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DEPARTMENT OF PUBLIC WORKS

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April 9, 2009

IN REPLY PLEASE
REFER TO FILE: WM-9

Ms. Tracy Egoscue
Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Attention Ms. Tracy Woods

Dear Ms. Egoscue:

**TENTATIVE VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT**

On behalf of the Los Angeles County Flood Control District and the County of Los Angeles, the Department of Public Works has reviewed the proposed Tentative Order Ventura County Municipal Stormwater National Pollutant Discharge Elimination System Permit made available for public comments by the Regional Board. Our comments are enclosed.

If you have any questions, please call me or your staff may contact Mr. Frank Wu at (626) 458-4358 or fwu@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works


MARK PESTRELLA
Assistant Deputy Director
Watershed Management Division

ACL:jtz

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Enc.

**County of Los Angeles Department of Public Works
Comments in Response to the
Tentative Order Ventura County Municipal Stormwater
National Pollutant Discharge Elimination System Permit, No. CAS004002
Dated February 24, 2009**

The County of Los Angeles (County) and the Los Angeles County Flood Control District (LACFCD) submit the following comments in response to the Tentative Order Ventura County Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Tentative Order). The County and the LACFCD share the California Regional Water Quality Control Board – Los Angeles Region's (Regional Board's) goal of improving receiving water quality in the County of Los Angeles and look forward to working with your staff to develop the next Los Angeles County Municipal Stormwater NPDES Permit that will address the challenges unique to the Los Angeles area. The County's and the LACFCD's comments on the Ventura Tentative Order should not be construed as a waiver of the right to address any aspect of the Los Angeles Permit when it is proposed or a waiver of the right to a full hearing on and full consideration of all aspects of the Los Angeles Permit, especially given the significantly different circumstances posed by the Los Angeles basin.

The County and the LACFCD previously submitted comments on the Ventura County draft permits in letters dated March 7, 2007, October 15, 2007, and May 29, 2008. We appreciate the Regional Board revising the Tentative Order language to reflect some concerns from our previous comment letters. To the extent that the Regional Board has not modified the Tentative Order in response to prior comments, they are incorporated by reference and are not being waived. Also, as a California Stormwater Quality Association (CASQA) member agency, the LACFCD has reviewed and is in full support of CASQA's comment letter in response to the Tentative Order.

The county and the District recognize that the Tentative Order pertains to Ventura County. However, we are providing the following comments relative to the overall direction of the permit and the potential effect on the upcoming Los Angeles Permit.

**I. Municipal Action Levels
(Tentative Order Part 2, Page 33)**

The County and the LACFCD fully support the changes made to the derivation and application of MALs; the modified approach is consistent with the U.S. Environmental Protection Agency (EPA) guidance and with the recommendations of the State's Blue Ribbon Panel's report on the *Feasibility of Numeric Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities*. However, we caution the application of MAL and corresponding monitoring in drainage systems with comingling of jurisdiction stormwater discharges.

The Tentative Order significantly changes the derivation and application of MALs from a numeric metric to assess compliance with the technology-based MEP standard to one of assessing the performance of the program. The County and the LACFCD fully support this change as the modified approach is consistent with EPA guidance and with the recommendations of the State's Blue Ribbon Panel's report on the *Feasibility of Numeric Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities*. As recommended by the panel, the use of MALs in the Tentative Order appears to be directed at identifying "bad actors" or "problematic catchments". Exceedances of the MALs will require responsible parties to develop an MAL Action Plan to address potential sources of the pollutant and identify remedies.

Furthermore, the County and the LACFCD concur that MALs, if employed in arid regions, should be developed from datasets of similar climatic zones. The Tentative Order uses the dataset for EPA climate zone 6 (arid southwest), which is more relevant to the Ventura communities that will be using the MALs to assess the performance of their stormwater programs.

The Tentative Order also requires an assessment of compliance with the MALs by monitoring a representative major outfall within each of the permittees' jurisdictions. Although this approach may be appropriate to Ventura County, we would note that such an approach for Los Angeles County is problematic given our extensive drainage shed and the comingling of jurisdiction stormwater discharges. Monitoring programs need to reflect field and drainage system logistics. Watersheds into which several jurisdictions discharge may not lend themselves to discrete monitoring to evaluate the individual contributions from each jurisdiction. With this in mind, the County and the LACFCD would suggest that there are other assessment tools¹ available to the Regional Board and areawide permittees that may be used in lieu of or in combination with MALs for assessing the performance of a stormwater program.

