cycles. During each cycle, EPA will continue to review deliverables from the District to ensure that its activities constitute sufficient progress toward standards attainment. With each permit reissuance EPA will continue to increase stringency until such time as standards are met in all receiving waters.* **Therefore today's Final Permit is clear that attainment of applicable water quality standards and consistency with the assumptions and requirements of any applicable WLA are requirements of the Permit, but, given the iterative nature of this requirement under CWA Section 402(p)(3)(B)(iii), the Final Permit is also clear that "compliance with all performance standards and provisions contained in the Final Permit shall constitute adequate progress toward compliance with DCWQS and WLAs for this permit term" (Section 1.4).**

USEPA is now proposing clarifying changes to this language and to other sections of the DC Permit as the result of a settlement with various parties. However, those changes do not require strict compliance with Water Quality Standards, but rather compliance through the programs developed under the Permit.

The State Board is thus, free to adopt new RWL language that effectuates its previously expressed intent that MS4 permits not require strict compliance with Water Quality Standards with regard to contributions from discharges from MS4s.

Misperception Number Two: The MS4 Permittees are Seeking a "Safe Harbor" that would Insulate them from Responsibility Under the Clean Water Act.

While State Board staff's "Issue Paper" uses the term "safe harbor" in describing the iterative process, the District believes that this is fundamentally misleading. Even a cursory review of the terms of a typical MS4 permit in California reveals that it is full of compliance points. In the three MS4 Permits in which the District serves as Principal Permittee, literally every sentence is a separate point of compliance.

This fact is supported by the language of the Permits themselves. For example, in Order R8-2010-0033 Part XX.G provides: **"The Permittees must comply with all terms, requirements, and conditions of this Order. Any violation of this Order constitutes a violation of the CWA, its regulations and the California Water Code, and is grounds for enforcement action . . . ."** (emphasis added). Similar provisions are contained in the other two Riverside County MS4 Permits. Even without the strict Water Quality Standard language imposed under the Ninth Circuit's opinion, there is no "safe harbor" from liability under the Clean Water Act or, where applicable, the California Water Code, for any Permittee that fails to fully implement each the detailed and prescriptive requirements of its MS4 Permit.

There is a fundamental difference however, between fully complying with activities within the control and responsibility of the Permittees, such as monitoring, implementing BMPs and performing other programmatic requirements of the MS4 Permit; and being forced to guarantee that MS4 discharges will not cause or contribute to exceedances of Water Quality Standards in Receiving Waters, a guarantee that the Permittees' have no ability to make.

What the District and other MS4 Permittees seek is relief from what is essentially "guaranteed non-compliance" where a Permittee can be found in violation of their MS4 Permit even if the exceedance occurs at no fault of or failure by the Permittee, or put another way, even in circumstances where there is nothing a Permittee could have done to prevent that exceedance from occurring. In such a case, the Permittee can be held liable for potentially millions of dollars in legal costs, penalties and other expenses. We note that the City of Malibu, a city of only 13,000 residents, spent more than $2 million in defending against a citizen suit filed with respect to its MS4 Permit and more than $6 million to settle the case, including payment of $750,000 in attorney fees to plaintiffs. Given the tremendous financial challenges faced by every California municipality, including the District, the County of Riverside and the Permittee cities within the County, such a diversion of resources that otherwise would be directed at clean water programs or other vital municipal programs is a poor policy choice. And, as noted, it is not a policy choice that is required by the Clean Water Act, nor is it required by USEPA in their own Permits.

The District recognizes that regulatory enforcement actions and citizen suits are authorized by the Clean Water Act and that such suits may be an appropriate remedy where, for example, a Permittee has failed to comply with the programmatic requirements of its MS4 Permit. Where, however, the Permittees are complying with those requirements in good faith but, due to circumstances beyond

their control, their MS4 discharge causes or contributes to a Water Quality Standard exceedance in Receiving Waters, a citizen suit based on those exceedances potentially throws away the work done by the Permittees and the Water Boards under the MS4 Permit, as discussed below.

