
San Diego Regional Water Quality Control Board

August 5, 2015

Via Email Only

San Diego County Principal Watershed Copermittees

In reply refer to / attn:
PIN :786088:LWalsh

**Subject: General Comments on Final Water Quality Improvement Plans
and Notice of Noncompliance**

San Diego County Principal Watershed Copermittees:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) received the Water Quality Improvement Plans (Plans) from the San Diego County Copermittees (Copermittees) on or before June 26, 2015, as required pursuant to Provision F.1.b.(1) of Order No. R9-2013-0001, *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* (Order).

The Plans are the product of more than two years of concentrated Plan development efforts by the Copermittees. These Plans were prepared in phases and the Copermittees received regular input from the San Diego Water Board, industry professionals, non-governmental environmental organizations, and community members as part of feedback from the Water Quality Improvement Consultation Panel groups and the public at large during multiple public workshops. While the San Diego Water Board recognizes this is the first time the Copermittees have prepared such Plans and acknowledges their efforts to comply with the requirements of the Order, some of the Plans did a better job of meeting the requirements of the Order than others.

The San Diego Water Board is confident that once the Plans are in compliance with the requirements of the Order and accepted by the San Diego Water Board, the Copermittees' jurisdictional runoff management programs (JRMPs) will have the greatest potential to achieve significant reductions in pollutant loads in MS4 discharges and improvements in receiving water quality to the level supportive of beneficial uses within the shortest possible time.

In addition to reviewing the Plans for compliance with the requirements of the Order, the San Diego Water Board reviewed the acceptability of the Plans. The Order allows the Copermittees to develop Plans that prioritize the water quality conditions to address

sooner rather than later, and to set numeric goals and schedules to address the highest priorities. However, not all proposed priorities, goals, and schedules will be determined acceptable, especially if the San Diego Water Board determines that a Plan will not achieve water quality improvements within a reasonable period of time. While the elements of a Plan may meet the requirements of the Order, those elements must also meet the intent of the Order which is instrumental to achieving the goals of the San Diego Water Board's Practical Vision.

The San Diego Water Board has not yet completed a detailed review of each Plan. At this time, the San Diego Water Board is providing general comments for all the Plans because there are several issues of concern already identified that make the Plans unacceptable, as well as noncompliant with the requirements of the Order. When the detailed reviews are completed the San Diego Water Board staff will schedule a time to meet with the Copermittees for each Watershed Management Area, as soon as practicable and anticipated to be before the end of August 2015, to discuss specific issues that need to be addressed in each Plan. At the meetings, the San Diego Water Board may have Plan-specific comments in addition to the issues identified below.

Until then, the issues identified below must be adequately addressed for the Plans to be considered acceptable by the San Diego Water Board, and to be in compliance with the requirements of Order. Not all of the following comments and areas of noncompliance are applicable to every Plan or to every Copermittee, so the San Diego County Copermittees should review the Plans to determine where the following issues are applicable to their watershed and their jurisdiction.

PRIORITY WATER QUALITY CONDITIONS

1. Identification of Priority Water Quality Conditions

Requirements: Provisions B.2.a through B.2.c of the Order require the Copermittees to identify the priority water quality conditions that will be evaluated to determine which of those conditions will be the highest priorities to be addressed by the Plan. Provisions B.2.a through B.2.c require the Copermittees to consider several sources of data and information to identify priority water quality conditions within the Watershed Management Area, and whether there is a potential that MS4 discharges may be causing or contributing to those conditions.

Issues of Concern: Each Plan includes a description of the process to review different sources of data and information, including input from the public, to identify priority water quality conditions. The San Diego Water Board, however, has found the following general issues of concern:

- a) In several Plans, the San Diego Water Board did not find a fully inclusive list of all priority water quality conditions (i.e. pollutants, stressors, receiving water conditions) that should have been identified in data and information that were required to be considered pursuant to Provisions B.2.a and B.2.b. Pursuant to

Provision B.2.c.(1), a fully inclusive list was required to be evaluated to identify which of those conditions were the highest threat to receiving water quality, or most adversely affect the quality of receiving waters.

- b) In at least one Plan, there was not enough description or information that allowed the San Diego Water Board to determine if all the factors under Provisions B.2.a and B.2.b were adequately considered or not.
- c) A few Plans have identified bacteria as a highest priority water quality condition based on the Revised Total Maximum Daily Loads (TMDLs) for Indicator Bacteria, Project I – Twenty Beaches and Creek in the San Diego Region (Beaches and Creeks Bacteria TMDLs), but the segment which the highest priority water quality condition is based on is no longer identified as impaired on the Clean Water Act Section 303(d) List (303(d) List).

Noncompliant Priority Water Quality Conditions: In several Plans, there was a notable absence of one or more pollutants or conditions of concern known to the San Diego Water Board (e.g. trash, hydromodification, benthic alteration, stream or riparian habitat degradation) that were also identified in reports, plans, and data cited and reviewed by the Copermittees (e.g. 2011 Long Term Effectiveness Assessment). In a few Plans, there was also a notable absence of pollutants or conditions of concern identified by the public at workshops or Water Quality Improvement Plan Consultation Panel meetings, and in written comments from stakeholders and the public. The lists developed pursuant to Provision B.2.c.(1) that do not acknowledge and include these notably absent pollutants and conditions of concern are not in compliance with the requirements of Provisions B.2.a-c.