II. Treatment Performance Best Management Practices (BMPs) Standards (Tentative Order Part 4.A.3, Page 35)

The County and the LACFCD have strong reservations that the design performance standards for treatment control BMPs may be misinterpreted and used as effluent limitations and possible enforcement actions.

The Tentative Order establishes the design performance standards for treatment control BMPs. The County and the LACFCD would suggest a few modifications to provide additional information for the permittees in selecting appropriate BMPs and help assure that the performance standards are used as recommended.

The County and the LACFCD have strong reservations that the performance standards may be misinterpreted and used as effluent limitations and possible enforcement actions. Such instances might arise in a case where a field sample that exceeds the

¹ See CASQA *Municipal Stormwater Program Effectiveness Assessment Guidance*, May 2007.

median design concentration is collected. Given that the treatment performance standard concentrations expressed in Attachment C are medians, there is an implied variability of the actual measured performance and any single sample would not provide a statistically valid assessment of median performance. A table footnote to the effect of explaining the intended use of the concentrations as design standards as well as referring to the concentrations within the Tentative Order as *Treatment BMP Design Performance Standards* will help prevent the misinterpretation or misuse of the design performance standards.

III. Prescriptive Nature of BMP Requirements and BMP Substitution Language (Tentative Order Part 5.A.2, Page 40)

The prescriptive lists of BMPs in the Tentative Order need to be paired with a reasonable level of flexibility to allow BMPs to be adapted for individual sites and provide protection of water quality. The County and the District recommend two different approaches for BMP substitution, one for program substitution and one for site-specific BMP handbooks and allow substitution of the revised documents and revised BMPs that may be contained within them, without triggering the substitution clauses.

The Tentative Order creates several prescriptive lists of BMPs for various program elements including construction sites (Part 5.F.1 1-4), commercial facilities (Part 5.D.2.a), municipal roadway maintenance and repair (Part 5.F.1 6), and municipal maintenance activities (Part 5.G.2.a). This specificity, however, needs to be paired with a reasonable level of flexibility to allow BMPs to be adapted for the needs of individual sites and activities and provide protection of water quality.

The BMP substitution language contained in Part 5.A.2 (quoted below) provides for a limited degree of flexibility but does not allow for the reasonable level of substitution flexibility that will be required during the course of implementing a stormwater management program.

2. *Best Management Practice Substitution*

(a) *The Regional Water Board Executive Officer may approve any site-specific BMP substitution upon written request by a Permittee(s) and after public notice, if the Permittee can document that:*

(1) *The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants.*

(2) *The fiscal burden of the original BMP or program is greater than the proposed alternative and does not achieve a greater improvement in storm water quality.*

(3) *The proposed alternative BMP or program will be implemented within a similar period of time.*

(4) *BMP substitution will be in accordance with the public review provisions of the Order (Part 8C.1 and Part 8C.2).*

As written, the substitution language allows for site-specific BMP substitution when appropriately justified, reviewed by the public, and approved by the Executive Officer. This process requires a minimum of 30 days (public review) before Executive Officer approval can be granted. It is not sufficiently flexible to allow for site-specific BMPs substitutions that are needed for individual projects or activities encountered during the day-by-day implementation of the stormwater management program.

The County and the LACFCD recommend two different approaches for BMP substitution, one for program substitution and one for site-specific BMPs. The approach for program substitution would follow the process outlined in Part 5.A.2. These substitutions would substitute programmatic BMPs for the ones specified in the Tentative Order; an example would be substituting the Erosion Potential approach for hydromodification assessment with one determined to be more appropriate for the region or individual watershed. This type of change appropriately warrants justification of the equivalency to the current practice, public review, and Executive Officer approval.

The approach for site-specific BMP substitution would be a more streamlined process for BMPs implemented at individual commercial/industrial sites, construction sites, or municipal maintenance projects. BMPs of this nature may need to be substituted on much shorter time scale than would be allowed by the language in Part 5.A.2. The process for substitution of BMPs at this level should follow the process identified in Part 5.D.3.a, Industrial/Commercial Business Program.

In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not protective of water quality standards, Permittees may require additional site-specific controls.

The County and the LACFCD recommend that this language be incorporated into the BMP substitution section so this type of substitution is allowed for all program elements where BMPs are prescribed, and not just in the Industrial/Commercial Business Program Element.

