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RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

October 8, 2009

Mr. Gerard J. Thibeault, Executive Officer
California Regional Water Quality Control Board
– Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

Dear Mr. Thibeault:

Re: Comments on the July 23, 2009 Draft Order R8-2009-0033 for the Renewal of Waste Discharge Requirements for the Riverside County Flood Control and Water Conservation District, the County of Riverside and the incorporated cities of Riverside County, Tentative Order R8-2009-0033, NPDES CAS618033, Area-wide Urban Runoff Management Program (Tentative Order)

The Riverside County Flood Control and Water Conservation District (District) serves as the Principal Permittee of the Riverside County Municipal Separate Storm Sewer System (MS4) Permit for the Santa Ana Region. This letter is submitted on behalf of the MS4 Permittees identified in the Tentative Order. The purpose of this letter is to transmit comments on Draft Order R8-2009-0033 for the Renewal of Waste Discharge Requirements for the Riverside County Flood Control and Water Conservation District, the County of Riverside and the incorporated cities of Riverside County, Tentative Order R8-2009-0033, NPDES CAS618033, Area-wide Urban Runoff Management Program.

The MS4 Permittees would like to thank the Santa Ana Regional Water Quality Control Board (Board) for extending the public comment period and allowing them and other interested parties to communicate with your staff regarding Tentative Order requirements. The additional time and communication afforded the MS4 Permittees an opportunity to better understand the goals and objectives of the Tentative Order, to identify our issues and concerns regarding the Tentative Order, and to formulate comments that may be able to address the Board's concerns while respecting the challenging fiscal situation in which our State, and by extension, its municipal governments, must manage.

However, the MS4 Permittees' communication with Board staff did not lead to significant resolution of two of the MS4 Permittees' most significant issues, incorporation of total maximum daily load ("TMDL") requirements into the Permit and the scope and purpose of the Watershed Action Plans ("WAPs"). This was in part due to information that developed from recent meetings regarding the Orange County Nitrogen/Selenium Task Forces and ongoing communication with USEPA and SWRCB staff. Although the informal request for an extension to the comment period was denied, the

MS4 Permittees are hopeful that the Regional Board will continue to communicate regarding the TMDL and WAP language. Given the compliance and fiscal ramifications of the Tentative Order requirements (as further discussed in the attachments to this letter), the MS4 Permittees request that dialogue continue until mutually acceptable language can be found to address these and other issues raised in this comment letter.

In general, the MS4 Permittees note that many compliance requirements specified in the draft MS4 Permit are not required by federal stormwater regulations. The MS4 Permittees are opposed to inclusion of any requirements in the Tentative Order that go beyond the federal regulatory requirements, and all of the MS4 Permittees' comments should be read in that light.

The MS4 Permittees' comments regarding this Tentative Order are addressed via several attachments. Attachments 1-3 provide context for our comments and Attachments 4-8 and 12-14 provide specific comments or recommendations. The remaining attachments provide support for comments made herein. A summary of the attachments follows:

Attachment 1 – Water Quality and Economic Context of the Renewal. This attachment summarizes the findings of the MS4 Permittees' ROWD regarding maintenance of Receiving Water quality during a period of unprecedented development and the economic conditions that are impacting the ability of the Permittees to implement the existing and proposed MS4 Permit requirements.

Attachment 2 – Legal Issues. This attachment summarizes the Permittees' underlying legal issues with the Tentative Order and addresses several specific provisions:

a) TMDL Requirements – Several issues are discussed, including incorporation of Numeric Effluent Limits, Anti-Backsliding Ramifications, and conformance to the TMDL Implementation Plan requirements.
b) Watershed Action Plan – Legal and technical limitations to the Board's authority to require, and the Permittees ability to develop, the proposed WAP.
c) Prohibitions – Legal ramifications of new discharge prohibitions proposed in the Tentative Order.
d) Legal Authority – Issues and concerns with provisions proposed in the legal authority section of the Tentative Order, including authority to control third-party discharges to the MS4.
e) Low Impact Development ("LID") – Legal and technical limitations to the Board's authority to require, and the Permittees ability to develop and implement the required LID programs.
f) Unfunded Mandates – Limitations to the Board's authority to make a finding concerning unfunded mandates.
g) Receiving Waters Limitations – Requirement to maintain consistency with State policy established in Precendential Order.

Attachment 3 – Narrative Comments on Tentative Order. Summary of issues and concerns regarding significant provisions of the Tentative Order.

a) General comments
b) Permittee road projects
c) IDDE programs
d) TMDL requirements
e) Compliance program implementation schedule
f) Hydromodification

Attachment 4 – Redline mark-up of the Glossary. Proposed revisions to the Glossary

Attachment 5 – Redline mark-up of the Monitoring and Reporting Program

Attachment 6 – Redline mark-up of the Fact Sheet

Attachment 7 – Redline mark-up of the Tentative Order

Attachment 8 - Redline mark-up of Monitoring and Reporting Program Section V (Schedule)

Attachment 9 – Thorne letter regarding Anti-backsliding

Attachment 10 – Permittee October 2004 Comments regarding Lake Elsinore / Canyon Lake TMDLs.

Attachment 11 – Mandates Commission Statement of Decision July 31, 2009

Attachment 12 – Appendix 1 (Permit Area – revised map)

Attachment 13 – Appendix 2 (Other Entities)

Attachment 14 – Appendix 5 (NOI/NOT)

Closing

The requirements proposed in the Draft SAR MS4 Permit, if adopted, will result in significant operational and fiscal impacts to the Permittees during a period of economic distress. As described in previous communications and Attachment 1, the MS4 Permittees do not currently have revenues to support expanded compliance programs and significant revenue increases are not anticipated during the term of the Tentative Order. Nevertheless, the Permittees are committed to effectively managing urban runoff to protect Receiving Water quality in a manner that balances this objective with the finite resources available to meet the universe of needs and expectations of the citizens, and the responsibility and duties of local governments within the Riverside County portion of the Santa Ana River watershed. Given the funding reductions impacting the Permittees, it is especially important to ensure that proposed requirements are mandated by the federal stormwater regulations, will be

effective in addressing existing water quality impairments, and are technically and fiscally achievable. The Permittees would also like to request a meeting with Board staff to discuss these comments at your earliest convenience. If you have any questions regarding these comments, please contact Jason Uhley (951.955.1273, juhley@rcflood.org) of the Regulatory Division.

Very truly yours,

WARREN D. WILLIAMS
General Manager-Chief Engineer

Attachment: Attachments 1-14

c: Santa Ana River Region MS4 Permittees
Matt Yeager, SB County Flood Control
Robert Collacott, URS Corporation

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P8/127456

ATTACHMENT 1

Attachment 1

Current Status of Riverside Economy

The ability of the Permittees to fund current and proposed expanded and new MS4 Permit compliance activities is directly related to the availability of funding. As described in the information provided by the Permittees in February 2009 and presented item IX of the Fact Sheet, all of the MS4 Permittees' sources of revenue for funding current and proposed compliance activities have been substantially reduced. Most of the Permittees utilize general fund revenue to finance their MS4 Permit compliance activities, as well as funding infrastructure maintenance and such basic services such as police, fire, library services, senior and recreation programs, etc. General fund revenue is generated by property tax, sales tax, and auto license taxes. In response to the reductions in general fund revenues, the Permittees have been forced to implement across-the-board cost reduction actions including early retirement, layoffs, furloughs, service reductions, deferral of capital projects, and reduction and/or elimination of services. Due to funding shortages, most Permittees have utilized all available resources to the maximum extent practicable to meet current compliance programs and in order to maintain public services without interruption.

During the current MS4 Permit, Riverside County was one of the fastest growing areas of the nation. Simultaneously, a variety of creative financing mechanisms were utilized for new home purchases. As a result, Riverside County has already been disproportionately impacted by the subprime loan crisis, represented by up to a 223% higher foreclosure rate than in adjacent counties as illustrated by the following data from March 2009:

Foreclosed Properties	Notices of Default	Ratio of NOD's to F/C's*	
1226	5127	23.9	Orange County
2340	8736	26.8	San Diego County
3959	12,950	26	Riverside County

According to Irvine-based RealtyTrac, 1 in 17 Riverside County households, or nearly six percent, slipped into some stage of foreclosure during the first six months of 2009. In addition to reductions in property tax revenues directly associated with foreclosures, reduced property tax values have resulted in large numbers of requests for property tax reductions, further reducing property tax revenues. This trend is anticipated to continue until property values stabilize and assessments are adjusted accordingly.

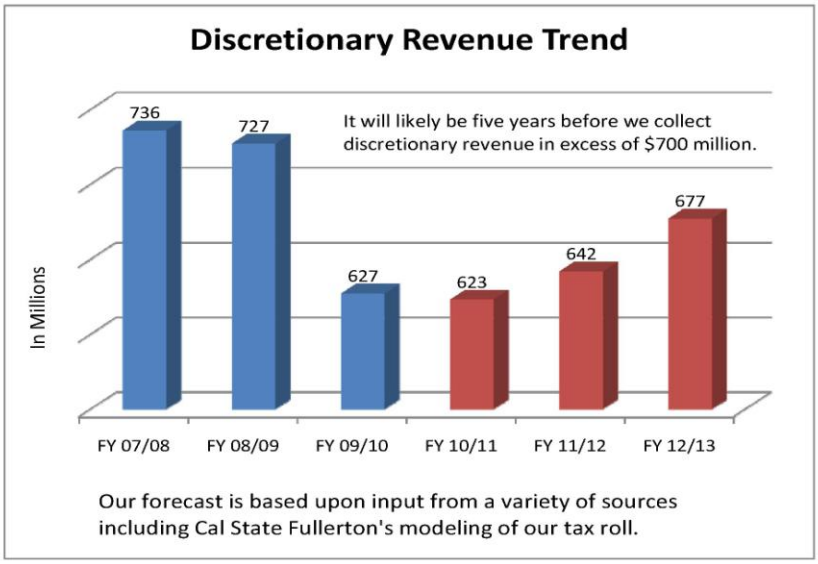
Since the MS4 Permittees provided economic information to the Regional Board in February 2009, conditions in Riverside County have continued to deteriorate. According to the State Economic

Development Department, unemployment in Riverside County has continually increased from approximately 9.5 percent in August 2008 to 15.0 percent in August 2009.[1]

On July 21, 2009, the Riverside County Board of Supervisors adopted an amendment to Ordinance No. 659.8, *An Ordinance of the County of Riverside Establishing a Development Impact Fee Program*. The ordinance amendment allows for a 50% reduction in the Development Impact Fee (DIF) for up to one year. The decrease in the DIF fees became effective on August 20, 2009. To date, no increase in development activity has resulted from this action. However, this action further reduces the potential funding available for oversight of development activity.

Economic Projections

Riverside County has a vibrant, skilled workforce and is strategically positioned to provide significant contributions to the Southern California economy in the long term. However, the County's general fund is not projected to recover to previous levels during the term of the forthcoming MS4 Permit. For example, the County Finance Officer is projecting a $70 million structural deficit for the budget cycle of FY 2010/2011 as of October 6, 2009. This structural deficit will result from a half cent sales tax loss to the Sate for public safety resulting from Proposition 172, resulting in a loss of approximately $35 million and an additional loss of $45 million to the State from Proposition 1A. In addition, seven County departments have reported exceeding budgets for the first quarter of FY 2009/2010 by approximately $15 million, which will further erode County reserves.



[1] http://www.calmis.ca.gov/file/lfmonth/rive$pds.pdf

Additional foreclosure activity has been forestalled by federal and state moratoriums. As the state moratorium expired at the end of September, an additional wave of foreclosure activity is expected. More significantly, a large wave of mortgage resets associated with option adjustable, Alt-A, and other adjustable mortgage financing is anticipated to begin by the end of the year and continue through the end of 2012[2]. This further exacerbates decreases in property tax and other revenues during the life of the Tentative Order. Although the sources of general fund revenue have declined, the increased demands for services associated with the increased development and number of residents has not. On the contrary, the economic crises have increased the need for expanded services by those residents most impacted.

Public agencies are guardians of public funds and therefore required to provide prudent and responsible fiscal management. Thus, they are burdened to determine the best use of limited financial resources. Funding must be spent where it is deemed to provide the most public good. In an environment of declining revenues, critical social services, health and safety issues must be funded first.

Water Quality Conditions

Despite the unprecedented development that has occurred in Riverside County, the existing Urban Runoff management program has prevented deterioration of water quality conditions. The compliance programs implemented in the Santa Margarita Region (SMR) and described in the Riverside County DAMP are very similar to those implemented in the Santa Ana Region. In fact, portions of the County and the cities of Menifee, Wildomar, and Murrieta are located in both the Santa Margarita and Santa Ana Regions. Population growth from 1990 to 2008 was approximately 300% for the SMR and as described in the SMR 2007/2008 Monitoring Annual Report, monitoring results indicate that there are no statistically significant trends in the water quality data over this period. The lack of trends in the data contrasts with the rapid population growth over the same time frame. The data indicates that increased urbanization is not a significantly dependent variable for determining pollutant concentrations in the Receiving Waters. The Santa Ana Region has also experienced unprecedented growth and water quality data indicates a similar lack of trends, as can be confirmed by the limited additions to the 303(d) list in the Santa Ana Region. This data suggests that the existing Urban Runoff management programs have been effective and that expanded compliance requirements are not warranted to protect water quality.

Recommendations

It is anticipated that the Riverside County economy will deteriorate further during the term of the MS4 Permit. Although the Permittees are hopeful that economic conditions will stabilize, recovery of previous levels of revenue are not anticipated during the term of the MS4 Permit. As the existing compliance program has been protective of Receiving Water quality, there is no water quality imperative to expand existing compliance programs. To maximize the water quality benefits of the

[2] http://www.calculatedriskblog.com/2007/10/imf-mortgage-reset-chart.html

diminished and finite resources available to the Permittees, proposed modifications to the MS4 Permit should focus on:

- Improved efficiencies of existing programs;
- Implementation of TMDLs;
- Resolution of audit deficiency issues.

ATTACHMENT 2

Attachment 2

A. TMDL Issues

1) Waste Load Allocations ("WLA") as numeric effluent limits
2) Anti-backsliding concerns
3) Requirements that exceed the implementation plan and conflict with TMDL Task Force Plans and Programs
4) Joint and several liability concerns

1. WLAs and Effluent Limits

The Tentative Order contemplates incorporation of the provisions of the Middle Santa Ana River ("MSAR") Watershed Bacteria Indicator TMDL ("MSAR Bacteria TMDL") and the Lake Elsinore/Canyon Lake (San Jacinto watershed) Nutrient TMDLs ("Lake Elsinore TMDLs"). Section VI.D. of the Tentative Order proposes to incorporate the WLAs associated with these TMDLs as Water Quality Based Effluent Limitations. This proposed approach raises significant legal issues.

Both the MSAR Bacteria TMDL and the Lake Elsinore TMDLs contemplate effective dates that are beyond the term of the Tentative Order. In the former case, compliance is required with dry summer conditions by December 15, 2015 and with wet winter conditions by December 31, 2025. In the latter case, compliance is required by no later than December 31, 2020. While both TMDLs indicate that compliance is desired "as soon as possible," this is not a requirement as to which the failure to attain it would violate the TMDLs. The administrative records for both TMDLs contemplated that compliance with the WLAs will require a substantial effort in cooperation with other jurisdictions, and that immediate compliance is not required. Attachment 10 incorporates a copy of the District's October 2004 comments regarding the Lake Elsinore / Canyon Lake TMDL. These comments clearly document the Board's commitments to the Permittees and the Permittees expectations as to the implementation of the TMDLs. As noted in the comments, it was expected that the TMDLs would be adaptively managed over time. This also implies that as BMPs were deployed, data was collected, and science developed, adjustments to the BMP deployment and TMDLs would be made over time scales that would exceed the term of this Tentative Order. The MSAR TMDL similarly references ongoing work to amend the REC 1 Beneficial Uses by the Storm Water Quality Standards Task Force (SWQSTF) and explicitly recognizes that the work of the SWQSTF will result in amendments to the TMDL WLA. These changes would revise the pathogen indicator bacteria the WLA are based on, as well as how and when the WLA are applied.

The adopted TMDLs and Implementation Plans specify strategies to be followed by the MS4 Permittees in attaining the WLAs and are focused on implementation of best management practices ("BMPs"), rather than compliance with numeric effluent limitations, in accordance with USEPA Headquarters and State Board policy and guidance, which acknowledges the complexity of urban stormwater runoff, both in terms of varying quality and quantity and the difference between addressing pollutants contained in such runoff from typical NPDES industrial discharges, which are relatively constant in quantity and quality and can be addressed with end-of-pipe treatment. This is

acknowledged in the Fact Sheet to the Tentative Order: "Due to economic and technical infeasibility of full-scale end-of-pipe treatments and the complexity of urban storm water runoff quality and quantity, MS4 permits generally include narrative requirements for the implementation of BMPs *in place of* numeric effluent limits." *See* Fact Sheet at p. 24 (emphasis added).

This flexible NPDES permitting strategy is integral to the "maximum extent practicable" ("MEP") standard that Congress imposed on municipalities addressing urban storm water runoff in Section 402(p)(3) of the Clean Water Act. Both USEPA Headquarters and the State Board have interpreted the MEP standard to require MS4s to implement BMPs such as source control and pollution prevention. These BMPs may be technology driven, but as USEPA Headquarters made clear in the Phase II storm water regulations, they are inclusive of water quality-based requirements. "BMPs are the most appropriate form of effluent limitations to satisfy technology requirements and water quality-based requirements in MS4 permits." *See* 64 Fed. Reg. 68722, 68770 (Dec. 8, 1999).

USEPA Headquarters guidance confirms the appropriateness of BMPs to meet water quality-based requirements, including TMDLs. *See, e.g.*, Memorandum from Robert H. Wayland to USEPA Regional Water Division Directors, *Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs* (Nov. 22, 2002) (clarifying that limits for NPDES-regulated storm water discharges subject to TMDL WLAs "may be expressed in the form of BMPs" and further, that "[i]f BMPs alone adequately implement the WLAs, then additional controls are not necessary."). This memorandum has been incorporated into the draft Handbook for Developing Watershed TMDLs (See Section 5.2, page 86, December 15, 2008, U.S. Environmental Protection Agency, Office of Wetlands, Oceans & Waterways) This Handbook specifically states in Program Notes regarding "How are WLAs Translated into NPDES Effluent Limitations?":

> **Water Quality-based Effluent Limitations for Permitted Stormwater**
> EPA recommends that for NPDES-regulated municipal and small construction stormwater discharges effluent limits should be expressed as BMPs or other similar requirements, rather than as numeric effluent limits, to be consistent with the WLA. (USEPA 2002c).

In short, USEPA Headquarters' guidance calls for the imposition of BMPs to meet TMDL requirements, unless/until those BMPs are shown to be inadequate. <u>The related comments submitted by USEPA Region 9 staff regarding the Tentative Order for San Bernardino County stands in stark contrast to this guidance from USEPA Headquarters</u>.

USEPA decisional law also confirms this BMP approach. For example, in *re: Government of the District of Columbia Municipal Separate Storm Sewer System*, 2002 EPA App. LEXIS 1 (NPDES Appeal Nos. 00-14 and 01-09) (Feb. 20, 2002), USEPA's Environmental Appeals Board determined that BMPs could lawfully be imposed in lieu of numeric effluent limits to meet the requirements of a TMDL.

TMDL-based numeric effluent limitations may, if determined to be both feasible and necessary, be imposed in appropriate circumstances. *See USEPA Interim Permitting Approach for Water Quality-*

Based Effluent Limitations in Storm Water Permits (Sept. 1996). However, a panel of experts convened by the State Board to assess this precise issue has already concluded that numeric effluent limitations for MS4 discharges are infeasible. *See* Blue Ribbon Panel Report, *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities* (June 19, 2006) ("It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges."). Instead of numeric effluent limitations, the Blue Ribbon Panel recommended a BMP-based storm water control strategy, consistent with prevailing USEPA Headquarters policy and practice.

Nevertheless, it is the "assumptions and requirements" of the TMDL that control the permitting process. *See* 40 CFR 122.44(d)(vii)(B). Here, the relevant TMDLs neither assume nor require numeric effluent limitations in the Tentative Order. To the contrary, the MSAR Bacteria TMDL specifically assumes that the WLAs will be implemented through the Permittees' Bacterial Indicator Urban Source Evaluation Plan, Municipal Storm Water Management Program, and Water Quality Management Plan, all of which are predicated on the implementation of BMPs rather than stipulating numeric effluent limitations. *See* Resolution No. R8-2005-0001, Task 4 (Aug. 26, 2005). With respect to the Lake Elsinore Nutrient TMDLs, the responsibility of the Permittees' urban discharges also is to be addressed through BMPs in revisions to the DAMP and the Water Quality Management Plan. *See* Resolution No. R8-2004-0037, Attachment A, Tasks 7.1 and 7.2 (December 20, 2004). These TMDLs reflect that the WLAs will be achieved through BMP implementation, and not numeric effluent limitations.

More fundamentally, any attempt to include numeric effluent limitations in the Tentative Order would improperly amend the TMDLs, which were adopted as Basin Plan amendments, without notice and hearing. Both TMDLs contemplated that the final WLAs would be achieved by dates in the future, as noted above. Including the WLAs as numeric effluent limitations in the Tentative Order could lead to their enforcement, potentially through a third-party citizens' suit if not by the Regional Board, as immediately applicable. Such enforcement would violate the plain language and intent of the TMDLs, which provided that the WLAs would be enforceable upon the "no later than" dates set forth in the Basin Plan amendments. Both the schedule for compliance laid out in the TMDLs and the detailed implementation plans included with the TMDLs contemplated that the process of adopting BMPs and other measures to achieve the WLAs meant that they would not be immediately achievable, but would be achieved over time as it noted in Attachment 10. Including numeric effluent limitations that could be enforceable upon the effective date of the Tentative Order would violate the Basin Plan amendments. Moreover, such potential immediate compliance would be beyond the MEP standard that governs the Permittees' obligations under the Tentative Order and place the MS4 Permittees in a position of unavoidable noncompliance.

Because of these facts, the Regional Board should incorporate only those portions of the TMDLs that are presently in effect into the Tentative Order. When adopted, the MS4 Permit could be reopened to incorporate the WLAs for the TMDLs if it became apparent that a new MS4 Permit would not take effect until after the effective date for those WLAs. For example, the Los Angeles County MS4 Permit has been reopened twice to incorporate TMDLs for dry weather bacteria at Santa Monica Bay Beaches and at Marina del Rey, but only *after* the WLAs applicable to these TMDLs were effective.

See Resolutions R4-2006-0074 (incorporating Santa Monica Bay beaches dry weather bacteria TMDL) and R4-2007-0042 (incorporating dry weather bacteria TMDL for Marina del Rey harbor). It should be noted here that Permittees are not objecting to the incorporation into the Tentative Order of the implementation plans for the TMDLs that are or will take effect during the term of the MS4 Permit.

Even were WLAs expressed as numerical effluent limitations deferred beyond the term of the Tentative Order, such a provision would create other issues, including the potential that a subsequent change in the applicable water quality standards, such as the proposed ineffectiveness of the fecal coliform WLA upon replacement of the fecal coliform objectives in the Basin Plan with approved REC1 objectives based on *E. coli*, would represent prohibited "backsliding" under the Clean Water Act. This issue is discussed next below. For these reasons, we urge the Regional Board to remove the TMDL-based numeric limitations.

2. Antibacksliding Concerns

As discussed above, even were the Regional Board to consider including within the Tentative Order WLAs expressed as numerical effluent limitations that do not take effect during the term of the Order, the Permittees are concerned that such inclusion would trigger the antibacksliding provisions of the Clean Water Act, 33 U.S.C. § 1342(o).

As the Regional Board is aware, the Stormwater Quality Standards Task Force is nearing completion of a six-year combined effort by MS4s in three counties, non-governmental organizations and Regional Board staff to update the water quality standards for recreational uses in the Santa Ana Region. This update is expected to result in the replacement of the current fecal coliform water quality standard for REC 1 uses in the Santa Ana River with an *E.coli* standard, as well as the deletion of the wet weather WLAs and revision of dry weather WLA to focus on controllable urban sources of contamination. However, the MS4 Permittees expect that if the proposed WLA requirements in the Tentative Order are expressed as numeric effluent limitations, the Task Force effort to develop site-specific water quality objectives throughout the area will be undermined.

The MS4 Permittees' concerns stem from the antibacksliding provisions of the Clean Water Act (33 U.S.C. § 1342(o)). This provision prohibits the renewal, reissuance or modification of an NPDES permit where the subsequent permit contains effluent limitations "which are less stringent than the comparable effluent limitations in the previous permit." It is anticipated that, with the work of Stormwater Quality Standards Task Force, the WLAs under the present MSAR Bacteria TMDL may well be less stringent due to the more refined analysis of impairment and beneficial uses accomplished by the Task Force. The efforts of the Task Force are specifically recognized in Finding F.11.

While the antibacksliding rule allows for a less stringent effluent limitation if "information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance" (33 U.S.C. § 1342(o)(2)(B)(i)), this exemption does not

apply "to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters . . . ." 33 U.S.C. § 1342(o)(2). A detailed analysis of the effects of the anti-backsliding provisions written by California attorney Melissa Thorme is in Attachment 9.

There appears to be uncertainty as to whether anti-backsliding rules apply to effluent limitations where the final compliance date is beyond the current MS4 Permit term. However, the requirements in the Tentative Order related to the establishment of numeric bacteria and nutrient WLAs, as well as other requirements relating to consequences for not meeting the WLAs (even though they are not as yet legally effective), suggest that the anti-backsliding provisions would apply. If so, the efforts and public resources spent by the Task Forces in the hopes of developing better science and technology to resolve beneficial use impairments and revise the TMDL consistent with those findings would be wasted. Additionally, public resources would be at best inefficiently used, and at worst, wasted in efforts to achieve WLAs that do not represent the best science and knowledge in the watershed and that were clearly believed to be unattainable at the time of adoption (see Attachment 10). Moreover, USEPA Headquarters guidance indicates that antibacksliding applies to any effluent limit, regardless of the compliance date, unless that limit is challenged at the time the permit is issued (*see* USEPA Headquarters Memorandum, "Interim Guidance on Implementation of Section 402[o] Anti-backsliding Rules for Water Quality-based Permits, 1989, Section II-A, at 3). Therefore, if numeric effluent limitations are contained in the Tentative Order, Permittees may be required to challenge those limits to prevent unintentional application of the anti-backsliding rules.

The MS4 Permittees have suggested above that the best course to allow continued progress toward achievement of both TMDLs, but not waste the efforts of the Task Force to develop site-specific water quality objectives and more appropriate measures of beneficial use impairment, is to incorporate at this time the TMDL implementation plans, the only requirements of the TMDLs that are presently effective. If required due to a delay in the adoption of a new MS4 permit, the upcoming MS4 Permit could be reopened to enforce the WLAs in the TMDLs. However, based on guidance from USEPA Headquarters and the Blue Ribbon Panel, cited above, the MS4 Permit should still require enforceable requirements for implementation of BMPs rather than numeric effluent limitations.

3. Requirements Exceeding Implementation Plan and Conflicting with TMDL Task Force Plans and Programs

The Permittees note that the Draft Order includes requirements to conduct additional and specific analyses in support of TMDL Implementation (See Sections VI.C.1.d.iv, Sections VI.C.1.d.v, VI.C.2.f). These requirements incorporate additional tasks, monitoring and studies that exceed those specified in the TMDL Implementation Plan.

The Permittees are concerned that these requirements exceed, and in some cases, short-circuit TMDL compliance programs developed through the TMDL Task Forces in conjunction with Regional Board staff.

As an example, Task VI.C.1.d.iii describes a “pre-compliance monitoring program” based on "locations specified in the MSAR Bacterial Monitoring Indicator TMDL or other appropriate urban source monitoring locations." Section VI.C.1.d.iv requires what appears to be a source abatement program with specific tasks and timeframes. However, these programs do not seem to comport with the significant and ongoing work of the MSAR TMDL Task Force to develop and implement an Urban Source Evaluation Plan as required by Task 4.1. The proposed requirements would likely short-circuit the proposals incorporated in the Urban Source Evaluation Plan that was adopted by the Regional Board on March 21, 2008. It should be noted that the Urban Source Evaluation Plan required by the MSAR TMDL incorporated a schedule for revision, and an updated draft of that Urban Source Evaluation Plan was submitted to the RWQCB for review. The proposed MS4 Compliance Programs are also not consistent with that plan or proposal (which calls for prioritized monitoring and source assessments and abatement actions based on various factors).

Similarly, Section VI.D.2.f requires a specific monitoring program and source evaluation plan. However, this program is not consistent with the monitoring programs that have been established consistent with the TMDL Implementation Plan. Further, although the program proposed would be an interim program pending completion of the Watershed Model (due November 2011) and the Pollutant Trading Plan (due November 2012), the Permittees note that this interim compliance program would be due, per the current Permit adoption schedule, in December 2010, and, per the Permittees revised adoption schedule, June 2010. This interim program would therefore only be in effect for a period of 12-24 months. The Permittees believe this effort, in addition to conflicting with adopted plans for TMDL compliance monitoring, would be a potentially undefined and costly effort (due to unknown number of monitoring stations required to be implemented to comply with the requirement) that would divert resources away from priorities of the TMDL Task Force and actual BMP deployment at a time when municipal budgets are already significantly constrained.

The program specified in Section VI.D.2.f would also preclude the Permittees from considering more effective ways of measuring their compliance with the TMDL WLA, including calculation of load reductions based on BMP implementation which could also be used to calibrate the TMDL compliance models that are being developed. These load reductions can be directly compared to existing waste load estimates and WLA to determine progress towards compliance and can be evaluated and verified using modeling techniques. The Permittees would also note that although direct monitoring of outfalls might seem upon first glance to be a effective approach to evaluating TMDL compliance, that in fact, it is likely to be a fruitless effort. This is because the Permittees MS4 Outfalls represent a combined nutrient load from urban, agricultural, natural, tribal and other state and federal sources – each individually regulated under the TMDL and which are not under the jurisdiction of the Permittees. Attempting to evaluate individual compliance with the TMDLs using an outfall monitoring approach will not result in effective or useful information due to co-mingling of sources. Further, the Phase II monitoring program was designed to capture data that could be used, in combination with model updates, to determine WLA implementation.

The Permittees also understand that the Board is contemplated adding additional TMDL monitoring compliance text to the Monitoring and Reporting Program supporting, or expanding the requirements

that are already contained in the Tentative Order. The Permittees are opposed to those additions for the same reasons noted above.

To address the issues raised above, the Permittees would instead propose the following approach:

1) Revise the Permit to strictly require compliance with the TMDL Implementation Plan Tasks for MS4 Permittees that are named as stakeholders in the TMDL. These tasks already address source assessment and TMDL compliance monitoring by deleting Sections VI.C.1.d.iv, VI.C.1.d.v and VI.C.2.f.

2) Replace those sections with a broader requirement for the MS4 Permittees named as stakeholders in the TMDL to develop a Program Effectiveness Assessment program to verify progress towards implementing the TMDL WLA. The Permittees have included a proposal for alternative text in the redline markup of Section VI.D contained in Attachment 7. The text for the MSAR TMDL has been excerpted here:

> Describe short and long term effectiveness measures, including application of TMDL and MS4 monitoring data that will be used to determine the need for refined or better tailored BMPs to implement Urban WLAs. Short-term effectiveness measures shall incorporate results of the Urban Source Evaluation Plan and are expected to be focused on refining BMPs based on each Permittee's experience with BMP implementation under this plan. Long term effectiveness measures will be incorporated into the ROWD and incorporate MS4 and receiving water monitoring data analysis to assess progress towards WLA implementation. The results of the long-term effectiveness assessment shall be used to assess the need for additional or better-refined BMPs to implement the applicable WLA. Based on the outcome of the effectiveness evaluation, each MSAR Permittee shall submit a report, as part of the Annual Report, summarizing the findings of their effectiveness analysis and identifying any additional BMPs that will be implemented to address deficiencies.

Similar text is proposed for the LE/CL TMDL in Section VI.D.2. The Permittees believe that this is a more effective and flexible approach to measuring implementation of the TMDL WLA. Specifically, it:

1) Allows the Permittees to develop a program effectiveness assessment program (using both monitoring data and load reduction data) that can be tightly, and appropriately, integrated into the existing efforts of the TMDL Task Force. The Permittees fully expect to work with the TMDL Task Force and designated Regional Board staff to develop these programs.

2) Eliminates the potential for conflict between the efforts of the TMDL Task Force and the requirements of this Permit; thereby providing the flexibility to work with the Regional Board's TMDL staff and Permitting staff to finalize these programs outside of the permit renewal process. Given the significant cost and ramifications of the program effectiveness assessment requirements (both Board and Permittee proposals) and the expedited timeline that

is proposed for the development of this Tentative Order, it makes sense to provide an opportunity to carefully discuss and develop these requirements outside of the renewal process.

3) Continues to allow the Permittees the flexibility to revise TMDL BMP programs based on updated science, reports and recommendations from the TMDL Task Force and does not forestall or short-circuit selection of BMPs based on addressing the underlying impairment as opposed to focusing on jurisdictional compliance.

4. Joint Liability Concerns

The provisions of the Tentative Order relating to implementation of the TMDLs suggest that specified MS4 Permittees in the watershed may be jointly responsible for certain implementation measures (*See, e.g.,* Finding II.F.5). This is further supported by language in the MSAR and Lake Elsinore/Canyon Lake (LE/CL) TMDL Implementation Plan requirements that jointly identify stakeholders as responsible for combined reports. However, as individual dischargers, the MS4 Permittees cannot be held liable under either the Clean Water Act or the Water Code for discharges caused by others. This concern was raised and addressed in the Lake Elsinore and Canyon Lake TMDL Task Force Agreement and should also be addressed in this Tentative Order for consistency and clarity.

The Clean Water Act directs its prohibitions against the "discharger," no others. 33 U.S.C. §§ 1319 and 1342. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Snell Contractor, Inc.*, 333 F.Supp.2d 1344, 1348 (N.D. Ga. 2004); *United States v. Sargent County Water Dist.*, 876 F.Supp. 1081, 1088 (D.N.D. 1992). The Permittees are aware of no case where a party has been held liable under the Clean Water Act for a discharge over which it has no control. Similarly, under the Water Code, waste discharge requirements are issued to "the *person* making or proposing the discharge." Water Code § 13263(f) (emphasis added). Enforcement is directed towards "any *person* who violates any cease and desist order, cleanup and abatement order . . . or . . . waste discharge requirements. Water Code § 13350(a) (emphasis added).

The State Board, in adopting a TMDL for the Los Angeles Regional Board, has held that "[Wasteload allocations] are only enforced for a *discharger's own discharges*, and then only in the context of its National Pollutant Discharge Elimination System (NPDES) permit, which must be consistent with the assumptions and requirements of the WLA." State Board Resolution No. 2002-0149, Finding 9 (emphasis supplied).

The MS4 Permittees propose including the following paragraphs in the Tentative Order (See edits to Section VI.D) to ensure that there is no ambiguity in the MS4 Permit regarding responsibility for TMDL compliance:

> In the event that the County of Riverside, the cities of Corona, Riverside or Norco, or any other discharger subject to the MSAR TMDL refuses or otherwise fails to participate in the development and implementation of the plans described in paragraphs d.i., and d.ii., above,

> the remaining dischargers shall only be responsible for development and implementation of such plans to the extent that they monitor and regulate discharges from their respective jurisdictions.
>
> In the event that any discharger subject to the Lake Elsinore and Canyon Lake TMDL refuses or otherwise fails to participate in the development and implementation of the plans described in Resolution No. R8-2007-0083, or this Order, the remaining dischargers shall remain responsible for development and implementation of plans to monitor and regulate direct discharges from their respective jurisdictions into Canyon Lake and/or Lake Elsinore.

These and other changes, to clarify the role of individual Permittees, are contained in the proposed markup of the Tentative Order, attached as Attachment 7.

B. Watershed Action Plan

The Watershed Action Plan ("WAP") requirements in the Tentative Order are both detailed and mandatory. Section XII.B. requires specific performance by Permittees to, among other things: form a Technical Advisory Committee ("TAC") consisting of identified municipal employees; develop the WAP to, among other things, incorporate LID techniques, Smart Growth principles, New Urbanism, urban runoff capture and re-use preservation of existing drainages and flood plains; provide incentives for redevelopment or brownfield development as well as other land uses; specify "common development standards, zoning codes, conditions of approval and other principles and policies necessary for water quality protection" identify Section 303(d) listed waterbodies (including where no TMDLs have been developed), monitoring programs, control measures, and proposed BMPs. It further requires Permittees, to the extent that an implementation plan is not yet developed for a TMDL, to condition control measures, conduct additional monitoring and cooperate with the development of an implementation plan as required by the Regional Board.

The WAP would further require the facilitation of integrated planning for water quality/quantity including urban runoff management and stream channel mapping; specifying monitoring requirements for hydromodification and water quality to evaluate the effectiveness of control measures in the WAP and invite participation and comments from local, state and federal agencies, as well as non-governmental organizations and other interested parties in the development of the WAP for incorporation into the DAMP.

Section XII.C further requires the Permittees to submit the WAP to the Executive Officer for approval and incorporation into the DAMP and within six months of approval, implement applicable provisions of the approved revised DAMP.

The requirements of Section XII.B raise a number of technical, policy and legal concerns. These are discussed below.

1. Technical and Policy Concerns

The Riverside County NPDES MS4 Permittees generally agree with comments submitted by the San Bernardino NPDES MS4 Permittees to the Board on September 9, 2009 and in supplemental comments submitted on September 16, 2009 regarding Tentative Order R8-2009-0036, which contains an similar WAP provision to that proposed in the Tentative Order. As noted by the San Bernardino County permittees, the components of the Orange County NPDES MS4 Permit that have been merged to form the WAP requirements in the Orange County MS4 Permit were incorporated to address the unique water quality concerns of Orange County and various other issues unique to Orange County, including recognition of a settlement agreement between the cities in Orange County and various NGOs. There are no such concerns or requirements with regard to either the Riverside County Permittees or the water quality concerns in Riverside County.

Several of the provisions of this section duplicate, or overlap with, several existing planning efforts that have been implemented independently of NPDES MS4 Permit requirements. These efforts include the Riverside County Multiple Species Habitat Conservation Plan, the Riverside County Special Area Management Plan, Riverside County's Integrated Plan, existing efforts to coordinate implementation of AB1881 requirements between local water districts and municipal governments, and several Integrated Regional Watershed Management Plans ("IRWMs"), including the Santa Ana Watershed Project Authority's One Water One Watershed IRWM and the San Jacinto River Watershed Council's San Jacinto River IRWM. The proposed detailed and mandatory requirements of the WAP, in addition to requiring actions and activities that are outside the purview of the Regional Board as noted below, also could upset the balance of carefully negotiated agreements between stakeholders and local, state and federal agencies regarding these regional management plans, a number of which invested considerable resources and have been several years in the making.

Riverside County remains a diverse environment. Portions of the County within the Santa Ana Region are highly urbanized, such as the City of Riverside. Other areas, including the unincorporated County, retain a rural character. Development of common development standards, zoning codes, and other principles and policies necessary for water quality protection (XII.C.3.h) are inappropriate for such a diverse setting, which is why the state Constitution delegates to local elected officials the authority to determine land use policy.

Several of the provisions of the WAP appear to conflict with other provisions of the Tentative Order. For example, Section XII.C.3.d includes references to "development strategies that provide incentives for redevelopment, brownfield development, high density, vertical density …". This approach would appear to be inconsistent with the low threshold for "significant redevelopment" that is established in Sections XII.D.2.a and b. Section XII.C.3.f, XII.C.3.g and XII.C.3.h are also described in Section XII.F.5 and XII.E.4, which identify alternative approaches that can be used to develop in-lieu criteria for WQMP requirements (as was specified in the recently adopted Orange County NPDES MS4 Permit. The WAP would effectively render these alternative in-lieu programs mandatory, which is both inappropriate and counter-productive.