Misperception Number Three: MS4 can achieve compliance with strict Water Quality Standards.

MS4 Permittees cannot guarantee that discharges from their MS4s will in fact, not cause or contribute to an exceedance of Water Quality Standards in a Receiving Water. The monitoring conducted under our MS4 Permits reflects exceedances of various Water Quality Standards in Receiving Waters, and we understand that such results are typical for MS4 discharges around the state (please see Pages 2-3 of the CASQA comment letter dated November 2, 2012). The extreme variability of stormwater quality and quantity itself (which, in Southern California, arrives infrequently and from widely varying storm sizes) combined with a multitude of potential pollutant sources beyond a Permittee's ability to truly "control", make it impossible for a municipality to ensure that no discharges from its MS4 will ever cause or contribute to exceedances of Water Quality Standards in Receiving Waters. This was recognized by the Issue Paper released by State Board staff in preparation for the November 20th workshop, which found that as "the storm water management programs of municipalities have matured, **an increasing body of monitoring data indicates that water quality standards are in fact not being met by many MS4s**" (Issue Paper, Page 2 (emphasis supplied)).

Thus, even if municipal Permittees are to be held strictly liable for the ensuring that no discharges from their MS4s cause or contribute to an exceedance of Water Quality Standards, as the Ninth Circuit has interpreted the current RWL language, those Permittees have no ability to attain those standards. The reasons are several-fold and include the following:

1) Unlike an industrial NPDES Permittee, a municipal Permittee is not typically the source of the pollutants in the MS4 discharge (whether wet or dry). The municipality can regulate sources to some degree (through, for example, the operation of structural and non-structural BMPs and implementation of an Illegal Connection/Illicit Discharge program), but the municipality cannot guarantee that pollutants will not enter the MS4 and then be discharged into the Receiving Waters.

2) Municipalities cannot control natural sources of pollutants that are discharged through the MS4. Monitoring has indicated that many pollutants are likely from natural and not anthropogenic sources.

3) While Permittees conduct extensive public education programs as part of their MS4 programs, municipalities cannot "control" human behavior, or "prevent" an individual from taking an action that might cause pollution to enter the MS4. As an example, a resident may, despite all ordinances, regulations, potential penalties or enforcement, public outreach, available BMPs, etc., choose not to pick up after their pets, and

stormwater may, through no fault of the Permittee, pick up animal waste and deposit into the MS4.

4) MS4 Permittees cannot "prevent" flows from entering their MS4. To protect the health and property of their residents, MS4 operators must allow the legitimate flows of water into their drains. This is especially true for the District, which is charged directly by the Legislature [in Water Code App. §48-9] with the task of taking necessary steps to protect the people, properties and watersheds of Riverside County from the negative impacts of flooding. The District cannot, in effect, cause flooding by preventing flows from entering their storm drain, simply because such flows may contain pollutants that cause a violation of the Receiving Waters Limitation provisions of their MS4 Permits. In fact, California law requires downstream property owners (such as MS4 operators) to accept flows from upstream property owners.

5) Further, the authorities granted to flood control districts, such as this District, by the Legislature are narrow and do not include the authority to condition or regulate the quality or nature of stormwater runoff discharged from up gradient properties. This responsibility is appropriately assigned by the Legislature to the Regional Boards.

Similarly, MS4 Permittees cannot guarantee compliance with Water Quality Standards in dry weather. "Alternative 4" in the staff's Issue Paper suggests an alternative RWL approach that would not extend the iterative approach to dry weather discharges. The District submits that this alternative does not reflect the reality of urban runoff. Monitoring conducted under the Riverside County MS4 Permits reflects exceedances of Water Quality Standards during dry weather as well as wet weather. There is no justification for imposition of strict liability for exceedances during such conditions, for the following reasons:

1) During dry weather, other NPDES-permitted discharges continue to flow into the Receiving Waters. For example, much of the flow in the Santa Ana River during dry weather conditions is from non-MS4 sources, such as publicly owned treatment works. Additionally, numerous other separate NPDES-permitted discharges will occur, potentially at concentrations of pollutants that exceed Water Quality Standards. Evidence generated during the *NRDC* case involving the County of Los Angeles, for example, indicated that NPDES permits covering hundreds of these dischargers, including POTWs allowed the discharge of pollutants at concentrations *greater* than Water Quality Standards. Because of these discharges, which are legal and authorized by the Regional Boards, the MS4 Permittees have essentially no more control over compliance with Water Quality Standards in dry weather than they would have during wet weather conditions.