Finally, the County and the LACFCD note that the prescribed BMPs are taken from documents authored by CASQA and California Department of Transportation. These organizations periodically update their BMP handbooks and guidance manuals. The Tentative Order should anticipate these updates and allow the substitution of the revised documents and revised BMPs that may be contained within them without triggering the substitution clauses of the Tentative Order.

IV. Low-Impact Development (LID) Requirements (Tentative Order Part 5.E.III.1, Page 55)

The County and the LACFCD have strong reservations about the use of effective impervious area (EIA) as a performance standard for LID and recommend it be eliminated in the Tentative Order. In its place, the County and the LACFCD recommends that a volume reduction criterion be used to promote LID strategies, which is to *design a hydrologically functional site that mimics predevelopment conditions*. The Tentative Order also severely limits the choices of BMPs and the County and the LACFCD recommend that the prioritized list of BMPs be expanded to be consistent with the definition of LID. Finally, the County and the LACFCD recommend that Regional Board should conduct a thorough evaluation of the capture/reuse BMPs.

In November 2008, the Los Angeles County Stormwater Ordinance was revised to incorporate LID practices and requirements. New development and redevelopment projects within unincorporated County areas are now required to comply with our recently developed LID Standards Manual, effective January 1, 2009. In addition, the County is also developing a LID standards manual for infrastructure.

The Tentative Order establishes a performance standard for low-impact development using the concept of Effective Impervious Area (EIA). The Tentative Order requires that new development comply with an EIA of 5 percent or less in undeveloped areas. Impervious area may be rendered ineffective by addressing the water quality storm volume with infiltration, capture and reuse, or vegetated surfaces. The Tentative Order essentially has two standards, one is the 5 percent EIA and the other is the full retention of the water quality storm (e.g. 85th percentile, 24-hour storm event). We note that the approach used in the Tentative Order is not consistent with the methods used in our adopted LID Standards Manual. The County and the District have a number of comments and concerns regarding the approach in the Tentative Order.

First, the County and the LACFCD question the use of EIA as a performance standard. In the Building Industry Association's (BIA's) March 7, 2008, comment letter to the Regional Board regarding this performance standard, BIA identified a number of issues associated with the blanket application of an EIA performance standard. Some of these points noted in their comment letter include:

- o Five percent is an arbitrary value that has little basis in the scientific literature and could be increased to as much as 10 percent to 15 percent given local conditions.
- o Achieving this standard will require a great deal of land and appropriate groundwater conditions for infiltration, which in turn, based on land values in Ventura County, create tremendous costs and economic feasibility issues, particularly for very small projects, and infill and redevelopment projects.

The BIA comment letter also included a technical analysis of the EIA standard which substantiated the above points. These concerns along with the fact the EIA standard is redundant with the requirement to render ineffective impervious area by infiltrating or reusing the water quality volume make the EIA standard unnecessary. The Tentative Order could obtain the same result by just requiring the implementation of LID BMPs to address the water quality storm without the additional EIA requirement.

Next, we would submit that the Tentative Order has missed the fundamental concept of low-impact development strategies. EPA defines LID as follows:

A comprehensive stormwater management and site-design technique. Within the LID framework, the goal of any construction project is to design a hydrologically functional site that mimics predevelopment conditions. This is achieved by using design techniques that infiltrate, filter, evaporate, and store runoff close to its source. (EPA web site: accessed on 3/24/09): <http://cfpub1.epa.gov/npdes/greeninfrastructure/information.cfm#glossary>

The operative words in the above definition are "mimics predevelopment conditions." The County and the LACFCD submit that this definition means that postdevelopment runoff should strive to reflect the predevelopment runoff (i.e., the pre- and postdevelopment water balances are equal). In this context, the volume of water from a storm event is accommodated by infiltration, evapotranspiration, or runoff. Thus, the postdevelopment volume from a site is the same as the predevelopment volume. The "delta v"² would be retained on site according to the site's natural conditions including, but not limited to, soil type, slope, etc. This approach is reflected in our LID Standards Manual. The full retention of the water quality volume as implied in the Tentative Order does not reflect this broader and more environmentally sound approach of "delta v." That is not to say that a site could not be engineered in many situations to retain the full volume but rather acknowledges the logic of the water balance and goal of LID. Full retention will, on one hand, create a new water source for the site but will also have the unintended consequence of disrupting the watershed water balance. It is also fair to say that regulatory agencies throughout the region have not identified a single approach but rather have used both approaches (i.e., full and "delta v" retentions).³