The MS4 Permittees are concerned that the requirements of Sections XII.C.3.c through XII.C.3.e appear to be imposing certain approaches to local land use planning, with references to incorporating "Smart Growth principles," and "New Urbanism". Land use planning is fundamentally a local concern, beyond the scope of the Tentative Order and the Regional Board's authority.

Finally, the Permittees have an existing Management Steering Committee (MSC), comprised of City Managers or their designated alternates. Section XII.B.2 should be revised to provide the Management Steering Committee the authority to designate the TAC representation. Further, all documents proposed for submittal to the Board are reviewed and approved by the MSC, thereby ensuring a management staff from the Permittees will be involved in the final approval and implementation of the WAP.

2. Legal Concerns

By specifying the precise manner in which Permittees are to formulate the WAP, even to specifying the composition of membership of the TAC, the inclusion of "New Urbanism," provisions of local land use ordinances, etc., Section XII.B violates Water Code § 13360(a), which prohibits the Regional Board from specifying a particular manner of complying with MS4 Permit requirements. The Regional Board cannot dictate to the Permittees the manner in which they will comply with the requirements of the Tentative Order.

Moreover, Section XII.B. infringed upon the Permittees' land-use authority, as granted by the California Constitution by specifying and directing Permittees' land use decisions. Article XI, section 7 of the Constitution guarantees municipalities the authority to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws." Implicit with this Constitutionally-granted authority is the authority of locally-elected officials to make local land-use decisions. Such land-use authority is a direct manifestation of the municipalities' local police powers conferred by the State Constitution and not an exercise of authority delegated by statute. As recognized by the California Supreme Court:

> "… a city's or county's power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the State."
>
> DeVita v. County of Napa (1995) Cal. 4th 763, xxx (1995).

In Section XII.B, Regional Board staff oversteps the limits of its permitting authority by seeking to direct the specific land use requirements of individual municipalities by stipulating that certain land uses receive preferential treatment through incentives and requiring preservation of existing flood plains. Moreover, Regional Board staff is attempting to dictate the contents of local ordinances through an apparent requirement for common development standards and zoning codes.

While the Regional Board is empowered to require an MS4 permittee to update its General Plan to include stormwater runoff as a consideration in land use, housing, conservation and open space planning, *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th

985, 1003, the ultra-specific and mandatory requirements of Section XII.B go far beyond, and are not authorized by, the Clean Water Act or the NPDES regulations in Part 40 CFR, Section 122.

Additionally, the requirement for monitoring and control measures for Section 303(d) listed waterbodies, prior to the adoption of a TMDL implementation plan, represents an attempt to short-circuit the administrative process. In California, any adopted TMDL, because it is a Basin Plan amendment, must be accompanied by an implementation plan. Water Code § 13242. *See also* Memorandum from William R. Atwater, Chief Counsel, State Board Office of Chief Counsel, to Gerard J. Thibeault, Executive Officer of the Regional Board, dated March 1, 1999, *Do TMDLs Have to Include Implementation Plans?* An implementation plan would be part of a Basin Plan amendment, adopted following notice and an adjudicative hearing required under the Code of Regulations and the Administrative Procedure Act. The Regional Board cannot avoid that process by adopting a WAP requiring Permittees to adopt monitoring and control measures that anticipate an implementation plan, and make those "back door" measures enforceable under the MS4 Permit.

3. Conclusion

The Permittees oppose the WAP requirements as proposed. However, the Permittees have proposed alternative text that would focus the WAP on addressing regional approaches to implementing TMDLs, addressing hydromodification impacts from new development, and evaluating opportunities to address water quality in other regional planning efforts. The Permittees believe that this alternative approach is consistent and appropriate to the needs of Riverside County, as well as within the authority of the Regional Board under federal and state law.

C. <u>Prohibitions – Section V</u>

The Permittees request that this provision be made consistent with the recently adopted Orange County NPDES MS4 Permit (Board Order R8-2009-0030). The Permittees see no reason for variation between the Orange County NPDES MS4 Permit ("Orange County Permit") and this Tentative Order in a requirement as fundamental as Prohibitions. The Prohibitions are set forth in the Basin Plan, state law, and the Clean Water Act. The additional prohibitions in the Tentative Order are contained in none of these sources. Specific comments regarding the various prohibitions follow.

V.A – The Permittees request that this prohibition be revised to use terms defined in the Riverside County proposed Tentative Order Glossary ("Glossary"), including "IC/ID" and "Illegal Discharges".

V.E – The Permittees request that this prohibition be made consistent with the Orange County Permit and defined terms in the Glossary.

V.F – This prohibition is not consistent with the Basin Plan and is not contained in the recently adopted Orange County Permit or the 2002 Riverside County NPDES MS4 Permit ("current Riverside County Permit"). The Permittees request its deletion.

V.G - This prohibition is not consistent with the Basin Plan and is not contained in the recently adopted Orange County Permit or the current Riverside County Permit. The Permittees request its deletion.

V.H - Requirement V.H of the Tentative Order prohibits the disposal of pollutants to public or private land. It is not consistent with language in the Basin Plan and is not contained in the recently adopted Orange County Permit or the current Riverside County Permit. This prohibition is overly broad, and beyond the scope of the stormwater permitting program. The MS4 permit is both a NPDES permit issued pursuant to the Clean Water Act and a WDR issued pursuant to the Porter Cologne Water Quality Control Act. The NPDES program is intended to regulate the discharge of pollutants, from a point source, into waters of the United States. (33 U.S.C. §§ 1311(a); 1342(p).) The WDR program is designed to regulate the discharge of "waste" that "could affect the quality of the waters of the state." (Cal. Water Code § 13260(a)(1).) Regulation of disposal of pollutants on private land not directly discharging to the MS4 is beyond the scope of the permitting scheme contemplated by the Tentative Order.

Most Permittees already have stormwater ordinances that prohibit the dumping of waste or pollutants in water bodies or their MS4, or where they are likely to be discharged to either. Moreover, most Permittees also already prohibit dumping on private land and use nuisance abatement laws and procedures to ensure compliance. However, requiring such actions in the proposed permit opens the Permittee up to enforcement actions by the Regional Board or private entities if either perceives a lack of enforcement by a Permittee.

In addition to being overly broad, Section V.H. is unclear as to who is required to comply with the requirement. Section V.H. does not state whether a Permittee may not dispose of pollutants on public or private land, or whether a Permittee must prohibit others from such disposal. Since the title of Section V is "Discharge Prohibitions," it would appear to apply only to a Permittee, but that may not be the case.

Further, the provision would prohibit potentially-legal MS4 Permittee activities, such as landfill disposal, stockpiling activities, and even the use of LID BMPs that use native landforms to remove pollutants. Prohibitions V.A and V.B already require the Permittees to prohibit IC/IDs from entering the MS4 and prohibit Urban Runoff from containing any Pollutants that have not been reduced consistent with the MEP standard. These existing prohibitions are clearly within the Regional Board's authority and address the underlying issue of controlling illegal dumping.

We note further that the RWQCB has the legal obligation to prohibit such discharges under the Porter-Cologne Act.

The Permittees also understand that the Regional Board staff is considering moving this Prohibition to the Legal Authority section of the Tentative Order to address issues raised by the Permittees. However, the Permittees also believe that several of the issues identified

above would apply in the Legal Authority section as well. Alternatively, the Permittees have recommended that the underlying intent of this requirement (control of illegal dumping affecting Receiving Waters) be translated into a requirement in Section IX (Illicit Connections/Illegal Discharges (IC/ID); Litter, Debris and Trash Control). Permittees have proposed the following language:

> "The Permittees shall control illegal dumping that may result in a discharge of pollutants to the MS4 to the MEP. The Permittees shall describe their procedures and authorities for managing illegal dumping in their LIP."

D. <u>Legal Authority</u>

The Permittees again request that section VIII. (Legal Authority/Enforcement) be made consistent with the text from the recently adopted Orange County NPDES MS4 Permit. Municipal government authority is established in the California Constitution and state statute. The Permittees submit that Orange County municipalities have no fewer powers than Riverside County municipalities. However, the proposed Tentative Order contains several provisions that both exceed the authority of local municipalities and are not contained in the Orange County Permit. Also, whereas the Findings recognize certain limitations on Permittee authority, these findings are not reflected in the Legal Authority section. The Permittees additionally have proposed alternative language included in Attachment 7, based on the recently adopted Orange County NPDES MS4 Permit. Permittees' specific comments on the Legal Authority sections follow:

Section VIII.A. Regulation of discharges from other jurisdictions entering the MS4 can be legally difficult. The Findings in the Tentative Order recognize the limitations of this authority. Those findings should be reflected in the Legal Authority section of the Tentative Order. This is especially true of Section VIII.A.7, which requires Permittees to "[s]top pollutant discharge or threat of discharge if the discharger is unable or unwilling to correct significant non-compliance." There is no link to dischargers that affect, or could affect, the MS4. The requirement also does not reflect a discharger's right to due process. Thus, the requirement goes beyond the authority of the Regional Board in issuing the Order, which relates only to Permittees' operation of the MS4. Moreover, because Section VIII.A.2 already requires the control of the "contribution of Pollutants to the MS4," and the Permittees proposed Section IX.C (Attachment 7) requires control of illegal dumping that may result in a discharge of pollutants to the MS4 to the MEP, the contribution of Pollutants to the MS4 is already addressed. The Permittees have proposed a revision to this Section, consistent with language contained in the DAMP regarding eliminating illicit discharges that are a serious threat to public health and safety.

Section VIII.A.11. This subsection attempts to delineate the sanctions that should be contained in the Permittees' Storm Water Ordinances. This level of detail goes far beyond the requirements of the Clean Water Act regulations and impinges on the Permittees' authority to exercise their police powers. Article XI, section 7 of the California Constitution guarantees the right of municipalities to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations

not in conflict with general laws." As a constitutionally granted power, this authority may not be overridden by an order of the Regional Board.

Also, the subsection includes a requirement to issue sanctions "in a decisive manner within a predetermined timeframe." In addition to being vague and ambiguous (there is no definition as to what constitutes a "decisive manner"), the requirement goes beyond the authority of the Regional Board, and imposes a subjective standard as to what constitutes a "decisive" manner of issuing sanctions. This section should be modified by deleting all material after the first sentence.

Section VIII.B. This section states: "The Permittees shall progressively and decisively take enforcement actions against any violators of the Storm Water Ordinance. . . . ." The proposed Order provides no definition of what constitutes "progressive" or "decisive" enforcement. More importantly, Permittees are entitled to exercise discretion in the enforcement of their ordinances, and the RWQCB has no legal authority to control or constrain that discretion. Also, Permittees should not face jeopardy if there is a subjective disagreement as to whether Permittees' enforcement of their own ordinances is not "progressive" or "decisive" enough for a third party citizens' enforcer or the Regional Board. Any requirement in the permit should be capable of objective review. That sentence should be deleted.

Section VIII. C. Indicating that "Co-Permittees shall use their authority to bring dischargers into immediate compliance with enforcement actions," is vague and ambiguous. If an enforcement action is brought against a discharger, the discharger will have the right to contest the enforcement action. "Immediate compliance" (itself a vague and ambiguous term) would therefore be impossible. This provision, like others in this section, attempts to improperly govern the prosecutorial discretion of the Permittees. It should be deleted.

Section VIII.D. This section requires the Permittees to promulgate ordinances that specify the BMPs for known pathogen or bacterial indicator sources. This requirement should be revised to allow the Permittees to specify BMPs with "ordinances, regulations, or internal policies." This will allow the Permittees to adopt the BMPs on a shorter timeline without mandating city council approval.

Section VIII.G. This section requires the Permittees to "specify conditions in interagency agreements or other documents for accepting urban storm water into their MS4s from owners of other MS4 systems, such as school and college districts, universities, Caltrans, the Department of Defense, or Native American Tribes." As described more fully in the encroachment permit discussion below, municipalities have limited, if any, authority to require these entities to enter into agreements. This requirement should be revised to reflect the possibility that entering into such agreements, or placing specific requirements in such agreements, may not be possible. Consistent with the Orange County NPDES MS4 Permit, the revised language should state:

> "The Permittees are encouraged to enter into Interagency agreements with owners of other MS4s, such as CalTrans, school and college districts, universities, Department of Defense, Native American Tribes, etc., to control the contribution of pollutants into their MS4 from the

> non-permittee MS4. The Regional Board will continue to notify the owner/operator of the MS4 systems and the Permittee if the Board issues a permit for discharges into the MS4 ."

Sections VII.H and VII.J require the Permittees to review their storm water ordinances annually and conduct an effectiveness assessment. This is an overly aggressive schedule that may not result in effective reviews. Many facets of a municipality's storm water ordinance may not be implemented in a given year, making annual review of the ordinance a potential waste of resources. If ordinance review was conducted as part of the ROWD, it could provide a greater opportunity for an accurate assessment of the ordinance's effectiveness.

E. Authority to Control Third-Party Discharges (Sections III.A.2.b, III.B.2.f)

The Tentative Order includes findings that state the Permittees are required to regulate discharges from third party entities such as the federal government and state agencies that discharge into the City's MS4 through permits "or other mechanisms." Finding E.7 states:

> The Permittees lack legal jurisdiction over discharges into their MS4 facilities from agricultural activities, State and federal facilities, public schools and hospitals, utilities, railroads, and special districts … to the extent that the Permittees authorize the connection of these discharges into their MS4s, this Order requires the Permittees to ensure that such facilities and/or discharges reduce Pollutants consistent with the MEP standard through encroachment permits or other mechanisms to control the contribution of Pollutants to the MS4.

This finding ignores the fact that the Permittees have little, if any, authority over the conduct of the state, federal and other entities that may operate within the Permittees' respective jurisdictions. (Gov. Code Section 53091.) These entities are exempt from many conditions in the Tentative Order. *See Hall v. Taft* (1956) 47 Cal.2d 177 (holding that when the State engages in sovereign activities, it is not subject to local regulations unless the California Constitution says it is, or the Legislature has consented to it. Moreover, the Permittees have no authority to require the federal government, a state agency, or a sovereign entity such as an Indian tribe to obtain a permit, or otherwise enter into an agreement regarding discharges to the Permittees' respective MS4s.

Regarding matters of drainage, California case law generally requires downstream property owners to accept surface waters that flow naturally from adjacent property owners. *Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, 349. Thus, the MS4 Permittees do not have a legal basis for refusing to accept drainage from adjacent jurisdictions, and, while the MS4 Permittees may regulate the structural design of connections to their MS4 facilities, it is clear that they have little, if any, authority to require such entities to enter into agreements, or otherwise regulate activities that would govern the character of such entities' discharges to the MS4.

The Tentative Order contains other findings that recognize the limits of the Permittees' authority to impose restrictions on neighboring government entities. For example, Finding A.9 states "[t]his Order . . . is not intended to address background or naturally occurring Pollutants or flows." Findings

E.6 and E.7 acknowledge that the Permittee's MS4 receives flows from entities and land uses not under Permittee control. Finding E.7 should be revised to remove any suggestion that the Permittee has authority to impose an agreement, permit, or other condition oriented document on another government agency. Similar revisions should be made to Sections III.A.2.b, III.B.2.f, and XII.A.5. The Permittees have developed specific text for the Board's consideration in Attachment 7. Please note that Finding E.7 (and proposed revisions thereto) has been relocated to Section I.B of the Tentative Order for the purposes of facilitating linear reading of the Tentative Order's basis and findings.

F. Low Impact Development

In reviewing the Low Impact Development ("LID") provisions in the Tentative Order SAR MS4 Permit, Permittees have concerns that the provisions represent specific directions by the Regional Board as to how Permittees are to adopt and enforce LID provisions in their communities. The Section also does not provide flexibility afforded to Orange County Permittees to address LID requirements.

Because the LID provisions in the Tentative Order are prescriptive, detailed and mandatory, Permittees believe that they violate Water Code § 13360, which prohibits the Regional Board from specifying a particular manner of complying with permit requirements. Pursuant to this statute, the Regional Board cannot dictate to the Permittees the manner in which they will comply with the requirements of the Tentative Order.

Moreover, Section XII.B violates the provisions of the California Constitution by specifying and directing the MS4 Permittees' land use decisions. Article XI, section 7 of the Constitution guarantees municipalities the right to "make and enforce within [their] limits all local police, sanitary and other ordinances and regulations not in conflict with general laws."

The Permittees have proposed several revisions to Section XII.B and XII.E in Attachment 7 to address these issues.

G. Unfunded Mandates

Finding II.B.10 should be deleted in its entirety for the following reasons:

First, the Regional Board has no jurisdiction or authority to make any determination as to whether the Order constitutes an unfunded state mandate. Only the Commission on State Mandates can make such a determination. The Commission on State Mandates has exclusive authority to determine, in the first instance, whether a requirement constitutes an unfunded state mandate. 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 findings of an agency that has no jurisdiction to make those findings are entitled to no weight.

Second, the finding is erroneous. Finding B.10(a) asserts that the Order "implements federally mandated requirements under Clean Water Act Section 402(p)(3)(B)." While this is true, the Order also contains separate state-mandated requirements. As the California Supreme Court has held, NPDES permits (like the Tentative Order) 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 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 federal law, the requirement can still constitute an unfunded state mandate if the state agency has a choice as to whether to impose the requirement. *E.g., Hayes,* 11 Cal.App.4th at 1593-94.

Recently, the Commission on State Mandates held that the Los Angeles County MS4 Permit contains requirements that constituted an unfunded state mandate, not required by federal law. *In re Test Claim on Los Angeles Regional Quality Control Board Order No. 01-182,* July 31, 2009, the Commission rejected arguments made by the State Water Resources Control Board and the Los Angeles Regional Board that the challenged requirements of the Los Angeles MS4 Permit were mandated by federal law. *See* Proposed Statement of Decision (adopted by the Commission on July 31, 2009), at 20-49. A copy of the Statement of Decision is included in Attachment 11 for the Regional Board's convenience.

Certain aspects of the Tentative Order are clearly required under the Clean Water Act and the NPDES MS4 permit regulations. However, as has been discussed elsewhere in the Permittees' comments, the Permittees suggest that a number of provisions are not required. In any event, this is not an issue within the jurisdiction of the Regional Board, but rather the Commission on State Mandates if a test claim were to be filed.

Finding B.10.(b) asserts that the Permittees' "obligation under this order are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges." Permittees respectfully disagree with this assertion, as there are numerous requirements in the Tentative Order that are uniquely applicable to governmental entities. Again, however, this is a question that can only be adjudicated by the Commission on State Mandates through the filing of a test claim.

Finding B.10.c asserts that Permittees "have the authority to levy service charges, fees, or assessments to pay for compliance with this Order." This finding is speculative, erroneous on the facts and unsubstantiated in the record. The question of how a state mandate is to be funded is beyond the scope of the Regional Board's expertise and, again, is exclusively within the jurisdiction of the Commission on State Mandates. Also, footnote seven asserts that "[v]oter approval may be required for new tax levies." It should be noted that voter-approved taxes are not considered "service charges, fees or assessments," and would not excuse a subvention of state funds. It may be noted that fees assessed against property owners to pay for the costs of stormwater control already have been held by the California courts to constitute a "special tax," requiring a vote under Proposition 218. *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal. App. 4th 1351.

Finding B.10.d. asserts that the "Permittees requested permit coverage in lieu of compliance with the complete prohibition against the discharge of Pollutants contained in federal Clean Water Act Section 301, subdivision (a)." This argument was also made and rejected in the Los Angeles MS4 Permit test claim. *See* discussion in Proposed Statement of Decision generally at 20-22: "[T]he claimants were required by state and federal law to submit the NPDES permit application in the form of a Report of Waste Discharge and SQMP," Statement of Decision at 21. Again, however, this is a determination reserved by statute to the Commission on State Mandates.

Finding B.10 is not supported by evidence in the record and is in fact contradicted by controlling legal precedent. Even were it to be included in the Order, it is entitled to no weight since the Regional Board lacks jurisdiction to make such a finding. For these reasons, the Permittees respectfully request that the finding be deleted.

H. <u>Receiving Waters Limitations</u>

The Permittees request that requirement VII.D be made wholly consistent with the Precedential State Water Resource Control Board (SWRCB) Order 99-05. This Precedential Order established a State policy requiring all NPDES MS4 Permits to contain Receiving Water Limitations language consistent with that Order. The recently adopted Orange County NPDES MS4 Permit ((Board Order R8-2009-0030) Receiving Water Limitations requirements are incorporated verbatim from SWRCB Order 99-05. The Permittees request that provision VII.D of the Draft SAR MS4 Permit similarly be made consistent with SWRCB Order 99-05.

ATTACHMENT 3

Attachment 3

General Comments

The comments contained herein are the results of ongoing discussions between Permittee and Regional Board staff regarding the intent, purpose and goals of the Tentative Order. Specific redline edits are contained in Attachments 4-8 of this comment letter. The following comments summarize the major revisions contained therein. Referenced sections are to the Public Release Tentative Order unless followed by (revised). Sections followed by (revised) reflect new provisions added to the redline comment drafts contained in Attachments 4-7.

1) The Tentative Order has been reviewed to ensure consistent use of defined terms and capitalization of defined terms.

2) Attachments 4-8, the Permittees have proposed to relocate several facts, findings, Tentative Order and Monitoring and Reporting Program requirements in order to facilitate more orderly discussion of compliance programs.

3) The Tentative Order has been reviewed for duplicative text. Wherever text was found that was duplicative of other Tentative Order requirements, the appropriate location for the text was determined and duplicate provisions were then removed or converted to a reference as appropriate. Several revisions were relocated to the Local Implementation Plan, Public Education and Notification Sections for consistency.

4) In several locations, the Tentative Order requires the MS4 Permittees to maintain data in a GIS system or GIS format. However, several Permittees do not have GIS systems. The attached revisions delete these references and replace them with general requirements to identify facility/project/BMP locations.

5) The references in the Tentative Order have been evaluated to ensure that they are accurate and appropriate.

6) Section II - Findings

    a. The MS4 Permittees request a finding be added to clarify the relationship between regional BMPs and MS4. The following text (incorporated as Finding II.A.11 (revised)) is recommended:

        > "It is recognized that in some cases MS4 are used to convey Urban Runoff to sub-regional or regional Treatment Control BMPs or may incorporate regional Treatment Control BMPs directly. The Regional Board recognizes this appropriate strategy for treatment provided that Waters of the U.S. are not used to convey Pollutants. Further, such BMPs are not considered MS4 or Waters of the U.S."

b. The MS4 Permittees request inclusion of finding 48 from the 2002 Riverside County NPDES MS4 Permit (added as Finding II.E.15 (revised)). This finding characterizes the flows that are typically found in the Santa Ana River and its tributaries during dry weather conditions.

c. Minor revisions to Table 3b have been proposed to make it consistent with the Basin Plan.

d. Sections II.F and II.K have been revised consistent with the recommendations in Attachment 2.A of this comment letter and the TMDL comments contained below.

e. The first sentence of Section II.G.13 has been deleted as the reference and the sentence is not consistent with the definition of LID contained in the Glossary.

f. The Permittees oppose the inclusion of references to Dr. Richard Horner's studies in Finding II.G.15. This study was neither peer reviewed nor published, and represents the opinion of an individual promoting special interest objectives. Further, these references are not the basis of the provisions of this Order and are therefore not necessary.

7) Section III – Permittee Responsibilities

a. The revisions are consistent with the 2002 Riverside County NPDES MS4 Permit, or the 2009 Orange County NPDES MS4 Permit, to ensure that authorities and limitations are properly addressed.

b. Clarifying revisions have been proposed to Section III.A.1.r.

c. Section III.A.2.a has been modified to reflect the limitation of the Principal Permittee's legal authority consistent with the 2002 Riverside County NPDES MS4 Permit.

d. Please also see comments in Attachment 2 of this comment letter regarding limitations on the authority to control third-party discharges (Applicable to Sections III.A.2.b (revised) and III.B.2.f (revised)). Additional revisions have been proposed to clarify that the Permittees entire New Development program meets the intent of the General Construction Permit post-construction requirements (not just the WQMP).

e. Section III.A.2.h is recommended for deletion as it is a duplicate of III.A.1.b.

f. Section III.B.2.f has been deleted as requiring public input in the DAMP and LIP revision process adds unnecessary time to the revision process. The decision to seek public input should be with the Permittees. This requirement should be removed. Section XX requires all documents submitted to the Executive Officer to go through public review.

g. Section III.B.3.b has been revised to reflect the jurisdictional boundary issues faced by Permittees responding to IC/ID investigations.

h. Sections III.B.3.c and III.B.3.d has been revised to clarify the roles and responsibilities between the Co-Permittees and Principal Permittee.

i. Section III.C is proposed for modification to allow the Permittees to address legal update of the agreement and addition of new permittees with a single revision of the Implementation Agreement as opposed to requiring a two-step renewal process. Given the number of Permittees, costs of legal review, and the need to schedule two city council/Board of Supervisors items, it is not appropriate to explicitly mandate the schedules for the Implementation Agreement update.

8) Section IV – Local Implementation Plan

Several revisions have been proposed to the LIP section, consistent with discussions with Board staff and in an effort to consolidate LIP requirements into a single section. Requirements IV.A.15 (revised) and IV.A.16 (revised) were relocated from Sections X.D and IX.F, respectively.

9) Section V – Discharge Prohibitions
Please see comments in Attachment 2

10) Section VI – Effluent Limitations, Discharge Specifications and Other TMDL Related Requirements

a. The Permittees request that discharges covered by a NPDES Permit, Waste Discharge Requirements or waivers issued by the Regional or State Board be added to the Allowed Discharges list (See Section VI.A.4 (revised)).

b. The last paragraph of Section VI.A has been modified to be consistent with the 2002 Riverside County NPDES MS4 Permit and the 2009 Orange County NPDES MS4 Permit.

c. Section VI.B.2 has been revised to focus the recommended BMPs on Permittee activities (which are being regulated by this Section) as opposed to third-party activities.

d. Section VI.C (revised) has been added at the request of the Regional Board staff.

e. The Permittees have proposed extensive revisions to Section VI.D (revised) that are addressed in the TMDL Requirements section of Attachment 2 of this comment letter and in the TMDL summary comments contained below.

11) Section VII – Receiving Water Limitations

Per comments in Attachment 2, the MS4 Permittees request that Section VII.D be made consistent with the precedential State Water Resource Control Board Order 99-05 and the 2009 Orange County NPDES MS4 Permit.

12) Section VIII – Legal Authority/Enforcement

a. Section VIII.A has been amended to be consistent with the 2009 Orange County NPDES MS4 Permit.

b. Please see comments in Attachment 2 for additional comments.

13) Section IX – Illicit Connections/Illegal Discharges; Litter, Debris and Trash Control

a. Several revisions to this section have been proposed to remove language that is duplicative of Section IV, V and XVI, removes duplicative requirements within the Section, and otherwise ensures that the Section identifies and uses defined terms.

b. Section IX.C (revised) was added to address the Regional Board's concerns with control of illegal dumping. This replaces the prohibition to discharges of pollutants to public or private land.

c. Section IX.C, IX.D and IX.E – Please see comments regarding IDDE Programs below.

d. Section IX.F was moved to Section IV.

e. Section IX.G was revised to incorporate IX.K. Section IX.K was deleted

f. Section IX.M was deleted as it was duplicative of Section IX.I

14) Section X – Sewage Spills, Infiltration Into the MS4 Systems from Leaking Sanitary Sewer Lines, Septic System Failures, and Portable Toilet Discharges

a. Section X.B was modified to reflect the existence of an existing Sanitary Sewer Overflow Coordination Program between the Permittees and local sewering agencies.

b. Section X.C has been revised to reference the requirements of the adopted State Board SSO Order (No. 2006-0003-DWQ).

c. Section X.D was moved to Section IV.

d. Section X.E was modified to reflect ongoing Permittee activities to document and record locations of septic systems within the Santa Ana Watershed.

15) Section XI – Municipal Inspection Programs

a. Section XI.A was a new provision that attempted to aggregate several common requirements related to inspection programs. However, crafting language that

continued to address the nuances between industrial, commercial, and construction inspection programs required several revisions that are contained in the attached edits.

i. Section XI.A.1 has been revised to be consistent with the MS4 Permittees' current MS4 Programs.

ii. Section XI.A.2 has been revised to clarify how records are to be kept and when they are to be made available.

iii. Section XI.A.3 has been revised to reflect the MS4 Permittees' ability to address General Statewide Permits.

iv. Section XI.A.4 should be deleted, as the MS4 Permittees do not enforce the General Stormwater Permits.

v. Sections XI.A.5 and XI.A.6 are deleted as they are addressed by Section XI.A.2.

vi. Section XI.A.5 (revised) adds cross-reference reporting requirements for General Construction Permit non-filers.

vii. Section XI.A.6 (revised) adds (and replaces Section XI.A.4) a permit provision from the 2002 Riverside County NPDES MS4 Permit. This provision described the Permittees' roles and responsibilities relative to the General Construction Permit.

viii. Section XI.A.10 is revised to reference the legal authority section.

b. Section XI.B.3.a has been revised to eliminate the reference to changes of ownership, as this is not verified by construction inspectors. This requirement is addressed in Section XII.J.

c. Section XI.B.3.d has been amended to reflect that the Permittees are enforcing their ordinances and not the General Construction Permit.

d. Section XI.B.4.a has been revised to be consistent with the Permittee's Santa Margarita Region NPDES MS4 Permit with regard to construction sites less than 1 acre.

e. Section XI.B.5 and XI.B.6 have been deleted as the Permittees enforce their ordinances and do not have authority or resources to enforce the General Construction Permit.

f. Section XI.D.6 has been modified to clarify that Permittees shall regulate mobile businesses based in their jurisdiction. Permittees are not aware of and cannot regulate

(other than through code enforcement) transient mobile businesses that are not based (and therefore do not have a license to operate) within their jurisdiction.

g. Section XI.D.8.e has been deleted as the Permittees do not conduct fat, oil, and grease (FOG) inspections. Entities that do conduct such inspections are separately permitted by the Regional Board and these requirements can be added to their permits.

h. Section XI.D.8.f has been revised to clarify that the Permittees are required to enforce their Stormwater Ordinances. This Permit does not regulate public health agency activities.

i. Section XI.E.4 has been modified, as irrigation is addressed as part of AB1881 compliance for new developments. Existing areas have been addressed by cooperative efforts between Riverside County Permittees and water districts, including the use of tiered rates and outreach programs to promote efficient irrigation.

j. Section XI.E.5 has been modified to reflect implementation of AB1881 requirements already addressing this issue.

16) Section XII – New Development (including Significant Redevelopment)

a. Section XII.A.1 has been clarified relative to the new General Construction Permit.

b. Section XII.A.2 has been clarified to note that Section 7.1 of the DAMP applies to all projects, not just discretionary projects.

c. Section XII.A.3 has been deleted, as this text was repetitive of XII.A.2. Specific reference to LIP is not required here as the LIP already addresses this requirement.

d. Section XII.A.4 has been modified consistent with the recommendations contained in Attachment 2 of this comment letter (Legal Authority to Control Third-Party Discharges).

e. Section XII.B – Please see Attachment 2 – Watershed Action Plan for specific Permittee concerns with the WAP, as well as redline comments contained in Attachment 7.

f. Section XII.C – This section inappropriately combined General Plan and CEQA issues. The Section has been rewritten to maintain the original intent, but to separate requirements related to General Planning from CEQA. Permittee staff also proposed several clarifications to the CEQA language to keep it consistent with CEQA terminology.

g. Section XII.C.2 has been deleted, as it was duplicative of requirements in Section XII.B.

h. Section XII.D.2 has been modified to be specific to Riverside County.

i. Section XII.D.2.b (revised) was added to clarify that the development categories that followed were considered "New Developments" consistent with the Glossary.

j. Section XII.D.2.b has been revised to make the language consistent with the 2009 Orange County NPDES MS4 Permit. An additional edit was incorporated to clarify that this provision does not include Permittee Road Projects consistent with Finding II.G.18 (revised) and Section XII.L (revised).

k. Section XII.D.2.f has been revised to reflect that "ESAs" are defined in the glossary.

l. Section XII.D.2.h has been deleted consistent with the intent of Finding II.G.18 (revised) and Section XII.L (revised).

m. Section XII.D.3.a has been deleted as the WQMP is implemented to an MEP standard. This Section was considered and deleted from an early draft of the 2009 Orange County NPDES MS4 Permit.

n. Section XII.D.3.c has been deleted as it was a duplicate of Section XII.E.7

o. Section XII.D.5 has been deleted as it was a duplicate of Section XII.F.4

p. Section XII.D.7 has been deleted as it is addressed by Section XII.E.6 (revised).

q. Section XII.D.8 has been revised to use standard terminology for the Riverside County NPDES MS4 Permit and to define the mechanism for incorporating BMPs into other development projects.

r. Sections XII.D.9.c through XII.D.9.e have been deleted and replaced with Section XII.D.8.c (revised) consistent with language contained in the 2009 Orange County NPDES MS4 Permit. The revised language removed overly restrictive requirements on infiltration BMPs. Please note that the pretreatment requirements from the deleted sections are already addressed in Section XII.D.8.b.

s. Section XII.E.1 has been revised to reflect the Board's intent that LID BMPs be implemented as close to the source as possible. The latter half of the requirement was incorporated into Section XII.E.3 (revised) for clarity and more linear reading.

t. Section XII.E.2, the first sentence has been deleted as it was addressed in Section XII.E.1. The second sentence was incorporated into Section XII.E.2 (revised).

u. Section XII.E.3 (revised) incorporates language from Section XII.E.1 and XII.E.2 for more linear reading.

v. Section XII.E.3 (revised) was revised to clarify that the LID BMPs should be based on the SMC LID Guidance Manual.

w. Section XII.E.5 has been revised, as this is not a pollutant discharge related issue. This requirement is addressed through other regulations outside the Regional Board's authority. The revision notifies the Board of the Permittee's decision to implement either the model DWR ordinance or its own equally effective ordinance.

x. Section XII.E.7 has been revised to coordinate vector control concerns in a fashion similar to how groundwater issues are coordinated with water districts.

y. Section XII.E.8 has been deleted, as the text was duplicative of Section XII.E.3

z. Sections XII.E.10.a through XII.E.10.c were modified to reflect components already addressed in the Permittee's WQMP and moved to Section XII.D.7 (revised).

aa. Section XII.E.10.d was revised to use the same hydromodification standards contained in the 2009 Orange County MS4 Permit (See Section XII.E.8 (revised)). Also see Permittee comments below regarding hydromodification for additional detail.

bb. Section XII.F.1 was incorporated into Section XII.F.2 (revised).

cc. Section XII.F.2 has been modified to be consistent with recommendations, with slight alteration, to reflect Regional Board intent at the 2009 Orange County NPDES MS4 hearing. Section XII.F.1 was incorporated.

dd. Section XII.G was revised to make it consistent with the 2009 Orange County NPDES MS4 Permit.

ee. Section XII.G.5 was deleted as it was a duplicate of Section XII.G.1

ff. Sections XII.G.3, XII.G.4 and XII.G.6 were deleted as they were also addressed by the broad requirements of XII.G.1.

gg. Section XII.J.1, the last sentence was moved to Section XII.J.5 (revised).

hh. Section XII.J.4 was revised to provide more useful tracking metrics.

ii. Section XII.J.4 was revised based on a proposal to make BMP inspections project-based as opposed to BMP-based. Project-based inspections are easier to administer and understand for both Permittee staff and project owners. Inspection (or

certification) frequency would be based on the relative risk of the site and the risk of BMP failure. Otherwise the intent remains the same. Also the MS4 Permittees are unsure why a "four year" period was selected as opposed to a five-year permit term. The MS4 Permittees presume that this is an artifact of the one-year ramp up period.

jj. Section XII.L (revised) was added consistent with the Permittee Road Projects discussion below.

17) Section XIII – Public Education and Outreach

a. Section XIII.E has been modified for clarity. The requirement to evaluate the effectiveness of brochures was revised and moved to Section XIII.I (revised).

b. Section XIII.G was deleted as this is an industrial permit issue and/or litter/material storage issue for Permittee business inspectors. There is no need to expend funds to develop specific brochures to address nurdles.

c. Section XIII.M has been revised and incorporated Section XIV.G for clarity.

18) Section XIV – Permittee Facilities and Activities

a. Section XIV.A has been modified consistent with text in the 2009 Orange County NPDES MS4 Permit.

b. Section XIV.D has been modified consistent with text from the 2002 Riverside County NPDES MS4 Permit for clarity.

c. Section XIV.G has been moved to Section XIII.

d. Section XIV.H has been deleted as it was addressed by XIV.B.

e. Section XIV.I has been deleted as it was also addressed by XIV.B.

f. Section XIV.K.1.d has been modified to be consistent with the adopted General Construction Permit.

g. Section XIV K.1.f and XIV.K.1.g have been modified for clarity.

h. Section XIV.K.2.e has been deleted as it was duplicative with the *De-Minimus* permit.

19) Section XV – Training Program for Storm Water Managers, Planners, Inspectors, and Municipal Contractors

A complete rewrite of the training requirements to improve clarity is required. The revision clearly states curriculum, reporting and scheduling requirements, while maintaining the original intent of the provision.

20) Section XVI – Notification Requirements

a. Section XVI.A has been revised to use defined terms (Emergency Situation) consistent with the 2002 Riverside County NPDES MS4 Permit.

b. Section XVI.B (revised) has been incorporated to cross-reference text in Section XI.A.5.

c. Section XVI.C duplicated Section XX.A. Section XVI.C is text that is standard language in Section XX, so retained there. This requirement was replaced with text referencing IC/ID notification requirements contained in Section IX.B of this Order.

d. Section XVI.C (revised) has been added to clarify notification requirement SSOs for Permittees subject to the SSO Order.

e. Section XVI.E has been modified to be consistent with the 2009 Orange County NPDES MS4 Permit.

21) Section XVII – Program Management Assessment/DAMP Review

a. Section XVII.A has been revised to reflect the current Annual Report due date of November 30th.

b. Section XVII.B (revised) has been split into two requirements and incorporated Section XVII.C, the 2nd requirement of Section XVII.B (revised) has been modified to increase clarity.

22) Section XVIII – Fiscal Resources

a. Section XVIII.A has been revised to recognize the limitations to the Permittees' authority to raise revenues.

b. Section XVIII.B (revised) has been modified to clarify that fiscal reporting requirements were specific to the NPDES MS4 Program.

23) Section XX – Provisions

a. Sections XX.J, XX.K and XX.N were deleted as these requirements were not incorporated into the 2009 Orange County NPDES MS4 Permit or 2002 Riverside County NPDES MS4 requirements. Please see Attachment 2 for further comments.

24) Section XXI – Permit Modification

a. Section XXI.A has been modified to clarify that TMDLs are part of the Basin Plan.

b. Section XXI.C was duplicative of Section XXI.B and deleted.

c. Section XXI.D has been deleted. This text was inconsistent with the standard language incorporated into the 2009 Orange County NPDES MS4 Permit.

d. Section XXI.E has been amended to recognize that several Permittees are bifurcated between the San Diego and Santa Ana RWQCB regions. The proposed language allows Murrieta (who only has a few thousand acres in the Santa Ana Region) and Menifee (who only has a few thousand acres in the San Diego Region) to be wholly regulated under the Permit that oversees the majority of their jurisdiction.

25) Section XXII – Permit Expiration and Renewal

a. Section XXII.A.1 has been added consistent with EPA requirements for permit reapplications.

b. Section XXII.A has been further revised to use standard terminology and defined terms.