2) Accidental or even intentional illicit discharges by third parties into the MS4 obviously can occur during dry weather as well as wet weather. Such discharges would potentially have an even greater impact on sampling, since they are not diluted by large volumes of stormwater. For example, a vehicular accident recently caused hundreds of gallons of

asphalt tar to enter Sandia Creek, a Receiving Water in Riverside County. While this spill was not discharged through an MS4, if the vehicular accident had occurred in another portion of the watershed, the spill could feasibly have entered into and been discharged from an MS4. Similarly in many places throughout the State, sanitary sewer systems are owned and operated by special districts that have no relation to the MS4 Permittees that own or operate the MS4 systems. Nevertheless, an overflow of such sanitary sewer systems may cause an unavoidable discharge into, and from a Permittee-owned MS4. Such accidental or illicit discharges cannot be "prevented" or "controlled" by the Permittees except to the extent that they can be cleaned up or blocked if promptly reported. However, if the discharge has reached Receiving Waters and caused a measured exceedance of Water Quality Standards, under the Ninth Circuit's interpretation, liability for civil penalties, injunctive relief and attorneys fees will attach to the MS4 Permittee.

3) Enforcing strict Water Quality Standard limits in dry or wet weather is counter-productive to the watershed planning-based MS4 Permits currently being promulgated by many regional water boards. Enforcing such limits will divert Permittee attention and resources from watershed-based, monitoring-heavy compliance programs, as will be discussed in greater detail below.

In essence, under the Ninth Circuit's interpretation of the current RWL language, the District, and potentially every other MS4 Permittee in the state, is in violation of its Permit any time that an exceedance of a Water Quality Standard is recorded and attributed to a discharge from its MS4. This means that the Regional Water Boards have issued, and continue to adopt permits that include RWL language **which cannot be complied with**. The Clean Water Act, however, does not require Permittees to achieve the impossible. *See, e.g., Hughey v. JMS Development Corp.* (11th Cir. 1996) 78 F.3d 1523, 1530 ("In interpreting the liability provisions of the CWA, we realize that Congress is presumed not to have intended absurd (impossible) results.").

Misperception Number Four: The Current RWL Language is more Protective of Receiving Water Quality.

This statement is not only untrue but maintaining the current RWL language actually **impedes** efforts to protect Receiving Water Quality.

We understand that some stakeholders believe that there should be Numeric Effluent Limitations (NELs) contained in the MS4 Permits for purposes of accountability. In response, we note that many MS4 permits now contain numeric Stormwater and Non-stormwater Action Levels ("SALs" and "NALs") or other numeric targets or goals, the exceedance of which trigger specific compliance responses by the Permittees. It is these action levels (which were advocated by the Blue Ribbon Panel established by the State Board to investigate the appropriateness of NELs in MS4 permits) which provide such "numeric" accountability. This is in addition to the numerous other compliance documentation and reporting provisions required of MS4 Permittees that also provide measures of accountability.

More importantly, the current RWL language as interpreted by the Ninth Circuit actually impedes efforts by municipalities to protect water quality. First, by requiring immediate compliance, the language undermines efforts to bring Water Quality Standard-impaired waterbodies into compliance through the Total Maximum Daily Load ("TMDL") program. TMDLs are designed with the recognition that, due to the complexity of the issues causing the waterbody to be impaired in the first place, meeting these requirements cannot be achieved immediately. Therefore, TMDL compliance plans include timelines to achieve such compliance over periods of years and sometimes decades.