Our third comment on LID pertains to Part 5.E.III.1.(c)-(d). In this provision, the Tentative Order stipulates how impervious surfaces are rendered "ineffective" through either infiltration or store-and-reuse BMPs. As currently drafted, the Tentative Order severely limits the choices of BMPs thereby creating challenges to the municipalities and developers in complying with this provision. The County and the LACFCD submit that this list of BMPs should be expanded to be consistent with the definition of LID. We suggest that the Tentative Order be modified to reflect the following approach:

² Delta volume = volume of postdevelopment runoff minus predevelopment runoff for the 85th percentile storm event (or equivalent water quality design event).

³ *Low Impact Development Metrics in Stormwater Permitting*, prepared for the Ventura and Orange County Stormwater Programs, Geosyntec, et al., January 2009.

- o LID BMPs shall be designed to retain the "delta v" for the 85th percentile, 24-hour storm event.
- o The goal is to retain the full "delta v" by using the following hierarchy of BMPs:
 - o Infiltration-based BMPs
 - o Capture/reuse BMPs
 - o Evapotranspiration BMPs
- o Any water quality volume that is not retained by the LID BMP shall be treated using treatment control BMPs, including biofilters, wetlands, and proprietary BMPs. A rigorous feasibility and performance criteria should be established to support implementation of the BMP hierarchy.

To support the effort described above, the County and the LACFCD believe the Regional Board should conduct a thorough evaluation of the capture/reuse BMPs by conducting a comprehensive water balance for a variety of case studies (including offsets to potable water use and vegetation water demands in arid climates), identifying health code requirements and obstacles, and providing typical construction cost for capture/reuse systems. This evaluation would greatly assist the municipalities as they evaluate the feasibility of capture/reuse BMPs.

V. Total Maximum Daily Loads (TMDLs)
(Tentative Order Part 6, Page 85)

The County and the LACFCD support the approach to only include the applicable implementation requirements of TMDLs that have been fully approved and that specifically identify Municipal Separate Storm Sewer System (MS4) responsibilities in the Basin Plan amendment. However, we remain concerned that there is no indication in the Tentative Order that the Regional Board staff has undertaken an analysis to determine whether the WLAs can be met using controls to the Maximum Extent Practicable. Finally the County and the LACFCD recommend that the word enforcement be eliminated from the TMDL compliance monitoring discussion, where it is stated that the "Regional Water Board staff will evaluate the need for further enforcement action."

The Tentative Order incorporates Total Maximum Daily Loads (TMDLs) that are in effect as of the date of the current Tentative Order. TMDLs in effect (i.e., Effective TMDLs) are those that have been adopted by the Regional Board as Basin Plan amendments (and approved by the State Water Board, Office of Administrative Law [OAL], and EPA).

The County and the LACFCD support the approach to only include applicable implementation requirements of Effective TMDLs that specifically identify Municipal Separate Storm Sewer System (MS4) responsibilities in the Basin Plan Amendment (BPA). Applicable implementation requirements are those that have been approved by the Regional Board and are specifically identified as MS4 responsibilities in the BPA and include, but are not limited to, allocations, compliance monitoring programs, special studies, and other specific implementation actions.

The County and the LACFCD have previously objected to the inclusion of TMDL numeric Waste Load Allocations (WLAs) into the Los Angeles County Municipal Stormwater NPDES Permit on the basis of improper incorporation of numeric limits. Consistent with EPA guidance, the WLAs should be expressed in the form of BMPs as nonnumeric limits. Also, as previously expressed, the Tentative Order does not indicate whether Regional Board staff has undertaken any analysis to determine whether the WLAs can be met using controls to the Maximum Extent Practicable (MEP). Thus, it is unknown whether attainment of the WLAs would require efforts that go beyond that standard. To the extent, this requirement imposes an obligation beyond the MEP standard there has to be complied with Water Code §13241.

Under the compliance monitoring portion of the TMDL section, the Tentative Order states that if any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL technical reports. The Tentative Order then says that, following these actions, the "Regional Water Board staff will evaluate the need for *further* enforcement action." (Tentative Order Part 6.V.1-8(c), Pages 87-95). This implies that there was a violation of the permit and enforcement actions were taken. The word "enforcement" should be eliminated.