Unacceptable Priority Water Quality Conditions: A few Plans have bacteria as a highest priority water quality condition only because of the Beaches and Creeks Bacteria TMDLs, but there is no longer an impairment identified on the 303(d) List. If there are no strategies proposed to be implemented other than the requirements of Provisions E.2 through E.7 to address bacteria, or there are no load reductions quantified for other pollutants in addition to bacteria, or both, the Plans are not acceptable to the San Diego Water Board.

WATER QUALITY IMPROVEMENT GOALS

2. Final Numeric Goals

Requirements: Provision B.3.a.(1)(a) of the Order requires the Copermittees to include final numeric goals in the Plan to address the highest priority water quality conditions. Each final numeric goal must either demonstrate the discharges from the Copermittees' MS4s will not cause or contribute to exceedances of water quality standards in receiving waters, or the receiving waters are protected from the Copermittees' MS4 discharges, or both (see Provisions B.3.a.(1)(a)(i)-(iii)).

Issues of Concern: Each Plan includes final numeric goals for the highest priority water quality conditions. The San Diego Water Board, however, has found the following general issues of concern:

- a) Several Plans include proposed final numeric goals expressed in a manner that is difficult for the San Diego Water Board to determine the final numeric goal is a criterion or indicator capable of demonstrating one or more of the criteria given in Provisions B.3.a.(1)(a)(i)-(iii). In addition, the San Diego Water Board questions how some of these proposed final numeric goals could be measured by the Copermittees.
- b) Several proposed final numeric goals appear to be in conflict with the prohibitions and limitations in Provision A of the Order. For example, there are Plans with proposed final numeric goals associated with reducing non-storm water discharges from the MS4s, but the San Diego Water Board cannot determine how achievement of the proposed final numeric goal is in compliance with the requirement to effectively prohibit non-storm water discharges to the MS4 (Provision A.1.b).
- c) There are proposed final numeric goals that are difficult for the San Diego Water Board to establish a link between achieving the final numeric goal and addressing the highest priority water quality condition. For example, there are Plans with proposed final numeric goals associated with reducing non-storm water discharges from the MS4s to achieve reductions of pollutants in MS4 discharges (e.g. bacteria) during wet weather and dry weather conditions; however, the MS4 discharge reduction metric (e.g. flow) does not quantify the pollutant reduction that will be achieved during wet weather or dry weather conditions.
- d) Some proposed final numeric goals did not meet the criteria of Provision B.3.a.(1)(a), but could be acceptable interim numeric goals.

Noncompliant Final Numeric Goals: Final numeric goals that are not numeric, AND measureable, AND capable of demonstrating the Copermittees' MS4s will not cause or contribute to exceedances of receiving water limitations, or the receiving waters are protected from the Copermittees' MS4 discharges, or both, are not in compliance with the requirements of Provision B.3.a.(1)(a).

Unacceptable Final Numeric Goals: The following proposed final numeric goals are not acceptable to the San Diego Water Board:

- a) Final numeric goals that are not consistent or do not demonstrate compliance with the prohibitions and limitations of the Provision A.

- b) Final numeric goals with a metric that is unclear about how it will be measured, and lacks any description of, or reference to the data that will be collected to measure the metric.
- c) Final numeric goals that do not clearly demonstrate achievement of the final numeric goal will result in MS4 discharges that do not cause or contribute to exceedances of water quality standards in receiving waters, or the receiving waters are protected from the Copermittees' MS4 discharges, or both.
- d) Final numeric goals that do not have a metric that clearly demonstrates a link to addressing the highest priority water quality conditions.

3. Interim Numeric Goals

Requirements: Provision B.3.a.(1)(b) of the Order requires the Copermittees to include interim numeric goals in the Plan for each final numeric goal. The Copermittees are allowed to propose as many interim numeric goals for each final numeric goal as they determine appropriate (Provision B.3.a.(b)(i)), but must include at least one interim numeric goal that is expressed as a reasonable increment of the final numeric goal. This interim numeric goal is expected to be in the same or a similar metric as the final numeric goal (Provision B.3.a.(b)(ii)). At least one interim numeric goal is required to be established during each 5 year period between the acceptance of the Plan and the achievement of the final numeric goal (Provision B.3.a.(b)(iii)).

Issues of Concern: In at least one Plan, the San Diego Water Board has found proposed final numeric goals that do not have interim numeric goals that are expressed in the same or similar metric as the final numeric goals.

Noncompliant Interim Numeric Goals: Final numeric goals that do not have at least one interim numeric goal expressed as a reasonable increment in the same or similar metric as the final numeric goal are not in compliance with Provision B.3.a.(1)(b)(ii).

WATER QUALITY IMPROVEMENT STRATEGIES

4. Identification of Potential Water Quality Improvement Strategies

Requirements: Provision B.2.e of the Order requires the Copermittees to identify potential strategies that can result in improvements to water quality. Provision F.1.a.(2)(f) requires the Copermittees consider revisions to potential water quality improvement strategies they propose in the Plan based on public comments.