Second, most MS4 permits have begun incorporating sophisticated watershed management plans, which prioritize pollutants by waterbody and attempt, through aggressive monitoring and source identification efforts, to identify and address the sources of those prioritized pollutants. Municipalities subject to strict RWL language will have no ability to prioritize pollutants, since they must address any pollutant that exceeds a Water Quality Standard, irrespective of the relative impact that that discharge may have had upon the environment or beneficial uses. Moreover, these watershed management plan approaches employ cooperative monitoring and other watershed-based approaches. Permittees faced with potential liability for any exceedance of Water Quality Standards in Receiving Waters that may be caused or contributed to by discharges of their MS4s, will not likely volunteer to cooperate on any watershed-based approach, if cooperation could subject them to additional unnecessary liability.

Third, in a citizen suit brought under the Clean Water Act, a federal judge is free to impose any appropriate injunctive relief to enforce a permit (33 U.S.C. § 1365(a)). Thus, for example, a court could ignore the provisions of a MS4 permit in ordering municipal defendants to address Water Quality Standard exceedances in Receiving Water. This means that the thousands of people-hours invested in the Permit's development, implementation and oversight by municipalities, the Regional Water Boards and other stakeholders would be wasted. In essence, under the Ninth Circuit's reading of the RWL language, all other language in an MS4 permit appears to be superfluous, since the RWL language would control all compliance efforts. This result, of course, is not required by plain language of the Clean Water Act.

Fourth, if a municipality is in unavoidable and automatic non-compliance with the requirements of its MS4 Permit, it will be unable to justify budgeting for water quality management programs and BMPs otherwise required by the Permit as the municipality will simply receive no benefit from making compliance investments. To gain public support for stormwater programs, a municipality must demonstrate to its residents that such investments will constitute compliance with the Permit.

Discussion of Alternatives

The State Board staff's Issue Paper sets forth five alternatives for consideration. Alternative 1, no change in the current RWL language, is completely unacceptable to the District (and, we believe, to other municipalities across the state) because it fails to address the "guaranteed non-compliance" problem of the current language.

Administrative Record Page No. 021270

Alternative 2, which proposes to maintain the language that puts the MS4 Permittees in a situation of unavoidable and potentially "guaranteed" non-compliance, but would add greater specification as to how the iterative process might be carried out, is also unacceptable as the MS4 Permittees will still have no viable means to ensure their compliance with the RWL language. While the District does not object in principle to RWL language that spells out clearly, and in achievable terms, what is required of MS4 Permittees when exceedances are recorded, such a change alone does not address the fundamental issues identified in this letter.

Alternative 3, which proposes to provide an iterative process for compliance with the RWL only for pollutants being addressed by dischargers in compliance with an approved TMDL, is better than the first two alternatives, but is still entirely insufficient. By failing to provide a viable means for compliance with the RWL language for non-TMDL pollutants, this alternative language would force Permittees into unavoidable non-compliance, and require them to redirect their efforts and resources away from the TMDL activities, to those other pollutants, due to the strict liability attached to those exceedances. This would be a poor policy choice, as pollutants that are not subject to a TMDL may have significantly less, or even no impact on beneficial uses in the Receiving Waters, as noted in the CASQA comment letter.

Alternative 4, which excludes dry weather discharges from the iterative process to comply with the RWL, is unacceptable for the reasons previously set forth regarding an MS4 Permittees inability to truly "prevent" or "control" accidental or illegal dry weather discharges.

Alternative 5, which provides viable means for compliance with the RWL, for all types of MS4 discharges, is the only viable solution among the alternatives presented by State Board staff. In an era of limited budgets, the only and best way to make progress toward improving the quality our Receiving Waters, is to provide MS4 Permittees the ability to prioritize their efforts, as required in the Watershed Management Plan provisions contained in the most recent MS4 Permits, including the Los Angeles County Permit and the proposed Regional Permit for the San Diego Regional Water Board. As previously discussed, such prioritization cannot occur in the context of strict liability for the exceedance of Water Quality Standards in the Receiving Waters. For all of the reasons set forth in this letter, no other alternative makes policy sense or is congruent with the Maximum Extent Practicable standard in the Clean Water Act.