26) Appendix 3 – Monitoring and Reporting Program

Several revisions to the Monitoring and Reporting Program are contained in Attachment 5

27) Appendix 4 – Glossary. Suggested revisions include:

a. Add new terms that are used in this Tentative Order
b. Make terms consistent with established state or federal definitions
c. Remove obsolete terms from the glossary; and
d. Clarify Tentative Order requirements by standardizing terminology

28) Appendix 6 – Fact Sheet

Several revisions to the Fact Sheet are contained in Attachment 6

Permittee Road Projects

The Permittees concur with comments raised by San Bernardino County (Tentative Order R8-2009-0030) regarding the incorporation of Road Projects as a separate WQMP category (See Section XII.D.2.h). Private New Development and Significant Redevelopment projects incorporating roads typically allow road runoff to be addressed as part of the overall water quality strategy for the larger common plans of development. Permittee street, road, and highway capital projects have special limitations. For example, the footprint of street, road and highway capital projects is often limited and may have hydraulic constraints due to lack of underground storm drain systems that would otherwise be necessary to hydraulically facilitate treatment of runoff. There are also limitations specified in state and federal design and code specifications that may limit or prohibit BMPs. Permittees may also be subject to flow diversion liability and limited road maintenance budgets and equipment. Street, road and highway projects that function as part of the MS4 also receive runoff and associated Pollutants from both existing urban areas and other external sources, including adjacent land use activities, aerial deposition, brake pad and tire wear, and other sources that may be outside of the Co-Permittees' authority to regulate, and/or economic or technological ability to control. These offsite flows can overwhelm Treatment Control BMPs designed to address the footprint (consistent with the typical requirements for a WQMP) of street, road or highway capital projects incorporating curb and gutter as part of its stormwater conveyance function.

A new finding in Section II.G.18 (revised) and revised requirements added as Section XII.L (revised) offer an alternative method to address the special limitations associated with the incorporation of street, road, highway and freeway projects into the WQMP framework.

IDDE Requirements -Sections IX.C and IX.D (revised)

The Permittees have also proposed a specific approach to IDDE based on programs that the Principal Permittee has been developing since the adoption of the 2002 Riverside County NPDES MS4 Permit. The primary component of this program is a full time District staff person whose job it is to drive the District's open channels, levees, basins, and other facilities to look for maintenance needs and IC/IDs. The District has also hired a full time staff-person to coordinate IC/ID response on behalf of the District and has promoted, in conjunction with our public education program, both public and inter-agency coordination in responding to, and eliminating IC/IDs. The net result has been an order of magnitude increase in IC/ID identification and elimination since fiscal year 2004-2005 (first year of electronic reporting). The Permittees also note that EPA's Final Phase II rule notes the following regarding proactive IC/ID:

> "The Center for Watershed Protection and Robert Pitt (2004) researched the most cost-effective and efficient techniques that can be employed to identify and correct inappropriate discharges. Data from Montgomery County, Maryland, was analyzed and it was determined that staff identify and correct about six inappropriate discharges per year as a result of regular screening. By contrast, over 185 inappropriate discharges are corrected each year in Montgomery County as a direct result of citizen complaints and calls to a storm water compliant hotline. Public education and labeling of outfalls and other storm drain infrastructure is an important element of establishing a successful citizen hotline."

The District's own experience supports the Center for Watershed Protection's findings. The District, by partnering with other agencies and aggressively educating the public has been far more successful at addressing IC/IDs than by using proactive monitoring of outfalls, as required in our Santa Margarita Region NPDES MS4 Permit. Further, the cost of monitoring and the general inability to reasonably track the sources of illegal discharges detected through field monitoring and lab analysis work call into question the cost of such a program. This is particularly important considering the number of facilities (Co-Permittees have over 250 miles of storm drains within the Permit area and the District may have as many as 500 facilities) and the sheer cost of staff time, monitoring and reporting associated with outfall reconnaissance. The District's program, which incorporates one full time staff person who drives District facilities looking for maintenance and IC/ID issues, has been effective. The District also has a full time IC/ID technician who has established significant relationships with both public and private stakeholders, resulting in dozens of abated discharges. Further, Permittee staff has been trained to not only conduct proper maintenance of the MS4, but to also be resources for identifying and abating IC/IDs. The District has also budgeted a position to add another IC/ID staff person to ensure capacity to fully and rapidly respond to reported IC/IDs.

The District's program is also tightly integrated with the Permittees' IC/ID efforts. As the District has no land use authority or storm water ordinances, the District must rely entirely on the cooperation of the Co-Permittees, and in some cases, Regional Board staff, to abate potential IC/ID sources. The District's program also serves to benefit the Co-Permittees as the vast majority of Co-Permittee MS4

drain into regional District MS4. Therefore the District's inspection programs also serve to evaluate Permittee outfalls that drain to District facilities.

The program described herein is an effective example of an IDDE program. The Permittees request that language be incorporated into the Permit to reflect the Permittees' existing efforts with regard to IDDE. Revisions have been proposed to Section IX in Attachment 7.

TMDL Requirements

The Permittees[i] generally support comments made by the San Bernardino County NPDES MS4 Program with regard to Tentative Order R8-2009-0036 (CAS618036). The comments provided by San Bernardino County NPDES MS4 Permittees are applicable to this Tentative Order as the two Programs share MSAR TMDL requirements. The Riverside County Permittees have developed further comments regarding the potential ramifications of the draft TMDL language, which are contained in Attachment 2 of this Comment Letter.

In response to the issues raised by the San Bernardino County NPDES MS4 Permittees and the issues raised herein, alternative language is proposed to address the TMDL requirements. This language is incorporated into the draft comments provided in Attachments 4-8.

As of the date of this letter, agreement on the TMDL provisions has not been reached. As a result, the MS4 Permittees request a joint meeting with Regional Board staff to further discuss Permittees' TMDL proposals, which are:

1) The need to only incorporate TMDL requirements that are applicable within the term of this MS4 Permit. The Regional Board is only required to ensure that the Implementation Plan tasks required within the term of this MS4 Permit are incorporated into this Order. The TMDL WLAs do not require incorporation until such time as they take effect. As the first WLA takes effect at the same time as this MS4 Permit's renewal, such an approach would not increase the Regional Board's administrative burden.
2) Incorporating language holding the MS4 Permittees responsible for compliance with the TMDL Implementation Plans.
3) Provides "good actor" MS4 Permittees protection from being held liable for "bad actor" MS4 Permittees or other stakeholders by eliminating potential joint liability for TMDL compliance tasks.
4) Reflects an iterative approach to TMDL Implementation Plan, consistent with the intent of the Board at the time of TMDL adoption.

The MS4 Permittees would note that both the MSAR and LE/CL TMDLs were adopted by the Board with a clear understanding of the potential hurdles of compliance posed by these TMDLs and the complex problems of pollutants in stormwater and urban runoff. This understanding was captured in the District's October 13, 2004 comments regarding the LE/CL Nutrient TMDL:

> "During the June workshop, several issues were raised by District and other stakeholders regarding the feasibility of the TMDL. As you [Gerard Thibeault] noted at the close of the workshop, the Regional Board is effectively being required to implement legal requirements without practical solutions. In recognition of this, however, Regional Board staff has made efforts to provide flexibility to the TMDL by incorporating adaptive management concepts. The adaptive management concepts are premised on allowing the science upon which the TMDL is based to continue to develop, then allowing for review and modification of the TMDL based on the improved science at specified future dates.

> Adaptive management requires the ongoing participation and coordination of all stakeholders, including Regional Board staff. To date Board staff has made outstanding efforts to work with stakeholders to develop the TMDL, to incorporate adaptive management concepts, and to address stakeholder concerns. It is for this reason, that despite the District's position that the TMDL is both economically and technologically unachievable, we are willing to look past these deficiencies and participate in a cooperative effort with responsible parties."

The MS4 Permittees therefore are dismayed by Regional Board staff's recent assertions, despite statements to the contrary at the time of the TMDL workshops and adoption hearings, that iterative approaches, and the protections that they provide, are not being incorporated into the MS4 Permits. The MSAR TMDL and its administrative record contains similar admissions, explicitly noting that the MSAR TMDL WLA are expected to be modified by pending Use Attainability Analyses and other regulatory actions being developed by the Storm Water Quality Standards Task Force. These regulatory actions will affect the MSAR TMDL WLA by amending the pathogen indicator bacteria and changing when and how the criteria are applied. The WLA revisions are critical amendments necessary to be able to attain compliance with the TMDL requirements.

Regional Board staff has indicated that the Permittees should take comfort in the fact that the staff intend to postpone the effective dates of the TMDL WLAs until after the Permit has expired. This promise, however, provides no real protection for the MS4 Permittees. The MS4 Permittees would note that the MSAR dry weather TMDL WLAs take effect in June 2015, 6 months after the expiration of this Order. The Permittees also note that the 2002 MS4 Permit expired in 2007, nearly two years ago. Should the Tentative Order be administratively extended beyond June 2015, the TMDL WLA could take effect. The MS4 Permittees believe that a BMP-based compliance approach, not numerical effluent limitations, reflects the intent of the TMDL Implementation Plans and the responses to comments from Regional Board staff during the promulgation of the TMDLs. It is clear that the Regional Board's intention had always been to provide for amendment of the TMDLs as scientific information and data allowed for a better understanding of the impaired waterbody function. Such a process would, however, be undermined by the direct incorporation of TMDL WLA into the NPDES MS4 Permit as numeric effluent limitations.

Finally, the incorporation of TMDL WLAs as numeric effluent limitations would undermine the TMDL Task Forces. Participation in the TMDL Task Forces has always been predicated on creative, "out of the box" thinking that promoted restoring Beneficial Uses as the primary method of addressing the TMDLs. The TMDL Implementation Plans were specifically designed to promote development of the science and technologies necessary to resolve the underlying impairments. If TMDL WLAs are incorporated into the Permit and individual Permittees are required to start assessing their compliance with the TMDL WLA via outfall monitoring (see comments in Attachment 2.A of this Comment Letter regarding TMDL requirements exceeding the implementation plan), it is likely that the individual MS4 Permittees will focus their efforts and resources on local solutions, instead of the regional solutions envisioned by the TMDL. Moreover, the risk of anti-backsliding associated with TMDL WLA incorporation as numeric effluent limitations will preclude the ultimate benefit of Task Force participation – revision of the TMDL to

reflect better science and technology. Further, the short-term benefit of allocating resources to jurisdictionally focused BMPs will outweigh the long-term benefits of developing good science and workable control technology through the Task Force approach, potentially at the cost of efficiently and effectively solving underlying beneficial use impairments.

For these reasons, and the reasons set forth in Attachment 2.A, the Permittees request that the RWQCB incorporate the TMDLs based on the recommendations contained herein.

Schedule

As described in Attachment 1, the MS4 Permittee budgets have been reduced significantly in Fiscal Year 2009-2010, and are expected to go through another round of cuts in Fiscal Year 2010-2011. The Permittees budgets are not likely to begin stabilizing until Fiscal Year 2011-2012.

Further, the MS4 Permittees have already carefully allocated available resources for the current Fiscal Year (2009-2010) and are unlikely to have available funds to begin significant program enhancements within the remaining sixth months of the current fiscal year. Further, cuts expected in 2010-2011 will unnecessarily put the proposed Permit compliance programs in direct competition with critical infrastructure maintenance and health, safety, and social services that will be vying for the same resources.

The MS4 Permittees are therefore requesting that the bulk of Permit compliance programs be extended to 18 months following adoption of the Tentative Order. By extending compliance deadlines to 18 months, the Board will allow the MS4 Permittees:

- Time to educate staff and elected officials about pending changes in Permit requirements;
- Time to hire consultants and commence reasonable process program development;
- To budget for the costs of compliance program development in 2010-2011, and if feasible, split compliance costs with any available funding from Fiscal Year 2009-2010.
- Implementation of new programs to occur in 2011-2012, when MS4 Permittee revenues are anticipated to begin to recover, and by which time the MS4 Permittees may have been able to secure necessary revenues.

The MS4 Permittees also request that tasks that are dependent on the final language contained in the revised DAMP, such as the LIPs, general plan and ordinance updates, and training requirements, be extended to a 24-month compliance schedule from adoption of the Tentative Order. This will avoid the need to unnecessarily develop and implement interim compliance programs or guess as to the final configuration and wording of the DAMP.

The Permittees would also recommend that certain special tasks, such as the bacteria and pathogen ordinance required in Section VIII.C, be extended to 48 months to allow sufficient time for the Permittees to determine if they have significant sources, and if so, how to properly abate them.

The Permittees believe the proposed schedule is reasonable given not only the economic climate, but also given the lack of any indication of deteriorating water quality conditions over the course of the current MS4 Permit term. The MS4 Permittees' redline comments incorporate revisions that support the proposed schedule.

Hydromodification Requirements

The MS4 Permittees have several concerns with the proposed Hydromodification criteria.

First, requirements in Section XII.e.6.ii are based on prescriptive control of both flow rate and volume of the 2 and 10 year hydrographs. The retention/infiltration requirements contained in the Tentative Order are different than the criteria specified in the 2009 Orange County NPDES MS4 Permit and the criteria specified in the Tentative San Bernardino County NPDES MS4 Permit as noted in Table 1.

Table 1: MS4 Permit Hydromodification Criteria

Riverside County	2, 10 (and 100-year in some cases) incremental retention
San Bernardino County	1, 2 and 5 year incremental retention
Orange County	2 year incremental retention

We understand that the 2 and 10-year retention/infiltration criteria contained in the Tentative Order were selected based on detention design criteria specified in the 2005 WQMP. However, the Permittees strongly disagree with the underlying assumption that the current application of the 2 and 10-year flow and volume control criteria to retention/infiltration is equivalent to the prior application of these criteria to detention under the 2005 WQMP.

The 2002 Riverside County NPDES MS4 Permit contained the following Hydromodification criteria:

> "VII.B.2.a. …The protocols shall include, at minimum, consideration of the following:
>
> (4) Sensitivity of the Receiving Waters in proximity to the project site to changes in storm water discharge flow rates, velocities, durations and volumes."

In response, the Permittees developed WQMP detention criteria based on peak flow control based on extensive studies of Riverside County watersheds by the US Bureau of Reclamation and supplemental analysis done by the District to address the impacts of urbanization on Receiving Waters. These studies recommended peak flow control for a series of storms that were represented by the 2 and 10-year storm event control in the WQMP. As the Permit also required consideration of volumes, the Permittees linked WQMP requirements for site design to Hydromodifcation to address these issues.

The WQMP incorporated the requirements to control 2 and 10-year storm events in Methodology "A" (Section 4.4 of the WQMP):

1) Releasing the post-development 2-year and 10-year, 24 hour volume at flow rates less than or equal to the pre-development 2-year and 10-year, 24 hour peak flow rates, respectively.

2) Passing the 100-year storm event without damage to the facility

3) Controlling outlet velocities such that downstream erosion and habitat loss is minimized.

Methodology "A" was based on the extensive studies cited above and was limited to *peak flow, duration and velocity control*. Volumes were separately addressed via site design criteria, however, there was no explicit design criteria for the Site Design BMPs. These methodologies were consistent with MEP at the time and similar to methodologies in use in Los Angeles and Orange Counties.

The Permittees are concerned with the inappropriate application of the 2 and 10-year criteria developed for detention in Section XII.E.6.d.ii not only because it could result in additional projects inappropriately being subjected to Hydromodification requirements, but also because the Permittees would like to add a parallel requirement into Section XII.E.6.d.iii (mitigation) similar to the language contained in the 2009 Orange County NPDES MS4 Permit. The proposed language (incorporated into Attachment 7) is consistent with language in the 2009 Orange County NPDES MS4 Permit:

> "Mimicking the pre-development hydrograph with the post-development hydrograph, for a 2- year return frequency storm. Generally, the hydrologic conditions of concern are not significant, if the post-development hydrograph is no more than 10% greater than pre-development hydrograph. In cases where excess volume cannot be infiltrated or captured and reused, discharge from the site must be limited to a flow rate no greater than 110% of the pre-development 2-year peak flow."

We are concerned, however, that the Regional Board staff, should they choose to incorporate this language, revise it consistent with the 2 and 10-year criteria contained in Section XII.E.6.d.ii. As is noted above, and further described below, this is not appropriate.

Explicit matching of pre and post-development runoff volumes for not only the 2 year event as prescribed in the 2009 Orange County NPDES MS4 Permit, but also the 10-year storm event would have a real and substantial effect on both public and private projects in Riverside County. More projects would be required to mitigate for Hydromodification and Hydromodification mitigation BMPs would become significantly larger and more costly, impacting the supply of housing and jobs in the Permit Area.

While it is not clear that this new criteria will be any more protective than the Permittees' existing criteria, particularly in light of the proposed LID infiltration-centric criteria already contained in the Tentative Order, the inappropriate incorporation of 10-year volume control would have the following economic impacts:

1) Larger BMPs for New Development and Significant Redevelopments in Riverside County. Retention/infiltration features are much larger than detention features as the infiltration BMPs must be designed to capture the entire design volume. Detention BMPs can be designed to account for the fact that a certain portion of the storm volume arrives, and is discharged, continuously over time. Additionally, several of the economic impacts and constraints

associated with infiltration have already been discussed in the extensive comment record associated with the 2009 Orange County NPDES MS4 Permit.

2) Increased costs for maintenance and operation of Hydromodification management measures. Retention/infiltration BMPs require additional maintenance to ensure that the soils are properly scarified to maintain infiltration capacity. These costs would exceed what would otherwise be required to maintain basin inlet and outlet works under the Permittees' existing Hydromodification criteria. Stormwater capture and re-use technologies will also have significant maintenance and operation impacts that would otherwise not be incurred using the Permittees' existing criteria.

The practical impacts of these various retention criteria are demonstrated by the following table which is based on analysis the District conducted in support of the development of our existing WQMP criteria:

Table 2:
Incremental Volume retained onsite in Acre-Feet (AF)

Project	2 Year incremental retention	5 year incremental retention	10 year incremental retention
20 acre commercial	1.8 AF	2.6 A.F	3.1 A.F
320 acre residential	16 AF	22.2 AF	27 AF

As can be seen from the Table 2 above, a 10-year volume retention standard would result in nearly twice the impact to Riverside County in comparison to Orange County's 2-year standard. The impact of 100-year onsite retention (referenced in Section XII.E.6.d.ii.5) of the Tentative Order) would be much more significant, but was not included in this table due to time constraints. The record, however, does not provide a basis to support the escalated criteria in Riverside County NPDES MS4 Permit.

The Permittees therefore request that Section XII.E.6.d.ii.1) and XII.E.6.d.ii.5) be modified consistent with the Orange County NPDES MS4 Permit by removing the reference to the 10-year criteria storm events.
The Permittees also request the following text be added to Section XII.E.6.d.iii.1) consistent with language in the Orange County NPDES MS4 Permit:

> "Mimicking the pre-development hydrograph with the post-development hydrograph, for a 2-year return frequency storm. Generally, the hydrologic conditions of concern are not significant, if the post-development hydrograph is no more than 10% greater than pre-development hydrograph. In cases where excess volume cannot be infiltrated or captured and reused, discharge from the site must be limited to a flow rate no greater than 110% of the pre-development 2-year peak flow."

Finally, the Permittees recommend revision of Section XII.E.6.ii.4) as follows:

4) All downstream conveyance channels to an adequate sump (e.g. Prado Dam, Lake Elsinore, Canyon Lake, Santa Ana River or other lake, reservoir or natural resistant feature) that will receive runoff from the project

a) are engineered, ~~hardened~~ and regularly maintained to ensure design flow capacity, and no sensitive stream habitat areas will be affected; or

~~b)~~ not identified in the Permittees hydromodification sensitivity maps required in Section XII.B.3.b., and no sensitive stream habitat areas will be affected. ~~This exemption is only applicable to conveyance channels that have been fully and properly approved (including CEQA review, and permitted by U.S. Army Corps of Engineers, Regional Board, and California Department of Fish and Game) by September 1, 2004.~~

The basis for these revisions are as follows:

1) The word "hardened" precludes engineered earthen channels and other flood control facilities that are otherwise engineered and maintained to prevent Hydromodification.
2) The addition of b) allows the Permittees to benefit from the Hydromodification mapping that is required under Section XII.B. SCCWRP is currently developing criteria to assess sensitivity of streams to Hydromodification and it is expected that not all natural systems are susceptible to Hydromodification. Adding this criteria ensures that Hydromodification mitigation is not required where it is not necessary.
3) The last sentence has been deleted as it has no basis for inclusion. Additionally, the date is arbitrary and the approval of the named agencies would have no nexus to the potential for a facility or project to mitigate or negate Hydromodification impacts.

In conclusion, the Permittees specifically request that this section be modified consistent with the Permittees' recommendations contained in Section XII of Attachment 7. The proposed revisions would remove inadvertent application of Hydromodification criteria to Riverside County projects while still ensuring protection of downstream Receiving Waters.

[i] For the purposes of this "TMDL Requirements" section, of Attachment 3, the term "Permittees" (within Riverside County) denote those entities named in a respective TMDL as stakeholders or dischargers.

ATTACHMENT 4

Appendix 4, GLOSSARY

40 CFR – Code of Federal Regulations Title 40: Protection of the Environment.

Annual Report – Report summarizing compliance information required to be submitted annually to the Regional Board on or before each November 30th.

APN – Assessor's parcel number

Basin Plan – Water Quality Control Plan developed by the Regional Board for the Santa Ana River Watershed.

BAT [Best Available Technology] – Technology-based standard established by Congress in CWA Section 402(p)(3)(A) for industrial dischargers of storm water. Technology-based standards establish the level of Pollutant reductions that dischargers must achieve, typically by treatment or by a combination of Source Controls and Structural BMPs. BAT generally emphasizes treatment methods first and pollution prevention and source control BMPs secondarily. The best economically achievable technology that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants is determined in accordance with regulations issued by the USEPA Administrator. Factors relating to the assessment of BAT shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the permitting authority deems appropriate.

BCT [Best Conventional Technology] – Treatment techniques, processes and procedure innovations, and operating methods that eliminate or reduce chemical, physical, and biological Pollutant constituents.

Beneficial Use – Uses of water necessary for the survival or well being of man, plants, and wildlife. These uses of water serve to promote the tangible and intangible economic, social, and environmental goals. "Beneficial Uses" 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 those that were attained in the surface or ground water on or after November 28, 1975; and potential Beneficial Uses are those 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)] Beneficial Uses for the Receiving Waters are identified in the Basin Plan.

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.

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BMP [Best Management Practices] – Defined in 40 CFR 122.2 as schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of Waters of the U.S. 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 MS4 permits, BMPs are typically used in place of numeric effluent limits.

Caltrans – California Department of Transportation.

CAP – The Commercial and Industrial Compliance Assistance Program is a Riverside County Environmental Health Department program that includes a storm water survey and educational outreach as part of existing inspections of hazardous material handlers and retail food service activities. Hazardous waste handling facilities are inspected at least once during a two-year cycle. Restaurants are inspected at least once during the permit cycle. Any completed surveys that indicate non-compliance are forwarded to the appropriate jurisdiction's code enforcement division. The Permittees notify Regional Board staff when conditions are observed during such inspections that appear to violate the General Storm Water Permits or a permit issued by the Regional Board.

CIEP – Compliance Inspection and Enforcement Program

CEQA – California Environmental Quality Act (Section 21000 et seq. of the California Public Resources Code).

Cleaning – Removal of litter or debris that can impact Receiving Waters.

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CMP – Consolidated Program for Water Quality Monitoring

Conditions of Concern – Scour, erosion (sheet, rill and/or gully), aggradation (raising of a streambed from sediment deposition), and changes in fluvial geomorphology, hydrology or the aquatic ecosystem.

Commercial Facilities – Businesses that have the potential to discharge pollutants to the MS4 not otherwise covered by the General Industrial Permit that are described in Section 8.1 of the DAMP. These businesses are inspected as part of the CAP or equivalent as described in Section 8.1 of the DAMP. Commercial Facilities include businesses based in a Permittee's jurisdiction that perform mobile carpet, drape or furniture cleaning; mobile automobile or other vehicle washing and mobile high pressure or steam cleaning.

Construction Site – A site with activities for which building or grading permits have been issued and activities at the site include: soil movement; uncovered storage of materials or wastes, such as dirt, sand or fertilizer; or exterior mixing of cementaceous products, such as concrete, mortar or stucco.

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 U.S. are affected.

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Co-Permittees – County of Riverside and the cities of Beaumont, Calimesa, Canyon Lake Corona Hemet, Lake Elsinore, Menifee, Murrieta, Moreno Valley Norco, Perris, Riverside, San Jacinto and Wildomar.

County – County of Riverside, a legal subdivision of the State of California.

CSA 152 – County Service Area 152

CWA – Federal Clean Water Act

DAMP [Drainage Area Management Plan] – The DAMP is a programmatic document developed by the Permittees and approved by the Executive Officer that outlines the major programs and policies that the Permittees individually and/or collectively implement to manage Urban Runoff in the Permit Area.

Design Capture Volume – (See Permit, XII.E.3, p. 90)

DDT – Dichlorodiphenyltrichloroethane – An insecticides first used in 1939. Most uses of DDT were banned in 1972, with limited exception for public health purposes.

Discretionary Project – Per Section 15357 of the Guidelines for CEQA "Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

Direct Discharge (Table 3a) – A discharge directly from an MS4 to a receiving water such that the MS4 discharge does not first co-mingle with waters from another receiving water or conveyance.

Dry Season - The season excluding the Wet Season. Generally it will be June 1 through September 30 of each year, unless specifically defined otherwise in a applicable TMDL implementation plan.

Effective Impervious Area (EIA) – EIA is the portion of the total impervious area that is directly connected to the drainage collection system. EIA includes street surfaces, paved driveways connecting to the street, rooftops which are hydraulically connected to the curb or storm sewer system, and paved parking lots that drain to a storm sewer system.

Impervious area such as rooftops, streets, sidewalks, and parking areas do not allow water to drain into the soil. Impervious area that collects and drains the water directly to a stream or wetland system via pipes or sheet flow is considered "effective impervious area" because it effectively drains the landscape. Impervious area that drains to landscaped areas, swales, parks

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(a) An activity directly undertaken by any public agency.¶
(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.¶
(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.¶

Deleted: Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

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and other impervious areas is considered "ineffective" because the water is allowed to infiltrate through the soil and into ground water, without a direct connection to the stream or wetland.

Reducing effective impervious area is defined as disconnecting impervious surfaces such as sidewalks, rooftops, parking areas, and streets, from the drainage system so that runoff percolates into the soil and does not flow directly to streams. Disconnecting the stormwater system allows the watersheds' hydrologic cycle to respond in a manner that more closely reflects pre-disturbed conditions. EIA reduction can occur as part of new development, redevelopment, or be part of a retrofit design. The level of benefit is determined by how well the practices minimize runoff in small to mid size storm events.

Effectiveness Assessment Outcome Level 1 - Compliance with Activity-based Permit Requirements – Level 1 outcomes are those directly related to the implementation of specific activities prescribed by this Order or established pursuant to it.

Effectiveness Assessment Outcome Level 2 - Changes in Attitudes, Knowledge, and Awareness – Level 2 outcomes are measured as increases in knowledge and awareness among target audiences such as residents, businesses, and municipal employees.

Effectiveness Assessment Outcome Level 3 - Behavioral Change and BMP Implementation – Level 3 outcomes measure the effectiveness of activities in affecting behavioral change and BMP implementation.

Effectiveness Assessment Outcome Level 4 - Load Reductions – Level 4 outcomes measure load reductions which quantify changes in the amounts of pollutants associated with specific sources before and after a BMP or other control measure is employed.

Effectiveness Assessment Outcome Level 5 - Changes in Urban Runoff and Discharge Quality – Level 5 outcomes are measured as changes in one or more specific constituents or stressors in discharges into or from MS4s.

Effectiveness Assessment Outcome Level 6 - Changes in Receiving Water Quality – Level 6 outcomes measure changes to receiving water quality resulting from discharges into and from MS4s, and may be expressed through a variety of means such as compliance with water quality objectives or other regulatory benchmarks, protection of biological integrity, or beneficial use attainment.

Effluent Limitations – means any restriction on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into Waters of the United States, waters of the "contiguous zone," or the ocean.

Emergency Situation – At a minimum, sewage spills that could impact water contact recreation, all sewage spills above 1,000 gallons, an oil spill that could impact wildlife, a hazardous material spill where residents are evacuated, all reportable quantities of hazardous

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waste spills as per 40CFR 117 and 302, and any incident reportable to the OES (1-800-852-7550).

Erosion and Sediment Control Plan (ESCP) – These are water quality protection plans that include control measures for erosion prevention and sediment controls that would minimize the mobilization of sediment from the project site.

ESA – Environmentally Sensitive Area - An area "in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments" (Reference: California Public Resources Code § 30107.5).

ESAs subject to storm water mitigation requirements are:

1. Areas adjacent to Receiving Waters designated as "Preservation of Biological Habitats of Special Significance (BIOL)", "Spawning, Reproduction, and Development (SPWN)" or ""Rare, Threatened, or Endangered Species (RARE)" Beneficial Uses in the Santa Ana Water Quality Control Plan (Basin Plan);

2. Areas within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) that contain rare or especially valuable plant or animal life or their habitat. These areas are considered mitigated as the MSHCP contains substantive alternatives analysis for any proposed development that has the potential to impact resources.

3. Areas adjacent to Clean Water Act 303d Listed Water Bodies or adopted TMDLs with implementation plans that have yet to achieve the Urban WLA or LA goals; and

4. Any other equivalent environmentally sensitive areas which the Permittees have defined.

Executive Officer - The Executive Officer of the Regional Board.

General Construction Permit- State Board Order No. 99-08 DWQ (NPDES No. CAS000002) or the most recent draft of the General Construction Permit issued by the State Board subsequent to issuance of this Order.

General Dairy Permit- – Regional Board Order No. R8-2007-0001 (NPDES No. CAG018001) for concentrated animal feeding operations.

General De Minimus Discharges Permit- Regional Board Order No. R8-2009-0003.

General Industrial Permit –State Board Order No. 97-03 DWQ (NPDES No. CAS000001) or the most recent General Permit for Storm Water Discharges Associated with Industrial Activities issued by the State Board subsequent to issuance of this Order.

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General Small Linear Underground Projects Permit-– State Board Order No. 2003-0007-DWQ (NPDES No. CAS000005) or the most recent General Permit for Storm Water Discharges Associated with Small Linear Underground Projects issued by the State Board subsequent to issuance of this Order for discharges of storm water runoff associated with small linear underground/overhead construction projects.

General Stormwater Permits – General Industrial Permit (State Board Order No. 97-03 DWQ, NPDES No. CAS000001), General Construction Permit (State Board Order No. 99-08 DWQ, NPDES No. CAS000002), and General Small Linear Underground Projects Permit (State Board Order No. 2003-0007-DWQ, NPDES No. CAS000005) or the most recent applicable General Permit issued by the State Board subsequent to the issuance of this Order.

General Utility Vaults Permit-– State Board Order No. 2006-0008-DWQ, NPDES No. CAG990002.

Green Infrastructure – Generally refers to technologically feasible and cost-effective systems and practices that use or mimic natural processes to infiltrate, evapotranspirate, or reuse stormwater or runoff on the site where it is generated. This is a concept that highlights the importance of the natural environment in decisions about land use planning. In particular there is an emphasis on the "life support" functions provided by a network of natural ecosystems, with an emphasis on connectivity to support long term sustainability. (Also see Low Impact Development.)

GIS – Geographical Information Systems.

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 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 – 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, Article1]

HCOC – Hydrologic Condition of Concern - An HCOC exists when a site's hydrologic regime is altered and there are significant impacts on downstream channels and aquatic habitats, alone or in conjunction with impacts of other projects.

Hydromodification - the "alteration of the hydrologic characteristics of coastal and non-coastal waters, which in turn could cause degradation of water resources."[1] (USEPA 2007)

IC/ID – Illicit Connection/Illegal Discharge

IDDE - Illicit Discharge Detection and Elimination Program

[1] USEPA. 2007. *National Management Measures to Control Nonpoint Source Pollution from Hydromodification.* EPA 841-B-07-002. U.S. Environmental Protection Agency, Office of Water, Washington DC

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Illegal Discharge –Defined at 40 CFR 122.26(b)(2) as any discharge to the MS4 that is not composed entirely of storm water, except discharges pursuant to an NPDES permit, discharges that are identified in Section VI.A. of this Order, and discharges authorized by the Executive Officer.

Illicit Connection – Any connection to the MS4 that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term Illicit Connection includes all non storm-water discharges and connections except discharges pursuant to an NPDES permit, discharges that are identified in Section V, Effluent Limitations and Discharge Specifications, of this Order, and discharges authorized by the Executive Officer.

Impaired – Relates to waterbodies where it is presumed Beneficial Uses are not attained.

Impaired Waterbody / Impaired Waters – Section 303(b) of the CWA requires each of California's Regional Water Quality Control Boards to routinely monitor and assess the quality of waters of their respective regions. If this assessment indicates that Beneficial Uses are not met, then that waterbody must be listed under Section 303(d) of the CWA as an Impaired Waterbody. The 2006 water quality assessment found a number of water bodies within the Permit Area as impaired pursuant to Section 303(d). In the Permit Area, these include: Canyon Lake (for pathogens); Lake Elsinore (for PCBs and unknown toxicity); Lake Fulmor (for pathogens); Santa Ana River, Reach 3 (pathogens); and Santa Ana River, Reach 4 (for pathogens).

Impairment – A waterbody condition where Beneficial Uses are not attained.

Implementation Agreement – The Implementation Agreement establishes the responsibilities of each Permittee and a procedure for funding the shared costs.

Impressions – The most common measure is "gross Impressions" that includes repetitions. This means if the same person sees an advertisement or hears a radio or sees a TV advertisement a thousand times, that will be counted as 1000 Impressions.

Industrial Facility – Facilities defined in Attachment 1 of the General Industrial Permit. These facilities are also addressed by the CAP or equivalent as described in Section 8.1 of the DAMP.

LA – [Load Allocations] – Distribution or assignment of TMDL Pollutant loads to entities or sources for existing and future nonpoint sources, including background loads.

Land Disturbance – The clearing, grading, excavation, stockpiling, or other construction activity that result in the possible mobilization of soils or other Pollutants into the MS4. This specifically does not include routine maintenance activity to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. This also does not include emergency construction activities required to protect public health and safety. The Permittees should first confirm with Regional Board staff if they believe that a particular routine maintenance activity is exempt under this definition from the General Construction Activity Storm Water Permit or other Orders issued by the Regional Board.

Local Implementation Plan (LIP) – Document describing an individual Permittees procedures, ordinances, databases, plans, and reporting materials for compliance with the MS4 Permit.

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Low Impact Development (LID) – Comprises a set of technologically feasible and cost-effective approaches and practices that are designed to reduce runoff of water and pollutants from the site at which they are generated. By means of infiltration, evapotranspiration, and reuse of rainwater, LID techniques manage water and water pollutants at the source. LID and Green Infrastructure are used interchangeably.

MSAR – Middle Santa Ana River

Management Steering Committee – Committee to address Urban Runoff management policies for the Permit Area and coordinate the review and necessary revisions of the DAMP and Implementation Agreement. The Management Steering Committee consists of one or more city manager or equivalent representatives from each Permittee.

MEP [Maximum Extent Practicable] *MEP is an acronym for "Maximum Extent Practicable" and refers to the standard for implementation of storm water management programs. Section 402(p)(3)(B)(iii) of the Clean Water Act requires that municipal storm water permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."*

In practice, compliance with the MEP standard is evaluated by how well the Permittees implement the "minimum measures" identified by EPA, including: (1) Public education and outreach on storm water impacts; (2) Public involvement/participation; (3) Illicit discharge detection and elimination; (4) Construction site storm water runoff control; (5) Post-construction storm water management in new development and redevelopment; and (6) Pollution prevention/good housekeeping for municipal operations. Collectively, these minimum measures are often referred to as "Best Management Practices" or BMPs. The MEP standard does not require Permittees to reduce pollutant concentrations below natural background levels, nor does it require further reductions where pollutant concentrations in the receiving water already meet water quality objectives. In implementing the MEP standard, it is appropriate for Permittees to prioritize their resource allocation to address the storm water pollution problems that pose the greatest and most immediate threat to human health or the environment.

MEP is a technology-based standard established by Congress in CWA section 402(p)(3)(B)(iii) 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 urban runoff management programs. Their total collective and individual activities conducted pursuant to the urban runoff management programs becomes their proposal for MEP as it applies both to their overall effort, as well as to specific activities

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Low Impact Development (LID) – A storm water management and land development strategy that combines a hydrologically functional site design with pollution prevention measures to compensate for land development impacts on hydrology and water quality. The approach 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 methods mimic the predevelopment site hydrology by using site design techniques that store, infiltrate, evaporate, and detain runoff. Low impact development and green infrastructure are used interchangeably. LID is an innovative storm water management approach with a basic principle that is modeled after nature: manage rainfall at the source using site design techniques that store, infiltrate, bio-treat, evaporate and detain runoff. LID's goal is to mimic a site's predevelopment hydrology by using design techniques that infiltrate, bio-treat, store, evaporate and detain runoff close to its source. A goal of LID is to use site and subdivision design techniques in coordination with storm water management engineering to mimic the hydrologic conditions associated with an undeveloped site. LID principles are based on controlling storm water at the source by the use of microscale controls that are distributed throughout the site. This is unlike conventional approaches that typically convey and manage runoff in large facilities located at the base of drainage areas. These multifunctional site designs incorporate alternative storm water management practices such as functional landscape that act as storm water facilities, flatter grades, depression storage and open drainage swales. This system of controls can reduce or eliminate the need for a centralized best management practice (BMP) facility for the control of storm water runoff. Although traditional storm water control measures have been documented to effectively remove pollutants, the natural hydrology is still negatively affected (inadequate base flow, thermal fluxes or flashy hydrology), which can have detrimental effects on ecosystems, even when water quality is not compromised (Coffman, 2000). LID practices offer an additional benefit in that they can be integrated into the infrastructure and are more cost effective and aesthetically pleasing than traditional, structural storm water conveyance systems.¶
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(e.g., MEP for street sweeping, or MEP for MS4 maintenance). In the absence of a proposal acceptable to the Regional Board, the Regional 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 em hasis 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 e 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 base 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."

Ministerial – Per Section 15369 of the CEQA Guidelines, Ministerial describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public

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official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

MS4 – [Municipal Separate Storm Sewer System] – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural drainage features or channels, modified natural channels, 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 U.S.; (ii) Designated or used for collecting of conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of the POTW as defined at 40 CFR 122.2.

Deleted: Historic and current developments make use of natural drainage patterns and features as conveyances for Urban Runoff. Urban streams used in this manner are part of the MS4 regardless of whether they are natural, man-made, or partially modified features. In these cases, the urban stream is both an MS4 and a receiving water.

New Development – The categories of development identified in Section XI.D of this Order. New Development does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of a facility, nor does it include emergency New Development required to protect public health and safety. Dischargers should confirm with Regional Board staff whether or not a particular routine maintenance activity is subject to this Order.

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New Urbanism – New Urbanism refers to the use of creative strategies to develop ways that preserve natural lands and critical environmental areas, protect water and air quality, and reuse already-developed land. This is based on principles of planning and architecture that work together to create human-scale, walkable communities that preserve natural resources.

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NOI [Notice of Intent] – A NOI is an application for coverage under the General Storm Water Permits.

Non-Point Source – Refers to diffuse, widespread sources of Pollution. These sources may be large or small, but are generally numerous throughout a watershed. Non-point sources, include but are not limited to urban, agricultural or industrial area, roads, highways, construction sites, communities served by septic systems, recreational boating activities, timber harvesting, mining, livestock grazing, as well as physical changes to stream channels, and habitat degradation. Non-point source Pollution can occur year round any time rainfall, snowmelt, irrigation, or any other source of water runs over land or through the ground, picks up Pollutants from these numerous, diffuse sources and deposits them into rivers, lakes and coastal waters or introduces them into ground water.

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Non-storm Water – All discharges to and from a MS4 that do not originate from precipitation events (i.e., all discharges to a MS4 other than storm water). Non-storm Water includes Illicit Discharges, non-prohibited discharges and NPDES permitted discharges.