Issues of Concern: Most Plans include lists of water quality improvement strategies that may be implemented by the Copermittees. The San Diego Water Board, however, has found the following general issues of concern:

- a) In at least one Plan, the San Diego Water Board was not able to locate the list of potential water quality improvement strategies developed during the public participation process in the Plan.
- b) In at least one Plan, the San Diego Water Board could not find all the potential water quality improvement strategies suggested or recommended in public comments.

Noncompliant Potential Water Quality Improvement Strategies: Plans that do not identify all potential strategies that were considered for implementation to improve water quality are not in compliance with the requirements of Provision B.2.e. Plans that did not consider all the potential water quality improvement strategies submitted in public comments are also not in compliance with the requirements of Provision B.2.e.

5. Optional Jurisdictional Strategies

Requirements: Provision B.3.b.(1)(b) of the Order requires each Copermittee to identify the optional jurisdictional strategies that will be implemented within its jurisdiction, as necessary, to achieve final numeric goals. Each Copermittee is required to identify water quality improvement strategies that are in addition to the best management practice (BMP) implementation, inspection, enforcement, and education activities that are already required by Provisions E.2 through E.7 (Provision B.3.b.(1)(b)(i)). Optional jurisdictional strategies to encourage or implement retrofit projects and channel and habitat rehabilitation projects are also required to be provided (Provisions B.3.b.(1)(b)(ii) and (iii)). For each optional jurisdictional strategy that a Copermittee includes in the Plan, descriptions of the funds and/or resources needed, and the circumstances needed to trigger implementation of the strategy are also required (Provisions B.3.b.(1)(b)(iv) and (v), respectively).

Issues of Concern: All the Plans lacked enough information for the San Diego Water Board to make a determination that all the requirements of Provision B.3.b.(1)(b) have been met. The San Diego Water Board has found the following general issues of concern:

- a) Several Copermittees did not include any proposed optional jurisdictional strategies to be implemented within their jurisdictions, as necessary, to effectively prohibit non-storm water discharges to the MS4, reduce pollutants in storm water discharges from the MS4 to the maximum extent practicable (MEP), protect beneficial uses of receiving waters from MS4 discharges, or achieve proposed interim and final numeric goals.
- b) Most Copermittees did not include an incentive or program to encourage or implement projects to retrofit areas of existing development within its jurisdiction.

Pursuant to Provision E.5.e.(1)(a), every Copermittee is required to identify areas of existing development within its jurisdiction as candidates for retrofitting. Therefore, every Copermittee should have some incentive or program to encourage implementation of retrofit projects in the areas of existing development identified in its JRMP document pursuant to Provision E.5.e.(1)(a), unless there is an acceptable rationale in the Plan describing why it is infeasible to encourage or implement such retrofit projects.

- c) Most Copermittees did not include an incentive or program to encourage or implement projects that will rehabilitate the conditions of channels or habitats within its jurisdiction. Pursuant to Provision E.5.e.(2)(a), every Copermittee is required to identify streams, channels, and/or habitats in areas of existing development within its jurisdiction as candidates for rehabilitation. Therefore, every Copermittee should have some incentive or program to encourage implementation of projects to rehabilitate the conditions of channels or habitats within its jurisdiction identified in JRMP document pursuant to Provision E.5.e.(2)(a), unless there is an acceptable rationale in the Plan describing why it is infeasible to encourage or implement such rehabilitation projects.
- d) Of the Copermittees that did include proposed optional jurisdictional strategies, adequate information about the funds and/or resources needed to implement the strategy (e.g. plans to be developed, studies to be conducted, data to be collected, personnel needed, equipment needed, administrative structures required, contracts needed, land to be acquired, etc.) was not provided.
- e) Of the Copermittees that did include proposed optional jurisdictional strategies, adequate information about the circumstances necessary to trigger implementation of the strategy (e.g. funding availability, obtain approval from city councils, findings from assessments or studies, etc.) was not provided.
- f) Many proposed optional jurisdictional strategies did not appear to be a BMP, an incentive, or a program that could be implemented to effectively prohibit non-storm water discharges to the MS4, reduce pollutants in storm water discharges from the MS4 to the MEP, protect beneficial uses of receiving waters from MS4 discharges, or achieve proposed interim and final numeric goals. Implementation of an optional jurisdictional strategy is expected to result in an improvement of water quality.

Noncompliant Optional Jurisdictional Strategies: The San Diego Water Board found that the proposed optional jurisdictional strategies in the Plans do not comply with the requirements of Provision B.3.b.(1)(b) as follows:

- a) A Copermittee that did not propose any optional jurisdictional strategies to be implemented within its jurisdiction, as necessary, to effectively prohibit non-storm water discharges to the MS4, reduce pollutants in storm water discharges from the MS4 to the MEP, protect beneficial uses of receiving waters from MS4

discharges, or achieve proposed interim and final numeric goals, in addition to the BMP implementation, inspection, enforcement, and education activities that are already required by Provisions E.2 through E.7 is not in compliance with the requirements of Provision B.3.b.(1)(b)(i).