The District would add that Alternative 5 should additionally incorporate the concept of achieving RWL compliance through watershed management plans, and requests the Board to direct staff to work with stakeholders to ensure that any revised RWL language does not force intermittent or minor exceedances of Water Quality Standards to become de-facto higher priorities than those set by the watershed stakeholders.

In summary, the District supports CASQA, the California State Association of Counties and other municipal stakeholders in advocating for a fully iterative and viable approach to compliance with RWL language in both wet and dry weather conditions. Only when such an approach is in place and endorsed by the State Board will Permittees, including the District, feel confident that they can focus

Administrative Record Page No. 021271

fully on efforts to address pollutants in discharges into and from their MS4s, and not on preparing for costly and pointless litigation.

The District therefore, respectfully requests the State Board direct its staff to commence development of new language providing for an enforceable, iterative and viable process for MS4 Permittees to comply with the RWL language included in MS4 permits.

We wish to thank you and State Board staff for your consideration of these comments and any further comments, written or oral, that the District may make on these important issues.

Very truly yours,

Steve Thomas

for WARREN D. WILLIAMS
General Manager-Chief Engineer

CP:cw
P8/150189

EXHIBIT D

Administrative Record Page No. 021273

FILED
JAN - 3 2013
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

VIRGINIA DEPARTMENT OF TRANSPORTATION, ET AL, Plaintiffs,	
-v-	Civil Action No. 1:12-CV-775
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL, Defendants.	

Memorandum Opinion

Before the Court is the Plaintiffs' motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). The Defendants opposed the motion, and the Plaintiffs replied. The Court heard oral arguments on December 14, 2012 and now issues this memorandum opinion and accompanying order granting the Plaintiffs' motion.

Background

The Clean Water Act, 33 U.S.C. § 1251 et seq., establishes the basic structure for regulating discharge of pollutants into the waters of the United States, and provides certain mechanisms to improve and maintain the quality of surface waters.

One such mechanism is the requirement that states identify "designated uses" for each body of water within their borders, as well as "water quality criteria" sufficient to support those uses. 33 U.S.C. § 1313(c)(2)(A). The Environmental Protection Agency ("EPA") evaluates the uses and criteria developed by the states, and either approves them or else proposes and

promulgates its own set of standards. § 1313(c)(3).

Once the standards are in place, each state is required to maintain a list—also subject to approval or modification by EPA—of its waterbodies that are "impaired" because they do not meet their respective water quality criteria. 33 U.S.C. § 1313(d)(1)(A). For each waterbody on the impaired list, the state is required to establish a set of total maximum daily loads ("TMDLs") sufficient to bring the body back into compliance with its water quality criteria. § 1313(d)(1)(C). Each TMDL establishes the maximum amount of a pollutant that may be added to the waterbody daily from all sources (runoff, point sources, etc.). EPA is required to publish a list of pollutants suitable for maximum daily load measurement, § 1314(a)(2)(D), and it has determined that *all* pollutants are suitable for TMDLs, *see* Total Maximum Daily Loads Under Clean Water Act, 43 Fed. Reg. 60,662. Therefore, any pollutant that falls within the relatively broad definition of "pollutant" set forth in § 1362(6) may be regulated via TMDL. EPA can approve or modify as it sees fit TMDLs proposed by the states. § 1313(d)(2).

Here the state in question is Virginia, and the waterbody is a 25-mile long tributary of the Potomac River, located in Fairfax County, called Accotink Creek. The creek has been the subject of litigation in the past that is not relevant to this matter except the result: EPA was required to set TMDLs for Accotink Creek once Virginia failed to do so by a certain date. Specifically, the creek had been identified as having "benthic impairments," which is to say the community of organisms that live on or near the bottom of the creek were not as numerous or healthy as they should be. EPA was to set appropriate TMDLs to improve the health of the benthic community in Accotink Creek.