NOT - Notice of Termination – Formal notice to the Regional Board of intent to terminate water discharge for projects covered under a General Stormwater Permit.

NPDES [National Pollutant Discharge Elimination System] – Permits issued under Section 402(p) of the CWA for regulating discharge of Pollutants to Waters of the U.S.

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."

Numeric Effluent Limitations – A quantitative limitation on pollutant concentrations or levels to protect beneficial uses and water quality objectives of a water body.

Nurdles – A plastic pellet, also known as pre-production plastic pellet or plastic resin pellet.

NURP - National Urban Runoff Program

OES – The Governor's Office of Emergency Services, an agency of the State of California.

"Only Rain Down The Storm Drain" Pollution Prevention Program – County Urban Runoff public education program.

Open Space – Any parcel or area of land or water that is essentially unimproved or devoted to an open-space use for the purposes of (1) the preservation of natural resources, (2) the managed production of resources, (3) outdoor recreation, or (4) public health and safety. [Riverside County General Plan, adopted October 7, 2003. Technical Appendix A , Glossary]

Order – Order No. R8-2009-0033 (NPDES No. CAS618033)

Outfall – Means a Point Source as defined by 40 CFR 122.2 a, the point where a municipal separate storm sewer discharges to Waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, 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 States. [40 CFR 122.26 (b)(9)]

PAHs – Polycyclic aromatic hydrocarbons. PAHs occur in oil, coal, and tar deposits, and are produced as byproducts of fuel burning (whether fossil fuel or biomass). As a pollutant, they are

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Numeric Effluent Limitations – A method by which "Effluent Limitations," (see above), may be prescribed for Pollutants in Waste Discharge Requirements using concentration based criteria to implement the federal NPDES regulations. When Numeric Effluent Limits are met at the "end-of-pipe," the effluent discharge generally will not cause Water Quality Standards to be exceeded in the receiving waters (i.e., Water Quality Standards will also be met).¶
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of concern because some compounds have been identified as carcinogenic, mutagenic, and teratogenic. PAHs are also found in foods.

PCBs – Polychlorinated biphenyls. Due to PCB's toxicity and classification as persistent organic pollutants, PCB production was banned by the United States Congress in 1976 and by the Stockholm Convention on Persistent Organic Pollutants in 2001.

Permit Area – In the Santa Ana Region, the portion of the Santa Ana River watershed that is within the County and regulated under the MS4 Permit. The Permit Area is identified on Appendix 1 as "Permittee Urban Area" and those areas under the Permittee's jurisdictions designated as "Agriculture" and "Open Space" on Appendix 1 that will convert to Permittee Urban Area when developed to industrial, commercial, or residential use during the term of the Order.

Permittees – Co-Permittees and the Principal Permittee

Party – 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.

Pollutant – Broadly defined as 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.

Pollutants of Concern –Pollutants expected to be present on the project site. In developing this list, consideration should be given to the chemicals and potential Pollutants available for storm water to pick-up or transport to Receiving Waters and legacy Pollutants at the project site. Pollutants of Concern for New Development and Significant Redevelopment projects are those Pollutants identified above for which a downstream waterbody is also listed as Impaired under the CWA Section 303(d) list or by a TMDL.

Pollution – As defined in the Porter-Cologne Water Quality Control Act, Pollution is the alteration of the quality of the Waters of the U.S. by Waste, to a degree that unreasonably affects either of the following: A) the waters for Beneficial Uses (i.e., when the Water Quality Objectives have been violated); or B) facilities that serve these Beneficial Uses. Pollution may include Contamination.

Pollution Prevention –Defined as practices and processes that reduce or eliminate the generation of Pollutants, in contrast to source control, pollution control, treatment, or disposal.

Post-Construction BMPs – A subset of BMPs including Site Design, Source Control, and Treatment Control BMPs which detain, retain, filter or educate to prevent the release of Pollutants to surface waters during the final functional life of development.

POTW – [Publicly Owned Treatment Works] – Wastewater treatment facilities owned by a public agency.

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Principal Permittee – Riverside County Flood Control and Water Conservation District [RCFC&WCD].

Public Education Committee – Committee established by the Permittees to provide oversight and guidance for the implementation of the public education program.

QAPP - Quality Assurance Project Plan

Rainy Season – See Wet Season.

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RCFC&WCD – Riverside County Flood Control and Water Conservation District

Receiving Water(s) – Waters of the U.S. within the Permit Area.

Receiving Water Limitations – Requirements included in the Orders issued by the Regional Boards to assure that the regulated discharges do not violate Water Quality Standards established in the Basin Plan at the point of discharge to Waters of the U.S. Receiving Water Limitations are used to implement the requirement of CWA section 301(b)(1)(C) that NPDES permits must include any more stringent limitations necessary to meet Water Quality Standards.

Receiving Water Quality Objectives – Water Quality Objectives specified in the Basin Plan for Receiving Waters.

Region – The portion of the Santa Ana River watershed within Riverside County.

Regional Board – California Regional Water Quality Control Board, Santa Ana Region.

Riverside County – Territory within the geographical boundaries of the County.

ROWD [Report of Waste Discharge] – Application for issuance or re-issuance of WDRs.

Sanitary Sewer Overflow (SSO) – Any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system.

Santa Ana Region – Area under the jurisdiction of the Regional Board.

SARA – Superfund Amendments and Reauthorization Act. SARA amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) on October 17, 1986. SARA reflected USEPA's experience in administering the complex Superfund program during its first six years and made several important changes and additions to the program. SARA:

- stressed the importance of permanent remedies and innovative treatment technologies in cleaning up Hazardous Waste sites;
- required Superfund actions to consider the standards and requirements found in other State and Federal environmental laws and regulations;
- provided new enforcement authorities and settlement tools;
- increased State involvement in every phase of the Superfund program;
- increased the focus on human health problems posed by Hazardous Waste sites;

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- encouraged greater citizen participation in making decisions on how sites should be cleaned up; and
- increased the size of the trust fund to $8.5 billion.

SARA also required USEPA to revise the Hazard Ranking System (HRS) to ensure that it accurately assessed the relative degree of risk to human health and the environment posed by uncontrolled Hazardous Waste sites that may be placed on the National Priorities List (NPL).

SAWBAA – Santa Ana Watershed Benefit Assessment Area

SCCWRP – Southern California Coastal Water Research Project

Smart Growth Principles – Smart Growth refers to the use of creative strategies to develop ways that preserve natural lands and critical environmental areas, protect water and air quality, and reuse already-developed land.

Sediment – Soil, sand, and minerals washed from land into water. Sediment resulting from anthropogenic sources (i.e. human induced land disturbance activities) is considered a Pollutant. This Order regulates only the discharges of Sediment from anthropogenic sources and does not regulate naturally occurring sources of Sediment. Sediment may destroy fish-nesting areas, clog animal habitats, and cloud waters so that sunlight does not reach aquatic plants.

SIC [Standard Industrial Classification] – Four digit industry code, as defined by the US Department of Labor, Occupational Safety and Health Administration. The SIC Code is used to identify if a facility requires coverage under the General Industrial Activities Storm Water Permit.

Significant Redevelopment – As defined in Section XI.D.3.a.

Site Design BMPs – Any project design feature that reduces the creation or severity of potential pollutant sources or reduces the alteration of the project site's natural flow regime. Redevelopment projects that are undertaken to remove pollutant sources (such as existing surface parking lots and other impervious surfaces) or to reduce the need for new roads and other impervious surfaces (as compared to conventional or low-density new development) by incorporating higher densities and/or mixed land uses into the project design, are also considered site design BMPs

SMC - Storm Water Monitoring Coalition

Source Control BMPs – In general, activities or programs to educate the public or provide low cost non-physical solutions, as well as facility design or practices aimed to limit the contact between Pollutant sources and storm water or authorized Non-Storm Water. Examples include: activity schedules, prohibitions of practices, street sweeping, facility maintenance, detection and elimination of IC/IDs, and other non-structural measures. Facility design (structural) examples include providing attached lids to trash containers, canopies for fueling islands, secondary containment, or roof or awning over material and trash storage areas to prevent direct contact between water and Pollutants.

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Southern California Monitoring Coalition (SMC) - A regional group working to improve monitoring program design, parameter test methods, calibrate labs, evaluate the effectiveness of BMPs, and/or advance the science and understanding of Urban Runoff impacts on Receiving Waters.

SSMP – Sewer System Management Plan

SSO Order – Statewide General Waste Discharge Requirements for Sanitary Sewer Systems Water Quality Order No. 2006-0003-DWQ

State Board – California State Water Resources Control Board

Storm Water – Storm water runoff and snow melt runoff from urban, open space, and agricultural areas consisting only of those discharges that originate from precipitation events. Storm water is that portion of precipitation that flows across a surface to the MS4 or receiving waters. Examples of this phenomenon include: the water that flows off a building's roof when it rains (runoff from an impervious surface); the water that flows into streams when snow on the ground begins to melt (runoff from a semi-pervious surface); and the water that flows from a vegetated surface when rainfall is in excess of the rate at which it can infiltrate into the underlying soil (runoff from a pervious surface). When all other factors are equal, runoff increases as the perviousness of a surface decreases. During precipitation events in urban areas, rain water may pick up and transports Pollutants through storm water conveyance systems, and ultimately to Waters of the U.S.

Storm Water Ordinance – The Storm Water/Urban Runoff Management and Discharge Control Ordinances and ordinances addressing grading and erosion control adopted by each of the Co-Permittees.

Structural BMPs – Physical facilities or controls that may include secondary containment, treatment measures, (e.g. first flush diversion, detention/retention basins, and oil/grease separators), run-off controls (e.g., grass swales, infiltration trenches/basins, etc.), and engineering and design modification of existing structures.

Subdivision Map Act - Section 65000 et seq. of the California Government Code

SWAMP - Surface Water Ambient Monitoring Program

SWPPP [Storm Water Pollution Prevention Plan] – Plan required by the General Construction Permit to minimize and manage Pollutants to minimize Pollution from entering the MS4, identifying all potential sources of Pollution and describing planned practices to reduce Pollutants from discharging off the site.

SWQSTF – Storm Water Quality Standards Task Force

TDS – Total dissolved solids.

Technical Committee – A committee consisting of one or more representatives from each Permittee that provides technical direction on the development of the DAMP and the implementation of the overall Urban Runoff program.

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Technology-Based Effluent Limitations – A permit limit for a Pollutant that is based on the capability of a treatment method to reduce the Pollutant to a certain concentration.

TIN – Total Inorganic Nitrogen

TMDL [Total Maximum Daily Load] – 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.

TMDL Implementation Plan – Component of a TMDL that describes actions, including monitoring, needed to reduce Pollutant loadings and a timeline for implementation. TMDL Implmentation Plans can include a monitoring or modeling plan and milestones for measuring progress, plans for revising the TMDL if progress toward cleaning up the waters is not made, and the date by which Water Quality Standards will be met (USEPA Final TMDL Rule: Fulfilling the Goals of the CWA, EPA 841-F-00-008, July 2000).

Toxic Substance – A substance that can cause Toxicity.

Toxicity – Adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies.

Treatment Control BMPs – Any engineered system designed and constructed to remove Pollutants from Urban Runoff. Pollutant removal is achieved by simple gravity settling of particulate Pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

Tributary – a stream, river, or MS4 which flows into downstream receiving water, MS4 or BMP.

TSS – Total suspended solids.

Uncontaminated Pumped Groundwater – Groundwater that meets the surface Water Quality Objectives specified in the Basin Plan to which it is proposed to be discharged.

Urban Runoff – Urban Runoff includes those discharges from residential, commercial, industrial, and construction areas within the Permit Area and excludes discharges from Open Space[2], feedlots, dairies, farms, and agricultural fields. Urban Runoff discharges consist of storm water and non-storm water surface runoff from drainage sub-areas with various, often mixed, land uses within all of the hydrologic drainage areas that discharge into the Waters of the U.S. In addition to Urban Runoff, the MS4s regulated by this Order receive flows from Open Space, agricultural activities, agricultural fields state and federal properties and other non-urban land uses not under the control of the Permittees. The quality of the discharges from the MS4s varies considerably and is affected by, among other things, past and present land use activities, basin hydrology, geography and geology, season, the frequency and duration of storm events,

[2] This use of Open Space excludes Open Space integrated into urbanized areas such as pocket parks, landscaped medians, walking trails, etc. Open Space is intended to address essentially unimproved areas in strictly unurbanized settings.

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and the presence of past or present illegal and allowed disposal practices and Illicit Connections.

The Permittees lack legal jurisdiction over storm water discharges into their respective MS4 facilities from agricultural activities, California and federal facilities, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by or under the jurisdiction of the Regional Board. The Regional Board recognizes that the Permittees should not be held responsible for such facilities and/or discharges. Similarly, certain activities that generate Pollutants present in Urban Runoff are beyond the ability of the Permittees to eliminate. Examples of these include operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear, residues from lawful application of pesticides, nutrient runoff from agricultural activities, leaching of naturally occurring minerals from local geography. Urban Runoff does not include background Pollutant loads or naturally occurring flows.

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USEPA – United States Environmental Protection Agency

Waste – As defined in Water Code 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 that cannot be discharged directly or indirectly to waters 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.

Waste Discharge Requirements – As defined in Section 13374 of the California Water Code, the term "Waste Discharge Requirements" is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act, as amended. The Regional Board usually reserves reference to the term "permit" to Waste Discharge Requirements for discharges to surface Waters of the U.S.

Waste Load Allocations – Maximum quantity of pollutants a discharger of waste is allowed to release into a particular waterway, as set by a regulatory authority. Discharge limits usually are required for each specific water quality criterion being, or expected to be, violated. Distribution or assignment of TMDL pollutant loads to entities or sources for existing and future point sources.

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WQBEL – Water Quality Based Effluent Limitations

WLA – see Waste Load Allocations

Water Code – California Water Code

Waters of the U.S. – Waters of the U.S. can be broadly defined as navigable surface waters and all tributary surface waters to navigable surface waters. Groundwater is not considered to be a Waters of the U.S. As defined in 40 CFR 122.2, the Waters of the U.S. are defined as: (a)

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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 U.S. 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 U.S. 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 CWA, the final authority regarding CWA jurisdiction remains with the USEPA.

Water Quality Objectives – means the numeric or narrative limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area. [California Water Code Section 13050(h)]

Water Quality Standards –The water quality goals of a waterbody (or a portion of the waterbody) designating Beneficial Uses to be made of the water and the Water Quality Objectives or criteria necessary to protect those uses. These standards also include California's anti-degradation policy.

Watershed – That geographical area which drains to a specified point on a watercourse, usually a confluence of streams or rivers (also known as drainage area, catchments, or river basin).

Watershed Action Plan (WAP) – Integrated plans for managing a watershed that include consideration of water quality, hydromodification, water supply and habitat protection. The Watershed Action Plan integrates existing watershed based planning efforts and incorporates watershed tools to manage cumulative impacts of development on vulnerable streams, preserve structure and function of streams, and protect source, surface and groundwater quality and water supply in the permitted area. The Watershed Action Plan should integrate hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction.

WDID [Waste Discharge Identification] – Identification number provided by the State when a Notice of Intent is filed.

Wet Season – October 1 through May 31st of each year unless defined otherwise, in the specific applicable TMDL implementation plan. The Middle Santa Ana TMDL defines the wet season as November 1 through March 31st and the Canyon Lake/Lake Elsinore TMDL monitoring defines it as October 1st through May 31st.

Deleted: Water Quality Objectives – 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 Boards in the Water Quality Control Plans. As stated in the Porter-Cologne requirements for discharge (California Water Code 13263): "(Waste discharge) requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the Beneficial Uses to be protected, the water objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." 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 determined specifically to protect the Beneficial Uses, when the objectives are violated the Beneficial Uses are, by definition, no longer protected and become impaired. Equally fundamental is Porter Cologne's definition of Pollution. These underlying definitions (regarding beneficial use and Pollution) are the reason why all 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. ¶

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WQMP – Water Quality Management Plan as discussed in Section 6 of the DAMP.

WRCOG - Western Riverside Council of Government

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ATTACHMENT 5

State of California
California Regional Water Quality Control Board
Santa Ana Region

Monitoring and Reporting Program No. R8-2009-0033
NPDES No. CAS618033

for
Riverside County Flood Control and Water Conservation District,
The County of Riverside and the Cities of Riverside County
Within the Santa Ana Region
AREA-WIDE URBAN STORM WATER RUNOFF MANAGEMENT PROGRAM

TENTATIVE

I. OBJECTIVES

The overall goal of the urban storm water runoff monitoring program is to support the development of an effective urban storm water runoff management program. The following are the major objectives:

A. To identify those receiving waters, which, without additional action to control pollution from urban storm water runoff, cannot reasonably be expected to achieve or maintain applicable water quality standards required to sustain the designated beneficial uses, the goals, and the objectives of the Basin Plan.

B. To develop and support an effective MS4 management program.

C. To identify significant water quality problems, related to discharges of urban storm water runoff within the permitted area.

D. To determine water quality status, trends, and pollutants of concern associated with urban storm water runoff and their impact on the beneficial uses of the receiving waters.

E. To analyze and interpret the collected data to determine the impact of urban storm water runoff and/or validate relevant water quality models.

F. To characterize pollutants associated with urban storm water runoff, and to assess the influence of urban land uses on receiving water quality and associated beneficial uses.

G. To identify other sources of pollutants in urban storm water runoff to the maximum extent possible (e.g., including, but not limited to, atmospheric deposition, contaminated sediments, other non-point sources, etc.)

H. To identify and permit or prohibit illicit connections.

I. To identify, verify and prohibit illegal discharges.

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J. To verify and to identify sources of Urban Runoff pollutants.

K. To evaluate the effectiveness of the DAMP and WQMPs, including an estimate of pollutant reductions achieved by the site design (LID), treatment and source control BMPs implemented by the Permittees.

L. To evaluate the effectiveness of proposed urban storm water runoff management programs to protect receiving water quality.

II. GENERAL MONITORING PROVISIONS

A. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. All sample collection, handling, storage, and analysis shall be in accordance with test procedures under 40 CFR Part 136 (latest edition) "*Guidelines Establishing Test Procedures for the Analysis of Pollutants*," promulgated by the USEPA, the guidance being developed by the State Board pursuant to Water Code Section 13383.5, or other methods which are more sensitive than those specified in 40 CFR 136 and approved by the Executive Officer. For priority toxic pollutants that are identified in the California Toxics Rule (CTR) (65 Fed. Reg. 31682), 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) shall be used for all analyses, unless otherwise specified.

For priority toxic pollutants, if the Permittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR 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 Principal Permittee must submit documentation from the laboratory to the Regional Water Board Executive Officer for approval prior to raising the ML for any constituent.

B. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by an appropriate governmental regulatory agency.

C. Analytical methods, target reporting limits and data reporting formats shall be compatible with California's Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Management Plan and with SWAMP's Procedures for Conducting Routine Field Measurement unless otherwise specified in this Monitoring and Reporting Program.

D. Revisions of this monitoring and reporting program (MRP) are appropriate to ensure that the Permittees are in compliance with requirements and provisions contained in this Order. Revisions may be made under the direction of the Executive Officer at any time during the term of the Order, and may include redistribution of monitoring resources to address TMDL needs, a reduction or

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increase in the number of parameters to be monitored, the frequency of monitoring, or the number and size of samples collected.

E. The Executive Officer is authorized to allow the Permittees to participate in regional, statewide, national, or other monitoring programs in addition to or as part of this Urban Runoff monitoring program. Also, the Permittees are authorized to complement their Urban Runoff monitoring data with data from other monitoring sources, provided the monitoring conditions and sources are similar to those in the Santa Ana River watershed.

F. 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 Order shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two 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 four years, or both [40 CFR 122.41(j)(5)].

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III. MONITORING PROGRAM

A. The Principal Permittee has been monitoring Urban Runoff and receiving waters since the first MS4 permit term. The Principal Permittee currently implements the Consolidated Monitoring Program (CMP) and participates in a number of other storm water or TMDL related monitoring programs such as: TMDL Bacterial and Nutrient Monitoring, WLA Compliance, BMP Effectiveness, Urban Source and Trend Evaluation, Receiving Water Quality, Hydromodification and Bioassessment. The Principal Permittee shall continue to implement the CMP and continue to participate in other related monitoring programs.

B. The Principal Permittee, on behalf of the Co-Permittees, participates (through a memorandum of understanding and cooperative agreements) with the 16 member agencies of the Storm Water Monitoring Coalition (SMC). The Permittees shall continue to cooperate with other MS4 permittees (including Orange County and San Bernardino County), Southern California Coastal Water Research Project (SCCWRP), POTW operators, the dairy industry, the Santa Ana Watershed Project Authority (SAWPA), and other public and private organizations in the watershed to develop coordinated surface water quality monitoring programs, databases, and special studies as appropriate. The Regional Board supports continued coordination with SCCWRP and the SMC to facilitate and implement coordinated watershed based monitoring programs. The Permittees may use coordinated monitoring efforts such as the Middle Santa Ana and Lake Elsinore TMDL Task Forces, SCCWRP and SMC regional monitoring programs to address partially, or in full, the requirements of this Monitoring and

TENTATIVE

Reporting Program. A proposed coordinated monitoring program shall result in the development and implementation of a monitoring plan that:

1. Fully addresses the requirements of this Monitoring and Reporting Program;

2. Describes how the external monitoring programs address the requirements of the Monitoring and Reporting Program;

3. Include a quality assurance plan , including data management, validation, verification mechanism for the portions of the monitoring directly conducted by the Permittees;

4. Reference the locations of the quality assurance plans for regional components; and

5. Result in a coordinated annual report summarizing the pertinent Urban Runoff data from the coordinated programs necessary to address this Monitoring and Reporting Program.

C. Within 12 months of adoption of this Order, the Permittees shall review the CMP, Regional and TMDL related monitoring programs that they conduct or participate to determine their effectiveness in achieving the Urban Runoff assessment requirements contained in Section IV.B, below. .If this review indicates any data gaps, the Principal Permittee shall submit a revised CMP, or coordinate revisions to other regional programs for approval of the Executive Officer to ensure that the combined efforts adequately address the requirements of Section IV.B. The revised CMP, including a description of how other regional efforts combine with the CMP to address requirements of Section IV.B shall be submitted within 16 months of adoption of this Order and shall be implemented within six months of its approval by the Executive Officer.

D. Pending approval of the revised CMP, current monitoring efforts will continue to be implemented, as summarized in Table 1 below.

Table 1 Current Core Monitoring Stations

Station Number	Class	Station Description	Latitude	Longitude
40	Outfall	Corona Storm Drain – Line K Harrison & Sheridan St.	33.885	-117.568611
316	Outfall	Sunnymead Chanel – Line B Alessandro & Heacock	33.917778	-117.242222
318	Outfall	Hemet Channel @ Sanderson Ave.	33.734167	-117.005556
364	Outfall	Magnolia Center – SD @ Santa Ana River	33.964722	-117.414444
702	Outfall	University Wash – Market & Bowling Green	33.9975	-117.370833
707	Outfall	North Norco Channel @ Country Club Lane	33.907778	-117.583889
752	Outfall	Perris Line J - Sunset Ave below Murrieta Rd.	33.803333	-117.2075

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E. TMDL/303(d) Listed Waterbody Monitoring: The Permittees identified as dischargers in adopted TMDLs shall continue to participate in TMDL monitoring programs as required by TMDL Implementation Plans. The compliance schedules for the two approved TMDLs within the permitted area are beyond the five year permit term. This Order requires Permittees identified as dischargers in their respective TDMLs to conduct monitoring required by the TMDL Implementation Plans to determine the effectiveness of the BMPs implemented in reducing pollutant loads and eventually to attain WLA by the deadlines specified in the respective TMDL implementation plans.

F. In addition, any requirements developed by the State Board in accordance with Water Code Section 13383.5 shall be considered during any revision of the CMP. The revised CMP shall, at a minimum, include the following:

1. Mass Emissions Monitoring – Core Stations:

   a. An estimate of flow in cubic feet per second (cfs) from the outfall/stream at the time of sampling.

   b. Monitor mass emissions in urban storm water runoff to:

      i) Estimate the total mass emissions from the MS4s to receiving waters.

      ii) Assess trends in mass emissions associated with specific urban storm water discharges from their MS4s over time; and

      iii) Determine if urban storm water runoff is contributing to exceedances of water quality objectives or beneficial uses in receiving waters by comparing results to Basin Plan water quality objectives.

      iv) Representative samples from the first sampleable storm event (based on mobilization criteria to be established in the CMP) of the rainy season (October 1 to May 31) and two more storm events shall be collected during the rainy season. A minimum of two dry-weather samples shall also be collected. Samples from the first sampleable storm event each year shall be analyzed for constituents according to the list provided in the 2007-2008 Santa Ana Region Monitoring Annual Report, Attachment A. This list includes 40 CFR 122 Appendix D Tables II and III, and Tables IV and V if expected to be present, and additional constituents. All samples shall be analyzed for *E. coli*, nutrients (Nitrates + Nitrites, potassium, and phosphorous), hardness[2], metals, pH, TSS, TOC, pesticides/herbicides, and pollutants/stressors for 303(d) listed receiving waters. Dry weather samples should also include analyses for TPH (8015M – direct injection) and oil and grease. The analyte list will be reviewed annually. Constituents may be added to the list for a selected monitoring station if they are expected to be present, and removed from the list if three consecutive samples from the station have not had detectable concentrations of the constituent.

[2] Hardness is necessary to evaluate some metal objectives in receiving waters.

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2. Water Column Toxicity Monitoring: Analyses for toxicity to aquatic species shall be performed on receiving water samples to determine the impacts of urban storm water runoff on toxicity of receiving waters. The *Ceriodaphnia dubia* survival (acute), Fathead Minnow larval survival (acute), and Selenastrum Capricornutum growth (chronic) tests shall be used to evaluate toxicity on the sample from the first sampleable storm event, plus one other wet weather sample. Where applicable, two dry weather samples shall also be collected or equivalent procedures shall be proposed in the CMP. In addition, criteria shall be identified which will trigger the initiation of Toxicity Identification Evaluations (TIEs) and Toxicity Reduction Evaluations (TREs).

   To the extent that the toxicity testing developed as part of the Regional Bioassessment Monitoring described in item 5 and Section D below, or other standardized toxicity testing protocols developed by the SWRCB, RWQCB, SMC or SCCWRP, satisfies the objective of determining the impact of Urban Runoff on toxicity of receiving waters, the Permittees may satisfy this requirement by participating in the regional bioassessment effort or conducting toxicity testing consistent with the standardized protocols.

3. Illicit Connection/Illegal Discharge (IC/ID) Monitoring: The Permittees shall review and update their dry and wet weather reconnaissance strategies to identify and eliminate illegal discharges and illicit connections using the Guidance Manual for Illicit Discharge, Detection, and Elimination developed by the Center for Watershed Protection[3] or any other equivalent program. Where possible, the use of GIS to identify geographic areas with a high density of industries associated with gross pollution (e.g. electroplating industries, auto dismantlers) and/or locations subject to maximum sediment loss (e.g. new development) may be used to determine areas for intensive monitoring efforts.

   The dry weather monitoring for nitrogen and total dissolved solids shall be used to establish a baseline dry weather flow concentration for TDS and TIN at each Core monitoring location.

4. Sources of Data: Where possible and applicable, data shall be obtained from monitoring efforts of other public or private agencies/entities (e.g., Caltrans).

5. Bioassessment: In lieu of developing an independent bioassessment program as required in the prior term permit, the Principal Permittee, on behalf of the Co-Permittees, participates (through a memorandum of understanding and cooperative agreements) with the 16 member agencies of the Storm Water Monitoring Coalition (SMC). The SMC's Bioassessment Working Group conducts bioassessments on a regional basis. The Principal Permittee in coordination with SCCWRP shall ensure that a sufficient number of monitoring stations are selected for this program from locations within the permitted area.

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[3] USEPA (Illicit Discharge Detection and Elimination - A Guidance Manual for Program Development and Technical Assessments) by the Center for Watershed Protection and Robert Pitt, University of Alabama, October 2004, updated 2005).

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a. The Principal Permittee, in collaboration with the SMC, shall conduct sampling, analysis, and reporting of specified in-stream biological and habitat data within the 5-year permit cycle according to the protocols specified in the SCCWRP Tech Report No. 539.

b. Within the Riverside County , the bioassessment project area consists of the lower half of the Middle Santa Ana River Watershed, the San Jacinto Watershed, and the northern Santa Margarita Watershed (northern San Diego) for a total of 1.5 watershed units, a minimum of 9 samples shall be collected per year[4]. Within Riverside County's Santa Ana and San Jacinto Watersheds, which are permitted areas of this Order, the Permittees shall sample 5 sites per year. SWAMP samples 2 sites per year.

c. For long-term trend monitoring, the Principal Permittee shall collect a minimum of 1 sample per year during the dry weather index period, as noted in the SCCWRP Tech Report No. 539. Additional samples may be collected to improve data quality for trend analysis. At a minimum, chemistry and aquatic toxicity should be used as indicators for trend analysis.

d. Any baseline and historic information on stream geomorphology and ecological health, including aquatic habitats, in the receiving waters and the findings from the trend analysis shall be used to evaluate the effectiveness of urban storm water management program, including the requirements specified in the Order.

6. A Quality Assurance Program Plan within the CMP that describes how data will be collected and analyzed to ensure that data is consistent with State and Regional Board monitoring programs and is of high quality. Dischargers shall develop a Quality Assurance Program Plan (QAPP) that is compatible with the State's Surface Water Ambient Monitoring Program (SWAMP) QAPP and approved by the Regional Board's Quality Assurance Officer. A QAPP template is available, upon request, through the State Water Resources Control Board's SWAMP website (http://www.waterboards.ca.gov/water_issues/programs/swamp/qapp.shtml). All analytical methods, target reporting limits, and data reporting formats should be SWAMP compatible unless otherwise specified in this Monitoring and Reporting Program. The QAPP will include location of sample site(s), description of analytical techniques, data quality objectives, and other standard quality assurance information.

7. A procedure for the collection, analysis, and interpretation of existing data from local, regional or national monitoring programs. These data sources may be utilized to:

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[4] See Table 4 page 15 of Technical Report No.539.

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a. Characterize different sources of pollutants discharged to the MS4;

b. Determine pollutant generation, transport and fate;

c. Develop a relationship between land use, development size, storm size and the event mean concentration of pollutants;

d. Determine spatial and temporal variances in urban storm water runoff quality and seasonal and other bias in the collected data; and

e. Identify any unique features of the permitted area.

f. The Permittees are encouraged to use data from similar studies, if available.

8. The CMP update shall include descriptions of:

a. The number of monitoring stations;

b. Monitoring locations within MS4s, major outfalls, and receiving waters; environmental indicators (e.g., ecosystem, flow, biological, habitat, chemical, sediment, stream health, etc.) chosen for monitoring;

c. Total number of samples to be collected from each station, frequency of sampling during wet and dry weather, short duration or long duration storm events, type of samples (grab, 24-hour composite, etc.), justification for composite versus discrete sampling, type of sampling equipment, quality assurance/quality control procedures followed during sampling and analysis, analysis protocols to be followed (including sample preparation and maximum reporting limits), and qualifications of laboratories performing analyses;

d. A procedure for analyzing the collected data and interpreting the results. This procedure shall include the evaluation of the effectiveness of the management practices, a comparative analysis of the Permittees' monitoring data to the USEPA Multi-Sector Permit Parameter Benchmark Values and applicable water quality objectives specified in Chapter 4 of the Basin Plan, and the need for any refinement of the WQMPs, the DAMP and or/the LIPs.

e. Parameters selected for field screening and for laboratory work; and

f. A description of the responsibilities of all the participants in this program, including cost sharing.

G. REGIONAL WATERSHED MONITORING

1. The objectives of the Regional Watershed Monitoring Program overseen by the State Board's Storm Water Ambient Monitoring Program (SWAMP) and the Storm Water Monitoring Coalition (SMC) and coordinated by the Southern California Coastal Water Research Project (SCCWRP) are:

a. To assess the current status of streams in Southern California.

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b. To identify major stressors to aquatic life.

c. To monitor the trend in water quality in Southern California streams.

2. The bioassessment discussed above, should provide information about the biological, chemical and toxicological integrity of receiving waters. Baseline and trend monitoring information on the biotic and geomorphological condition of the receiving waters should be used to evaluate the effectiveness of the Urban Runoff pollution control measures.

3. The Riverside County Regional Watershed monitoring area is within the lower half of the Middle Santa Ana River Watershed, the San Jacinto Watershed, and the northern Santa Margarita watershed (northern San Diego) for a total of 1.5 watershed units[5]. Within Riverside County's Santa Ana and San Jacinto Watersheds, the Permittees sample 5 sites per year. SWAMP samples 2 sites per year..

4. The sampling sites in each watershed unit were determined according to distribution or abundance of the three land uses: urban, agriculture, or open. The sampling grid includes 15 watershed units located from Ventura to San Diego and as far east as San Bernardino and Riverside Counties. A total of 450 samples in the 15 watershed units will be collected within a five year period to assess the spatial extent of impacts to streams within the area. Samples will be collected at sites representing each of the three land use types. Each site will be sampled only once during an index period and not all sites need to be sampled during the same year. One-fifth of the samples (90 samples) will be collected each year for the 15 watersheds. Sampling events shall be conducted between 4 to 12 weeks following the last significant rainfall. No sampling shall occur within 72 hours of any measurable rainfall. The default index period will be from May 15 to July 15. The specifics and details of the Regional Watershed Program are discussed in "The Regional Monitoring of Southern California's Watershed SMC Bioassessment Working Group", SCCWRP, Technical Report No. 539, December 2007 (The Tech Report).

5. Any baseline and historic information on stream geomorphology and ecological health, including aquatic habitats, in the receiving waters and the findings from the trend analysis shall be used to evaluate the effectiveness of Urban Runoff management program, including the requirements specified in the Order.

H. HYDROMODIFICATION MONITORING PROGRAM

[5] See Table 4 page 15 of Technical Report No.539.

TENTATIVE

This Order requires development and implementation of a hydromodification monitoring plan as part of the Watershed Action Plan to evaluate the effectiveness of hydromodification controls implemented within the permitted area (The following requirements may be satisfied by the Permittees participation in the "Development of Tools for Hydromodification Assessment and Management' Project" undertaken by the SMC and coordinated by SCCWRP and follow on efforts to develop hydromodification monitoring guidance).

1. The hydromodification monitoring program shall include:
   a. Protocols for assessing the effectiveness of hydromodification management within the permitted area.

   b. Methods to predict the effects of urbanization on stream stability within the permitted area.

I. LOW IMPACT DEVELOPMENT BMP MONITORING

The Principal Permittee shall continue to participate in data collection and monitoring to assess the effectiveness of low impact development techniques in semi-arid climate as part of the SMC project titled, "Quantifying the Effectiveness of Site Design/ Low Impact Development Best Management Practices in Southern California". The Principal Permittee is also developing a regional LID BMP testing and demonstration facility at the main office that meets the intent of this requirement (currently the facility data is intended to be integrated into the SMC project).

IV. RECORD KEEPING REQUIREMENTS

A. All monitoring activities shall meet the following requirements:

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity [40 CFR 122.41(j)(1)].

2. The Permittees shall retain records of all monitoring information, including all calibration and maintenance of monitoring instrumentation, copies of all reports prepared as per this MRP and records of all data used to complete the Report of Waste Discharge and annual reports for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the Regional Board or USEPA at any time and shall be extended during the course of any unresolved litigation regarding this discharge [40 CFR 122.41(j)(2), CWC section 13383(a)].

3. Records of monitoring information shall include [40 CFR 122.41(j)(3)]:

Deleted: <#>The Order requires the Permittees to revise the DAMP to incorporate Watershed Action Plan principles within three years of adoption of the Order. The hydromodification requirements require the permittees to identify vulnerable streams and possible control measures to minimize hydrologic impacts and tools to measure any impacts on geomorphology and aquatic resources. ¶

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a. The date, exact place, and time of sampling or measurements;
b. The individual(s) who performed the sampling or measurements;
c. The date(s) analyses were performed;
d. The individual(s) who performed the analyses;
e. The analytical techniques or methods used; and
f. The results of such analyses.

4. Calculations for all effluent limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this MRP [40 CFR 122.41(l)(4)(iii)].

G.

B. PROGRAM EFFECTIVENESS ASSESSMENT AND REPORTING

1. All progress reports and proposed strategies and plans required by this Order shall be signed by the Principal Permittee, and copies shall be submitted to the Executive Officer under penalty of perjury.

2. The Permittees shall submit an annual report to the Executive Officer and to the Regional Administrator of the USEPA, Region 9, no later than November 30th, of each year. This progress report shall also be submitted in a mutually agreeable electronic format that is text searchable. Any monitoring data shall also be submitted electronically in the form outlined in Section IV.B.4 of this Monitoring and Reporting Program. At a minimum, the annual report shall include the following:

   a. A review of the status of program implementation and compliance (or non-compliance) with the schedules contained in this Order;

   b. An assessment of the effectiveness of control measures established under the illegal discharge elimination program and the DAMP. The effectiveness may be measured in terms of how successful the program has been in eliminating IC/IDs and/or reducing pollutant loads in urban storm water runoff, including summaries of Permittee actions to investigate and eliminate or permit IC/IDs and measures to reduce and/or eliminate the discharge of pollutants, including trash and debris

Moved up [4]: <#>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 Order shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two 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 four years, or both [40 CFR 122.41(j)(5)].

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Moved up [3]: All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by an appropriate governmental regulatory agency. ¶

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Moved up [2]: For priority toxic pollutants, if the Permittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR 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 Principal Permittee must submit documentation from the laboratory to the Regional Water Board Executive Officer for approval prior to raising the ML for any constituent.¶
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c. As assessment of control measures and their effectiveness in addressing pollutants causing or contributing to an exceedance of water quality objectives in receiving waters that are on the 303(d) list of impaired waters. The effectiveness evaluation shall consider changes in land use and population on the quality of receiving waters and the impact of development on sediment loading within sediment impaired receiving waters and recommend necessary changes to program implementation and monitoring needs.

d. An assessment of the Permittees compliance status with the Receiving Waters Limitations, Section VII of this Order, including any proposed modifications to the DAMP if the Receiving Water Limitations are not fully achieved.

e. An overall program assessment. The Permittees are encouraged to use the program assessment methodology described in the 2006 ROWD. The Permittees should determine, to the extent practicable, water quality improvements and pollutant load reductions resulting from implementation of various program elements. The Permittees may also use the "Municipal Storm Water Program Effectiveness Assessment Guidance" developed by the California Storm Water Quality Association in May 2007 as guidance for assessing program effectiveness at various outcome levels. The assessment should include each program element required under this Order, the expected outcome and the measures used to assess the outcome. The Permittees may propose any other methodology for program assessment using measurable targeted outcomes.

f. Description of program modifications and improvements identified during the program assessment above along with implementation schedule for incorporation of relevant revisions into the local implementation plans (LIPs).

g. An assessment of any modifications to the WQMPs, or the DAMP made to comply with CWA requirements to reduce the discharge of pollutants to the MEP;

h. A summary, evaluation, and discussion of monitoring results from the previous year and any changes to the monitoring program to be made the following year;

i. A fiscal resources analysis progress report as described in Section XVII.B of Order No. R8-2009-0033 including:

   i. Each Permittee's expenditures for the previous fiscal year;

   ii. Each Permittee's budget for the current fiscal year; and

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Deleted: and determine their effectiveness in attaining receiving water quality standards. This determination must include a comparative analysis of monitoring data to the applicable water quality objectives for receiving waters as specified in Chapter 4 of the Basin Plan. If the Receiving Water Limitations are not fully achieved, the Permittees must comply

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iii. A description of the source of funds.

j. A draft work plan that describes the proposed implementation of the LIPs and DAMP for next fiscal year. The work plan shall include clearly defined tasks, responsibilities, and schedules for implementation of the storm water program and each Permittee's actions for the next fiscal year;

k. Major changes in any previously submitted plans/policies;

l. If the Implementation Agreement is revised, a copy of the signature page and revisions to the Implementation Agreement.

m. A review of each Permittee's Storm Water Ordinances and their enforcement practices to assess their effectiveness in prohibiting non-exempt, non-storm water discharges to the MS4 (The Permittees may propose appropriate control measures in lieu of prohibiting these discharges, where the Permittees are responsible for ensuring that dischargers adequately maintain those control measures).