- b) Unless acceptable data or rationale are provided in the Plan, a Copermittee that did not propose any incentives or programs to encourage or implement projects to retrofit areas of existing development within its jurisdiction as optional jurisdictional strategies is not in compliance with the requirements of Provision B.3.b.(1)(b)(ii). A Copermittee that has not identified areas of existing development within its jurisdiction as candidates for retrofitting in its JRMP document also is not in compliance with Provision E.5.e.(1)(a), unless acceptable data or rationale is provided.
- c) Unless acceptable data or rationale are provided in the Plan, a Copermittee that did not propose any incentives or programs to encourage or implement projects to rehabilitate channels or habitats within its jurisdiction as optional jurisdictional strategies is not in compliance with the requirements of Provision B.3.b.(1)(b)(iii). A Copermittee that has not identified projects to rehabilitate the conditions of channels or habitats within its jurisdiction in its JRMP document also is not in compliance with Provision E.5.e.(2)(a), unless acceptable data or rationale are provided.
- d) A Copermittee that does not have any optional jurisdictional strategies in the Plan or has proposed an optional jurisdictional strategy without an adequate description of the funds and/or resources needed to implement the strategy is not in compliance with the requirements of Provision B.3.b.(1)(b)(iv).
- e) A Copermittee that does not have any optional jurisdictional strategies in the Plan or has proposed an optional jurisdictional strategy without an adequate description of the circumstances needed to trigger implementation of the strategy is not in compliance with the requirements of Provision B.3.b.(1)(b)(v).

Unacceptable Optional Jurisdictional Strategies: The following proposed optional jurisdictional strategies are not acceptable to the San Diego Water Board:

- a) Many proposed optional jurisdictional strategies are described using terms such as “consider”, “evaluate”, “investigate”, or “develop” a BMP, incentive, or program. These terms indicate to the San Diego Water Board that the Copermittee is only preparing for the implementation of a BMP, incentive, or program. Provision B.3.b.(1)(b) requires each Copermittee identify that optional jurisdictional strategies that ***will be*** implemented. Preparation for a strategy does not meet the requirement of a strategy that will be implemented.
- b) Many proposed optional jurisdictional strategies describe development of a plan, conducting a special study or an assessment, or collecting data. Plans, special

studies, assessments, and data collection are necessary steps to implement a strategy, but are not in and of themselves a strategy that will result in the effective prohibition of non-storm water discharges to the MS4, reduction of pollutants in storm water discharges from the MS4 to the MEP, protection of beneficial uses of receiving waters from MS4 discharges, or achievement of proposed interim and final numeric goals.

- c) Several proposed optional jurisdictional strategies appear to be BMP implementation, inspection, enforcement, and education activities that are already being implemented or required to be implemented by the Copermittee pursuant to Provisions E.2 through E.7. Optional jurisdictional strategies are required in addition to the requirements of Provisions E.2 through E.7.

6. Watershed Management Area Strategies

Requirements: Provision B.3.b.(2) of the Order requires the Copermittees to identify Watershed Management Area strategies that will be implemented, as necessary, to achieve final numeric goals. The Copermittees are required to identify regional or multi-jurisdictional scale water quality improvement strategies (Provision B.3.b.(2)(a)). Watershed Management Area strategies to encourage or implement retrofit projects and channel and habitat rehabilitation projects are also required to be provided in the Plan (Provisions B.3.b.(2)(b) and (c)). For each Watershed Management Area strategy that the Copermittees includes in the Plan, descriptions of the funds and/or resources needed, and the circumstances needed to trigger implementation of the strategy are also required (Provisions B.3.b.(2)(d) and (e), respectively).

Issues of Concern: All the Plans lacked enough information about Watershed Management Area strategies to meet the requirements of Provision B.3.b.(2).

Noncompliant Watershed Management Area Strategies: The San Diego Water Board found that the Watershed Management Area strategies in the Plans do not comply with the requirements of Provision B.3.b.(2) as follows:

- a) A Plan that did not propose any Watershed Management Area strategies to be implemented on a regional or multi-jurisdictional scale, as necessary, to effectively prohibit non-storm water discharges to the MS4, reduce pollutants in storm water discharges from the MS4 to the MEP, protect beneficial uses of receiving waters from MS4 discharges, or achieve proposed interim and final numeric goals is not in compliance with the requirements of Provision B.3.b.(2)(a).
- b) Unless acceptable data or rationale are provided in the Plan, a Plan that did not propose any incentives or programs to encourage or implement projects to retrofit areas of existing development as a Watershed Management Area strategy is not in compliance with the requirements of Provision B.3.b.(2)(b).

- c) Unless acceptable data or rationale are provided in the Plan, a Plan that did not propose any incentives or programs to encourage or implement projects to rehabilitate channels, streams, or habitats as a Watershed Management Area strategy is not in compliance with the requirements of Provision B.3.b.(2)(c).
- d) A Plan without Watershed Management Area strategies or a Plan that has a proposed Watershed Management Area strategy without information about the funds and/or resources needed to implement a Watershed Management Area strategy is not in compliance with the requirements of Provision B.3.b.(2)(d).
- e) A Plan without Watershed Management Area strategies or a Plan that has a proposed Watershed Management Area strategy without a description of the circumstances needed to trigger implementation of Watershed Management Area strategy is not in compliance with the requirements of Provision B.3.b.(2)(e).