On April 18, 2011, EPA established a TMDL for Accotink Creek which limited the flow rate of stormwater into Accotink Creek to 681.8 ft^3/acre-day. The TMDL was designed to

regulate the amount of sediment in the Accotink, because EPA believed sediment was a primary cause of the benthic impairment. Both parties agree that sediment is a pollutant, and that stormwater is not. EPA refers to stormwater flow rate as a "surrogate" for sediment.

The Plaintiffs are now challenging the TMDL on multiple grounds, but presently before the Court is a single issue: Does the Clean Water Act authorize the EPA to regulate the level of a pollutant in Accotink Creek by establishing a TMDL for the flow of a nonpollutant into the creek?

Analysis

I. Standard of Review

Count I of the complaint, at issue here, is brought under the Administrative Procedures Act. *See* Comp. ¶ 169. The APA "confines judicial review of executive branch decisions to the administrative record of proceedings before the pertinent agency." *Shipbuilders Council of Am. V. U.S. Dept. of Homeland Sec.*, 770 F. Supp. 2d 793, 802 (E.D. Va. 2011). As such, the district court "sits as an appellate tribunal," and APA claims can be resolved equally well in the context of Rule 12 or Rule 56. *Univ. Med. Ctr. Of S. Nev. V. Shalala*, 173 F.3d 438, 441 n. 3 (D.C. Cir. 1999).

Because Count I presents a question of statutory interpretation, the Court reviews EPA's decision using the two-step analysis set forth in *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984). For a given question of statutory interpretation, the first step under *Chevron* is to determine whether Congress addressed the "precise question at issue." 467 U.S. at 842. "If the intent of Congress is clear, that is the end of the matter . . . ." *Id.* If the Court cannot find that Congress has squarely addressed the question, the Court must move to Chevron's second step. In

the second step of statutory construction under *Chevron*, the Court must determine whether the agency's interpretation of the statute is "permissible." *Id.* at 843. The agency's construction is permissible if it is reasonable, but it need not be what the Court considers the *best* or *most reasonable* construction. *See id.* at 845. The Court is not to simply impose its own construction on the statute, but instead it gives deference to any reasonable statutory construction by the agency. *Id.* at 843.

II. Chevron Step One

Whether statutory ambiguity exists so that the issue cannot be settled at *Chevron's* first step is for the Court to decide, and the Court "owe[s] the agency no deference on the existence of ambiguity." *Am. Bar Ass'n v. FTC*, 430 F.3d 457, 468 (D.C. Cir. 2005). The Court begins the inquiry by "employing traditional tools of statutory construction." *Chevron*, 467 U.S. at 843 n.9. As always, the analysis begins with the text of the statute. *Nat'l Elec. Mfrs. Ass'n v. U.S. Dept'l of Energy*, 654 F.3d 496, 504 (4th Cir. 2011).

The text of the statute that requires states to establish their own TMDLs, 33 U.S.C. § 1313(d)(1)(C), is:

> Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, **the total maximum daily load, for those pollutants which the Administrator identifies** under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established 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. (emphasis added)

The next subsection, § 1313(d)(2), grants EPA the authority to set TMDLs when the state

has not done so adequately. "Pollutant" is a statutorily defined term. 33 U.S.C. § 1362(6).

The Court sees no ambiguity in the wording of this statute. EPA is charged with establishing TMDLs for the appropriate pollutants; that does not give them authority to regulate nonpollutants. The parties agree that sediment is a pollutant under 33 U.S.C. § 1362(6), and stormwater is not. Then how does EPA claim jurisdiction over setting TMDLs for stormwater?

EPA frames the stormwater TMDL as a surrogate. EPA's research apparently indicates that the "[sediment] load in Accotink Creek is a function of the amount of stormwater runoff generated within the watershed." Def. Opp. at 8. And EPA believes that framing the TMDL in terms of stormwater flow rate is superior to simply expressing it in terms of maximum sediment load.