VI. Pyrethroid Insecticides Study
(Tentative Order Attachment F, Tentative Monitoring Program, Section E,
Page F-13)

The County and the LACFCD suggest that in lieu of the required Pyrethroid Insecticide Study by the Ventura permittees, that a Southern California regional study be conducted to build upon the current and proposed bioassessment monitoring and use a multiple lines of evidence approach.

The Tentative Order requires the Principal Permittee to perform a Pyrethroid Insecticides Study to establish baselines, evaluate toxicity, identify trends, and determine the contribution of urban sources to pyrethroid pollution in the three major Ventura County Watersheds. Such a study should be conducted in a broader Southern California context. Specifically, we suggest the following approach:

- Utilize a regional approach to this effort, and start by identifying regions in southern California that are most likely to have elevated levels of pyrethroids. This process can be built upon previous monitoring efforts in California.
- Build upon current and proposed bioassessment monitoring to evaluate the health of sediment dwelling aquatic species. Evaluation of potential impacts of pyrethroids could tie into the existing bioassessment monitoring effort to provide multiple lines of evidence to further evaluate the impacts of urbanized land areas.

VII. Non-Stormwater vs. Dry-Weather Discharges

(Tentative Order, (a) front page; (b) Finding B.10, Page 4; (c) Finding D.6, Page 9; and (d) Finding E.6, Page 11)

The Tentative Order erroneously mixes up the concept of stormwater with wet-weather discharges and the concept of nonstormwater with dry-weather discharges. This causes unnecessary confusion and ambiguity. To avoid this confusion and ambiguity, the Order should eliminate all references to "wet weather" and "dry weather," except where those terms are in the title of a TMDL (see Tentative Order, Part 6, VI.1, Page 86.)

The Clean Water Act distinguishes between stormwater and nonstormwater. The Federal regulations, 40 C.F.R. 122.26(b)(13), define stormwater to mean "stormwater runoff, snow melt runoff, and surface runoff and drainage." The Tentative Order adopts this definition as the definition of stormwater in the permit. We support the Tentative Order's adoption of this definition.

The Clean Water Act does not distinguish between "wet weather" and "dry weather," nor does it distinguish between "wet weather discharges" and "dry weather discharges." The distinction between wet weather and dry weather is solely a creation of the Regional Board's TMDL program. This distinction is meant to address the different circumstances created during rain events as opposed to nonrain events based on the recognition that different strategies might be needed during rain events.

"Stormwater," as defined by the Clean Water Act, is not necessarily the equivalent of wet weather, and "non-stormwater" is not necessarily the equivalent of "dry weather." There is no reason or need to use the terms "wet weather" or "dry weather," and by using the terms interchangeably the Tentative Order creates confusion. One does not know whether the Order is referring to stormwater discharges within the meaning of the Clean Water Act or any discharge that occurs during wet weather. Likewise, one does not know whether the permit is referring to nonstormwater discharges as used by the Clean Water Act or any discharge that occurs during dry weather. The Tentative Order should limit itself to the terms used by the Clean Water Act; *i.e.*, stormwater and nonstormwater. Reference to wet weather or dry weather is appropriate only where the Order is referring to the title of a TMDL.

The permit should eliminate all references to the terms "wet weather" and "dry weather" except where those terms are in the title of a TMDL (see Page 86, Tentative Permit, Part 6, VI.1). These references include those found on the front page, in Finding B.10 on Page 4, in Finding D.6 on Page 9, and in Finding E.6 on Page 11.

VIII. Non-Stormwater Discharges to Watercourses

(Tentative Order, Part 1.A.1, Page 29, Part III, Pages 55-59)

Part 1.A.1 of the Tentative Order proposes to prohibit "non-storm discharges into the MS4 and watercourses." The reference to "watercourses" should be deleted because

no authority exists for this provision. Whereas a stormwater permit regulates MS4s, it does not regulate watercourses.

The NPDES Permit program regulates the discharge of pollutants from point sources to navigable waters of the United States: 33 U.S.C. § 1342(a)(1). Under the NPDES Permit program, the authority to regulate is based on the nature of the activity; *i.e.*, it must be a discharge from a point source, and the nature of the water body receiving the discharge must be a navigable water of the United States, 33 U.S.C. § 1362(12).