WATER QUALITY IMPROVEMENT SCHEDULES

7. Schedules for Achieving Numeric Goals

Requirement: Provision B.3.a.(2) of the Order requires the Copermittees to develop and incorporate schedules for achieving interim and final numeric goals. Provision B.3.a.(2) requires the schedules to incorporate TMDL compliance dates, incorporate ASBS compliance schedules, and be designed to achieve the interim and final numeric goals in the shortest time practicable taking into account the time required to implement water quality improvement strategies.

Issues of Concern: Each Plan includes schedules to achieve interim and final numeric goals. The San Diego Water Board, however, has found the following general issues of concern:

- a) For Plans where the Beaches and Creeks Bacteria TMDLs are applicable and bacteria is the only highest priority water quality condition identified, and only final numeric goals are established for bacteria, the Plan is a Bacteria Load Reduction Plan (BLRP) not a Comprehensive Load Reduction Plan (CLRP). According to the Beaches and Creeks Bacteria TMDLs, the wet weather and dry weather dates for compliance with the final wasteload allocations (WLAs) must be no later than 10 years after the effective date of the TMDLs, which is April 4, 2021. For the Copermittees to have until April 4, 2031 (i.e. 20 years after the effective date of the TMDLs) to achieve the Beaches and Creeks Bacteria TMDLs WLAs, the Plan needs to be a CLRP and incorporate load reduction programs with quantified load reductions for other pollutants of concern in addition to bacteria.

- b) Several Plans propose more than 20 years from the date the Plan was submitted to achieve final numeric goals if there are no applicable TMDL compliance dates. Schedules proposing to achieve final numeric goals in more than 20 years appear to be relying primarily on BMP implementation, inspection, enforcement, and education activities that are required to be implemented by the Copermittees pursuant to Provisions E.2 through E.7, with few, if any, commitments to implement optional jurisdictional strategies within the first 10 or more years.

Noncompliant Schedules for Achieving Numeric Goals: There are several Plans that have a proposed date to achieve compliance with the Beaches and Creeks Bacteria TMDLs by April 4, 2031. Unless the Plan includes quantified load reductions for pollutants in addition to bacteria, the April 4, 2031 date to achieve the final numeric goals for bacteria is not in compliance with the requirement to incorporate CLRPs into the Plan pursuant to Attachment E, Specific Provision 6.b.(2)(c)(i).

Unacceptable Schedules for Achieving Numeric Goals: The following proposed schedules to achieve numeric goals are not acceptable to the San Diego Water Board:

- a) Schedules of 10 years or more to address only one highest priority water quality condition are not acceptable, unless there is information provided that allows the San Diego Water Board to make a determination that the schedules are clearly based on the time reasonably required to implement proposed optional jurisdictional strategies.
- b) Schedules of 10 years or more to achieve final numeric goals without optional jurisdictional strategies proposed to be implemented within the next 5 years are not acceptable.
- c) Schedules of 5 years or more to achieve final numeric goals for only addressing one highest priority water quality condition by eliminating unauthorized non-storm water discharges to and from the MS4 without optional jurisdictional strategies proposed to be implemented within the next 5 years are not acceptable.

8. Schedules for Implementing Strategies

Requirements: Provision B.3.b.(3) of the Order requires the Copermittees to develop reasonable schedules for implementing the jurisdictional, optional jurisdictional, and Watershed Management Area strategies to achieve interim and final numeric goals. Provision B.3.b.(3) requires the schedules for implementing strategies to describe: 1) when jurisdictional strategies required pursuant to Provisions E.2 through E.7 will be implemented (Provision B.3.b.(3)(a)(i) and (ii)), 2) the shortest practicable time to secure funds and procure resources to initiate implementation of each optional jurisdictional strategy (Provision B.3.b.(3)(a)(iii)), and the shortest practicable time to secure funds and procure resources to initiate

implementation of each Watershed Management Area strategy (Provision B.3.b.(3)(b)(i)). The schedules are also required to provide information about whether a strategy is expected to be a continuously implemented strategy (Provisions B.3.b.(3)(a)(iv) and B.3.b.(3)(b)(ii)) or strategy to be completed within a schedule (Provisions B.3.b.(3)(a)(v) and B.3.b.(3)(b)(iii)).

Issues of Concern: Each Plan includes schedules to implement strategies. The San Diego Water Board, however, has found the following general issues of concern:

- a) In most Plans there were several proposed strategies that did not have any schedules associated with them, other than “to be determined.”
- b) Most Plans lacked enough information about the shortest practicable time to secure funds and procure resources of initiate implementation of optional jurisdictional strategies and Watershed Management Area strategies.
- c) For several strategies that appeared to be limited timeframe or structural projects, they lacked the information about the anticipated time to complete the project based on a realistic assessment of the shortest practicable time required.