3. The Co-Permittees shall be responsible for the submittal of all required information/materials needed to comply with this order in a timely manner to the Principal Permittee. A duly authorized representative of the Co-Permittee under penalty of perjury shall sign all such submittals.

4. The monitoring data transmittals to the Regional Board shall be in the form developed by the Storm Water Monitoring Coalition (SMC) and approved by the State Water Resources Control Board in the document entitled "Standardized Data Exchange Formats". This document was developed in order to provide a standard format for all data transfer so that data can be universally shared and evaluated from various programs.

TENTATIVE

V. REPORTING SCHEDULE

Comment [JEU1]: Please note that revisions to the schedule are contained in Attachment 8 of this Comment Letter

All reports required by this Order shall be submitted to the Executive Officer in accordance with the following schedule:

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
III.A.1.e III.B.3.a,d,e & XVII.D.		Management Steering Committee meetings to discuss MS4 Permit implementation	Held at least twice per year.	
III.A.1.f III.B.3.a,d,e & XVII.D.		Permittee Technical Committee meetings to discuss permit implementation	Held at least 10 times each year	
III.B.3.a,d,e & XVII.D.		Co-Permittees participate in Management Steering and Technical Committee meetings to discuss MS4 Permit implementation	Attend at least 1 out of 2 Management and 8 out of 10 Technical meetings each year	
III.A.1.r		The Principal Permittee shall develop a library of BMP performance reports, and revise the BMP performance report annually thereafter.	Within 6 months of permit adoption	
III.A.1.s		The Principal Permittee shall coordinate a review of area-wide documents with the co-permittees to determine the need for update or revisions and establish a schedule for those revisions.	Within 6 months of permit adoption	
III.B.2.g		Submit up-to-date MS4 facility maps	Annually to Principal Permittee	In Annual Report
III.B.2.h		Submit reports & information for Annual Report	Annually to Principal Permittee	In Annual Report
III.C.		Evaluate Urban Runoff Management structure and Implementation Agreement annually to determine need for revision.	Annually	Report findings and schedule for revisions to the Implementation Agreement in Annual Report.
IV.A.		Principal Permittee shall develop and maintain a LIP Template	Within 12 months of adoption of Order and update annually thereafter.	
IV.B.		Complete a Co-Permittee specific LIP	Within 6 months of approval of the Template	Within 6 months of approval of the Template

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
IV.E.		Implement approved BMPs and update LIP	Within 90 days of approval of plan req'd in VII.D.2.	
IV.F.		Prepare a Co-Permittee specific LIP	Within 18 months of Order adoption.	
VI.C.1.b.		Comply with WLA for Dry Weather bacterial indicators in MSA River	Dec. 31, 2015.	
VI.C.1.c.		Comply with WLA for Wet Weather bacterial indicators in MSA River	Dec. 31, 2025.	
VI.C.1.d. iv.		Submit Tri-annual data summary and compliance evaluation report	February 15, 2010 and every 3 years thereafter.	
VI.C.2..b.		Submit Phase 2 Alternatives	December 31, 2010	
		Submit O&M for Agreement for Fishery Management Program	December 31, 2010	
		Submit O&M for Agreement for Aeration and Mixing Systems	December 31, 2010	
		Submit Phase 2 Projects Plans	June 30, 2011	
		Complete Phase 2 Project Implementation	December 31, 2014	
		Implement in-lake and watershed monitoring programs	Annual reports due August 31 every year.	
VI.C.2.c.		In-lake Processes Evaluation Study	December 31, 2008	
		Linkage Analysis Study	December 31, 2009	
		Watershed Source Loading Study	August 31, 2010	
		Model Evaluation	December 31, 2010	
		Construct/Calibrate Model	June 30, 2011	
		Conduct Model Scenarios	August 31, 2011	
		Model Update Final Report	November 30, 2011	
VI.C.2.d.		Conduct Feasibility analysis and ID Pollutant Trading Framework	March 2012	
		Create and Adopt Program Protocols and Program Implementation	August 2012	
		Submit Pollutant Trading Program	November 30, 2012	

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
VII.D.1		Notify Regional Board if Section VI.A. discharges from MS4 causes exceedance of Receiving Water Quality Objectives.	---	2 working days verbal or email notice and 30 days written from time of becoming aware of the situation.
VII.D.2		Submit modified report required under VI.D.1		30 calendar days following receipt of written notice to modify report.
VII.D.3		Report any exceedance solely due to discharges outside the Permittees jurisdiction.	Within two (2) working days of becoming aware of the situation, provide oral or e-mail notice and provide written documentation within ten (10) calendar days of becoming aware of the situation.	
VII.D.4		Modify DAMP, LIP, and MRP to address Receiving Water Limit Violations and implementation schedule.	---	60 days after approval of Subsection VI.D.1 report by Executive Officer
VII.D.5		Report discovery of exceedances of Receiving Water Standards from non-jurisdictional sources.	---	Oral or email notice within 2 working days of becoming aware of situation and written documentation within 10 days from time of becoming aware of the situation.
VIII.D.		Promulgate ordinances that would specify BMPs for known pathogen or bacterial indicator sources	Within 2 years of adoption	
VIII.H.		Review of the effectiveness of ordinances and associated enforcement programs in prohibiting illicit connections/illegal discharges to the MS4s		Annually
VIII. J.		Certification statement, signed by the Chief legal counsel, that the permittee has obtained all necessary legal authority		One year after Order adoption

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
VIII. K.		Permittees shall review adequacy of their ordinances, implementation and enforcement response procedures to properly manage, reduce and mitigate potential pollution sources within each Permittee's jurisdiction.		Annually
IX. A.		Eliminate or permit IC/IDs		60 calendar days from receipt of notice from a third party.
IX..C		Review and revise IC/ID program	One year after Order adoption	Annual Report, one year after Order adoption
IX..D.		Prepare a focused outfall reconnaissance inventory	50% completed within three years after Order adoption. 100% by end of permit term.	Status of progress annually
IX. .G.		Annually review and evaluate their IC/ID or IDDE program to determine if progress is being made.		Annually
IX..M.		Control the contribution of pollutants from its MS4 systems prior to connecting to privately owned or maintained stormwater conveyance systems.	Within 12 months of Order adoption.	One year after Order adoption
IX..M.,		Investigate spills, leaks, and/or IDs.	Immediately if notified by Permittee staff or within 24 hours of receipt of notice from third party.	Annually
X.D.		Review and revise, as needed, the Sanitary Sewer Overflow Unified Response Plan developed during the previous permit term to control and mitigate sanitary sewer overflows in the permit area.	Within 12 months of Order adoption.	One year after Order adoption

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
X.G.		Develop an inventory of septic systems within its jurisdiction to promote compliance with Assembly Bill 885 and implementing regulations[6] regarding onsite waste water treatment systems.	Within 2 years of Order adoption,	2011-2012 Annual report.
XI.A.1. & XI.A 2.		Submit a sortable electronic database of all construction, industrial, and commercial facilities within their jurisdiction that have a reasonable potential to discharge pollutants.	Starting 6 months after Order adoption. Updated at least quarterly.	Annually
XI.A.5.		Report of storm water related information gathered during site inspections of industrial, commercial, and construction sites.	Within 24 months after Order adoption	Available through an internet accessible database.
XI.A.10.		Each Permittee shall document, evaluate and annually report the effectiveness of its enforcement procedures in achieving prompt and timely compliance.		Annually
XI.B.1. & XI.B.4.		An inventory and inspection frequency of: Wet Season(Oct 1 – May 31): High = 1/mo., Med = 2/season, low = 1/season Dry Season: All construction sites shall be inspected at a frequency sufficient to ensure that sediment and other pollutants are properly controlled and that unauthorized, non-storm water discharges are prevented		Annually

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[6] **http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/**

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XI.C.2. & XI.C.3		All high priority industrial facilities are to be inspected at least once a year; all medium priority sites are to be inspected at least once every two years; and all low priority sites are to be inspected at least once per permit cycle.		Annually
XI.D.1. & XI.D.4		All high priority sites shall be inspected at least a year; all medium priority sites shall be inspected at least every two years; and all low priority sites shall be inspected at least once per permit cycle.		Annually
XI.D.6		Notify all mobile businesses operating within the County concerning the minimum source control and pollution prevention measures that they must develop and implement.	Within 12 months of adoption of this Order	Annually
XI.D.7		The Principal Permittee shall develop an enforcement strategy to address mobile businesses.	Within 12 months of adoption of this Order	Annually
XI.E.1		Each Permittee shall develop and implement a residential program to reduce the discharge of pollutants from residential facilities to the MS4s to the maximum extent practicable	Within 12 months of adoption of this Order	Annually
XII.B.2.		The Principal Permittee shall facilitate the formation of a technical advisory committee (TAC)	Within 6 months of adoption of this Order	Annually
XII.B.3.		The Principal Permittee shall submit to the Regional Board a Watershed Action Plan	Within 12 months of formation of TAC.	Annually
XII.C.1.		Each Permittee shall review the watershed protection principles and policies in its General Plan	Within 12 months of adoption of this Order	Annually

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XII.C.4.		Shall incorporate information into its LIP and its project approval process specified in this Section.	Within 18 months of adoption of this Order	2010-2011 Annual Report.
XII.D.1& 2.		Submit a list of project categories that Permittees have ministerial or discretionary approval authority (specify which authority).	12 months of Order adoption	
XII.D.7.		Develop recommendations for streamlining regulatory agency approval of regional treatment control BMPs.	Within 12 months of adoption of this Order	Annually
XII.E.1		Principal Permittee shall update the WQMP to incorporate LID principles,	12 months of Order adoption	
		Implement the updated WQMP.	Within six months of WQMP approval.	
XII.F.1		All waivers, along with documentation justifying the issuance of the waiver, shall be submitted to Regional Board staff in writing		Within thirty (30) calendar days of issuance of the waiver.
		Develop technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs	Within 12 months of adoption of this Order	2010-2011 Annual Report.
XII.E.4		Each Permittee shall identify barriers to low impact development implementation and revise ordinances, codes, building and landscape design standards to promote green infrastructure/low impact development implementation.	Within 12 months of adoption of this Order	2010-2011 Annual Report.
XII.G.		Each Permittee shall develop and implement standard procedures and tools, and include in its LIP.	Within 6 months of adoption of this Order	Annually
XII.J.3.		The Permittees shall develop a database to track operation and maintenance of post-construction BMPs.		Annually

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XII.J.4		Structural treatment control BMPs, shall be inspected prior to the rainy season.	Within 12 months of adoption of this Order All public agency and 25% of priority dev. Proj. 100% within 4 years.	Annually
XII.K.		Provisions for LID and hydrologic conditions of concern included in WQMP.	Within 90 days of Order adoption, unless WQMP approved prior to Order adoption.	
XIII.A.		Review public education and outreach efforts and revise their activities to adapt to the needs identified in the annual reassessment.		Annually
XIII.F.		The Permittees shall develop, maintain and distribute BMP guidance for the control of those potentially polluting activities identified during the previous permit cycle, which are not otherwise regulated by any agency, including guidelines for the household use of fertilizers, pesticides, herbicides and other chemicals, and guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting.	Within 12 months of adoption of this Order	Annually
XIII.J.		The Public Education Committee shall meet at least twice per year.		Annually
XIII.K..		Sponsor or staff an Urban Runoff table or booth at community, regional, and/or countywide events to distribute public education materials to the public. Each Permittee shall participate in at least one event per year.		Annually
XIII.L.		Involve public agency organizations, listed in Appendix 2, in Urban Runoff program. Notify the Regional Board of non-compliance.		Annually

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XIV.A.		Review activities and facilities to determine the need for revisions to Section 5 of the DAMP and LIP.	July 1st each year.	Annually
XIIV.B.		Each Permittee shall review its inventory of fixed facilities listed in the DAMP, its field operations and drainage facilities to ensure that public agency facilities and activities do not cause or contribute to a pollution or nuisance in receiving waters.	Within 12 months of adoption of this Order	Annually
XIV.D.		Conduct inspections of its fixed facilities and field operations.	Annually	Annually
XIV.J.		The Principal Permittee shall evaluate the effectiveness of debris booms and their placement to address floatables in inland streams.	By July 1, 2010	
XIV.N.1.c.		Notify the Executive Officer of the proposed construction project by electronically submitting Permit Registration Documents (PRDs).	Prior to commencement of each construction project.	
XIV.N.1.d.		the Executive Officer shall be notified of the completion of the project by submitting a Notice of Termination (NOT).	Upon completion of each construction project.	
XIV.N.2.a.		Notify the Executive Officer of each proposed deminimus discharge at least 15 days prior to start of the discharge	At least 15 days prior to discharge.	At least 15 days prior to discharge.
XIV.N.2.h.		Discharge greater than 150,000 gallons.		Semi-Annual reports or for period of discharge, whichever is sooner.
XV.A., XV.E. .		Each Permitee's LIP shall describe a program to provide formal and informal training to Permittee staff and contractors that implement the provisions of this Order. Provide the specified training.	Within 12 months of adoption of this Order and annually thereafter.	Annually

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XV.F.		Principal Permittee shall provide and document training to applicable public agency staff on area wide procedures such as the updated Municipal Facilities Strategy (MFS) contained in the DAMP, and any other applicable guidance and procedures developed by the Permittees to address municipal activities in fixed facilities as well as field operations, including conveyance system maintenance.	Within 12 months of adoption of this Order and every two years, thereafter.	Bi-annually
XIV.I*		Principal Permittee shall notify Regional Board staff		30 days prior to conducting training session.
XVI.A.		Notify of noncompliant sites within its jurisdiction.		Within 24 hours of discovery
XVI.B		All sewage spills above 1,000 gallons and all reportable quantities of hazardous waste spills as per 40CFR 117 and 302 shall be reported.		Within 24 hours of discovery
XVI.D.		Facilities operating without a proper permit.		Reported within 14 calendar days
XVI.E		Report to EO any discharge that may impair domestic water supply sources or threaten human health or the environment.		Within 24 hours of discovery
XVII.A.		Evaluate the effectiveness of the Urban Runoff management program.	By November 30 of each year.	Annually by November 30.
XVII.B.		Amended DAMP pages.		Annually
XVIII.B.		Financial analysis report		Annually
XXII.A.		Report of Waste Discharge	180 days before permit expires	Month Day, 2014
Appendix 3, III.C.		Review storm water and to determine their effectiveness in urban storm water runoff program assessment	Within 12 months of adoption of this Order	

TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
		Submit Revised CMP	Within 16 months of adoption of this Order and implement within 6 months of approval.	
Appendix 3, III.F.		Submit Revised CMP	Within 16 months of adoption of this Order and implement within 6 months of approval.	
Appendix 3, IV.B.2.		Annual Report	Annually	November 30th

(a) This column to be completed by Permitees.

Date:_____ Ordered by_____

Gerard J. Thibeault
Executive Officer

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Page 4: [1] Deleted **Recommended Revisions** **10/7/2009 1:23:00 PM**

792	TMDL – RW*.	San Jacinto River @ Cranston Guard Station	33.7328	-116.8361
745	TMDL – RW*.	Salt Creek @ Murrieta Road	33.6871	-117.2013
759	TMDL – RW*.	San Jacinto River @ Goetz Rd	33.7517	-117.2237
741	TMDL – RW*.	San Jacinto River @ Ramona Expressway	33.8383	-117.1367
841	TMDL – RW*.	Canyon Lake spillway	33.6754	-117.2729
Starting Jan 1, 2011[1]				
318	TMDL – RW*.	Hemet Channel at Sanderson Ave.	33.73417	-117.0062
325	TMDL – RW*.	Perris Valley Storm Drain @ Nuevo Rd.	33.8011	-117.2053
827	TMDL – RW*.	San Jacinto River upstream of Lake Elsinore	33.6642	-117.293
834	TMDL – RW*.	Sierra Park Drain in Canyon Lake	33.6949	-117.2604
NS-1	TMDL – RW*.	Medowbrook (Marie St & SH 74 Perris)	33.7613	-117.2668
NS-2	TMDL – RW*.	Kitching St. & Iris Ave., Moreno Valley	33.888	-117.2174
NS-3	TMDL – RW*.	Bridge St. & SJ River, San Jacinto	33.853	-117.0683
NS-4	TMDL – RW*.	State St., & SJ River, San Jacinto	33.819	-117.9735

*TMDL - RW. TMDL Receiving Water

Page 11: [2] Deleted **Recommended Revisions** **10/7/2009 1:24:00 PM**

The Clean Water Act 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 six months per violation, or by both [40 CFR 122.41(k)(2)].

[1] As described in Order No. R8-2004-0037, Phase 2 Monitoring in Table 11 of the "In Lake Sediment

ATTACHMENT 6

State of California

California Regional Water Quality Control Board

Santa Ana Region

3737 Main Street, Suite 500

Riverside, CA 92501- 3348

FACT SHEET
August 3, 2009

ITEM: 2

SUBJECT: Waste Discharge Requirements for the Riverside County Flood Control and Water Conservation District, the County of Riverside, and the Incorporated Cities of Riverside County within the Santa Ana Region, Urban Runoff Management Program, Order No. R8-2009-0033 (NPDES No. CAS 618033)

I. INTRODUCTION

A. PROJECT

The attached pages contain information concerning an application for renewal of Waste Discharge Requirements and a National Pollutant Discharge Elimination System (NPDES) permit, Order No. R8-2009-0033 (Order), NPDES No. CAS 618033, which prescribes Waste Discharge Requirements for Urban Runoff (as defined in Appendix 4) from the cities and the unincorporated areas in Riverside County within the jurisdiction of the Santa Ana Regional Board Water Quality Control Board (Regional Board). This Order regulates discharges of Urban Runoff from the Permit Area, as defined in Order No. R8-2009-0033 and shown in Appendix 1.

If appropriate Pollution control measures are not implemented, Urban Runoff, (as defined in Appendix 4- Glossary), may contain pathogens (bacteria, protozoa, viruses), sediment, trash, fertilizers (nutrients, mostly nitrogen and phosphorus compounds), oxygen-demanding substances (decaying matter), pesticides (DDT, chlordane, diazinon, chlorpyrifos), heavy metals (cadmium, chromium, copper, lead, zinc), and petroleum products (oil & grease, PAHs, petroleum hydrocarbons).

If not properly managed and controlled, urbanization can change the stream hydrology and increase Pollutant loading to Receiving Waters. As a watershed undergoes urbanization, pervious surface area decreases, runoff volume and velocity - increase, riparian habitats and wetland habitats decrease, the frequency and severity of flooding - increase, and Pollutant loading increase. Most of these impacts occur due to human activities (Anthropogenic) that occur during and/or after urbanization. The Pollutants and hydrologic changes can cause declines in

Deleted: Urban Runoff includes those discharges from residential, commercial, industrial, and construction areas within the Permit Area and excludes discharges from feedlots, dairies, farms, and open space. Urban Runoff discharges consist of storm water and authorized non-storm water surface runoff from drainage sub-areas with various, often mixed, land uses within all the hydrologic drainage areas that discharge into the Waters of the U. S.

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aquatic resources, cause toxicity to aquatic organisms, and impact human health and the environment. Based on information provided in Section D of the Riverside County Flood Control and Water Conservation District's (RCFC&WCD or the Principal Permittee as context indicates) Hydrology Manual, it is feasible that, in semi-arid regions, development may result in the creation of a net increase in absorption.

Properly planned high-density development can reduce urban sprawl and problems associated with sprawl. Urban in-fill and high-density development are elements of smart growth, which creates the opportunity to maintain relatively natural open space elsewhere in the Permit Area (see Appendix 4). The goal of LID is to mimic pre-development runoff quality and quantity.

On April 27, 2007, The RCFC&WCD in cooperation with the County of Riverside (the County) and the incorporated cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, and San Jacinto, jointly submitted a NPDES Application No. CAS 618033, a Report of Waste Discharge (the ROWD) and a revised Drainage Area Management Plan (DAMP) to renew the Municipal Separate Storm Sewer System (MS4) NPDES permit for the Santa Ana River watershed (the Permit Area) within Riverside County. This Order renews the NPDES permit authorizing Urban Runoff in the Permit Area (see Appendix 1, "urban area" includes those portions of "agriculture" and "open space" that convert to industrial, commercial, or residential use during the term of this Order). To more effectively carry out the requirements of this Order, the Permittees have agreed that the RCFC&WCD will continue as the Principal Permittee and the County and the incorporated cities will continue as the Co-Permittees.

Deleted: (hereinafter, with the County, collectively referred to as the Co-Permittees, and collectively, with the Principal Permitee, the Permittees),

On February 5, 2008 Wildomar residents voted for cityhood and the City incorporated on July 1, 2008. Menifee residents voted for cityhood on June 3, 2008 and the City incorporated on October 1, 2008. On May 6, 2009, the City of Menifee and on May 5, 2009, the City of Wildomar have submitted Letter of Intent to be a Co-Permittee in this Order and for the purposes of this Order shall be considered as such. The cities in the Permit Area, along with the County, are collectively referred to as the Co-Permittees, and collectively, with the Principal Permitee, the Permittees.

B. PROJECT AREA

The Permit Area contains 1,396 square miles or 19.1% of the 7,300 square miles within Riverside County and includes 15 of the 26 municipalities within Riverside County. The California Department of Finance estimates that as of January 1,

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2006, the population of Riverside County is 1,953,330 of which 1,237,388[1] reside within the Permit Area. The California Department of Finance estimates that as of January 1, 2009, the population of Riverside County was 2,107,653[2]. Beaumont, Calimesa, and Canyon Lake have populations of 25,000 or less. The County, Corona, Moreno Valley and Riverside have populations of 100,000 or more. The Southern California Association of Governments estimates that the County of Riverside will grow by 16% between 2006 and 2010 (2008 RTP Growth Forecast by City). The most significant percentage growth in population between 2006 and 2010 is expected in the Cities of Beaumont, Calimesa, and San Jacinto.

Land uses in Riverside County within the Santa Ana Region include open space, residential, commercial, light industrial, heavy industrial, and agriculture. The agricultural land uses include row crops, nurseries, citrus groves and vineyards, dairies, ranches, poultry and hog farms, and other agricultural related uses with one single-family residence allowed per 10 acres (County of Riverside General Plan, Land Use Element 2003). The conversion of agricultural lands and open space to other "developed" land uses has been ongoing and will continue. Based on Riverside County Assessor's Parcel Data as of February 2006, the land use mix of the County area within the Santa Ana Region was: 29,441 acres used or zoned for commercial/industrial purposes (3.3%), 70,499 acres for residential purposes (7.9%), 11,798 acres utilized for improved streets and roads (1.3%), 9,872 acres are used for parks and recreational facilities (1.1%), 70,164 acres are used for rural residential (7.9%), 453,976 acres are utilized for open space (50.8%), and 48,627 acres are used for agricultural purposes (5.4%). The federal state, tribal, and non-Permittee jurisdictional lands within the portion of Riverside County within the Santa Ana Region total 199,064 acres (22.3%).

Less than one fifth (1/5) of Riverside County is within the Permit Area. The Permit Area includes the "urban area" as shown in Appendix 1 and those portions of "agriculture" and "open space" as shown on Appendix 1 that do convert to industrial, commercial or residential use during the term of this Order. The Permit Area is delineated by the San Bernardino-Riverside County boundary line on the north and northwest, the Orange Riverside County boundary line on the west, the Santa Ana-San Diego Regional Board boundary line on the south, and the Santa Ana Colorado River Basin Regional Board boundary line on the east. Sixty-seven percent of Riverside County's population resides within the Regional Board's jurisdiction. The San Diego and the Colorado River Basin Regional Water Quality Control Boards regulate Urban Runoff from those portions of Riverside County outside of the Permit Area shown in Appendix 1.

C. CLEAN WATER ACT REQUIREMENTS

[1] As per Section 3.3.1 of the 2007 ROWD (Western Riverside Council of Governments (WRCOG),, excluding the cities of Menifee and Wildomar

[2] E-1 report dated April 30, 2009 (http://www.dof.ca.gov/research/demographic/reports/estimates/e-1/2008-09/documents/E-1_2009%20Press%20Release.pdf).

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The federal Clean Water Act (the "CWA") established a national policy designed to help maintain and restore the physical, chemical and biological integrity of the nation's waters. In 1972, the CWA established the NPDES permit program to regulate the discharge of Pollutants from point sources to "Waters of the U. S." From 1972 to 1987, the main focus of the NPDES program was to regulate conventional Pollutant sources such as sewage treatment plants and industrial facilities. As a result, on a nationwide basis, non-point sources, including agricultural runoff and Urban Runoff, now contribute a larger portion of many kinds of Pollutants than the more thoroughly regulated sewage treatment plants and industrial facilities.

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The National Urban Runoff Program (NURP) final report to the Congress (USEPA, 1983) concluded that the goals of the CWA could not be achieved without addressing Urban Runoff discharges. The 1987 CWA amendments established a framework for regulating Urban Runoff. Pursuant to these amendments, the Santa Ana Regional Board began regulating discharges from MS4s in 1990.

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II. REGULATORY BACKGROUND AND CLEAN WATER ACT REQUIREMENTS

As water flows over streets, parking lots, construction sites, and industrial, commercial, residential, and municipal areas, it can intercept Pollutants from these areas and transport them to Waters of the U.S. As indicated in I. A, above, Urban Runoff may contain pathogens, sediment, trash, fertilizers, oxygen-demanding substances, pesticides, heavy metals, and petroleum products. If not properly managed and controlled, urbanization may adversely impact water quality and quantity in the receiving waters.

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However, urban development projects that incorporate LID concepts could minimize the impact of urban development on runoff water quality and quantity.

Studies [3] conducted in the Southern California area have established storm water runoff from urban areas as significant sources of Pollutants in surface waters. The Santa Ana River is impacted by agricultural, other discharges and Urban Runoff as it flows through the San Bernardino County and Riverside County areas prior to flowing through Orange County and into the Pacific Ocean. .

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If not properly controlled, Urban Runoff could be a significant source of Pollutants in the Waters of the U. S. Table 1 includes a list of Pollutants, potential sources, and some of the adverse environmental consequences mostly resulting from urbanization.

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[3] Bay, S., Jones, B. H. and Schiff, K, 1999, Study of the Impact of Stormwater Discharge on Santa Monica Bay. Sea Grant Program, University of Southern California; and Haile, R.W., et al., 1996, An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay. Southern California Coastal Water Research Project (1992), Surface Runoff to the Southern California Bight.

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Table 1[4]
Pollutant Sources and Impacts of a Number of Pollutants On Waters of the U.S.

Pollutants	Sources	Effects and Trends
Toxins (e.g., biocides, PCBs, trace metals, heavy metals)	Industrial and municipal wastewater; runoff from farms, forests, urban areas, and landfills; erosion of contaminated soils and sediments; vessels; atmospheric deposition	Poison and cause disease and reproductive failure; fat-soluble toxins may bioconcentrate, particularly in birds and mammals, and pose human health risks. Inputs into Waters of the U.S. have declined, but remaining inputs and contaminated sediments in urban and industrial areas pose threats to living resources.
Pesticides (DDT, diazinon, chlorpyrifos)	Urban Runoff, agricultural runoff, commercial, industrial, residential and farm use	The use of legacy pesticides (DDT, chlordane, dieldrin) has been banned or restricted; still persists in the environment; some of the other pesticide uses are curtailed or restricted.
Biostimulants (organic wastes, plant nutrients)	Sewage and industrial wastes; runoff from farms and urban areas; nitrogen from combustion of fossil fuels	Organic wastes overload bottom habitats and deplete oxygen; nutrient inputs stimulate algal blooms (some harmful), which reduce water clarity, and alter food chains supporting fisheries. While organic waste loading has decreased, nutrient loading has increased (NRC, 1993a, 2000a).
Petroleum products (oil, grease, petroleum hydrocarbons, PAHs)	Urban Runoff and atmospheric deposition from land activities; accidental spills; oil & gas production activities; natural seepage; and PAHs from internal combustion engines	Petroleum hydrocarbons can affect bottom organisms and larvae; spills affect birds, mammals and aquatic life. While oil Pollution from accidental spills and production activities has decreased, diffuse inputs from land-based activities have not (NRC, 1985).
Radioactive isotopes	Atmospheric fallout, industrial and military activities	Bioaccumulation may pose human health risks where contamination is heavy.
Sediments	Erosion from farming, construction activities, forestry, mining, development; river diversions; coastal dredging and mining	Reduce water clarity and change bottom habitats; carry toxins and nutrients; clog fish gills and interfere with respiration in aquatic fauna. Sediment delivery by many rivers has decreased, but sedimentation poses problems in some areas.
Plastics and other debris	Ships, boats, fishing nets, containers, trash, Urban Runoff	Entangles aquatic life or is ingested; degrades, beaches, lake shores, near shore habitats, and wetland habitats. Floatables (from trash) are an aesthetic Nuisance and can be a substrate for algae and insect vectors.
Thermal	Cooling water from power plants and industry, urban run off from impervious surfaces	Kills some temperature-sensitive species; and displaces others. Generally, less a risk to marine life than thought 20 years ago.
Noise	Vessel propulsion, sonar, seismic prospecting, low-frequency sound used in defense and research	May disturb marine mammals and other organisms that use sound for communication.
Pathogens (bacteria, protozoa, viruses)	Sewage, Urban Runoff, livestock, wildlife, and discharges from boats and cruise ships.	Pose health risks to swimmers and consumers of aquatic life. Sanitation has improved, but standards have been raised (NRC 1999a).
Alien species	Ships and ballast water, fishery stocking, aquarists	Displace native species, introduce new diseases; growing worldwide problem (NRC 1996).

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[4] Adapted from "Marine Pollution in the United States" prepared for the Pew Oceans Commission, 2001.

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The CWA prohibits the discharge of any Pollutant to navigable waters from a Point Source unless an NPDES permit authorizes the discharge. The 1987 amendments to the CWA required MS4s and industrial facilities, including construction sites, to obtain NPDES permits for storm water runoff from their facilities. On November 16, 1990, the USEPA promulgated the final Phase I storm water regulations. The storm water regulations are contained in 40 CFR Parts 122, 123 and 124.

On July 13, 1990, the Regional Board adopted the first term Riverside County Area-wide MS4 Permit, Order No. 90-104 (NPDES No. CA 8000192), for Urban Runoff from areas in Riverside County within the Permit Area. On March 8, 1996, the Regional Board renewed Order No. 90-104 by adopting the second term area-wide MS4 Permit, Order No. 96-30, (NPDES No. CAS618033). On October 25, 2002, the Regional Board renewed Order No. 96-30 by adopting the third term area-wide MS4 Permit, Order No. R8-2002-0011.

This Order renews the area-wide NPDES MS4 Permit for the Permit Area for the fourth-term, in accordance with Section 402 (p) of the CWA and all requirements applicable to an NPDES permit issued under the issuing authority's discretionary authority. The requirements included in this Order are consistent with the CWA, the federal regulations governing urban storm water discharges, the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan), the California Water Code, and the State Water Resources Control Board's (State Board) Plans and Policies.

The Basin Plan is the basis for the Regional Board's regulatory programs. The Basin Plan was developed and is periodically reviewed and updated in accordance with relevant federal and state law and regulation, including the CWA and the California Water Code. As required, the Basin Plan designates the Beneficial Uses of the waters of the Region and specifies Water Quality Objectives intended to protect those uses. (Beneficial Uses and Water Quality Objectives, together with an anti-degradation policy, comprise federal "Water Quality Standards"). The Basin Plan also specifies an implementation plan, which includes certain discharge prohibitions. In general, the Basin Plan makes no distinctions between wet and dry weather conditions in designating Beneficial Uses and setting Water Quality Objectives, i.e., the Beneficial Uses, and correspondingly, the Water Quality Objectives are assumed to apply year-round. (Note: In some cases, Beneficial Uses for certain surface waters are designated as "I", or intermittent, in recognition of the fact that surface flows (and Beneficial Uses) may be present only during wet weather.) Most Beneficial Uses and Water Quality Objectives were established in the 1971, 1975, 1983, and 1995 Basin Plans. The 1995 Basin Plan was updated in February 2008[5]. Amendments to the Basin Plan included new nitrate-nitrogen and TDS objectives for specified management zones, new nitrogen and TDS management strategies applicable to both surface and ground waters and various Total Maximum Daily Loads (TMDLs) and

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[5] http://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/index.shtml

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TMDL Implementation Plans that had been adopted for Impaired Waterbodies within the region.

Water Code Section 13241 requires that certain factors must be considered when Water Quality Objectives are established. These factors include economics and the need for developing housing in the Region. During the 2002 MS4 Permit development process, the Permittees raised an issue regarding compliance with Section 13241 of the California Water Code with respect to Water Quality Objectives for wet weather conditions, specifically the cost of achieving compliance during wet weather conditions and the need for developing housing within the Region and its impact on Urban Runoff. During the 2006 review of the Basin Plan, this matter was incorporated on the triennial review list. To begin addressing this issue, Regional Board staff, in collaboration with the MS4 Permittees in the Santa Ana River watershed, has organized a Storm Water Quality Standards Task Force (SWQSTF).

The SWQSTF is closely analyzing, monitoring and documenting actual and potential Beneficial Uses of surface waters within the Santa Ana River watershed. Based on the findings, the SWQSTF plans to recommend changes to the current Beneficial Use designations and Water Quality Objectives specified in the Basin Plan. This Order may be reopened to incorporate any changes to the Water Quality Standards. The SWQSTF is currently focusing on Recreational Beneficial Uses. In the meantime, the provisions of this Order will result in reasonable further progress towards the attainment of the existing Water Quality Objectives, in accordance with the discretion in the permitting authority recognized by the United States Court of Appeals for the Ninth Circuit in Defenders of Wildlife vs. Browner, 191 F.3d 1159, 1164 (9th Cir. 1999).

III. EXCLUSIONS TO THE PERMIT AREA

Areas of the County not addressed or which are excluded by the storm water regulations and areas not under the jurisdiction of the Permittees were excluded from the area requested for coverage under the ROWD. These include the following areas and activities:

- Federal lands and State properties, including, but not limited to, military bases, national forests, hospitals, colleges and universities, and highways;
- Native American tribal lands;
- Open space and rural (non-urbanized) areas;
- Agricultural lands (exempted under the CWA); and

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- Utilities, railroads, and special districts (including school districts, park districts, publicly owned treatment works and water utilities, etc.).

  These areas in the Permit Area for which coverage under a NPDES MS4 permit is excluded, are shown in Appendix 1.

IV. BENEFICIAL USES

Stormwater flows discharged to MS4s in the Permit Area are tributary to various waterbodies (inland surface streams, lakes and reservoirs) of the State. The Beneficial Uses of these waterbodies may include municipal and domestic supply, agricultural supply, industrial service and process supply, groundwater recharge, water contact recreation, non-contact water recreation, and sport fishing, warm freshwater habitat, cold freshwater habitat, preservation of biological habitats of special significance, wildlife habitat and preservation of rare, threatened or endangered species. The ultimate goal of this Order is to protect the Beneficial Uses and quality of the Receiving Waters.

To protect the Beneficial Uses of the Receiving Waters, the Pollutants from all sources, including Urban Runoff, need to be controlled. Recognizing this, and the fact that Urban Runoff contains Pollutants, an area-wide MS4 permit is the most effective way to develop and implement a comprehensive Urban Runoff management program in a timely manner. This area-wide MS4 permit contains requirements with time schedules that will allow the Permittees to continue to address water quality problems caused by Urban Runoff through their management programs to reduce Pollutants in Urban Runoff discharges consistent with the MEP standard [See Appendix 4, Glossary].

V. WATERSHED MANAGEMENT IN THE UPPER SANTA ANA RIVER BASIN

A. Management Approach

To regulate and control Urban Runoff from the Permit Area to the MS4s, an area-wide approach is expected to be most effective. The entire MS4 is not controlled by a single entity; the RCFC&WCD, the County, several cities, the State Department of Transportation (Caltrans), and the U.S. Army Corps of Engineers, in addition to other smaller entities, manage portions of the MS4s. In addition to the cities, the County and the RCFC&WCD, there are a number of other significant contributors of Urban Runoff to these MS4s. These include: large institutions such as the State university system, prisons, schools, hospitals, etc.; federal facilities such as military sites, etc.; State agencies, such as Caltrans; water and wastewater management agencies such as Eastern and Western Municipal Water District; the National Forest Service and State parks. The State Board has issued a separate NPDES permit to Caltrans. In addition, Caltrans, and the other contributors

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identified, are not under the jurisdiction of the Permittees. The management and control of the entire MS4 cannot be effectively carried out without the cooperation and efforts of all these entities. Also, it would not be effective to issue a separate MS4 permit to each of the entities within the Permit Area whose land/facilities drain into the MS4s operated by the Permittees and ultimately to Waters of the U.S. The Regional Board has concluded that the best management option for the Permit Area is to issue an area-wide NPDES MS4 permit to the Permittees.

Although, the Urban Runoff from the Permit Area drains to the Prado Basin, and ultimately into Orange County, Urban Runoff from Orange County areas are regulated under NPDES No. CAS 618030. Some areas within Riverside County are within the Colorado River Basin and San Diego Regional Boards' jurisdictions. Permit requirements for Urban Runoff from the drainage areas of Riverside County within the jurisdiction of the San Diego and Colorado River Basin Regional Boards are addressed by those Regional Boards.

In developing Urban Runoff management and monitoring programs, consultation/coordination with other drainage management entities and other Regional Boards is essential. Common programs, reports, implementation schedules and efforts are desirable and will be utilized to the MEP.

Cooperation and coordination among all the stakeholders are essential for efficient and economical management of the Santa Ana River watershed. It is also critical to manage non-point sources at a level consistent with the management of Urban Runoff in a watershed in order to successfully prevent or remedy water quality Impairment. Regional Board staff will facilitate coordination of monitoring and management programs among the various stakeholders.

An integrated watershed management approach for Urban Runoff in the Santa Ana River watershed is consistent with the Strategic Plan (2008-2012[6]) and Initiatives for the State and Regional Boards and the draft California Water Plan Update[7]. A watershed wide approach is also beneficial for implementation of the load and WLAs developed under the TMDL process. The Permittees and all the affected entities are encouraged to participate in regional or watershed solutions, instead of project-specific and fragmented solutions.

The Pollutants in Urban Runoff originate from multiple sources and effective control of these Pollutants requires a cooperative effort of all the stakeholders and many regulatory agencies. Every stage of urbanization should be considered in developing appropriate Urban Runoff Pollution control methodologies. The program's success depends upon consideration of Pollution control techniques during planning, construction and post-construction operations. At each stage, appropriate Pollution Prevention measures, proper site design considerations,

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[6] State Water Resources Control Board, Strategic Plan Update, 2008-2012, September 2, 2008
[7] http://www.waterplan.water.ca.gov/docs/cwpu2009/1208prd/vol2/UrbanRunoff_PRD_09.pdf

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Source Control BMPs, and, if necessary, Treatment Control BMPs should be considered.

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B. SUB-WATERSHEDS AND MAJOR CHALLENGES

The Santa Ana River watershed is the major watershed within the Santa Ana Region. This watershed is divided into three sub-watersheds: the Lower Santa Ana, Upper Santa Ana, and San Jacinto.

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1. The lower Santa Ana River sub-watershed (downstream from Prado Basin) includes the north half of Orange County. The Upper Santa Ana River sub-watershed includes the southwestern corner of San Bernardino County and the northwestern corner of Riverside County. The San Jacinto sub-watershed includes the northwest corner of Riverside County south of the Upper Santa Ana River sub-watershed within the Santa Ana Region.