MS4s are subject to the NPDES Permit program when they constitute point sources that discharge into navigable waters of the United States. The MS4 Permit, however, applies to the MS4 and discharges from it, 33 U.S.C. § 1342(p)(3)(B). It does not apply to discharges wholly independent of the MS4, including discharges into watercourses, 33 U.S.C. § 1342(p)(3)(B). (A discharge into a watercourse might be the subject of a separate NPDES Permit if the watercourse is a navigable water of the United States, 33 U.S.C. § 1342(a), but that discharge is not part of the MS4 Permit program.)

In the response to our comments, your staff states that the definition of an MS4 includes any conveyance of stormwater, natural or manmade. This is not correct. A municipal separate storm sewer is defined to include only those conveyances designed or used to convey stormwater that is owned or operated by the permittee, 40 C.F.R. 122.26(b)(8). The permittees own or operate the MS4, not the watercourses. (To the extent that your staff intends to limit the term "watercourses" to those MS4s-owned by the permittees, the addition of the term then becomes superfluous). The regulatory definition of an MS4 does not include any reference to watercourses or, for that matter, "natural conveyances," 40 C.F.R. 122.26(b)(8) and (18). If the definition of an MS4 included watercourses, every river in the country would be considered part of an MS4 because every river conveys rainfall or other stormwater contained in it.

Any doubt that the inclusion of the reference to "watercourses" in Part 1.A.1 is without authority and beyond the reach of an NPDES MS4 Permit is put to rest by the terms of 33 U.S.C. § 1342(p)(3)(B) itself. This statute provides that "*permits for discharges from municipal storm sewers . . . shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers,*" 33 U.S.C. § 1342(p)(3)(B)(ii). There is no reference to discharges into watercourses. Accordingly, a MS4 Permit applies only to discharges *from municipal storm sewers*, not to discharges into watercourses and the prohibition applies only to non-stormwater discharges "*into the storm sewers.*"

This same principle applies with respect to the Tentative Order's Hydromodification Provisions, Part III, Sections 2 and 3, Pages 55 through 59. The Tentative Order can only regulate discharges from the MS4, not discharges into streams, watercourses, and natural drainage areas.

IX. Unfunded State Mandates
(Proposed Finding E.7, Pages 11-12)

The Tentative Order contains a finding that nothing in the permit constitutes an unfunded State mandate (Tentative Order, Finding E.7, pages 11-12,). This finding is both superfluous and erroneous.

The finding is superfluous because it carries no weight. The Commission on State Mandates has exclusive authority to determine, in the first instance, whether a requirement constitutes an unfunded State mandate. The Regional Board has neither the authority nor the expertise to make this finding. Government Code §§ 17551 and 17552; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 83; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1546, 1596-97. The findings of an agency that has no jurisdiction to make those findings are entitled to no weight.

The finding is also erroneous. NPDES Permits can contain both Federal and State requirements. *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal. 4th 613, 618, 628. Where those non-Federal requirements constitute a new program or higher level of service ordered by the State or exceed the Federal requirements, those requirements can qualify as a State mandate requiring a subvention of funds. See *Long Beach Unified School District v State of California* (1990) 225 Cal.App.3d 155, 172-173. Even if the requirement derives from the Federal law, the requirement can still constitute an unfunded State mandate where the Regional Board has a choice whether to impose the requirement on the permittees. *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1546, 1593-94.

Accordingly, permit requirements which are imposed as an exercise of the Regional Board's discretion, which go beyond those required by a Clean Water Act, or which otherwise are more stringent than the Clean Water Act, are unfunded State mandates. The Tentative Order contains such requirements in portions of Parts 1 through 6. Moreover, the statements in Finding E.7 that the provisions of the Order implement the TMDLs, that all obligations are similar or less stringent than the obligations of nongovernmental dischargers, that there has been a "relaxation" of permit requirements, that the permittees have the authority to levy service charges, fees, or assessments to pay for compliance with all portions of the permit, and that the permittees had a choice in requesting issuance of the Order, are all incorrect and are not supported by substantial evidence in the record.

Proposed Finding E.7 should be deleted.

X. Insufficient Time to Meet Requirements

The County and the LACFCD are concerned that the Tentative order does not provide for a sufficient amount of time following the Order adoption to complete the required elements and recommends that the deadlines of these requirements be reviewed for

feasibility. Several requirements are labor intensive in nature or require a significant amount of data processing. Consideration should be given to increase the specified time to complete those requirements listed in Table 1 below.