Noncompliant Schedules for Implementing Strategies: The San Diego Water Board found that the schedules in the Plans for implementing strategies do not comply with the requirements of Provision B.3.b.(3) as follows:

- a) Strategies that do not have a schedule are not in compliance with the requirements of Provision B.3.b.(3).
- b) A Copermittee that does not have any optional jurisdictional strategies or has proposed an optional jurisdictional strategy without a description of the shortest practicable time to secure funds and procure resources to initiate implementation of the optional jurisdictional strategy is not in compliance with the requirements of Provision B.3.b.(3)(a)(iii).
- c) A Plan without Watershed Management Area strategies or has a proposed Watershed Management Area strategy without a description of the shortest practicable time to secure funds and procure resources to initiate implementation of the optional jurisdictional strategy is not in compliance with the requirements of Provision B.3.b.(3)(b)(i).
- d) Strategies that are expected to be completed within a limited timeframe without information about the anticipated time to complete the project based on a realistic assessment of the shortest practicable time required are not in compliance with the requirements of Provision B.3.b.(3)(a)(v) or B.3.b.(3)(b)(iii).

OTHER ISSUES

9. Hydromodification Management Exemptions

Requirements: Provision E.3.c.(2)(d) of the Order describes situations where the Copermittees have the discretion to exempt Priority Development Projects from the hydromodification management BMP performance requirements. Exemptions may be granted to projects that discharge to 1) existing underground storm drains discharging directly to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean, or 2) conveyance channels whose bed and bank are concrete lined all the way from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean. The Copermittees may also propose additional exemptions via the optional Watershed Management Area Analysis.

Issues of Concern: Most Plans proposed additional exemptions via the optional Watershed Management Area Analysis. The San Diego Water Board, however, has found issues of concern with proposed exemptions in Plans for two different Watershed Management Areas:

- a) As part of the Watershed Management Area Analysis, the City of Carlsbad included a report entitled “*Hydromodification Exemption Analysis for Select Carlsbad Watersheds*” (Report). Based on the Report, the Copermittees in the Carlsbad Watershed Management Area proposed to add drainage areas upstream of the Buena Vista, Agua Hedionda, and Batiquitos Lagoons as exempt from hydromodification management BMP requirements. Instead of evaluating the drainage areas leading to the lagoons using an erosion potential (or equivalent) analysis, the Report studies the lagoons using the criteria for exemptions outlined in the Hydromodification Management Plan for the San Diego Region (HMP) that was approved by the San Diego Water Board in July, 2010. However, the HMP is predicated on requirements of the previous MS4 permit. When the Order was adopted in 2013, the only exemptions retained were those cited in Provision E.3.c.(2)(d), meaning exemptions are essentially limited to concrete-lined or underground drainage channels. Any additional exemptions, including “non-erodible drainage networks” as described in the Report, must be evaluated from an erosion potential (or equivalent) point of view and included in the optional Watershed Management Area Analysis.

The Report describes rationale for exempting areas draining to Agua Hedionda and Batiquitos Lagoon, and different rationale for exemptions for areas draining to Buena Vista Lagoon. The discussions regarding the areas draining to Agua Hedionda and Batiquitos Lagoons indicate that these areas may meet the Order’s requirement of being concrete lined all the way from the point of discharge to an enclosed embayment (lagoon). However, whether or not drainage conveyances from these areas act like “concrete lined channels” is unclear because the discussion is centered on criteria applicable to the HMP and not the Order.

For Buena Vista Lagoon, the Report states that: *“As long as a project discharges into a non-erodible drainage network that is continuous to a lagoon outlet, it is potentially eligible for a hydromodification exemption.”* The Report continues to explain that in drainage areas upstream of Buena Vista Lagoon, *“... the intervening ground is densely vegetated and or naturally armored. The City Engineer found no evidence of erosion at or near the water’s edge of the lagoon. Consequently, this area is identified as exempt....”*

In order for the San Diego Water Board to accept a conclusion that a conveyance system can be exempt from hydromodification management BMP requirements, the Report must include an analysis demonstrating that the natural area under review would not experience erosion for the range of storms considered to be geomorphically significant. Although these areas are presented as “naturally armored,” because they are not concrete-lined, the systems must be evaluated from an erosion potential (or equivalent) point of view to determine if an exemption is appropriate.

- b) In the San Diego River Water Quality Improvement Plan, the Watershed Management Area Analysis includes a proposed methodology for demonstrating that hydromodification management BMPs are not needed upstream of Forrester Creek, a channel stabilized with materials other than concrete. The proposed methodology includes a process for classifying additional channels as “stabilized,” and thus allowing exemptions for areas upstream of these channels. The San Diego Water Board is supportive of allowing exemptions for such stabilized channels, provided that the exemptions are supported and the proposed process is clear and repeatable.

The Watershed Management Area Analysis includes a discussion of erosion potential in Forrester Creek under several different flow rates, all of which suggest that Forrester Creek would not experience erosion caused by land development occurring in the upstream watershed, even in a fully built-out condition. The discussion includes analyses using various methods to verify the assertion that the channel is stable in the range of flows considered to be geomorphically significant. Because the discussion includes several lines of evidence, the San Diego Water Board agrees that Forrester Creek can be considered stable and therefore the proposed exemption is appropriate.