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Generally, the San Bernardino County drainage areas drain to the Riverside County drainage areas, and Riverside County drainage areas discharge to Orange County through Prado Dam on the Santa Ana River. Most of the flow in the Santa Ana River is recharged into the groundwater basin in Orange County but infrequently some of the flow may be discharged to the Pacific Ocean as a result of heavy storm events.

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Water from rainfall and snow melt runoff, and surfacing ground water from various areas either discharge directly to the Santa Ana River or to watercourses tributary to the Santa Ana River. Other major rivers in the Permit Area include the San Jacinto River and Temescal Creek. The San Jacinto Mountain areas drain into the San Jacinto River, which discharges into Canyon Lake and then to Lake Elsinore. The San Jacinto River is ephemeral. Smaller storms tend to be fully captured by Canyon Lake, which the San Jacinto River drains into, with discharges from Canyon Lake to Lake Elsinore only occurring in larger events or wetter years. Any overflow from Lake Elsinore is tributary to Temescal Creek, which flows into the Santa Ana River at the Prado Flood Control Basin. Overflow from Lake Elsinore occurs infrequently, only once every 12 to 15 years.

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2. Upper Santa Ana River Sub-watershed:

   a. Reach 3 of the Santa Ana River (Prado Dam to Mission Boulevard in Riverside): The Pollutant of Concern for Reach 3 based on adopted TMDLs and the 2006 303(d) list is pathogens. With the adoption of the TMDL for bacterial indicators, the Basin Plan now contains schedules for achieving compliance with waste load allocations (WLAs) for bacterial indicators in the Middle Santa Ana River (MSAR) subwatershed.

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b. Reach 4 of the Santa Ana River: Reach 4 of the Santa Ana River is the portion of the River from Mission Boulevard Bridge in Riverside to the San Jacinto fault (Bunker Hill Dike) in San Bernardino. Reach 4 is also listed in the CWA Section 303(d) as an Impaired Waterbody. Most of Reach 4 of the River is in San Bernardino County. The Pollutant of Concern for Reach 4 is pathogens, scheduled for TMDL completion in 2019.

c. San Jacinto Sub-watershed: Canyon Lake and Lake Elsinore are in this watershed and are listed on the 2006 303(d) list for pathogens (Canyon Lake) and PCBs and unknown toxicity (Lake Elsinore). Nutrient TMDLs have been developed for both Canyon Lake and Lake Elsinore. The Basin Plan contains schedules for achieving compliance with WLAs for nutrients in the San Jacinto sub-watershed (Canyon Lake/Lake Elsinore).

C. CWA SECTION 303(d) LIST AND TMDLS:

Pursuant to Section 303(b) of the CWA, the 2006 water quality assessment conducted by the Regional Board listed a number of waterbodies within the Region under Section 303(d) of the CWA as Impaired Waterbodies. These are waterbodies where the Water Quality Objectives are being violated and it is presumed that the designated Beneficial Uses are not met. The sources of the Impairmentsinclude POTW discharges, and runoff from agricultural, open space and urban land uses. The Impaired Waterbodies in Riverside County within the Santa Ana Regional Board's jurisdiction are listed in Table 2. In addition, CWA Section 303(d) requires states to develop and submit to USEPA for approval a list of waterbodies that are not meeting Water Quality Standards (Water Quality Objectives and Beneficial Uses) and are not expected to attain these standards even with technology based controls. CWA Section 305(b) requires States to biennially prepare and submit to the USEPA for approval a report assessing statewide surface water quality.

Regional Board staff have reviewed and reevaluated all water quality monitoring and information, combined the CWA Section 305(b) Report with the Section 303(d) List of Impaired Waters and introduced the Proposed 2008 303(d)-305(b) Integrated Report that was adopted by the Regional Board on April 24, 2009. The additional Impaired Waterbodies that are on this list are also identified in Table 2. The Proposed 2008 303(d)-305(b) Integrated Report will not be effective until it has been approved by the State Board or the USEPA.

Federal regulations require that a TMDL be established for each 303(d) listed waterbody for each of the Pollutants causing Impairment. The TMDL is the total amount of the Pollutant that can be discharged without impairing Water Quality Standards in the Receiving Water, i.e., Water Quality Objectives are met and the Beneficial Uses are protected. It is the sum of the individual WLAs for point source inputs and LAs for non-point source inputs and natural background, with a

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margin of safety. The TMDLs are the basis for limitations established in Waste Discharge Requirements. TMDLs are being developed for all Pollutants identified in Table 2. The Permittees are required to revise their DAMP, at the direction of the Executive Officer, to incorporate TMDL Implementation Plans developed and approved pursuant to the process for the designation and implementation of TMDLs for Impaired Waterbodies.

For 303(d) listed waterbodies identified as potentially impaired by Urban Runoff and without a TMDL, the Permittees are required to provide special protections such as requiring effective post-constructionBMPs, enhanced training programs and developing targeted public outreach that would address the Pollutants of Concern.

This Order incorporates TMDLs that have been adopted for bacterial indicator in the Middle Santa Ana River Watershed and for nutrients in the Lake Elsinore and Canyon Lake Watersheds. On August 26, 2005, the Regional Board adopted Resolution No. R8-2005-001 amending the Basin Plan to incorporate Bacterial Indicator TMDL for Middle Santa Ana River Watershed. On December 20, 2004, the RWQCB adopted resolution R8-2004-0037 amending the Basin Plan to incorporate the Lake Elsinore and Canyon Lake nutrient TMDLs. The stakeholders in these watersheds, including applicable Permittees, are collaborating in the development and implementation of the TMDLs.

Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the requirements and assumptions of the wasteload allocations in the TMDL. See 40 CFR § 122.44(d)(1)(vii)(B). Effluent limitations to control the discharge of pollutants generally are expressed in numerical form. However, in light of 33 U.S.C. §1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. See Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 FR 43761 (Aug. 26, 1996). The Interim Permitting Approach Policy recognizes the need for an iterative approach to control pollutants in storm water discharges. Specifically, the policy anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.

EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these

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situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.

This Order includes permit conditions necessary to implement the TMDLs already approved by the Regional Board as required by federal regulations at 40 CFR 122.44(d)(vii(B). This Order requires Permittees to achieve the WLA for Urban Runoff through an iterative process of implementing BMPs to the MEP. Failure to submit a BMP implementation plan to the Regional Board or failure to implement the approved plan in a timely manner will be deemed to violate the conditions of this Order. The CWA requires the Permittees to have appropriate controls to reduce the discharge of pollutants to the MEP, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants (33 USC 1342(p)(3)(B)). MEP is a dynamic performance standard and it evolves as the knowledge of urban runoff control measures increases. Permittees are required to monitor and report effectiveness of their BMPs with respect to pollutant reduction goal(s) as one measure of progress toward reducing pollutant loads from urban sources in accordance with the compliance schedules specified in the TMDL implementation plans. If on-going monitoring indicates that implemented BMPs are insufficient to assure compliance with the relevant water quality standard(s), then the Permittees are required to develop and implement additional and/or more effective BMPs for the controllable urban sources within their jurisdiction to the MEP. In addition, the Permittees are required to submit a revised BMP implementation plan documenting the completion schedule for any additional and/or more effective BMPs and must execute the plan upon approval by the Regional Board. Taken together, these permit conditions are consistent with the facts and assumptions specified in the TMDLs, including the TMDL Implementation Plans, and are expected to achieve compliance with the related WLAs.

Since some of the compliance dates for the TMDLs are outside this permit term, this Order does not impose the WLA for bacteria or nutrients as numeric effluent limits. However, the Regional Board reserves the right to reopen the permit and add such limitations if MS4 dischargers fail to implement the BMPs approved by the Board or the iterative BMP process proves inadequate to achieve the urban WLA. Numeric effluent limits are included for de-minimus types of discharges from Permittee-owned or permittee-operated facilities and activities and for total dissolved solids and total inorganic nitrogen for dry weather discharges.

Table 2

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2006 CWA Section 303(d) Listed Waterbodies and April 24, 2009 Proposed 2008 Integrated Report of 305(b) and 303(d) List of Water Quality Limited Segments

WATERBODY	HYDRO UNIT	POLLUTANT/ STRESSOR	SOURCE	SIZE AFFECTED
Canyon Lake	802.120	Pathogens	Nonpoint Source	453 Acres
Lake Elsinore	802.310	Unknown Toxicity	Unknown Nonpoint Source	2431 Acres
		PCB's.	Unknown Nonpoint Source	2431 Acres
		Proposed for 2008 Sediment Toxicity	Unknown Point and/or Nonpoint Sources	2431 Acres
Lake Fulmor	802.210	Pathogens	Unknown Nonpoint Source	4.2 Acres
Santa Ana River, Reach 3	801.200	Pathogens	Unknownn Nonpoint Source	3 miles
		Proposed for 2008 Copper – Wet Season	Unknown Nonpoint Source	3 Miles
Temescal Creek Reach 1		Proposed for 2008 pH	Unknown	Unknown

VI. FIRST, SECOND, AND THIRD TERM PERMITS

A. STORM WATER POLLUTION CONTROL PROGRAMS AND POLICIES

1. Prior to USEPA's promulgation of the final regulations implementing the storm water requirements of the 1987 CWA amendments, the counties of Orange, Riverside and San Bernardino requested an area-wide NPDES permit for storm water runoff for each of the county areas within the Regional Board's jurisdiction. On July 13, 1990, the Regional Board issued Order No. 90-104 to the Permittees (first term MS4 Permit). In 1996, the Regional Board adopted Order No. 96-30 for the Riverside County Permit Area (second term MS4 Permit). On October 24, 2002, the Regional Board adopted Order No. R8-

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2002-0011 for the Riverside County Permit Area (third term MS4 Permit). These MS4 Permits included the following requirements:

a. Prohibited non-storm water discharges to the MS4s with certain exceptions.
b. Required the Permittees to develop and implement a DAMP to reduce Pollutants in Urban Runoff to the MEP.
c. Required the discharges from the MS4 to meet Water Quality Standards in Receiving Waters.
d. Required the Permittees to identify and eliminate IC/IDs to the MS4.
e. Required the Permittees to establish legal authority to enforce Storm Water Ordinances.
f. Required monitoring of dry weather flows, storm flows, and Receiving Water quality, and program assessment.
g. Required the Permittees to inventory, prioritize and inspect construction sites and industrial and commercial facilities based on threat to water quality.
h. Required the Permittees to develop a restaurant inspection program to address practices that may impact Urban Runoff quality such as oil and grease disposal, trash bin area management, parking lot cleaning, spill clean-up, and inspection of grease traps or interceptors to ensure adequate capacity and proper maintenance.
i. Required the Permittees to review and approve Water Quality Management Plans (WQMPs) for categories of New Development and Significant Redevelopment projects to address post-development Urban Runoff water quality and Hydromodification.
j. Required the Permittees to develop a unified response plan to respond to sewage spills that may impact Receiving Water quality.

During the first term MS4 Permit, the Permittees developed a DAMP that was approved by the Executive Officer on January 18, 1994. The DAMP included five BMP groups: environmental education activities, solid waste activities, road drainage system operations and maintenance, regulatory and enforcement activities, and structural controls. The DAMP was updated as part of the second and third-term MS4 Permits. The Permittees submitted a revised DAMP with the ROWD for the fourth term MS4 Permit renewal.

2. The RCFC&WCD performs water quality monitoring activities in support of three separate area-wide NPDES MS4 Permits (Santa Ana, San Diego and Colorado River Basin) under the Consolidated Program for Water Quality Monitoring (CMP). The CMP contains a combined 132 historical, active, and special project sampling locations in the three MS4 Permit regions. Within the Permit Area, water column samples and/or sediment samples have been collected at a total of 93 locations over the last nineteen years. These 93 locations are

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comprised of 45 MS4 outfalls, 43 Receiving Water, 8 sediment, and 2 special interest sampling locations. In addition, the Permittees participate in a number of sub-regional and regional monitoring programs and special studies.

3. During the third term MS4 Permit, the Executive Officer approved the delay in implementing the bioassessment requirement to allow the development of indices of biological integrity applicable to inland waters. Subsequently, a regional bioassessment monitoring was initiated by the Surface Water Ambient Monitoring Program (SWAMP) to determine the conditions of the receiving waters in a more holistic way. The Southern California Watershed Research Project (SCCWRP), in conjunction with the southern California MS4 Permit programs, has developed a regional bioassessment monitoring program in which the Permittees participating. This Order requires the Permittees to continue to participate in the regional bioassessment monitoring program. It is expected that these monitoring stations and Permittee and regional monitoring will be used to identify problem areas and to re-evaluate the monitoring program and the effectiveness of BMPs. The future direction of some of these program elements will depend upon the results of the ongoing studies and a holistic approach to watershed management.

4. Other elements of the Urban Runoff management program included identification and elimination of JC/IDs and establishment of adequate legal authority to control Pollutants in Urban Runoff discharges. The Permittees have completed a survey of their MS4 to identify JC/IDs and have adopted appropriate ordinances to establish legal authority. Some of the more specific achievements during the second and third term MS4 Permits are as follows:

   a. During the second term MS4 Permit, the Permittees operated under an Implementation Agreement that sets forth the responsibilities of the Permittees as defined in the 1996 MS4 Permit. The Permittees update this agreement during each MS4 Permit term. The Permittees have adopted Storm Water Ordinances regarding the management of Urban Runoff. The Storm Water Ordinances provide the Permittees with the legal authority to implement the requirements of the MS4 Permit and the key regulatory requirements contained in 40 CFR Section 122.26(d)(2)(I)(A-F).
   b. Revised DAMP: Includes 28 Construction Site and 36 Municipal and Industrial Source Control BMPs that are to be implemented by the Permittees for purposes of controlling Pollutants associated with Urban Runoff to the MEP. The Permittees also strengthened enforcement and compliance elements of the DAMP. Enhanced the construction site inspections, the industrial/commercial facilities inspections, New Development review requirements, and the Permittee facilities and activities program.
   c. Cooperated in the establishment of TMDL Task Forces and workgroups for Lake Elsinore, Canyon Lake and the MSAR.

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d. Assisted in development and implementation of the TMDLs for Canyon Lake, Lake Elsinore and the MSAR.
e. Developed and updated methods to track program effectiveness such as resident surveys, tracking hotline inquiries, and web counters.
f. In August 1999 the RCFC&WCD and the County's Environmental Health Department executed an agreement that provides the framework for an area-wide Commercial and Industrial Compliance Assistance Program (CAP).
g. The Permittees have participated in the CMP.
h. The Permittees administered area-wide programs including: hazardous materials emergency response, household hazardous waste collection, industrial/commercial CAP and public education and outreach. Some of these programs were coordinated with Caltrans and local agencies.
i. A Municipal Facilities Strategy was established then later incorporated into the DAMP, the Supplement "A" New Development Guidelines were amended to require compliance with the Riverside County WQMP for specific categories of New Development and Significant Redevelopment projects.
j. The Riverside County WQMP was developed in 2004. The Model WQMP is a post-construction planning tool to address Urban Runoff from New Development and Significant Redevelopment. The WQMP is implemented on a watershed-specific level, and provides guidance for project specific post-construction BMPs to address the quantity and quality of Urban Runoff from New Development and Significant Redevelopment projects. Any New Development or Significant Redevelopment project that requires discretionary approval must submit a project-specific WQMP to the appropriate Permittee. The project-specific WQMP ensures that management of Urban Runoff to protect Receiving Water quality is considered a priority during project design and operation.
k. Established the Management Steering Committee that brings together the city managers in the Permit Area promoting consensus and communication on a regional basis.
l. Formation of sub-committees to guide and develop specific program elements (Construction Activities, Industrial/Commercial Activities, New Development/ Significant Redevelopment, Public Education, Permittee Facilities & Activities, Monitoring, & Finance).
m. Evaluated and revised ordinances, regulations, rules, and codes to ensure appropriate level of legal authority.
n. A Technical Advisory Committee for overall program development and implementation was established.
o. Program Review: A number of existing programs were reviewed to determine their effectiveness in combating Urban Runoff Pollution and to recommend alternatives and or improvements, including Permittee activities and facilities, IC/IDs to the MS4, and existing monitoring programs.

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p. Enhanced Public Education program through development of new outreach materials and programs.

q. Public Education: A number of steps were taken to educate the public, businesses, industries, and commercial establishments regarding their role in Urban Runoff Pollution controls. The industrial dischargers were notified of the Urban Runoff regulatory requirements. For a number of unregulated activities, BMP guidance documents were developed and a toll free hotline was established for reporting any suspected water quality problems.

r. The Permittee's website hosted by RCFC&WCD and including the Only Rain Down the Storm Drain public information page, was developed and is continually enhanced. It contains resources for residential facilities, businesses, developers and contractors. The website is accessible from the RCFC&WCD home page. The website offers free brochures that all web site visitors can print in quantities or can order including:

   i. *After the Storm* – a citizen's guide to understanding MS4 Pollution in your neighborhood or when performing daily activities.
   ii. *Automotive Maintenance & Car Care* – guidelines for keeping your auto shop or retail fuel facility in environmental shape.
   iii. *Outdoor Cleaning Activities* – guideline for outdoor cleaning activities and wastewater disposal.
   iv. *Pools, Spas and Fountains* –Environmental maintenance suggestions for pool, spa, and fountain owners.
   v. *What's the Scoop* – tips for a healthy pet and a healthier environment.
   vi. *Household Hazardous Waste (HHW)* – A schedule of collection locations for proper disposal of HHW.
   vii. *Storm Water Pollution Found in Your Neighborhood* – door hanger.

s. In addition to the information provided on the Only Rain Down the Storm Drain website, the Public Education and Outreach Program has:

   i. Tested and/or implemented several new Public Education and Outreach Program effectiveness tracking mechanisms including call tracking, web counters, testing, and surveys.
   ii. Conducted a review of the efficacy of Permittee employee training programs.
   iii. Enhanced the toll free storm water Pollution reporting hot line to include public education information and support for the Public and other interested stakeholders.
   iv. Enhanced on-line registration access for NPDES training to help facilitate training of appropriate Permittee employees.
   v. Worked with the Riverside-Corona Resource Conservation District to develop home garden workshops and presentations to elementary and middle schools and staff to raise public awareness of Urban Runoff management issues and Source Control BMPs and to encourage volunteers, partners, and groups to gather annually for a trash and debris clean-up day along the Santa Ana River.

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vi. Developed special newspaper and billing inserts, fliers and advertisements to raise public awareness of Urban Runoff management issues and Source Control BMPs. A radio advertising campaign was also developed and implemented for a limited time.

vii. Developed and presented workshops regarding household hazardous waste use and proper disposal at major home improvement stores through out Riverside County.

viii. Placed numerous advertisements in the Penny Saver and Bargain Bulletin to raise public awareness of Urban Runoff management.

ix. In cooperation with certain County Service Areas and other programs, pet waste signs with bag dispensers have been installed at various parks to help encourage the proper disposal of animal waste.

x. Coordinated with County-wide Animal Control Facilities, as well as city-owned animal control facilities and Humane Societies, to distribute specific materials to the County Agricultural inspectors as well as Regional Board inspectors for use during facility inspections.

xi. Distributed educational and outreach materials to the County Agricultural inspectors as well as Santa Ana Regional Board staff inspectors for use during facility inspections.

xii. Cooperated with the Western Riverside Council of Government (WRCOG) in the Used Oil Block Cycle Grant that decreases the amount of illegally dumped motor oil by promoting the addition of new Certified Oil Collection Centers.

xiii. Participated in WRCOG's "Cleanest County in the West" program to address issues relating to litter and illegal dumping which targeted both students and adults.

xiv. Supplemental Environmental Projects: As a result of an environmental enforcement case settlement brought by the County Department of Environmental Health, Conoco Phillips and Downs Energy developed two posters and a billboard, respectively. These items were designed to increase the awareness of appropriate BMPs for retail fuel businesses.

t. Permittee Training: Training was provided to Permittee employees to implement New Development Guidelines and Public Works BMPs. The fourth-term MS4 Permit specifies additional training requirements to focus on necessary competencies for storm water program managers, Permittee planners and inspection staff. This was added following information collected during Regional Board staff audits of Permittees' storm water management programs, which found that a number of the Permittees' staff and/or contractors were not adequately trained to properly implement the required program elements contained within the third term MS4 Permit and/or training programs were not properly documented.

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u. Related Activities: Modified MS4s by channel stabilization and creation of sediment basins; eliminated or permitted and documented Jllicit Connections to the MS4s.
v. Pursued and received Proposition 50 Planning Grant to develop an Integrated Regional Watershed Management Plan for the San Jacinto watershed and to facilitate implementation of the Canyon Lake/Lake Elsinore Nutrient TMDL.
w. Pursued and received two Proposition 40 Integrated Regional Watershed Management Plan implementation grants to facilitate the MSAR Bacterial Indicator TMDL and Lake Elsinore and Canyon Lake Nutrient TMDLs.
x. Co-Permittees developed and maintain an inventory database (or databases) of construction sites 1-acre or larger for which they have issued a building or grading permit. For each construction site/project included in a Co-Permittee's inventory, the Co-Permittees have assigned a priority of "high," "medium," or "low" to reflect the construction site's potential for impairing Receiving Water quality.
y. Created databases for the commercial and industrial facilities within each jurisdiction.
z. Developed a GIS Web Browser to assist developers and Permittees in identifying pertinent water quality information for proposed development projects.
aa. Developed Planning Application forms for Permittee use to ensure that the need for a project-specific WQMP was properly identified early in the planning process.
bb. Developed a FAQ and watershed Jmpairment maps to assist Permittees and developers with preparing and reviewing project-specific WQMPs.
cc. Enhanced online watershed maps to assist developers and the public with identifying areas tributary to Jmpaired Waterbodies.
dd. Developed a BMP design handbook to standardize BMP selection and design in Riverside County.
ee. Initiated development of an enhanced BMP Design Handbook to provide additional guidance for LID and post-construction BMP design.
ff. Participation in the Storm Water Monitoring Coalition (SMC) efforts to evaluate LID options and establish guidance for BMP implementation for Southern California areas.
gg. Participation in SCCWRP's Hydromodification studies to develop scientifically based design guidance for Southern California.
hh. Initiated cooperative program with Environmental Health to promote Environmental Enhancement Projects in lieu of fines for violations of environmental laws. This initiative resulted in the billboard advertising campaign to promote appropriate BMPs for gas stations and garages.
ii. Prepared a one-year evaluation of Jitter management BMPs. This evaluation assessed the relative efficiency and cost effectiveness of anthropogenic litter management BMPs including: street sweeping, catch basin cleaning, deployment of trash receptacles, public education, and

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MS4 maintenance. As a result, a Litter Removal Inspection Form was developed that assisted the Permittees in identifying and prioritizing areas with litter problems. The Permittees augmented the litter management programs including employee/contractor training, industrial/commercial activity inspections, recycling programs including bulk-item collection, participation in watershed clean-up efforts, and illegal dumping retrieval.

jj. The RCFC&WCD coordinated GIS-based maps for Permittee MS4 facilities. The MS4 maps are updated annually with new information provided by the Permittees as part of the Annual Reporting process. The GIS layers are also now available on the RCFC&WCD's website through an internet GIS browser.

kk. Updated Model Facilities Pollution Prevention Plan for Permittee facilities not requiring coverage under the General Permit for Storm Water Discharges Associated with Industrial Activities (General Industrial Permit).

ll. The Permittees completed a MS4 assessment in 2004 to identify opportunities for incorporation of regional BMP retrofits within the limits of existing infrastructure.

mm. Pursued a Proposition 13 Grant, through the Santa Ana Watershed Project Authority, to develop a LID BMP Demonstration and Testing Facility. RCFC&WCD has continued to develop this project and plans to start construction this winter despite the current freeze on new grant projects.

B. PRIOR TERM PERMITS - WATER QUALITY IMPROVEMENTS

An accurate and quantifiable measurement of the impact of the above stated Urban Runoff management programs is difficult, due to a variety of reasons, such as the variability in chemical water quality data, the incremental nature of BMP implementation, lack of baseline monitoring data, and the existence of some of the programs and policies prior to initiation of formal Urban Runoff management programs. There are generally two accepted methodologies for assessing water quality improvements: (1) conventional monitoring such as chemical-specific water quality monitoring; and (2) non-conventional monitoring, such as monitoring of the amount of household hazardous waste collected and disposed off at appropriate disposal sites, the amount of used oil collected, and the amount of anthropogenic debris removed from the MS4, etc.

The Permittees' water quality monitoring data submitted to date document a number of violations of Basin Plan Water Quality Objectives for various Urban Runoff-related Pollutants; the most notable among these violations was fecal coliform bacteria. Where these violations have resulted in the development of TMDLs for the MSAR, this Order requires the Permittees named in the TMDL: to

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comply with the WLAs for bacteria consistent with the Implementation Plan requirements defined in the MSAR Bacterial Indicator TMDL.

During the prior MS4 Permit terms, there was an increased focus on watershed management initiatives and coordination among the MS4 permittees in Orange, Riverside and San Bernardino Counties. These efforts resulted in a number of regional monitoring programs and other coordinated program and policy developments. The Principal Permittee continues to be an active participant in the SWQSTF, the Canyon Lake/Lake Elsinore nutrient TMDL, the MSAR Bacterial Indicator TMDL, and the SMC studies. In addition to the TMDL implementation and monitoring activities, the Permittees participate in the Regional Integrated Freshwater Bioassessment Monitoring Program, the BMP Effectiveness Project assessing the effectiveness of LID techniques. Riverside and San Bernardino MS4 Programs are also coordinating on the development of several outreach programs.

It is anticipated that with continued implementation of the revised DAMP, the programs proposed in the ROWD incorporated into this Order and other requirements specified in this Order, the goals and objectives of the storm water regulations will be met, including protection of the Beneficial Uses of all Receiving Waters.

VII. FUTURE DIRECTION/2007 ROWD

A. Recognizing the significant resources utilized in developing the 2002 MS4 Permit and the significant commitment the Permittees are making to address water quality Impairments, including those identified in the 2006 303(d) List as high priority for establishment of TMDLs, the Permittees proposed in the 2007 ROWD to maintain the fundamental structure and content of the 2002 MS4 Permit and the 2005 DAMP with modifications to reflect:

1. Removed descriptions of studies that have been completed;
2. Updated references to related orders by the Regional Board and State Board;
3. Adoption of TMDL requirements;
4. Evolution of compliance programs;
5. Further standardization and definition of terms;
6. Consolidation of similar compliance requirements [training requirements, reporting requirements, IC/ID requirements] to simplify the Order, increase readability and prevent the need for duplicative language;
7. Deletion of requirements in the 2002 MS4 Permit that described the development of compliance program elements which were incorporated into the 2005 DAMP;

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8. Development of local implementation plans (LIPs) by the Permittees during the fourth term Order;
9. Addition of Permittee coverage under the Small Linear Underground Projects (State Board Order No. 2003-0007-DWQ, NPDES No. CAS000005) and Utility Vaults (State Board Order No. 2006-0008-DWQ, NPDES No. CAG990002) General Permits;
10. Recognition that the Municipal Facilities Strategy and Enforcement Compliance Strategies have been incorporated into the DAMP; and
11. Regional Board staff comments received by the Permittees during the third term permit, including comments received during the January 22, 2007 ROWD kick-off meeting regarding topics such as LID, Hydromodification, LIPs, etc.

B. In addition, the 2007 ROWD proposed continuing with the 2005 DAMP with some revisions. Based on an effectiveness assessment analysis, the following significant changes were incorporated into the Permittees 2007 draft DAMP compliance programs:

1. The Permittees proposed to complete preparation of LIPs within 12 months of Order adoption. The Permittees propose to develop LIPs that will:
   a. Specify how each program element of the DAMP shall be implemented;
   b. Describe the ordinances, plans, policies, procedures, and tools (e.g., checklists, forms, educational materials, etc.) used to execute the DAMP;
   c. Identify the organizational units responsible for implementation of each program element;
   d. Establish internal reporting requirements to ensure and promote accountability; and
   e. Describe an adaptive method of evaluation and assessment of program effectiveness for the purpose of identifying program improvements.
2. The final report "BMP Siting Study for the Santa Ana Permit Area" was released in May 2005. The sites identified in this study are likely to be further evaluated for opportunities to implement Regional BMPs necessary to comply with existing and future TMDLs.
3. Proposed revisions to the 2002 MS4 Permit provisions to reflect the unified IC/ID reporting procedures currently contained within the DAMP for simplicity and clarity.

C. Regional Board Approach to Consolidation of Overlapping NPDES Permit Requirements

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1. During the third term MS4 Permit, the Permittees reviewed the applicability of the General Permit-Small Linear Underground Projects (State Board Order No. 2003-0007-DWQ, NPDES No. CAS000005), the General Permit-De Minimus Discharges (Order No. R8-2003-0061 as amended by Order Nos. R8-2005-0041 and R8-2006-0004), and the General Permit-Utility Vaults (Order No. 2006-0008-DWQ, NPDES No. CAG990002) to their activities such as hydrant flushing, maintenance on potable water supply system(s), construction dewatering, and the short-term and intermittent discharges from the de-watering of utility vaults and underground structures. Since the DAMP incorporates BMPs for the activities covered by these general permits, the Permittees recommended separate coverage under the Small Linear Underground Projects, De Minimus Discharges, or Utility Vaults General Permits was not necessary. This Order now includes coverage for De Minimus discharges from Permittee-owned facilities and activities specifically excluded from coverage under the General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality, NPDES NO. CAG998001, Order No. R8-2009-0003. Permittees shall continue to obtain separate coverage for activities covered by the Small Linear Underground Projects and Utility Vaults General Permits, unless these permits are incorporated into the General Construction Permit.
2. Specific identification of the types of discharges that must have coverage under the General De Minimus Permit and the General Construction Permit, is included in Section 5 of the 2007 DAMP. This Order requires the Permittees to include a description of those de minimus discharges into the Permittees' LIP, including a Regional Board notification process.
3. Prioritized inspections and monitoring based on sampling and monitoring results and other metrics to help target activities that present the highest risk to water quality.

D. During the fourth term Order, the following revisions to the Public Education and Outreach Program will be priorities:

1. Continue coordination of public education outreach with adjacent MS4s.
2. Continue to evaluate and enhance outreach materials for IC/IDs, nutrients, fertilizers, and pesticides.
3. Continue to focus the Public Education and Outreach Program on the Pollutants causing the greatest impacts to water quality, determined by the monitoring results and the list of Impaired Waterbodies [303(d) list].

The Permittees have already taken several steps in this direction. For example, the Permittees have provided spray bottles with environmentally friendly pesticide recipes printed on the side to residents at community fairs; the Permittees have developed or are in the process of developing brochures for septic system management, landscape management, and gardening; the

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Riverside and San Bernardino County Permittees are coordinating on a Curiosity Quest Episode (KVCR Family Show) to promote BMPs for nutrients, fertilizers and pesticides and the Permittees place information in hardware and gardening stores regarding pesticide and fertilizer management. The Permittees also incorporate other materials to address general pollutants of concern.

E. As a result of continued program effectiveness assessment the Permittees propose to update Annual Reporting forms to incorporate specific reporting requirements for all effectiveness assessment metrics.

F. Enhanced online watershed maps to assist developers and the public with identifying areas tributary to Impaired Waterbodies.

G. WQMP

1. The Permittees committed to maintain the "Frequently Asked Questions" information sheet for priority development projects to assist with the development and implementation of the revised WQMP.
2. The Permittees committed to update the Riverside County Storm Water Quality Best Management Practice Design Handbook to (1) better incorporate LID design concepts, (2) incorporate guidance to describe how developments can offset Hydromodification impacts with LID and (3) incorporate additional design guidance to ensure maintainability and functionality of BMPs, throughout the life of the development. This Order further requires the Permittees to revise the WQMP consistent with the requirements of the Order.
3. The Permittees committed to maintain the WQMP template to assist developers with developing a project-specific WQMP.
4. An audit of each of the Permittees' Urban Runoff management programs during the third term MS4 Permit indicated no clear nexus between the watershed protection principles, including LID techniques, specified in the WQMP and the Permittees' General Plan or related documents such as Development Standards, Zoning Codes, Conditions of Approval, Project Development Guidance, etc. It appears that many of the existing procedures, Development Standards, Ordinances and Municipal Codes may be barriers to implement LID BMPs. This Order requires the Permittees to facilitate LID techniques specified in this Order.

H. The Regional Board has proposed a revised Notice of Intent and Notice of Termination for Permittee construction projects to assist Regional Board staff with identifying locations and owners of Permittee projects.

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I. The Permittees have committed to annual updates to Sanitary Sewer Overflow Procedures to ensure proper contact information for Permittee and outside agencies.

J. WATERSHED APPROACH

1. TMDL for bacterial indicator in the MSAR subwatershed and nutrients in the Canyon Lake and Lake Elsinore subwatershed are incorporated into this Order (See Section V.C). The Permittees support TMDL implementation and agreed to participate in a comprehensive water quality monitoring program to ensure that Urban Runoff meets the Water Quality Objectives identified in the Basin Plan and are consistent with the Implementation Plans specified in the TMDLs. This Order requires that, consistent with the requirements of the respective TMDL Implementation Plans, the Permittees use the water quality monitoring of Urban Runoff to evaluate the effectiveness of the BMP.

2. The USEPA has recommended a shift to watershed-based NPDES permitting[8] and watershed approach[9] to CWA programs, including NPDES programs. The Permittees and the Regional Board also recognize that a watershed-based approach is expected to be effective in controlling Pollutants in Urban Runoff. Consistent with this approach, this Order requires the Permittees to develop and implement programs that integrate Hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction. A *watershed approach* considers the diverse Pollutant sources and stressors and watershed goals within a defined geographic area (i.e., watershed boundaries). A watershed approach has three basic components:

   a. *Geographic Focus*: Watersheds are nature's boundaries. They are the land areas that drain to surface waterbodies, and they generally include lakes, rivers, estuaries, wetlands, streams, and the surrounding landscape. Groundwater recharge areas are also considered.

   b. *Sound Management Techniques Based on Strong Science and Data*: Sound scientific data, tools, and techniques are critical to evaluate the process. Actions taken include characterizing priority watershed problems and solutions, developing and implementing action plans, and evaluating their effectiveness within the watershed.

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[8] EPA: Watershed-based NPDES permitting is a process that emphasizes addressing all stressors within a hydrologically-defined drainage basin, rather than addressing individual pollutant sources on a discharge-by-discharge basis.
[9] EPA (1996a): "The watershed approach is a coordinating framework for environmental management that focuses public and private sector efforts to address the highest priority problems within hydrologically defined geographic areas, taking into consideration both ground and surface water flow."

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c. *Partnerships/Stakeholder Involvement*: Watersheds transcend political, social, and economic boundaries. Therefore, it is important to involve all the affected interests in designing and implementing goals for the watershed. Watershed teams may include representatives from all levels of government, public interest groups, industry, academic institutions, private landowners, concerned citizens, and others.

There are two major sub-watersheds in Riverside County within the Permit Area – the MSAR subwatershed, consisting of the portions of the Permit Area that drain to Reaches 3 and 4 of the Santa Ana River, and the San Jacinto River sub-watershed, which consists of the portions of the Permit Area that drain to Lake Elsinore. The Permittees participate in the MSAR TMDL Task Force and the Lake Elsinore and Canyon Lake TMDL Task Forces, which are stakeholder driven, watershed based efforts to address Pollutants of Concern in the respective sub-watersheds. The Permittees have also implemented several stakeholder driven, watershed based conservation programs such as the Special Area Management Plan, the Western Riverside County Multiple Species Conservation Plan, the San Jacinto River Integrated Watershed Management Plan and the Santa Ana Watershed Project Authority One Water One Watershed Plan.

These efforts are also addressed and discussed in the DAMP, which integrates these efforts into a coherent and uniform compliance program to protect Receiving Waters. Due to economies of scale and the fact that many of the Permittees have jurisdiction in both sub-watersheds, the Permittees have opted to continue to implement uniform MS4 Permit compliance programs across the entire Permit Area (for example Permittee training programs educate inspectors about the impacts and sources of pathogens and nutrients as opposed to offering separate sub-watershed specific training programs for the San Jacinto and MSAR sub-watersheds). The Permittees have indicated that as source assessments and monitoring data results from the aforementioned watershed efforts produce findings regarding potential urban sources of Pollutants of Concern that they may opt, in the future, to develop specific action plans for the MSAR and San Jacinto River sub-watersheds, or potentially even tributaries there-of. If so, the DAMP will be appropriately modified to clarify the sub-watershed specific components.

The Permittees also currently implement interim Hydromodification criteria and have committed to revising their Hydromodification management programs based on studies currently being conducted by SCCWRP. This Order requires the Permittees to continue to pursue these watershed planning efforts and enhance them as appropriate to address Pollutants of Concern.

J. To promote program transparency, each Permittee proposed to develop its own LIP that:

a. Specifies how each program element of the DAMP shall be implemented;

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b. Describes the ordinances, plans, policies, procedures, and tools (e.g., checklists, forms, educational materials, etc.) used to execute the DAMP;

c. Identifjes the organizational units responsible for implementation of each program element;

d. Establishes internal reporting requirements to ensure and promote accountability; and

e. Describes an adaptive method of evaluation and assessment of program effectiveness for the purpose of identifying program improvements.

K. The audits conducted by Regional Board staff have also shown a significant deficiency in measuring program effectiveness. This Order requires quantifiable measures for evaluating program effectiveness.

L. The above-mentioned strategies for the fourth term Order build upon and continue the programs and policies developed by the Permittees during the prior MS4 Permit terms as described in Sections VI and VII above.

M. A combination of these programs and policies and the requirements specified in this Order should ensure control of Pollutants in Urban Runoff from the MS4 owned and/or controlled by the Permittees.

VIII. ORDER REQUIREMENTS AND PROVISIONS

The legislative history of storm water statutes (1987 CWA Amendments), USEPA regulations (40CFR Parts 122, 123, and 124), and clarifications issued by the State Board (State Board Orders No. WQ 91-03 and WQ 92-04) indicate that a non-traditional NPDES permitting strategy was anticipated for regulating Urban Runoff. Due to the economic and technical infeasibility of full-scale end-of-pipe treatments and the complexity of Urban Runoff quality and quantity, MS4 permits generally include narrative requirements for the implementation of BMPs in place of Numeric Effluent Limits.

The requirements included in this Order are meant to specify those management practices, control techniques and system design and engineering methods that will result in protection of the Beneficial Uses of the Receiving Waters consistent with the MEP standard. State Board (Orders No. WQ 98-01 and WQ 99-05) concluded that MS4s must meet the technology-based MEP standard and Water Quality Standards. The U.S. Court of Appeals for the Ninth Circuit subsequently held that strict compliance with Water Quality Standards in MS4 permits is at the discretion of the local permitting agency.

The ROWD included a discussion of the current status of Riverside County's Urban Runoff management program and the proposed programs and policies for the next five years (fourth term Order). This Order incorporates these documents and specifies

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performance commitments for specific elements of the Permittees Urban Runoff management program.

This Order recognizes the significant progress made by the Permittees during the first three MS4 Permit terms in implementing the storm water regulations. This Order also recognizes regional and innovative solutions to such a complex problem, addresses deficiencies in the Permittees' Urban Runoff programs observed during the audits conducted by Regional Board staff, and considers comments by the USEPA on other draft MS4 Permits. This Order specifies quantifiable performance measures to determine compliance and assess the effectiveness of the Urban Runoff programs. This Order incorporates an integrated watershed approach in solving water quality and Hydromodification impacts resulting from urbanization and aims to promote LID techniques as a key element to mitigate impacts from New Development and Significant Redevelopment projects. The proposed Order also requires the Permittees to jmplement TMDL WLA through iterative BMP programs as required in the respective approved TMDL Implementation Plans (See Section V.C).. The goal of these programs and policies that are included in this Order is to achieve and maintain Water Quality Standards in the Receiving Waters.