Table. 1 Requirements with Insufficient Time Allotted for Completion

Permit Section	Requirement	Allotted Time
Part 5.G.5.(a)(1)	Submittal of a map/list and GPS coordinates of all Catch Basins	Within one year of Order Adoption
Part 5.G.5.(b)(1)(C)	Clean out of catch basins, trash receptacles, and grounds	Within 24 hours subsequently to an event
Part 5.G.5.(c)(1)	Installation of trash receptacles or equivalent in areas subject to high trash generation	No later than one year after Order adoption
Part 5.G.5.(d)(2)	Re-stenciling or re-labeling of catch basins	Within 15 days of inspection
Part 5.G.7.(a)(1)	Submittal of a statement of the occurrence of the emergency, an explanation of the circumstance, and the measures that were implemented	Within 30 business days after the situation of emergency has passed
Part 5.G.8.(a),(b),(c)	Train all employees and contractors in targeted positions on the requirements of the overall storm water management program	Annually before June 30
Part 5.H.1.(b)	Mapping all known connections to the storm drain system	No later than three years after Order adoption
Part 5.H.3.(b)(1)	Illicit connection investigations to be completed	Within 21 days.
Attachment F, Section A.14	Submittals to the Regional Board of nonperformance of monitoring requirements.	Within two working days
Attachment F, Section F.4	Submittal of a letter to the Regional Board stating how the Principal Permittee will satisfy the requirements for the Hydromodification Control Study.	No later than two months after Order adoption
Attachment F, Section G.3; and Attachment H, Part 1.B.3.(a) and Part 1.B.5.(a)	Submittal of a letter to the Regional Board stating how they are satisfying the requirement for the Low-Impact Development Special Study	Within two months
Attachment H, Part 1.C.1.(a)-4(a)	Electronic submittal to the Regional Board of monitoring results	No later than 45 days from the sample collection date

XI. Costly Requirements

The County and the LACFCD recommend that several of the more costly permit requirements be reviewed and that the Tentative Order language allow for flexibility to use alternative methods to achieve the objective of the requirements listed in Table 2 below.

Table 2. Requirements That Appear to be Cost Prohibitive

Permit Section	Requirement
Part 5.E.III.1.(b)	Use 5 percent Effective Impervious Area for redevelopment areas
Part 5.E.IV.2.(a)(1)	Implement GIS or other electronic system for tracking projects for postconstruction BMPs
Attachment F, Section A.8	Flow-weighted composite sampling
Attachment F, Section E.1.(d)	Establishing at least two stations along the mainstems of each major watershed river for the Pyrethroid Insecticides Study.

XII. Miscellaneous Detail Comments

During our review of the Tentative Order, we noted several inconsistencies in the language between the various subparts and reference corrections. The ones we identified are listed in Table 3 below.

Table 3. Minor Edit Comments

Permit Section	Permit Language	Comment
Part 5.E.III.1.(b)	...the project shall comply with the surface discharge requirements of 5.E.III.4	Subpart 5.E.III.4 does not appear in the permit.
Part 5.E.III.2.(a)(3)(A)	...until Permittees complete Hydromodification Control Plans (HCPs), described in subpart 5.E.III.3(a)(3)	Subpart 5.E.III.3(a)(3) does not appear in the permit.
Part 5.G.2.(a), Finding 17	Each Permittee shall implement the activity specific BMPs listed in Table 9...	This part and finding should refer to Table 10.
Part 5.G.7	vii. Public Industrial Activities Management	This part does not appear in the permit. Is this intended to be operations as reference in Pat 5.G.5?

Permit Section	Permit Language	Comment
Part 5.G.10	x. Infrastructure Maintenance	This part does not appear in the permit. It appears to be redundant with Part 5.G.5 Storm Drain Operation and Management.
Part 7	Industrial Activities Storm Water General Permit (IASGP)...	Previous permits utilize GIASP as an acronym. The definition of GIASP on Page 101 should indicate that IASGP was formerly known as GIASP and that they are interchangeable.
Attachment F Section E.1.(s)	The study shall be repeated in the fifth year of the permit term.	This contradicts Section E.I.iv. where it states "trends shall be assessed over the permit term."
Attachment H Part 1.C. 1(a) through 4(a)	Monitoring results no later than 45 days from sample collection date.	The 45 days monitoring results submittal is inconsistent with what is specified in Attachment F, which states 90 days (Page F-12, Item 17)