The Watershed Management Area Analysis appears to rationalize a more succinct and less rigorous analysis for including exemptions for future proposed channel segments. Absent a similar, thorough, and multiple lines of evidence approach analysis as was included for Forrester Creek, the San Diego Water Board disagrees and cannot support the less rigorous analysis. The San Diego Water Board supports the concept of introducing additional stabilized channel reaches that are exempt from hydromodification management BMP requirements, but only if an erosion potential analysis using continuous simulation modeling demonstrates that the channel segment would not erode in the range of flows determined to be geomorphically significant. Additionally, the analysis would need to include flows expected from a fully-built out watershed

condition, and would have to consider erosion potential at the channel's most susceptible location(s). Finally, the criteria and process to qualify for an exemption should be clear so that future proposals for exemptions for additional channel segments include all the required elements.

Unacceptable Hydromodification Management Exemptions: The following proposed exemptions are not acceptable to the San Diego Water Board:

- a) Without an appropriate and acceptable analysis of the potential of erosion for the range of storms considered to be geomorphically significant, the additional exemptions proposed for Agua Hedionda Lagoon, Batiquitos Lagoon, and Buena Vista Lagoon are not acceptable.
- b) Without an erosion potential analysis using continuous simulation modeling that shows a channel will not erode in the range of geomorphically significant flows for the fully built out condition of the drainage area at the most sensitive channel segment(s) included in the Watershed Management Area Analysis, future proposals for exemptions from the hydromodification management BMP requirements will not be acceptable.

10. Loma Alta Slough Resolution Implementation Requirements

Requirements: Provision A.1.b of the Order requires the Copermittees to effectively prohibit non-storm water discharges into the MS4. Provision B.3.a requires the Copermittees to develop interim and final numeric goals and schedules to achieve those goals for the highest priority water quality conditions. Resolution No. R9-2014-0020, a *Resolution of Commitment to an Alternative Process for Achieving Water Quality Objectives for Biostimulatory Substances in Loma Alta Slough* (Resolution), was adopted by the San Diego Water Board on June 26, 2014. The Resolution includes numeric targets, a compliance schedule, and monitoring which are expected to be implemented through the Carlsbad Watershed Management Area Water Quality Improvement Plan (Carlsbad WMA Plan).

Issues of Concern: A number of items in the Carlsbad WMA Plan are not consistent with the Resolution. The San Diego Water Board chose to adopt the Resolution as a practical, measureable, and timely approach for directing actions to remedy the Slough through a productive collaboration with the community to address an important water quality challenge. The Copermittees must implement the elements of the Resolution, or the San Diego Water Board will reinstate the process of considering adoption of the Phosphorus TMDL for Loma Alta Slough. The San Diego Water Board has found the following issues of concern:

- a) The Resolution includes numeric targets for both surface water macroalgal biomass and surface water macroalgal cover, which represent attainment of the biostimulatory water quality objective for Loma Alta Slough. These numeric targets were developed through a multi-year stakeholder process, and were

based on special studies specific to the Slough and water quality modeling. The numeric targets are to be achieved by 2023.

According to the source and linkage analysis for which the numeric targets are based, the primary sources of the impairment in Loma Alta Slough are dry-weather discharges from irrigation runoff and other illicit dry weather discharges conveyed by the MS4 to Loma Alta Slough. Nutrient loading, specifically phosphorus, into the Slough from dry weather flows results in excessive algal growth. Further, modeling results cited in the staff report (which served as the technical basis for the Resolution) suggests that reductions of dry weather flows in excess of 96 percent are needed to achieve the targeted reductions in phosphorus loading. As such, the Resolution relies on the Order, specifically the prohibitions of dry weather non-storm water discharges, and development and implementation of a Plan that includes the Loma Alta Creek watershed, to achieve the necessary reductions in phosphorus loading and restore the beneficial uses.

In contrast to the approach for which the Resolution is based, the Carlsbad WMA Plan proposes interim numeric goals that fall short of achieving the prohibitions on dry weather discharges. The Carlsbad WMA Plan describes the interim goals as:

- 50 percent reduction in anthropogenic persistent dry weather flows at the three outfalls addressed through 2018, and
- 25 percent reduction in additional (other outfalls in watershed) anthropogenic persistent flows identified during dry weather monitoring program implemented in 2015 and in subsequent years.

The interim goals as expressed in the Carlsbad WMA Plan are not consistent with the Resolution because there is no mention in the Resolution that the City of Oceanside would only first reduce flows by 50 percent, followed by an additional 25 percent in subsequent years, and no explicit attempt to comply with the requirement to effectively eliminate non-storm water discharges into the MS4. Additionally, Finding 20 of the Resolution states that the City of Oceanside, in a comment letter dated May 5, 2014 committed to:

- Using the numeric targets, developed through the stakeholder process as numeric goals in the Water Quality Improvement Plan for the Loma Alta Creek watershed, and
- Develop and implement a Water Quality Improvement Plan to effectively prohibit the City's non-storm water discharges into the MS4 system.

The San Diego Water Board expects the City of Oceanside to honor its commitment as stated in the letter dated May 5, 2014, and therefore expected the interim and final numeric goals in the Carlsbad WMA Plan to incorporate the prohibition of dry weather non-storm water discharges into the MS4 for reducing phosphorus loading to Loma Alta Slough. Further, there must also be interim

numeric goals expressed as an increment toward achieving the final numeric goals.