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The essential components of the Urban Runoff management program, as established by federal regulations [40 CFR 122.26(d)] are: (i) Adequate Legal Authority, (ii) Fiscal Resources, (iii) Storm Water Quality Management Program (SQMP) - (Public Information and Participation Program, Industrial/Commercial Facilities Program, Development Planning Program, Development Construction Program, Public Agency Activities Program, JC/ID Elimination Program), and (iv) Monitoring and Reporting Program. The major sections of the requirements in this Order include: I. Facility Information, II. Findings, III. Permittee Responsibilities; IV. Discharge Prohibitions; V. Effluent Limitations and Discharge Specifications, VI. Receiving Water Limitations; VII. Legal Authority/Enforcement; VIII. Illicit Connections/Illegal Discharges; Litter, Debris and Trash Control; IX. Sewage Spills, Infiltration into MS4 Systems from Leaking Sanitary Sewer Lines, Septic System Failures, and Portable Toilet Discharges; X. Municipal Inspection Program, XI. New Development (including significant re-development);; XII. Public Education and Outreach; XIII. Permittee Facilities and Activities, XIV. Training Program For Storm Water Managers, Planners, Inspectors And Municipal Contractors; XV. Notification Requirements,; XVI. Program Management/Damp Review; XVII. Fiscal Resources, XVIII. Monitoring and Reporting Requirements; XIX. Provisions; XX Permit Modification, XXI. Permit Expiration and Renewal.

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These programs and policies are intended to improve Urban Runoff quality and protect the Beneficial Uses of Receiving Waters of the Permit Area.

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A. RESPONSIBILITIES

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The responsibilities of the Principal Permittee are to coordinate the overall Urban Runoff management program and the Co-Permittees are responsible for managing the Urban Runoff program within their jurisdictions as detailed in the ROWD and the proposed Order, Order No. R8-2009-0033.

The existing Implementation Agreement needs to be revised to include the cities that were not signatories to this Agreement. The Order requires that a copy of the signature page and any revisions to the Agreement be included in the specified Annual Report.

B. DISCHARGE PROHIBITIONS

In accordance with CWA Section 402(p)(3)(B)(ii), this Order prohibits the discharge of non-storm water to the MS4s, with a few exceptions. The specified exceptions are consistent with 40 CFR 122.26(d)(2)(iv)(B)(1). If the Permittees or the Executive Officer determines that any of the exempted non-storm water discharges is a significant source of Pollutants, a separate NPDES permit or coverage under the Regional Board's De Minimus permit will be required.

C. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS, INCLUDING WASTE LOAD ALLOCATIONS FOR DISCHARGES TO 303(d) LISTED WATERBODIES WITH ADOPTED TMDLS

The Order clarifies allowed discharges and those discharges (only from Permittee owned or operated facilities and activities) allowed only if certain discharge specifications are met, such as those covered under the De Minimus Permit. These discharges should be consistent with the Regional Board's General De Minimus Permit for Discharges to Surface Waters, Order No. R8-2009-0003, NPDES No. CAG 998001. Permittees de minimus discharges covered under this Order include: 1) dewatering wastes from subterranean seepage, except for discharges from utility vaults; 2) discharges resulting from hydrostatic testing of vessels, pipelines, tanks, etc.; 3) discharges resulting from the maintenance of potable water supply pipelines, tanks, reservoirs, etc.; 4) discharges resulting from the disinfection of potable water supply pipelines, tanks, reservoirs, etc.; 5) discharges from potable water supply systems resulting from initial system startup, routine startup, sampling of influent flow, system failures, pressure releases, etc.; 6) discharges from fire hydrant testing or flushing; 7) air conditioning condensate; 8) swimming pool discharges; 9) discharges resulting from diverted stream flows; and 10) Construction dewatering wastes. The DAMP and the LIP are required to incorporate information regarding Permittees' de minimus discharges.

This Order requires Permittees to implement established TMDL WLAs specified for Urban Runoff through an iterative BMP approach (see Section V.C above). Since some of the compliance dates for the TMDLs are outside this permit term, this Order

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does not impose the Urban Runoff WLA for bacteria or nutrients as numeric effluent limits. However, the Regional Board reserves the right to reopen the Order and add such limitations if the MS4 dischargers fail to implement BMPs approved by the Regional Board or the iterative BMP process proves inadequate to achieve the Urban Runoff WLA.

D. RECEIVING WATER LIMITATIONS

Receiving Water Limitations are included to ensure that discharges of Urban Runoff from MS4s do not cause or contribute to violations of applicable Water Quality Standards in Receiving Waters. The compliance strategy for Receiving Water Limitations is consistent with the USEPA and State Board guidance and recognizes the complexity of Urban Runoff management.

This Order requires the Permittees to meet Water Quality Standards in Receiving Waters in accordance with USEPA requirements, as specified in State Board Order No. WQ 99-05. If Water Quality Standards are not met through implementation of certain BMPs, the Permittees are required to re-evaluate the programs and policies and to propose additional BMPs. Compliance determination will be based on this iterative BMP implementation process.

E. LEGAL AUTHORITY/ENFORCEMENT

Each Permittee has adopted ordinances, municipal codes, and other regulations to establish legal authority to control discharges to the MS4s and to enforce these regulations as specified in 40 CFR 122.26(d)(2)(I)(B, C, E, and F. The Permittees are required to enforce these ordinances and to take enforcement actions against violators (40 CFR 122.26(d)(2)(iv)(A-D)).

The enforcement activities undertaken by a majority of the Permittees have consisted primarily of Notices of Violation, which act to educate the public on the environmental consequences of Illegal Discharges. In the case of the County, additional action has sometimes included recovery of investigation and clean-up costs from the responsible parties. In the event of egregious or repeated violations, the option exists for a referral to the County District Attorney for possible prosecution or to the Regional Board for enforcement under the California Water Code or the CWA. In order to eliminate unauthorized, non-storm water discharges, reduce the amount of Pollutants commingling with Urban Runoff and thereby protect water quality, an additional level of enforcement is required between Notices of Violation and District Attorney referrals.

The third term MS4 Permit required the Permittees to establish the authority and resources to administer either civil or criminal fines and/or penalties for violations of their Storm Water Ordinances. The Permittees now have this authority for

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penalties. Within the fourth term Order, Permittees are required to exercise this authority by developing an enforcement program to be administered within the industrial, commercial and construction elements of their Urban Runoff management programs. The enforcement program has been required to be included as an update to each Permittee's LIP. The effectiveness of this program must be documented in the Annual Reports submitted by the Permittees. However, it is acknowledged that once cases have been referred to the District Attorney or Environmental Crimes Task Force, etc. for prosecution, case details are confidential.

The fourth term Order further requires the Permittees to document and implement progressive and decisive enforcement actions, evaluate the effectiveness of their enforcement program and sanctions by tracking compliance and evaluating the amount of time to return to compliance.

This Order requires the Permittees to include in the LIP their legal authority and mechanisms to implement the various program elements required by this Order to properly manage, reduce, and mitigate potential Pollutant sources within each Permittee's jurisdiction. The LIP shall include citations of appropriate local ordinances, identification of departmental jurisdictions and key personnel in the implementation and enforcement of those ordinances. The LIP shall include procedures, tools and timeframes for progressive enforcement actions and procedures for tracking compliance.

F. ILLICIT CONNECTIONS/ILLEGAL DISCHARGES; LITTER, DEBRIS AND TRASH CONTROL

Federal regulation, 40 CFR 122.26(d)(2(iv)(B), requires the Permittees to eliminate illicit discharges to the MS4s. The Permittees have completed a survey of the MS4 and eliminated or permitted all identified Jllicit Connections. The Permittees have also established a program to address Jllegal Discharges and a mechanism to respond to spills and leaks and other incidents of discharges to the MS4.

The Permittees currently have several programs to address IC/IDs:

1. The Permittees operate a toll free phone line, provide e-mail access for filing complaints and take direct calls regarding IC/ID reports from third parties. These reports are investigated by Permittee staff and reported in IC/ID investigation forms. All Permittee public education outreach materials promote the use of these reporting mechanisms.
2. Permittee staff receive training on identification and reporting of IC/IDs to appropriate Permittee staff. These reports are investigated and reported in IC/ID reporting forms.

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3. The Permittees conduct industrial, commercial and construction inspections to identify potential IC/IDs. The outcomes of these inspections are reported in inspection reporting databases.
4. The Permittees contribute funds to the County Hazardous Materials Response Team to train and educate them to handle Illegal Discharges or accidental hazardous waste discharges so as to prevent IC/IDs. A summary of HAZMAT activities is provided in the Permittees Annual Reports.
5. The RCFC&WCD monitors Office of Emergency Service reports for potential IC/ID incidents and investigates them as appropriate. Results are reported in the RCFC&WCD complaint call database and reported to the Permittees as appropriate.
6. The RCFC&WCD has developed an online GIS tool that identifies the location of District and Permittee facilities to facilitate IC/ID investigations and response.
7. The Permittees have developed a Sanitary Sewer Overflow Procedure to limit the potential for sewage spills to the MS4.
8. RCFC&WCD, as Principal Permittee, has dedicated staff that conducts dry weather monitoring and also evaluates RCFC&WCD MS4 facilities for maintenance problems and/or IC/IDs. Detected IC/IDs from monitoring data or field inspections are reported to the District's NPDES section, logged into RCFC&WCD's complaint database, and reported to the appropriate Permittee for follow up action.

However, with a few exceptions, program evaluations conducted during the third term MS4 Permit showed that this program element is primarily complaint driven or an incidental component of municipal inspections or MS4 inspections for a number of Permittees. This Order requires the Permittees to ensure their LIPs describe each Permittee's plan for focused, systematic IC/ID investigations, outfall reconnaissance surveys, indicator monitoring, and track their sources[10]. A proactive illicit discharge detection and elimination (IDDE) program should be integrated with other LIP program elements as appropriate including: mapping of the Permittees' MS4 to track sources, aerial photography, Permittee inspection programs for construction, industrial, commercial, MS4, Permittee facilities, etc., watershed monitoring, public education and outreach, Pollution Prevention, and rapid assessment of stream corridors to identify dry weather flows and illegal dumping.

G. SEWAGE SPILLS, INFILTRATION INTO MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, SEPTIC SYSTEM FAILURES, AND PORTABLE TOILET DISCHARGES

[10] Table 2: Land uses, Generating Sites and Activities that Produce Indirect Discharges from IDDE, A Guidance Manual for Program Development and Technical Assessments, October 2004 CWP.

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Federal regulation, 40 CFR 122.26(d)(2)(iv)(B)(4), requires the Permittees to develop procedures to prevent, contain, and respond to spills that may discharge into the MS4s. The Permittees have already developed a program to address various types of spills to the MS4s. This Order requires the Permittees to continue to implement the unified sewer response plans in collaboration with the local sanitary sewer system operators. To facilitate swift response actions, the Permittees are required to provide 24-hour access to MS4s to the sanitary sewer system operators. The Permittees should also work cooperatively with the sanitary sewer system operators to determine if exfiltration from leaking sanitary sewer lines is causing or contributing to Urban Runoff Pollution problems. In addition, the Permittees are required to control infiltration or seepage from sanitary sewers to the MS4s through routine preventive maintenance of the MS4 (40 CFR 122.26(d)(2)(iv)(B)(7)). This Order also requires the Permittees to implement control measures and procedures to prevent, respond to, contain and clean up all sewage and other spills from sources such as portable toilets and septic systems.

On May 2, 2006, the State Board issued the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ (SSO Order) to address proper management and operation of sewer collection systems and to control sanitary sewer overflows. It requires dischargers/enrollees to develop and implement a written Sewer System Management Plan (SSMP) approved by the discharger's governing board and report sewer spills through an on-line reporting system. This Order requires the Permittees have reviewed the unified sewage spill response plan developed during the third term MS4 Permit with the local sewering agencies and determined that it is consistent with the requirements of the SSO Order. This Order also requires each Permittee to include in its LIP the interagency or interdepartmental sewer spill response coordination and responsibilities.

The MS4 program audits indicated that a majority of the Permittees with septic systems have inadequate information with regard to the number and location of those systems within their jurisdiction. This Order requires the Permittees with septic systems to develop within 2 years of adoption of this Order, an inventory of septic systems within its jurisdiction and establish a program to ensure that failure rates are minimized.

H. MUNICIPAL INSPECTION PROGRAM;

Federal regulations, 40 CFR 122.26(d)(2)(iv)(A-D), require the Permittees to inventory, prioritize and inspect industrial, construction and commercial facilities. This Order requires the Co-Permittees to continue inspections of construction, industrial, and commercial activities within their jurisdiction in order to control the Pollutants entering the MS4. The Co-Permittees will continue to maintain the inventory of facilities and sites in the above categories, prioritize these facilities based on threat to water quality, and perform regular inspections to insure compliance with local ordinances. While initial observations of non-compliance

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may result in 'educational' type enforcement, repeated non-compliance will result in more disciplinary forms of enforcement, such as monetary penalties, stop work orders or permit revocation.

An evaluation of Permittee inspection programs during the third term MS4 Permit indicated certain deficiencies in the commercial, industrial and construction programs of some of the Permittees. In many instances, program documentation of progressive enforcement and facilities' return to compliance were not properly documented. This Order requires Permittees to document inspections and enforcement and evaluate the effectiveness of their inspection and enforcement program by tracking the time for facilities to return to compliance. The Permittees who do not have an internet accessible database are required to initiate quarterly reporting and update of the inventory, inspection and enforcement database for facilities within their jurisdiction.

In order to address discharges to the MS4 from residential sources, the fourth term MS4 Permit requires the Permittees to develop and implement a residential program to prevent residential discharges from causing or contributing to a violation of Water Quality Standards in the Receiving Waters (40 CFR 122.26(d)(2)(iv)(A)).

I. NEW DEVELOPMENT (INCLUDING SIGNIFICANT REDEVELOPMENT)

Federal regulation, 40 CFR 122.26(d)(2)(iv)(A)(2), requires the Permittees to develop a comprehensive master plan to address discharges from New Development and Significant Redevelopment projects. During the third term MS4 Permit, the Permittees revised their New Development guidelines to address water quality and Hydromodification impacts resulting from urbanization. A WQMP for Urban Runoff was approved by the Regional Board in 2004 and became effective in 2005. This Order requires the Permittees to continue to work towards the goal of restoring and preserving the natural hydrologic cycles in proposed urban developments by reviewing and approving project-specific WQMPs to address post-construction impacts. The WQMP should be designed to address water quality impacts, including hydrologic conditions of concern (HCOC), from New Development and Significant Redevelopment projects through: (1) site design BMPs, including LID techniques; (2) Source Control BMPs; and (3) Treatment Control BMPs. This Order recognizes the importance of LID techniques to minimize the impact of urbanization on water quality. This Order requires the project proponents to infiltrate, harvest and reuse, evapotranspirate, or bio-treat the volume of runoff from a 24-hour, 85th percentile storm event where feasible. The Order also provides alternatives and in-lieu programs for project sites where infiltration, harvesting and re-use, evapotranspiration and bio-treatment are not feasible.

Program evaluations conducted during the third term MS4 Permit indicated a need for establishing a clear nexus between the watershed protection principles (including LID) and the planning and approval processes of the Permittees. This

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Order requires the Permittees to review and revise their Development Standards, Zoning Codes, Conditions of Approval, Development Project Guidance, ordinances, and other related documents, where feasible, to identify and eliminate barriers to incorporate watershed protection principles.

The Southern California Monitoring Coalition (SMC), including project lead agency, the San Bernardino County Flood Control District, in collaboration with SMC member, SCCWRP and the California Storm Water Quality Association (CASQA), is developing a LID Manual for Southern California with funding from the State Board, CASQA and other sources. This manual will be incorporated into the CASQA BMP Handbooks. The Permittees are encouraged to utilize the manual as a resource for proper LID design and implementation techniques.

Program evaluations have also suggested a need for improvement in the Permittees' inspection, and tracking of post-construction BMPs. This Order requires the Permittees to revise their close-out procedures to include field verification that site design, Source Control and Treatment Control BMPs are operational and consistent with the approved WQMP.

This Order incorporates new project categories and revised thresholds for several categories of New Development and Significant Redevelopment projects that trigger the requirement for a WQMP. New project categories retail gasoline outlets (RGOs) with 5,000 square feet or more with 100 or more average daily vehicle traffic. The threshold criteria that trigger the WQMP requirement for non-residential commercial/industrial construction projects have been reduced from 100,000 square feet to 10,000 square feet or more of impervious surface. The threshold for residential subdivision projects has also been revised from 10 units or more to a threshold of 10,000 square feet or more of impervious surface.

The 2008 National Research Council (NRC) report[11] indicates that roads and parking lots constitute as much as 70% of total impervious cover in ultra-urban landscape, and as much as 80% of the directly connected impervious cover. Roads tend to capture and export more storm water Pollutants than other impervious covers. As such, roads are included as a priority development category for which WQMPs are required. The NRC report also indicates that there is a direct relationship between impervious cover and the biological condition of downstream receiving waters. The Permittees are required to address HCOC from New Development and Significant Redevelopment projects to minimize downstream impacts.

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[11] National Research Council Report (2008), http://www.nap.edu/catalog.php?record_id=12465

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This Order incorporates new project categories and revised thresholds for several categories of new development and redevelopment projects that trigger the requirement for a WQMP. The 2008 National Research Council (NRC) report[12] indicates that roads and parking lots constitute as much as 70% of total impervious cover in ultra-urban landscape, and as much as 80% of the directly connected impervious cover. Roads tend to capture and export more storm water pollutants than other impervious covers. As such, roads are included as a priority development category for which WQMPs are required. Private New Development and Significant Redevelopment projects incorporating roads typically allow road runoff to be addressed as part of the overall water quality strategy for the larger common plans of development. Permittee streets, roads and highways capital projects have special limitations. For example, the footprint of street, road and highway capital projects is often limited and may have hydraulic constraints due to lack of underground storm drain systems that would otherwise be necessary to hydraulically facilitate treatment of runoff. There are also limitations specified in state and federal design and code specifications that may limit or prohibit BMPs. Permittees may also be subject to flow diversion liability and limited road maintenance budgets and equipment. Street, road and highway projects that function as part of the MS4 also receive runoff and associated Pollutants from both existing urban areas and other external sources, including adjacent land use activities, aerial deposition, brake pad and tire wear and other sources that may be outside the Co-Permittee's authority to regulate and/or economic or technological ability to control. These offsite flows can overwhelm Treatment Control BMPs designed to address the footprint (consistent with the typical requirements for a WQMP) of street, road or highway capital projects incorporating curb and gutter as part of its stormwater conveyance function. Despite these limitations, the Regional Board finds that Permittee construction of streets, roads and highway capital projects may provide an opportunity to address Pollutant loads from existing urban areas. However, due to the nature of the facilities and projects, it would be unduly burdensome for the Co-Permittees to maintain WQMP documents for transportation projects (in addition to Facility Pollution Prevention Plans and other overlapping requirements of this Order). The Permittees are therefore not required to prepare WQMP documents for street, road and highway capital projects, but instead are required to develop equivalent documents that include site specific consideration utilizing BMP guidance to address street, roads and highway capital project runoff to the MEP.

Consistent with a long term holistic approach to address water quality and Hydromodification impacts resulting from urbanization, this Order requires Permittees to continue to develop tools that facilitate integration, to the extent

[12] National Research Council Report (2008), http://www.nap.edu/catalog.php?record_id=12465

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practicable, of water quality, stream protection, storm water management and re-use strategies with land use planning policies, ordinances, and plans within each jurisdiction. These tools should address cumulative impacts of development on vulnerable streams, preserve or restore, consistent with the MEP standard, the structure and function of streams, and protect surface and groundwater quality. For 303(d) listed waterbodies with Urban Runoff pollutant sources and without a TMDL, the Permittees are required to provide special protections such as requiring more effective post-construction BMPs, focus training programs and develop targeted public outreach that would address the urban source of the pollutant of concern. The Permittees are also required to participate in the TMDL development and implementation.

J. PUBLIC EDUCATION AND OUTREACH;

Federal regulation, 40 CFR 122.26(d)(iv), requires the Permittees to develop a comprehensive storm water management plan with public participation and 40 CFR 122.26(d)(iv)(B)(6) requires the Permittees to engage in outreach activities to facilitate the proper management of Pollutants. Public outreach is an important element of the overall urban Pollution Prevention program. The Permittees have committed to implement a strategic and comprehensive public education program to maintain the integrity of the Receiving Waters and their ability to sustain Beneficial Uses. The Principal Permittee has taken the lead role in the outreach programs and has targeted various groups including businesses, industry, development, utilities, environmental groups, institutions, homeowners, school children, and the general public. The Permittees have developed a number of educational materials, have established a storm water Pollution Prevention hotline, started an advertising and educational campaign, and distributed public education materials at a number of public events. The Permittees are required to continue these efforts and to expand public participation and education programs.

The Permittees have already developed BMP fact sheets to address sources from residential activities such as auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes. .

This Order requires the Permittees to annually review their public education and outreach efforts and revise their activities, if necessary, to address public outreach needs fed back from other Urban Runoff program elements. Federal regulation, 40 CFR 122.26(d)(v), requires the Permittees to conduct a program assessment to determine the reduction in Pollutant loadings due to Urban Runoff management programs. Each Permittee is required to implement an assessment program, guided by the CASQA Guidance manual or equivalent alternative, to measure the change in behavior of its target communities to reduce discharge of Pollutants to the MS4 and the environment.

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K. PERMITTEE FACILITIES AND ACTIVITIES;

Federal regulation, 40 CFR 122.26(d)(iv)(A), requires the Permittees to ensure that their activities and facilities do not cause or contribute to violations of Water Quality Standards in receiving waters. Education of Permittee planning, inspection, and maintenance staff is critical to ensure that Permittee facilities and activities do not cause or contribute to an exceedance of Receiving Water Quality Standards. The 2002 MS4 Permit also specified minimum requirements for street sweeping and inspection and maintenance of drainage facilities. The Permittees were also required to develop and distribute BMP fact sheets for various Permittee activities. Permittee as well as contract staff that perform Permittee activities were required to be properly trained. The second and third term MS4 Permits required the Permittees to prepare a Municipal Facilities Strategy (MFS) to ensure that Permittee facilities and activities do not contribute Pollutants to Receiving Waters. The MFS was incorporated into Section 5 of the DAMP during the third-term MS4 Permit. Each year, by August 1st, the Permittees are required to review their activities and facilities to determine the need for revisions to section 5 of the DAMP.

This Order continues and builds upon the requirement of the third term MS4 Permit by requiring Permittees to include structural post-construction BMP information for certain Permittee projects along with the Notice of Termination submitted to the Executive Officer upon completion of the construction activity. The Notice of Termination must include photographs of the completed project, a location map, and for public works projects subject to a WQMP, structural post-construction BMP location, field verification report and identify long term operation and maintenance responsibility. Permittees are required to develop a database of post-construction BMPs for which the Permittees are responsible and shall reference this database in the LIP.

Program evaluations conducted during the third term MS4 Permit indicated varying degrees of compliance at Permittee facilities and activities. This Order requires each Permittee to inventory its fixed facilities, field operations and MS4 facilities to ensure that Permittee facilities do not cause or contribute to a Pollution or Nuisance in Receiving Waters. These facilities and field operations are to be prioritized for inspection according to threat to water quality.

Fixed Permittee facilities and field operations include, but are not limited to fire training facilities, corporate yards, maintenance and storage yards, animal shelters, water treatment facilities, swimming pools, warehouses, and hazardous materials storage facilities, and recreation facilities. The Permittees are required to include in their LIP procedures and schedules for inspections and maintenance of Permittee facilities and activities. Urban Runoff from other Permittee facilities, such as airports, wastewater treatment plants and landfills, is regulated under the General Industrial Permit.

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L. PERMITTEE CONSTRUCTION PROJECTS

The third term MS4 Permit authorized the discharge of storm water from construction activities on one acre or more that are under ownership or direct responsibility of the Permittees. The Permittees were required to notify the Executive Officer prior to commencement of construction activities, and to comply with the substantive requirements of the latest Statewide General Construction Activities Storm Water Permit.

Program evaluations conducted during the third term MS4 Permit indicated that some of the Permittees were not submitting or were not aware of the requirement to submit a Notice of Intent and a Notice of Completion for Permittee construction projects.

M. TRAINING PROGRAM FOR STORM WATER MANAGERS, PLANNERS, INSPECTORS AND PERMITTEE CONTRACTORS

Education of Permittee planning, inspection, and maintenance staff is important to ensure that land use decisions, local permit approvals and Permittee facilities and activities do not cause or contribute to an exceedance of Receiving Water Quality Standards. During the term of the 2002 MS4 Permit, the Permittees attended training classes specific to major Urban Runoff program elements including New Development/Significant Redevelopment, construction and industrial inspections, and Permittee activities.

This Order requires the Permittees, in conjunction with a broader array of MS4 Programs or CASQA, to define the program implementation training needs for Urban Runoff program staff, including contractors, managers and inspectors. The training curriculum must be designed for Permittee facilities and field operations staff, Permittee inspection staff, Urban Runoff program managers and those involved in the review and approval of WQMPs and CEQA documents, including Permittee contractors. The audits of the Permittees indicated the need for better inter-departmental collaboration and communication in the local Urban Runoff program implementation. This Order requires LIPs to develop and document processes and procedures for coordination between planners, plan reviewers, engineers and inspectors to ensure that appropriate post-construction BMPs are approved, installed, and are operational.

N. NOTIFICATION REQUIREMENTS

Most of the notification requirements that were spread throughout the third term MS4 Permit were consolidated into one section.

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O. PROGRAM MANAGEMENT ASSESSMENT/DAMP REVIEW

The DAMP is a management document that needs to be updated with the new requirements of this Order.

FISCAL RESOURCES

Each Permittee is expected to exercise its full authority to secure the resources necessary to meet all requirements of this Order. See Section IX for existing funding mechanisms and potential limitations to Permittee funding.

Q. MONITORING AND REPORTING REQUIREMENTS

During the first term MS4 Permit and part of the second term MS4 Permit, the Permittees conducted monitoring of the Urban Runoff flows, Receiving Water quality, and sediment quality. The Santa Ana Phase I NPDES Monitoring Program began in November 1991 with 27 monitoring sites. The program has been reduced in phases to more specifically address Urban Runoff program needs and to redirect monitoring resources to TMDL-related activities. There was a time where samples were collected on a rotational basis with no consistent monitoring from year to year. On April 14, 2003, with the submittal of an Interim Monitoring Program, monitoring at seven core sampling locations (Sampling Stations 040, 316, 318, 364, 702, 707, and 752) was established that provided representative and consistent monitoring results for the Permit Area.

The Riverside County monitoring programs, as well as other monitoring programs nationwide, have shown that there is a high degree of uncertainty in the quality of Urban Runoff and that there are significant variations in the quality of Urban Runoff spatially and temporally. However, most of the monitoring programs to date have indicated that there are a number of Pollutants in Urban Runoff. A link between Pollutants in Urban Runoff and Beneficial Use Impairments has been established in a few studies.

This Order requires the Permittees identified as TMDL stakeholders in an approved TMDL to continue to comply with applicable TMDL Implementation Plan requirements, including monitoring requirements, and to implement Urban TMDL WLAs through an iterative BMP approach (see Section V.C above).

Wet and dry seasons are defined differently by the various monitoring programs included in this Order. The Middle Santa Ana TMDL defines the wet season as November 1 through March 31st and the Canyon Lake/Lake Elsinore TMDL monitoring defines it as October 1st through May 31st. The Monitoring and Reporting Program for this Order generally defines the Wet Season as October

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Deleted: participate in monitoring programs to support TMDL development and implementation. Specific implementation programs exist for the Middle Santa Ana River and Canyon Lake/Lake Elsinore TMDLs. Monitoring strategies shall be revised as necessary to evaluate the impacts of Urban Runoff on identified impairments within the Permit Area and the tributary 303(d) listed waterbodies.

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1st through May 31st. Monitoring required under this Order is expected to be conducted consistent with the applicable seasonal definitions.

The MSAR Bacterial Indicator TMDL and Canyon Lake/Lake Elsinore Nutrient TMDL requires the Permittees to comply with TMDL Implementation Plan requirements to revise the DAMP to incorporate BMPs in the Permittees Urban Runoff programs. This Order requires the Permittees to evaluate the effectiveness of the BMPs implemented as part of the DAMP in conformance with the TMDL Implementation Plan requirements.

This MS4 monitoring program includes sampling Urban Runoff at a variety of sites located throughout the Permit Area for three storm events per year. Urban Runoff samples will be collected and analyzed for a variety of constituents. In addition to these efforts, the Permittees are reevaluating their overall Urban Runoff monitoring program to determine its effectiveness in meeting the following objectives:

1. Assess rates of mass loading
2. Assess influence of land use on water quality
3. Assess compliance with Water Quality Objectives
4. Assess effectiveness of water quality controls
5. Detect JC/IDs
6. Identify problem areas and/or trends
7. Identify Pollutants of Concern
8. Identify baseline conditions
9. Establish/maintain a water quality database

To accomplish these goals, the following activities are conducted:

1. Collect water quality data
2. Collect rainfall/runoff data
3. Establish quality assurance/control procedures
4. Conduct data analysis and archiving
5. Install and maintain appropriate equipment
6. Prepare an Annual Report

RCFC&WCD, in its role as Principal Permittee, participates in the SMC and other task forces. The goal of the SMC is to develop the technical information necessary to better understand storm water mechanisms and impacts, and then develop the tools that will effectively and efficiently improve storm water decision-making. Some of the cooperative monitoring efforts conducted through the SMC and other task forces include Comparative Evaluation of Microbial Source Tracking Techniques, Model Monitoring Program Guidance, Peak Flow Study, and Laboratory Inter-Calibration Studies. Under the auspices of the SMC, SCCWRP prepared "Model Monitoring Program for Municipal Separate Storm Sewer Systems in Southern California", August 2004 Technical Report No. 419. This report noted, "...the lack of mass emissions stations in the inland counties hampers

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their ability to estimate the proportional contribution of these inland areas to cumulative loads downstream." The SMC consists of representatives from the Counties of Ventura, Los Angeles, Orange, San Bernardino, Riverside, and San Diego and the Cities of Long Beach, and Los Angeles, the Los Angeles, Santa Ana and San Diego Regional Boards, the State Board, SCCWRP, Caltrans, and the USEPA. This Order requires the Permittees to continue mass emissions monitoring to determine Pollutant loading.

During the second and third term MS4 Permits, there was an increased focus on watershed management initiatives and coordination among the MS4 permittees in Orange, Riverside and San Bernardino Counties. The MS4 permittees participated in a number of regional monitoring programs and other coordinated program and policy developments, such as the Regional Integrated Freshwater Bioassessment Monitoring Program, and the BMP Effectiveness Assessment. The Principal Permittee continues to be an active participant in the SWQSTF, MSAR Bacterial Indicator TMDL, Canyon Lake/Lake Elsinore (San Jacinto) Nutrient TMDL and the SMC. This Order recommends the Permittees continue their participation in these types of watershed coordination efforts and provides them with opportunities to use these efforts to comply with applicable requirements of the Permit.

The third term MS4 Permit required the Permittees to initiate bioassessment monitoring. To allow for a holistic approach, this Order requires the Permittees to participate in the Regional Integrated Freshwater Bioassessment Monitoring Program in lieu of a separate bioassessment monitoring program for the Permit Area.

This Order requires the Permittees to re-evaluate the CMP and submit a revised plan for approval. The revised CMP should integrate the goals and objectives of the Watershed Action Plan and rectify data gaps from previous monitoring efforts.

R. PROVISIONS – Standard Language per NPDES regulations.

S. PERMIT MODIFICATION– Standard Language per NPDES regulations.

T. PERMIT EXPIRATION AND RENEWAL– Standard Language per NPDES regulations.

IX. WATER QUALITY BENEFITS, COST ANALYSIS, AND FISCAL ANALYSIS

There are direct and indirect benefits from clean lakes and beaches, clean water, and a clean environment. It is difficult to assign a dollar value to the benefits the public derives from fishable and swimmable waters. In 1972, at the start of the NPDES program, only 1/3 of the U.S. waters were swimmable and fishable. In 2008, more than 2/3 of the U.S. waters met these criteria. In the 1999 "*Money*" magazine survey

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of the "Best Places to Live", clean water and air ranked as two of the most important factors in choosing a place to live. Thus environmental quality has a definite link to property values.

The true magnitude of the Urban Runoff problem is still elusive and any cost estimate for cleaning up Urban Runoff would be premature short of end-of-pipe treatments. For Urban Runoff, end-of-pipe treatments are cost prohibitive and are not generally considered as a technologically feasible option. Over the last decade, the Permittees have attempted to define the problem and implemented BMPs to the MEP to combat the problem.

The costs incurred by the Permittees in implementing these programs and policies can be divided into three broad categories:

A. Shared costs: These are costs that fund activities performed mostly by the Principal Permittee under the Implementation Agreement. These activities include overall storm water program coordination; intergovernmental agreements; representation at the SWQSTF, Regional Board/State Board meetings and other public forums; preparation and submittal of compliance reports and other reports required under the NPDES permits, responding to Water Code Section 13267 requests, budget and other program documentation; coordination of consultant studies, Co-Permittee meetings, and training seminars.

B. Individual Costs for DAMP Implementation: These are costs incurred by each Permittee for implementing the BMPs (drainage facility inspections for Jllicit Connections, drain inlet/catch basin stenciling, public education, etc.) included in the DAMP. A number of programs and policies for Non-Point and Urban Runoff Pollution controls existed prior to the MS4 permit program. However, the DAMP that was developed and implemented in response to the MS4 Permits required additional programs and policies for Urban Runoff Pollution control.

C. Individual Costs of Pre-Existing Programs: These are costs incurred by each Permittee for water Pollution control measures which were already in existence prior to the MS4 permit program. These programs included recycling, litter control, street sweeping, drainage facility maintenance, and emergency spill response.

Historically, the Permittees have employed four distinct funding methods to finance their NPDES Activities. Many Permittees utilize a combination of these funding sources. The different methods include:

A. Santa Ana Watershed Benefit Assessment Area

In 1991, the RCFC&WCD established the Santa Ana Watershed Benefit Assessment Area (SAWBAA) to fund its NPDES activities. Currently, SAWBAA

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revenues fund both area-wide NPDES program activities and the RCFC&WCD's individual MS4 permit compliance activities.

B. County Service Area 152

In December 1991, the County of Riverside formed County Service Area 152 (CSA 152) to provide funding for compliance activities associated with its NPDES permit activities. Under the laws that govern CSAs, sub-areas may be established within the overall CSA area with different assessment rates set within each sub-area. The cities of Corona, Moreno Valley, Norco, Riverside, Lake Elsinore and San Jacinto elected to participate in CSA 152.

C. Utility Charge

The City of Hemet funds a portion of its NPDES program activities through a utility charge.

D. General Fund /Other Revenues

Permittees also utilize general fund revenue to finance their NPDES activities. Several Permittees also report using general fund and other revenue sources (e.g., gas taxes, developer fees, etc.) to fund a portion of their Urban Runoff management activities.

The Annual Report provides the most recent budgets and expenditure projections available for the costs incurred by the Permittees in implementing these programs and policies. The following information, in parenthesis, on the current economic conditions was provided by the Permittees.

{Current Economic Conditions
The following information was provided by the Permittees and does not constitute a finding by the Regional Board:

Historically, the Permittees have employed several funding methods to finance their MS4 Permit compliance activities. Unfortunately, the mortgage crisis, collapse of the housing market and the economic recession has resulted in the cessation of virtually all development activity and has significantly reduced sales tax revenue. Property tax revenues have been reduced by the high level of foreclosure activity and reduced property values. Property tax revenues have been further reduced by homeowner requests for reassessments to reflect the reduced property values. The impact of these economic conditions on the Permittees in the Santa Ana Region has been particularly severe. As a result, funds typically provided by these funding methods has been severely reduced, and it is anticipated that this condition will continue for an indefinite period. The funding methods historically used and the

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effects of the economic situation on the availability of funds through these sources are summarized as follows:

- Santa Ana Watershed Benefit Assessment Area. In 1991, the District established the Santa Ana Watershed Benefit Assessment Area to fund its MS4 Permit compliance activities. Currently, the Benefit Assessment revenues fund the District's share of the area-wide MS4 Permit program activities and the District's individual compliance activities as a Permittee. Under the Benefit Assessment each parcel is taxed based on the impervious area of each parcel at a set rate established through Proposition 218. This rate has not been increased since 1991 and increases in revenues have resulted from increases in the number of contributing parcels resulting from New Development. In 2007/08 the Santa Ana Benefit Assessment generated approximately $2,030,000 in revenue. These revenues are used to fund the District's compliance activities and the bulk of the administrative costs associated with the District's duties as Principal Permittee.

  Outlook: The District expects at best to maintain, if not see temporary reductions in Benefit Assessment revenues due to the significant number of homes that are not paying property tax due to foreclosure. An increase in the established Benefit Assessment rate to compensate for these reductions would require approval of 2/3 of the voters or 50% of the property owners and is unlikely, especially in the current economic climate. An increase in the number of contributing parcels will not occur until the development industry recovers.

- General Fund/Other Revenues. The County and the Cities utilize general fund revenue to finance most of their MS4 Permit compliance activities. General fund revenue is generated by property tax, sales tax, and auto license taxes.

  Outlook: The Permittees expect a continued reduction in the funds available through General Fund/Other Revenues through at least FY 2009/2010. Although optimistic that conditions will begin to stabilize toward the end of 2009, the Permittees cannot speculate as to when revenues will recover to previous levels. Historically, the Permittees have investigated other funding sources, including a phone survey conducted by LESJWA with support from the District and the County of Riverside to evaluate the possibility of passing a new assessment to fund water quality improvements benefiting Lake Elsinore. The results of the survey found insufficient voter support for water quality related issues to move forward with a special election. The Permittees have also formed a finance committee which has met several times to obtain information about actions that they can take to maximize revenues and potential alternative funding sources. These efforts met with some success, particularly in relation to maximizing fees for service; however significant new funding sources were not identified or available to the Permittees even during the more favorable

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economic conditions experienced during the term of the 2002 Riverside County MS4 Permit.

- Fees. Several Permittees charge fees for services such as inspections, plan check and other recoverable costs related to compliance with the 2002 Riverside County MS4 Permit. These fees cover both the direct and indirect costs associated with conducting these inspections/reviews including associated compliance tracking and reporting.

  Outlook: It is notable that, with the virtual collapse of the development industry in the Santa Ana Region, the fees received by the Permittees for review of New Developments and construction inspections have been significantly reduced. With this reduced level of fee-based income, maintenance of the existing inspection and plan review programs will place a burden on overall funding of the compliance programs. The Permittees do not expect revenues from fees to recover until the development industry recovers. Even with recovery of the development industry, it is anticipated that revenues from fees will be reduced for the majority of the Cities within the Santa Ana Region and the County due to the reduced area remaining for development in their jurisdictions.

- Grants. The Permittees have actively pursued and, as available, used grants to fund compliance programs.

  Outlook: In December the State's budget crisis resulted in a directive to State agencies from the Department of Finance to halt projects that rely on bond funds, including those funded by Proposition 40, Proposition 50 or Proposition 84. The State of California is the primary source of grant funding for water quality projects. Future availability of funds to resume compliance projects funded by grants is uncertain.

It is clear that the current economic climate and that of the foreseeable future is creating a significant burden upon the Permittees that will make the continuance of all existing MS4 Permit compliance programs difficult. If new funding sources or alternative combinations of funding sources cannot be identified , it is likely that compliance program funding will be reduced.