The DC Circuit has considered and rejected a similar attempt by EPA to take liberties with the way Congress intended it to express its TMDLs. In *Friends of the Earth, Inc. v. Env. Protection Agency*, EPA had promulgated TMDLs for the Anacostia River that expressed the maximum load of certain pollutants in terms of annual and seasonal amounts. 446 F.3d 140, 143 (D.C. Cir. 2006). The court found that expressing a TMDL in terms of annual or seasonal maximums was not allowed, because the statute granted authority only for daily loads. *Id.* at 148. The court reached its conclusion even though EPA apparently made a strong argument that expressing TMDLs in terms of annual or seasonal loads was an effective and reasonable approach. *See id.* Presumably a daily load could have been derived by simply dividing the annual load by 365, yet the court still required expression in the terms dictated by Congress.

Here too, EPA hopes to express a TMDL in terms other than those contemplated by the statute, arguing that such an expression is the most effective method. But, as *Friends of the Earth* illustrates, EPA may not regulate something over which it has no statutorily granted power—

annual loads or nonpollutants—as a proxy for something over which it *is* granted power—daily loads or pollutants.

EPA's argument that its surrogate approach should be allowed because the statute does not specifically forbid it fails. EPA is not explicitly forbidden from establishing total maximum *annual* loads any more than they are explicitly barred from establishing TMDLs for nonpollutants. The question is whether the statute grants the agency the authority it is claiming, not whether the statute explicitly withholds that authority. And in this case, as in *Friends of the Earth*, the statute simply does not grant EPA the authority it claims.

The dicta in *Weyerhaeuser Co. v. Costle* is not as helpful to EPA's case as it would like. 590 F.2d 1011, 1022 n.6 (D.C. Cir. 1978). It is true that the court said in a footnote "[i]t is well recognized that EPA can use pollution parameters that are not harmful in themselves, but act as indicators of harm." *Id.* But in that case, the non-harmful pollution parameters the EPA sought to regulate were components of the effluent commonly discharged from paper mills, *id.* at 1022, making them effluents themselves. And power to regulate effluents is expressly granted to the EPA in the relevant statutory section. *See* 33 U.S.C. § 1314(b).

EPA would like to create the impression that Congress has given it loose rein to determine exactly what it could and could not regulate. On page 16 of its opposition to this motion, EPA points out that "Congress authorized EPA to determine which pollutants were suitable for TMDL calculation and measurement." (Internal quotes removed). While this may be true, EPA glosses over the fact that 33 U.S.C. § 1314(a)(2)(D) only gives EPA the power to regulate pollutants as that term is defined—by Congress—elsewhere in the statute. And, as discussed above, sediment is a pollutant for these purposes, but stormwater is not.

In a similar vein, EPA regulations which imply that the agency has discretion to set the

TMDL as it sees fit do not bear on the question now before the Court. EPA has promulgated a regulation allowing TMDLs to be "expressed in terms of either mass per time, toxicity, or other appropriate measure," 40 C.F.R. § 130.2(i), and another that allows TMDLs to be expressed as a "property of pollution," 50 Fed. Reg. 1774, 1776 (Jan. 11, 1985). But, EPA citing these regulations to demonstrate that the surrogate TMDL approach is permissible is mere bootstrapping. To the extent the regulations allow EPA to set TMDLs for nonpollutants, they exceed the statutory authority of EPA.

The plain language of the statute trumps all, but legislative history also supports Plaintiffs' argument. Congress's intent to limit EPA's discretion in this context is evidenced by the committee record cited by Plaintiffs, which has also been used by the Ninth Circuit, in which Senator Randolph, Chairman of the Senate committee that amended the act in 1972, explained, "We have written into law precise standards and definite guidelines on how the environment should be protected. We have done more than just provide broad directives [for] administrators to follow." Pl. Mot. 7, *citing Nw. Envtl. Def. Ctr. v. Brown*, 640 F.3d 1063, 1072 (9th Cir. 2011). Congress created a statutory scheme that included a precise definition of the word "pollutant," and then gave EPA authority to set TMDLs for those pollutants. Senator Randolph's comments strongly imply that Congress did not intend anything more or less than what is written in the statute.