- b) The Carlsbad WMA Plan does not include the required Loma Alta Slough Monitoring Plan. Table 2 of Resolution No. R9-2014-0022 describes the City of Oceanside's *Tentative Proposed Schedule to Address the Eutrophication Impairment in Loma Alta Slough*. According to this Table, in 2015, "*the City was to submit a Water Quality Improvement Plan, including the Loma Alta Slough Monitoring Plan, to the San Diego Water Board.*"

Section 3.1.4 of the Carlsbad WMA Plan describes a special study whose objectives are "*to develop a water quality monitoring program for the Loma Alta Slough (Slough Monitoring Plan) that will allow the City of Oceanside to track progress toward reducing nutrient discharges into the Slough and eliminate the eutrophication impairment.*" The monitoring is to occur every summer from 2016 to 2022.

In a letter dated May 5, 2014, the City of Oceanside indicated that it would incorporate the slough monitoring requirements proposed in Tentative Investigative Order No. R9-2014-0022 into the Carlsbad WMA Plan¹. The San Diego Water Board's expectation was that the Slough Monitoring Plan would be fully developed and included in the Carlsbad WMA Plan, as stated in the City's letter and described in Table 2 of the Resolution. The City of Oceanside has not submitted any correspondence to the San Diego Water Board suggesting a need to amend the schedule described in Table 2 since Resolution No. R9-2014-0020 was adopted on June 26, 2014.

Noncompliant Loma Alta Slough Resolution Implementation Requirements:

The San Diego Water Board found that the Carlsbad WMA Plan does not comply with the requirements of Provisions A.1.b and B.3.a.(1) as follows:

- a) The interim numeric goals as expressed are not consistent with the Resolution and not in compliance with the requirements of Provisions A.1.b and B.3.a.(1)(b).
- b) Each final numeric goal that does not have an interim numeric goal expressed as a reasonable increment in the same or similar metric as the final numeric goal is not in compliance with Provision B.3.a.(1)(b)(ii).

Unacceptable Loma Alta Slough Resolution Implementation Requirements:

The City of Oceanside committed to incorporating slough monitoring requirements proposed in Tentative Investigative Order No. R9-2014-0022 into the Carlsbad WMA Plan. Without the slough monitoring requirements proposed in Tentative Investigative Order No. R9-2014-0022 in the monitoring and assessment program for the Carlsbad Watershed Management Area, the Carlsbad WMA Plan is not acceptable to the San Diego Water Board.

¹ Tentative Investigative Order No. R9-2014-0022 was replaced by Resolution No. R9-2014-0020.

11. Items of Additional Concern

Pursuant to Provision F.1.b.(2), the Copermittees are required to consider revisions to the Plans based on written comments received by the close of the public comment period. Pursuant to Provision F.1.b.(3), the Copermittees are required to submit any revisions to the Plans no later than 60 days after the close of the comment period, or by September 29, 2015.

Pursuant to Provisions E and F.2.a.(2) of the Order each Copermittee was required to update its JRMP document to incorporate the requirements of Provision E concurrently with the submittal of the Plans. Pursuant to Provisions E.3.d and F.2.b.(1) of the Order each Copermittee was also required to update its BMP Design Manual to incorporate the requirements of Provisions E.3.a-d. Each Copermittee's JRMP document updated with the requirements of Provision E became effective with the submittal of the Plans. In addition, each Copermittee must begin implementing its updated BMP Design Manual within 180 days of submittal of the Plans, unless directed otherwise by the San Diego Water Board.

Until the Plans are accepted by the San Diego Water Board, any exemptions to the hydromodification management BMP requirements of Provisions E.3.c.(2)(a)-(c), proposed in the Plans pursuant to Provision B.3.b.(4)(c), are not authorized to be applied to any Priority Development Projects within a Copermittee's jurisdiction. Likewise, a Copermittee is not authorized to implement an Alternative Compliance Program (pursuant to Provision E.3.c.(3)) for any Priority Development Project within its jurisdiction until the optional Watershed Management Area Analysis developed pursuant to Provision B.3.b.(4) has been accepted as part of the Plans.

12. Potential Future Enforcement Options

The areas of noncompliance identified herein began on the due date to submit the Plans (June 26, 2015) and may be subject to additional future enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of up to \$10,000 per day of violation (Water Code section 13385) until the violations are corrected and/or pursue any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Sections
Technical or Investigative Order	Sections 13267 or 13383
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, if any, referring the matter to other resource agencies, or referring the matter to the State Attorney General for injunctive relief, as applicable.

The San Diego Water Board is available to assist the Copermitees with refining the Plans to become acceptable, and to be in compliance with the requirements of the Order. In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." Please contact Wayne Chiu at (619) 521-3354 or Wayne.Chiu@waterboards.ca.gov, or Christina Arias at (619) 521-3351 or Christina.Arias@waterboards.ca.gov with any questions or concerns.

Respectfully,



Laurie Walsh, P.E.
Senior Water Resource Control Engineer
Storm Water Management Unit

Tech Staff Info & Use	
Order No.	R9-2013-0001
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