The Court considers the language of 33 U.S.C. § 1313(d)(1)(C) to be unambiguous. Congress has spoken directly on the question at issue, and its answer is that EPA's authority does not extend to establishing TMDLs for nonpollutants as surrogates for pollutants. The legislative history of the CWA is consistent with this reading. Therefore, this Court finds EPA's interpretation of § 1313 and the related provisions to be impermissibly broad based on analysis

under the first step of *Chevron* analysis.

III. Chevron Step Two

Because the Court considers Congress's intent to be clear and unambiguously expressed by the language of the statute, it need not move to the second step of *Chevron* analysis. But the Court notes that there is substantial reason to believe EPA's motives go beyond "permissible gap-filling."

Page 9 of EPA's opposition says, "stormwater flow rates as a surrogate would more effectively address the process by which sediment impairs aquatic life in Accontink Creek." If the sediment levels in Accotink Creek have become dangerously high, what better way to address the problem than by limiting the amount of sediment permitted in the creek? If sediment level is truly "a function of" the amount of stormwater runoff, as EPA claims, then the TMDL could just as easily be expressed in terms of sediment load.

In fact, the Board of Supervisors of Fairfax County argued at the December 14th hearing (without objection from EPA) that EPA has approved 3,700 TMDLs for sediment nationwide, and in Virginia has addressed 111 benthic impairments with TMDLs. None of them regulated the flow rate of stormwater. By comparison, EPA has tried out its novel approach of regulating sediment via flow in only four instances nationwide, and all four attempts were challenged in court. One has settled, the other three are still pending.

The Court suspects that the decision to regulate stormwater flow as a surrogate for sediment load would not constitute a permissible construction of § 1313(d)(1)(C), even given the deference due at *Chevron's* second step. This is especially likely because EPA is attempting to increase the extent of its own authority via flow TMDLs, which courts must examine carefully.

See Brown & Williamson Tobacco Corp. v. Food & Drug Admin., 153 F.3d 155, 161-62 (4th Cir. 1998). EPA's attempt to set TMDLs for nonpollutants probably goes beyond "permissible gap-filling" and is instead an impermissible construction of the statute.

Conclusion

The language of § 1313(d)(1)(C) is clear. EPA is authorized to set TMDLs to regulate pollutants, and pollutants are carefully defined. Stormwater runoff is not a pollutant, so EPA is not authorized to regulate it via TMDL. Claiming that the stormwater maximum load is a surrogate for sediment, which is a pollutant and therefore regulable, does not bring stormwater within the ambit of EPA's TMDL authority. Whatever reason EPA has for thinking that a stormwater flow rate TMDL is a better way of limiting sediment load than a sediment load TMDL, EPA cannot be allowed to exceed its clearly limited statutory authority. For these reasons, the Plaintiffs' motion for Rule 12(c) judgment on the pleadings on Count I of their complaint is granted.

January 3, 2013
Alexandria, Virginia

/s/ LOG
Liam O'Grady
United States District Judge

FILED
JAN - 3 2013
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

VIRGINIA DEPARTMENT OF TRANSPORTATION, ET AL, Plaintiffs, -v- UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL, Defendants.	Civil Action No. 1:12-CV-775

Order

In accordance with the memorandum opinion that accompanies this order, it is now **ORDERED**:

1. Plaintiffs' motion (Dkt. No. 29) for judgment on the pleadings as to Count I of the complaint is **GRANTED**.
2. The clerk shall enter judgment in favor of the Plaintiffs.
3. The Accotink Creek TMDL is remanded to EPA for reconsideration consistent with this order.

January 3, 2013
Alexandria, Virginia

/s/
Liam O'Grady
United States District Judge