Economic Projections

According to Chicago Title, Southwest Riverside County has experienced a very significant increase in supply of single-family residential units on the market. As a result, housing price indicators are very negative. In the majority of the Southwest Riverside submarket, the pending price is less than closing price that suggests the weakness of the market. The October 2008 count of bank owned (REO) properties for Riverside County as a whole was 12,078. The number of foreclosures was 23,480. The presence of high levels of REO properties will continue to negatively

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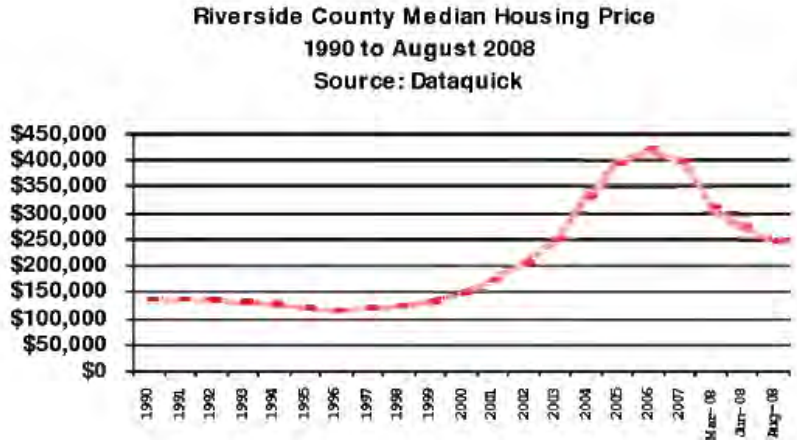
affect the price line. In addition, the level of foreclosures is increasing. At the end of January 2009, 68% of the homes listed for sale are foreclosures or short sales.[13]

With regard to other sectors of the economy, Riverside County has taken a serious turn for the worst in 2008, with projections indicating that the severe downturn will continue through 2009 at the very least. The economic difficulties being faced in the Southwest Riverside submarket is the result of the dramatic downturn in the housing market in this area, the national financial turmoil, the worldwide credit crisis, and the increasing consumer debt crisis. According to Beacon Economics, a respected economics consulting firm in Los Angeles, Inland Southern California is clearly at the epicenter of this economic turmoil, with extremely high rates of unemployment at present. Unemployment rates in Inland Southern California are expected to reach 12.4% (Riverside County beat that – unemployment was 13.7% in June 2009 – California Employment Development Department) before this deep recession is over. Housing prices are expected to continue their precipitous decline from their peak levels in the two Inland Southern California counties through at least 2011. According to Dataquick, median home prices in Riverside County peaked at $415,000 in January 2007. At the end of this cycle, the median home price in Riverside County is expected to be $198,000. Figure 1 depicts the median housing price in Riverside County over the period 1990 to August 2008.

Figure 1. Riverside County Median Housing Price (1990 – August 2008)



Source: Riverside County Center for Demographic Research. 2008. Riverside County Progress Report, pg 14.

[13] Orange County Register, January 27, 2009, p. 11.

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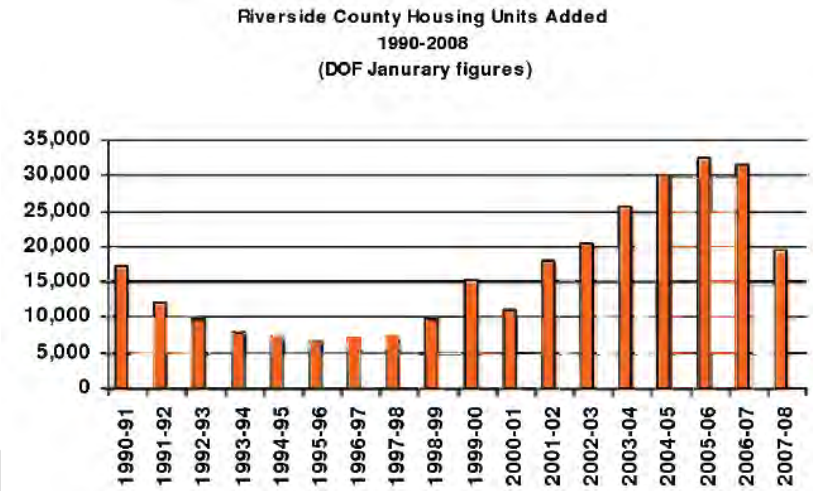
Local Government sales tax revenues remained fairly stagnant through 2006 and began to decline in early 2007, according to Beacon. By the second quarter of 2008, the taxable sales in Riverside County declined by 7.7%. This will continue with taxable sales possibly bottoming out by 2010. These shocks are expected to continue and accelerate within the southwest Riverside County economy.

As a direct outcome of the current economy and the economic outlook into the term of the 2009 Riverside County MS4 Permit, the number of New Development proposals has plummeted and any significant rebound is not forecast. New and redevelopment projects will likely remain minimal. As shown in Figure 2, the number of housing units being added each year has dropped below the levels seen at any point in time during the 2002 Riverside County MS4 Permit. These numbers will likely continue to decrease for a significant portion of the new 2009 Riverside County MS4 Permit term.

Figure 2. Riverside County Housing Units Added (1990 – 2008)



Source: Riverside County Center for Demographic Research. 2008. Riverside County Progress Report, pg 12.

These economic issues and projections directly affect and limit both:

The need for including enhanced New Development and Significant Re-development requirements in the 2009 Riverside County MS4 Permit, and

The Permittees ability to fund, and even seek new funding sources for additional MS4 Permit requirements for New Development and Significant Re-development projects.

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Permittee specific projections are as follows:

County of Riverside

The County is operating with a structural deficit of $12 million and plans a 25% budget reduction from FY 2008/2009 through FY 2011/2012. The County's current budget of $4.7 billion represents a 5% reduction from the previous year and next year's budget is expected to be cut by 10%. These cuts are directly associated with the decline in property values caused by the high number of foreclosures. There are concerns about having to use discretionary funds to meet State mental health and social service mandates. In addition, the County is dependent on funds from Federal and Sstate sources. If during this time of economic crisis Federal and State funding sources are reduced or eliminated, any unfunded programs will be terminated. Only core County programs will continue.

The primary source of general fund revenue is from property taxes and sales tax. With the unprecedented number of foreclosures, reduced property values, and declining sales, general fund revenue is in a downward spiral. Another source of funding is through the Solid Waste Tipping Fees paid at the County landfills. Volume is down 15% since 2006 with anticipated downward trend to 40% reduction in solid waste through 2014. Programs that are partially funded through tipping fee allotments will be impacted. Due to the declining economy the recycling market has collapsed. Virtually no recyclable materials are being shipped for reprocessing. This loss of revenue and increased disposal costs is further impacting the general fund.

Cuts of 25% for all Net County Cost general fund programs will translate into reduction of County services and elimination of unfunded State and Federal programs. Only core value programs will be provided (including public safety and fee programs).

The County has instituted a hiring freeze and required each department to create a report outlining the projected effects of the budget cuts. The County currently employs over 20,000 people, and layoffs are expected to result from the findings of these departmental reports. It is anticipated that this will impact program delivery for stormwater related activities. No County department will be able to sustain current staffing levels as they try to meet the 25% budget reduction strategy.[14] [15]

City of Menifee

The newly incorporated City of Menifee FY 2008/2009 initial budget was estimated from their comprehensive fiscal analysis that was submitted to the

[14] "The Realities of Recession in California: A Statewide Report by U.S. Senator Barbara Boxer, December, 2008, p. 18.
[15] Riverside County Executive Office, January, 2008.

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Local Agency Formation Commission during the incorporation process. Because of the economic uncertainty, and the fact that the City is only now beginning to staff positions, it is unknown what the immediate impact of the fiscal crisis will be. The County is responsible for assisting the City in meeting its MS4 Permit compliance requirements during the first year of incorporation which expires October 1, 2009. Currently, the level of property tax revenue that will be available to the City is uncertain. Funding for MS4 Permit compliance requirements was not explicitly budgeted. A financial hardship currently exists because of the costs associated with incorporation.

City of Murrieta

The City of Murrieta's FY 2008/2009 budget did not increase compared to FY 2007/2008. The City has identified a $3.3 million budget shortfall for the current fiscal year ending on June 30, 2009. This represents approximately 8.2% of the City's projected revenue which must be absorbed in five months. The shortfalls are primarily due to reduced sales tax and property tax revenues. Department heads are currently working on revised budgets to adjust for the loss in revenue.

Additional, budget cuts are anticipated for FY 2009/2010 because the immediate economic outlook is not good. There have been approximately 2,000 home foreclosures within the City. Sales tax revenue is estimated to drop 12.5%, property tax revenue will drop, and the State took approximately $525,000 out of redevelopment funds. Murrieta did not receive any vehicle licensing fees from the State and it appears likely that the State will take more revenue from the Cities to solve its budget problems. New NPDES requirements that increase compliance costs will create a financial hardship for the City.

City of Riverside

The City of Riverside has seen declining general fund revenue over the last two fiscal years in virtually all categories. The City's most recent projection indicates that total general fund revenues for the current fiscal year will be under $200 million, down from a budget of $215 million as adopted, and $226.5 million in the prior fiscal year. This represents a decline over two fiscal years of approximately 12%. Specifically, property tax and sales tax revenue continue their decline, which is primarily attributable to decreased residential construction activity and in the case of sales tax declining automobile sales.

The decline in revenue has resulted in a corresponding reduction to general fund expenditures. Specifically, approximately 12% of the positions authorized for the general fund have been vacated and unfunded, either through transferring staff to other funds, attrition or limited layoffs of temporary and contract staff. Additionally, the level of service provided to the community in virtually all City departments has been reduced through funding reductions

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to items such as street maintenance, recreation programs and libraries, though great care has been taken to minimize the impact of cuts to the public. It is anticipated that in the near term the economic situation will not improve, and staff is preparing a budget for the upcoming fiscal year that anticipates further decreases in revenue.

City of Wildomar

The newly incorporated City of Wildomar FY 2008/2009 initial budget was estimated from their comprehensive fiscal analysis that was submitted to the Local Agency Formation Commission during the incorporation process. Because of the economic uncertainty, and the fact that the City is only now beginning to staff positions, it is unknown what the immediate impact of the fiscal crisis will be. The County is responsible for assisting the City in meeting its MS4 Permit compliance requirements the first year of incorporation that expires July 1, 2009. Currently, the level of property tax revenue that will be available to the City is uncertain. Funding for MS4 Permit compliance requirements was not explicitly budgeted. A financial hardship currently exists because of the costs associated with incorporation.}

X. ANTIDEGRADATION ANALYSIS

The Regional Board has considered whether a complete antidegradation analysis, pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16, is required for these Urban Runoff discharges. The Regional Board finds that the Pollutant loading rates to the Receiving Waters will be reduced with the implementation of the requirements in this Order. As a result, the quality of Urban Runoff discharges and Receiving Waters will be improved, thereby improving protection for the Beneficial Uses of Waters of the U.S. Since this Order will not result in a lowering of water quality, a complete antidegradation analysis is not necessary, consistent with the federal and state antidegradation requirements.

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XI. PUBLIC WORKSHOP

Regional Board proposes to conduct at least one public workshop and a subsequent public hearing. The first workshop to review the proposed Order and to get public comments is scheduled as follows:

Date and time: August 3, 2009; meeting starts at 9:00 a.m.
Location: City of Loma Linda, Council Chambers
25541 Barton Road
Loma Linda, CA

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The details regarding any subsequent workshops and the public hearing to consider adoption of the proposed Order will be posted on the Regional Board's website at:

http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/riverside_permit.shtml

This information may be also obtained by calling the Regional Board office at 951-782-4130.

The Regional Board recognizes the significance of Riverside County's Storm Water/Clean Water Protection Program and will conduct, participate, and/or assist with at any workshop during the term of this Order to promote and discuss the requirements of this Order and the progress of the Urban Runoff management program. The details of the public workshops will be posted on the Regional Board's website indicated above. Persons wishing to be included in the mailing list for any of the items related to this permit may register their name, mailing address and phone number with the Regional Board office at the address given below.

XII. PUBLIC HEARING

The Regional Board will hold a public hearing regarding the proposed waste discharge requirements. A Notice of Public Hearing will be also published in the Legal Notices section of a local newspaper. The public hearing will be scheduled at a later time, information regarding the public hearing will also be posted on the website indicated above. Further information regarding the conduct and nature of the public hearing concerning these waste discharge requirements may be obtained by writing or visiting the Santa Ana Regional Board office, 3737 Main Street, Suite 500, Riverside, CA 92501. This and other information are also available at the website at: www.waterboards.ca.gov/santaana.

XIII. INFORMATION AND COPYING

Persons wishing further information may write to the above address or call Keith Elliott at (951) 782-4925. Copies of the application, proposed waste discharge requirements, and other documents (other than those which the Executive Officer maintains as confidential) are available at the Regional Board office for inspection and copying by appointment scheduled between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday (excluding holidays, and furlough days).

XIV. REGISTER OF INTERESTED PERSONS

Any person interested in a particular application or group for applications may leave his name, address and phone number as part of the file for an application. Copies

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of tentative waste discharge requirements will be available on the web for all interested parties to download.

E-mail registration:
http://www.waterboards.ca.gov/resources/email_subscriptions/reg8_subscribe.shtml

XV. RECOMMENDATION

At the August 3, 2009 Public Workshop, the Board will not take any action on the proposed Order.

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ATTACHMENT 7

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

ORDER NO. R8-2009-0033
NPDES NO. CAS 618033

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND WASTE DISCHARGE REQUIREMENTS FOR THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, THE COUNTY OF RIVERSIDE, AND THE INCORPORATED CITIES OF RIVERSIDE COUNTY WITHIN THE SANTA ANA REGION

AREA-WIDE URBAN RUNOFF MANAGEMENT PROGRAM

The following Discharger(s) are subject to waste discharge requirements as set forth in this Order:

Table 1. Municipal Permittees (Dischargers)

Principal Permittee	Riverside County Flood Control and Water Conservation District (RCFC&WCD)*	
Co–Permittees	1. Beaumont	9.. Moreno Valley
	2. Calimesa	10. Murrieta
	3. Canyon Lake	11. Norco
	4. Corona	12. Perris
	5. County of Riverside (County)	13. Riverside
	6. Hemet	14. San Jacinto
	7. Lake Elsinore	15. Wildomar
	8. Menifee	

The Principal Permittee and the Co-Permittees are collectively referred to as the Permittees or the Dischargers.

Table 2. - Administrative Information

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This Order was adopted by the Regional Water Board on:	**XXXX, 2009**
This Order will become effective on:	**XXXX, 2009**
This Order will expire on:	**XXXX, 2014**
The U.S. Environmental Protection Agency (USEPA) and the California Regional Water Quality Control Board have classified this discharge as a major discharge.	
The Discharger 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.	

Moved up [1]: Table 2. - Administrative Information¶
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IT IS HEREBY ORDERED, that this Order supersedes Order No. R8-2002-0011 except for enforcement purposes, and, in order to meet the provisions contained in Division 7 of the California Water Code (CWC) and regulations adopted there under, and the provisions of the federal Clean Water Act (CWA), and regulations and guidelines adopted there under, the Permittees must comply with the requirements in this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that this Order No. R8-2009-0033 with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on XXXX, 2009.

_____
Gerard J. Thibeault, Executive Officer

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LIST OF APPENDICIES

Appendix Number	DESCRIPTION
1	Permit Area
2	Other Entities that May Discharge Pollutants to the MS4
3	Monitoring And Reporting Program
4	Glossary
5	Notice of Intent and Notice of Termination
6	Fact Sheet

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I. FACILITY INFORMATION

A. Each of the municipalities listed in Table 1, above, hereinafter called Permittees, owns and/or operates portions of the municipal separate storm sewer system (MS4[1]), through which Urban Runoff [1] is discharged into Waters of the United States (Waters of the U.S.) that are located within the jurisdiction of the Santa Ana Regional Water Quality Control Board (Santa Ana Region). The MS4 falls 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) an MS4 which contributes to a violation of a Water Quality Standard; or (3) an MS4 which is a significant contributor of Pollutants to Waters of the U. S.; or (4) an MS4 owned and/or operated by a small municipality that is interrelated to a medium or large municipality. Section 402(p) of the CWA requires that discharges of Urban Runoff from MS4s be regulated under a National Pollutant Discharge Elimination System (NPDES) permit.

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B. This Order regulates the discharge of Pollutants (as defined in Appendix 4, Glossary) in Urban Runoff from anthropogenic (generated from non-agricultural human activities) sources from the MS4 that is owned and/or operated by the Permittees. The Permittees lack legal jurisdiction over discharges into their MS4 facilities from agricultural activities, State and federal facilities, public schools and hospitals, utilities, railroads, and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that the Permittees should not be held responsible for discharges from such facilities or Pollutants in those discharges. However, to the extent that the Permittees authorize the connection of these discharges into their MS4s, this Order requires the Permittees to provide written notification of WQMP requirements for post-construction BMPs and/or other applicable requirements of this Order. A WQMP approved by the Permitee who owns the MS4 constitutes compliance with the General Construction Permit post construction requirements[2] for the Permit Area.

C. The Co-Permittees have established legal authority to control discharges into the MS4 facilities that they own and/or operate. As owners and/or operators of the MS4, the Permittees are responsible for discharges into their MS4 facilities to the extent of their legal authority. The discharge of Pollutants into the MS4 may cause or contribute to, or threaten to cause or contribute to, a condition of Pollution in Receiving Waters. Federal regulations, 40 CFR 122.26(d)(2)(i), require the Permittees to control the discharge of Pollutants into the MS4s to the maximum extent practicable (MEP, see

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1 See Appendix 4.
2 The State General Construction Permit Section XIII

Appendix 4). Certain activities and sources that generate Pollutants present in Urban Runoff may be beyond the ability of Permittees 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, bacteria and wildlife (including feral cats and dogs) 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.

D. The Permittees have identified major Outfalls (Outfalls with a pipe diameter of 36 inches or greater or drainage areas draining 50 acres or more) and have submitted maps of existing MS4 facilities. The Co-Permittees reported having approximately 269 miles of underground storm drains, and 95 miles of channels[3]. The RCFC&WCD reported having 75 miles in underground storm drains and 59 miles of channels in the Permit Area.

E. On February 5, 2008 Wildomar residents voted for cityhood and the city incorporated on July 1, 2008. Menifee residents voted for cityhood on June 3, 2008 and the city incorporated on October 1, 2008. Both cities in letters dated May 5 and May 6, 2009, respectively, have expressed their intent to be a Co-Permittee in this Order and for the purposes of this Order shall be considered as such. Urban Runoff from the cities of Menifee, Murrieta and Wildomar discharges into watersheds within the Santa Ana Regional Board and the San Diego Regional Board jurisdictions. Therefore, these cities are regulated by MS4 permits issued by both Regional Boards. Urban Runoff from the County of Riverside and RCFC&WCD discharge into watersheds within the Santa Ana, San Diego and Colorado River Region Regional Board jurisdictions. Therefore, these entities are regulated by MS4 permits issued by three Regional Boards.

F. The Permit Area contains 1,396 square miles or 19.1% of the 7,300 square miles within Riverside County and includes 15 of the 26 municipalities within Riverside County. The more densely populated areas of Riverside County are located within the Santa Ana Regional Board's jurisdiction. The population of the Permit Area was estimated at 1,232,979 as of January 1, 2006[4]. The California Department of Finance estimates that as of January 1, 2009, the population of Riverside County was 2,107,653[5]. Other portions of Riverside County are regulated by the San Diego and the Colorado River Basin Regional Boards.

II. FINDINGS

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[3] Section 3.6.1 of the 2007 ROWD.
[4] Section 3.3.1 of the 2007 ROWD (Western Riverside Council of Governments (WRCOG), Sub-regional Growth Forecast, Riverside County Projection (Revised Draft), November 22, 2006.)
[5] E-1 report dated April 30, 2009 (http://www.dof.ca.gov/research/demographic/reports/estimates/e-1/2008-09/documents/E-1_2009%20Press%20Release.pdf).

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The California Regional Water Quality Control Board, Santa Ana Region (hereinafter the "Regional Board") finds that:

A. BACKGROUND

1. The Co-Permittees own and operate flood control facilities. Some of the natural channels, streambeds and other drainage facilities that are generally considered as Waters of the U.S. have been converted to flood control facilities. In such cases, where a natural streambed is modified to convey storm water flows, the conveyance system becomes both a MS4 and a Water of the U. S.

2. The Permittees are currently discharging from the MS4 pursuant to Order No. R8-2002-0011, NPDES Permit No. CAS 618033. This Order renews Order No. R8-2002-0011 and regulates discharges of Urban Runoff from the MS4 within Riverside County.

3. On April 27, 2007, the Riverside County Flood Control and Water Conservation District (hereinafter referred to as "RCFC&WCD" or "Principal Permittee"), in cooperation with the County of Riverside, (the "County") and the incorporated cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, and San Jacinto, jointly submitted a permit renewal application, a Report of Waste Discharge (the "2007 ROWD"), to renew the NPDES permit for discharges of Urban Runoff from the MS4 in the Permit Area. Subsequently, the cities of Menifee and Wildomar also signed letters of intent to include discharges from their MS4 facilities under this MS4 Permit. The County and incorporated cities are hereinafter the "Co-Permittees", and collectively with the Principal Permittee referred to as the "Permittees". The Permit Area (as defined in Appendix 4, Glossary) is shown in Appendix 1 and includes the urban areas and those portions of agriculture and open space as shown on Appendix 1 that may convert to industrial, commercial, or residential use during the term of this Order.

4. To more effectively carry out the requirements of this Order, the Permittees have agreed that the RCFC&WCD will continue as the Principal Permittee and the County and the incorporated cities within the Permit Area will continue as the Co-Permittees.

5. The Permittees submitted a revised Drainage Area Management Plan ("2007 DAMP" as defined in Appendix 4, Glossary) as contained in Appendix B of the 2007 ROWD. The proposed DAMP identifies programs and policies, including best management practices (BMPs as defined in Appendix 4, Glossary), to achieve Water Quality Standards in the Receiving Waters. These BMPs can be organized into two categories: BMPs for existing facilities and BMPs for New Development and Significant Redevelopment. Both categories include regulatory activities, public education programs, waste management, and operations and

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maintenance activities. The Permittees currently implement the 2006 DAMP. With the adoption of this Order, the Permittees are required to implement the 2007 DAMP. The DAMP is a dynamic document that defines the MEP standard (see discussion of this term in the Glossary, Appendix 4) for the Permittee activities and is incorporated by reference as an enforceable element of this Order.

6. This Order requires the Permittees to revise the DAMP and associated documents to incorporate new MS4 Permit requirements which include recommendations from the 2007 ROWD. Future modifications of the DAMP, once approved by the Regional Board Executive Officer[6], are also enforceable elements of this Order.

7. During the Third Term Permit, Regional Board staff conducted an evaluation of each of the Permittees' Urban Runoff programs. This evaluation indicated that most of the Permittees lacked proper documentation of procedures and policies for implementation of various elements of their Urban Runoff program. This Order requires each Permittee to develop a Local Implementation Plan (LIP as defined in Appendix 4, Glossary) that documents its internal procedures for implementation of the various program elements described in the DAMP and this Order.

8. On July 13, 1990, the Regional Board adopted the first term Riverside County MS4 permit, Order No. 90-104 (NPDES No. CA 8000192). On March 8, 1996, the Regional Board renewed Order No. 90-104 by adopting the second term Riverside County MS4 permit, Order No. 96-30 (NPDES No. CAS618033). On October 25, 2002, the Regional Board renewed Order No. 96-30 by adopting the third term MS4 permit, Order No. R8-2002-0011(NPDES No. CAS618033).

9. This Order renews Order No. R8-2002-0011 (NPDES No. CAS618033), and regulates discharges of Urban Runoff from the MS4 within the Permit Area in Riverside County. This Order is the fourth term permit and is intended to regulate the discharge of Pollutants in Urban Runoff from non-agricultural Anthropogenic (as defined in Appendix 4, Glossary) activities and sources under the jurisdiction of and/or maintenance responsibility of the Permittees and is not intended to address background or naturally occurring Pollutants or flows.

10. The Santa Ana River Basin is the major watershed within the Santa Ana Region. The Regional Board and the Permittees recognize the importance of watershed

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[6] The Executive Officer shall provide members of the public with notice and at least a 30-day comment opportunity for all documents submitted in accordance with this Order. If the Executive Officer, after considering timely submitted comments, concludes that the document is adequate or adequate with specified changes, the Executive Officer may approve the document or present it to the Board for its consideration at a regularly scheduled and noticed meeting. If there are significant issues that cannot be resolved by the Executive Officer, the document will be presented to the Board for its consideration at a regularly scheduled meeting.

management initiatives and regional planning and coordination in the development and implementation of programs and policies related to water quality protection.

11. It is recognized that in some cases MS4 are used to convey Urban Runoff to sub-regional or regional treatment BMPs or may incorporate regional BMPs directly. The Regional Board recognizes this appropriate strategy for treatment provided that Waters of the U.S. are not used to convey pollutants. Further, such BMPs are not considered MS4 or Waters of the U.S.

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12. A number of regional and watershed-wide efforts are underway in which the Permittees are active participants. The Regional Board also recognizes that, in certain cases, diversion of funds targeted for certain monitoring programs to regional monitoring programs may be necessary. The Executive Officer is authorized to approve, after proper public notification and consideration of all comments received, reallocation of resources to the watershed management initiatives and regional planning and coordination programs and regional monitoring programs.

13. The Permittees are required to submit all documents, where appropriate, to the Regional Board in an electronic format. All such documents will be posted at the Regional Board's website and all interested parties will be notified. In addition, the website will include the administrative and civil procedures for appealing any decision made by the Executive Officer. Some Urban Runoff issues, such as monitoring, public education, and training can be more effectively addressed on a regional or statewide basis thereby increasing program consistency and efficiency. This Order encourages continued participation in such programs and policies.

B. LEGAL AUTHORITIES

1. This Order Is issued pursuant to Section 402 of the federal Clean Water Act, the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000), applicable State and federal regulations, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (State Board), the Water Quality Control Plan for the Santa Ana River Basin adopted by the Regional Board (Basin Plan), the California Toxics Rule (CTR), and the California Toxics Rule Implementation Plan. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to Article 4, Chapter 4, Division 7 of the Water Code (commencing with Section 13260).

2. This Order is consistent with the following precedential Orders adopted by the State Board, addressing municipal storm water NPDES Permits: Order 99-05-DWQ (Petition of Environmental Health Coalition/Receiving Water Limitation Language for Municipal Storm Water Permits), Order WQ-2000-11 (Petitions Bellflower, City of Arcadia, Western States Petroleum Association, Review of

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RWQCB and Its Executive Officer Pursuant to Order 96-054, Permit for Municipal Storm Water and Urban Run-Off Discharges within Los Angeles County), Order WQ 2001-15 (In the Matter of the Petitions of Building Industry Association of San Diego County and Western States Petroleum Association), and Order WQO 2002-0014 (Petitions of Aliso Viejo, et al/Order to stay provision F.5.f of the permit and part of last sentence of Finding 26, permit issued by San Diego Regional Board).

3. Consistent with the State Board's orders, this Order requires the Permittees to comply with the applicable Water Quality Standards, which is to be achieved through an iterative approach requiring the implementation of increasingly more effective BMPs until Water Quality Standards are not Impaired by Urban Runoff. All MS4 permits issued in California specify certain minimum control measures and incorporate an iterative process that requires increasingly more effective control measures if the Water Quality Standards are not met.

4. The federal Clean Water Act established a national policy designed to help maintain and restore the physical, chemical and biological integrity of the nation's waters. In 1972, the CWA established the NPDES permit program to regulate the discharge of Pollutants from "point sources" to waters of the nation or Waters of the U.S. (the Receiving Waters and as defined in Appendix 4, Glossary). From 1972 to 1987, the main focus of the NPDES program was to regulate conventional Pollutant sources such as sewage treatment plants and industrial facilities. As a result, on a nationwide basis, non-point sources, including agricultural runoff and Urban Runoff, now contribute a larger portion of many kinds of Pollutants than the more thoroughly regulated sewage treatment plants and industrial facilities.

5. Studies conducted by the USEPA, the states, counties, cities, flood control districts and other entities dealing with Urban Runoff indicate that the following are major sources of Urban Runoff Pollution nationwide:

   a. Industrial sites where appropriate Pollution Prevention and BMPs are not implemented;

   b. Construction sites where erosion and sediment controls and BMPs are not implemented; and,

   c. Runoff from urbanized areas.

6. The 1987 amendments to the CWA added Section 402(p) that required the USEPA to develop permitting regulations for storm water discharges from MS4s and from industrial facilities, including construction sites. The USEPA promulgated the final Phase I storm water regulations on November 16, 1990. Neither the 1987 amendments to the CWA nor the Phase I storm water regulations (40 CFR Part 122) have been amended since their effective dates.

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7. Prior to the USEPA's promulgation of the final storm water regulations, three counties (Orange, Riverside, and San Bernardino) and their incorporated cities located within the Regional Board's jurisdiction requested area-wide NPDES MS4 permits. These area-wide MS4 NPDES permits are:

   a. Orange County, NPDES No. CAS 618030

   b. Riverside County, NPDES No. CAS 618033

   c. San Bernardino County, NPDES No. CAS 618036

8. Consistent with the CWA and the USEPA regulations promulgated pursuant thereto, the State Board and the Regional Board have adopted a number of permits to address Pollution from the sources identified in Finding 5, above. Industrial activities (as defined in 40 CFR 122.26(b)(14)) including construction activities on one or more acres are to be covered under one of the following permits and those individuals or entities that engage in such activities are required to secure permission to engage in such identified activities pursuant to the provisions of one of the following permits:

   a. State Board Order No. 97-03-DWQ, for storm water runoff from industrial activities (NPDES No. CAS000001), (the "General Industrial Activities Storm Water Permit").

   b. State Board Order No. 99-08-DWQ, for storm water runoff from construction activities (NPDES No. CAS000002), (the "General Construction Activity Storm Water Permit"). Order No. 99-08- DWQ was amended by State Board Resolution No. 2001-046 on April 26, 2001, to incorporate monitoring provisions as directed by the Superior Court, County of Sacramento. This Order is in the process of being renewed.

   c. State Board Order No. 99-06-DWQ (NPDES No. CAS000003) for storm water runoff from facilities (including freeways and highways) owned and/or operated by the California Department of Transportation ("Caltrans").

   d. State Board Order No. 2003-0007-DWQ, for discharges of storm water runoff associated with small linear underground/overhead construction projects (NPDES No. CAS000005), (the "General Permit-Small Linear Underground Projects). This State Board Order may be merged into the General Construction Activity Storm Water Permit upon its renewal.

   e. The Regional Board also issues individual storm water permits for certain industrial facilities within the Santa Ana River watershed. Currently there is only one industrial storm water NPDES permit that has been issued by the Regional Board for a facility (March Air Reserve Base) located within the Permit

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Area. Additionally, the Regional Board has issued NPDES permits for a number of facilities that discharge process wastewater and storm water; storm water discharge requirements are included in such a facility's NPDES permit.

9. Section 402(p) of the CWA establishes two different performance standards for storm water discharges. NPDES MS4 permits require controls to reduce the discharge of Pollutants to the MEP. NPDES permits issued for industrial storm water discharges (including construction activities) must meet Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") standards. The CWA and the USEPA regulations allow each state the flexibility to decide what constitutes the MEP.

10. This Order does not constitute an unfunded mandate subject to subvention under Article XIII.B, Section (6) of the California Constitution for several reasons, including the following:

    a. This Order implements federally mandated requirements under Clean Water Act Section 402(p)(3)(B). (33 USC § 1342(p)(3)(B)).

    b. The Permittees' obligation under this order are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges.

    c. The Permittees have the authority to levy service charges, fees, or assessments to pay for compliance with this Order[7].

    d. The Permittees requested permit coverage in lieu of compliance with the complete prohibition against the discharge of Pollutants contained in federal Clean Water Act Section 301, subdivision (a). (33 USC § 1311(a)).

11. Section 13225 of the California Water Code identifies the Regional Board as being the enforcement authority for NPDES permits, including the Industrial General Permit, the Construction General Permit, and the General Permit-Small Linear Underground Projects, which are collectively referred to as the "General Stormwater Permits." However, in many areas, the industrial and construction sites discharge directly into MS4 facilities owned and operated by the Permittees. These industrial and construction sites are also regulated under local ordinances and regulations. The Permittees and Regional Board staff work together to avoid duplicative efforts in regulating these facilities. As part of this coordination, the Permittees have been notifying Regional Board staff when they observe, during their routine activities, conditions that result in a threat or potential threat to water

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[7] Voter approval may be required for new tax levies.

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quality, or when a required industrial facility or construction activity fails to obtain coverage under the appropriate General Stormwater Permit.

12. 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 U.S.C.A. Sections 1531 to 1544). This Order requires compliance with Effluent Limits, Receiving Water Limits, and other requirements to protect the Beneficial Uses of Waters of the U.S. The Permittees are responsible for meeting all requirements of the applicable Endangered Species Act.

13. The Permittees may petition the Regional Board to issue a separate NPDES permit to any discharger of Non-storm Water into MS4 facilities that they own or operate.

14. The Regional Board has considered anti-degradation requirements, pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16, for this discharge. The Regional Board finds that the Urban Runoff regulated under this Order is consistent with the federal and state anti-degradation requirements and a complete anti-degradation analysis is not necessary. This Order requires the continued implementation of programs and policies to reduce the discharge of Pollutants in Urban Runoff. This Order includes additional requirements to control the discharge of Pollutants in Urban Runoff from "Significant Redevelopment," and "New Development," as defined in Finding II.G. and Section XI of this Order.

C. RATIONALE FOR REQUIREMENTS

1. The Regional Board developed the requirements in this Order based on information submitted as part of the 2007 ROWD (including the 2007 DAMP), monitoring and reporting data, program audits, and other available information and consistent with the CWA, CWC and regulations adopted thereunder.

2. The Fact Sheet (Appendix 6) which contains additional background information and rationale for requirements specified in this Order is hereby incorporated into this Order and constitutes part of the Findings for this Order. Appendices 1 through 5 are also incorporated into this Order.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

1. Under Water Code Section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code Sections 21100 - 21177 (*County of Los Angeles v. California State Water Resources Control Board* [2006] 142 Cal Appl. 4th 985, mod. [Nov. 6, 2006, B184034] 50 Cal. Rptr 3rd 619,

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632-636). This action also involves the re-issuance of Waste Discharge Requirements for existing facilities and as such, is exempt from the provisions of California Environmental Quality Act (commencing with Section 21100) in that the activity is exempt pursuant to Title 14 of the California Code of Regulations Section 15301.

2. Compliance with this Order and the DAMP does not necessarily constitute mitigation that is sufficiently specific to satisfy the requirements of CEQA with regards to projects. The intent of the Drainage Area Management Plan/Water Quality Management Plan (DAMP/WQMP), Storm Water Pollution Prevention Plan (SWPPP) and other programs and policies incorporated into this order is to minimize the impacts from a specific project to a level that is below significance as defined in CEQA.

E. DISCHARGE CHARACTERISTICS

1. This Order regulates Urban Runoff from areas under the jurisdiction of the Permittees. The term Urban Runoff as used in this Order includes storm water runoff, snowmelt runoff and surface runoff and drainage as defined in Appendix 4.
2. Pollutants in Urban Runoff can threaten and adversely affect human health and the environment. Human illnesses have been clearly linked to recreating near storm drains flowing into coastal waters[8]. Also, Pollutants in Urban Runoff can bioaccumulate in receiving waters in the tissues of invertebrates and fish and eventually consumed by humans and other animals.
3. Urban Runoff can carry Pollutants described in the Fact Sheet to rivers, streams, and lakes within the Permit Area (collectively the "Receiving Waters"). In addition, although infrequently, Urban Runoff from the Permit Area can carry these Pollutants to other receiving waters such as the Pacific Ocean.
4. Management of dry weather discharges resulting from urbanization provides an opportunity to promote water conservation as well as address water quality.
5. The Co-Permittees discharge Urban Runoff into lakes, drinking water reservoirs, rivers, streams, creeks, and tributaries thereto within the Upper Santa Ana River, Middle Santa Ana River, and San Jacinto hydrologic units within the Santa Ana Region, as shown in Tables 3a and 3b. Some of the Receiving Waters have been designated as Impaired by the Regional Board and the USEPA pursuant to CWA Section 303(d).

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[8] The Santa Monica Bay Restoration Project, Epidemiology Study, 1996.

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Table 3a – Receiving Waterbodies and Municipal Dischargers:

	Upper Santa Ana						San Jacinto								
Municipality	**Temescal Creek**	**San Timoteo Wash**	**Little San Gorgonio**	**Santa Ana River, Reach 3**	**Santa Ana River, Reach 4**	**Cucamonga Creek**	**San Jacinto River reaches 1-4**	**Lake Elsinore**	**Canyon Lake**	**Strawberry Creek**	**Lake Hemet**	**Salt Creek**	**Poppet Creek**	**Indian Creek**	**Bautista Creek**
RCFC&WCD	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
Beaumont		◆	◆	⌘	⌘		◆	⌘		◆					
Calimesa		◆	⌘	⌘	⌘		◆	⌘	◆	◆					
Canyon Lake	⌘			⌘			⌘	⌘	◆						
Corona	◆			⌘											
County of Riverside (County)	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
Hemet	⌘			⌘			⌘	⌘	⌘			⌘			
Lake Elsinore	◆			⌘			⌘	◆							
Menifee	~~⌘~~			~~⌘~~			~~⌘~~	~~⌘~~	~~⌘~~			~~⌘~~			
Moreno Valley	⌘			⌘			⌘	⌘	⌘						
Murrieta	⌘			⌘				⌘							
Norco	⌘			◆											
Perris	⌘			⌘			◆	⌘	⌘			⌘			
Riverside	⌘			◆	◆			⌘							
San Jacinto							◆	⌘	⌘						
Wildomar	~~⌘~~			~~⌘~~				~~⌘~~							

◆ Direct Discharge of MS4 to Receiving Water
⌘ Tributary to Receiving Water

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⌘ Indirect Discharge¶

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Table 3b**. Beneficial Uses and 2006 CWA Section 303(d) Impaired Waters**

Watershed Management Areas in Riverside County	**Hydraulic Unit**	**Beneficial Uses**
Upper Santa Ana River		
Santa Ana River, Reach 3,	801.21, 801.25, 801.27,	AGR, GWR, REC1, REC2, WARM, WILD, RARE
Santa Ana River, Reach 4	801.27, 801.44	GWR, REC1, REC2, WARM, WILD,
Temescal Creek – Reach 1	801.25	REC1, REC2, WARM, WILD,
Temescal Creek – Reach 2	801.32, 801.25	INTERMITTENT - AGR, IND, GWR, REC1, REC2, WARM, WILD
Temescal Creek – Reach 3 **See Lee Lake**		
Temescal Creek – Reach 4	801.34	RARE, INTERMITTENT - AGR, GWR, REC1, REC2, WARM, WILD
Temescal Creek – Reach 5	801.35	AGR, GWR, REC1, REC2, WARM, WILD, RARE
Temescal Creek – Reach 6	801.35	INTERMITTENT - GWR, REC1, REC2, WARM, WILD
Coldwater Canyon Creek	801.32	MUN, AGR, GWR, REC1, REC2, WARM, WILD
Bedford Canyon Creek	801.32	INTERMITTENT - GWR, REC1, REC2, WARM, WILD
Dawson Canyon Creek	801.32	MUN, GWR, REC1, REC2, WARM, WILD
Day Creek	801.21	INTERMITTENT - MUN,PROC, GWR, REC1, REC2, COLD, WILD
San Sevaine Creek	801.21	INTERMITTENT - MUN, GWR, REC1, REC2, COLD, WILD
San Timoteo Wash Reaches 3 & 4	801.62	INTERMITTENT - AGR, GWR, REC1, REC2, WARM, WILD,
Little San Gorgonio Creek & Tributaries	801.62, 801.63, 801.69	MUN, GWR, GWR, REC1, REC2, COLD, WILD,
Sunnyslope Channel	801.27,	MUN, REC1, REC2, WARM, WILD, SPWN
Tequesquite Arroyo (Sycamore Creek)	801.27,	GWR, REC1, REC2, WARM, WILD, SPWN
Chino Basin/ Middle Santa Ana		
Cucamonga Creek – Reach 1	801.21	GWR, REC1, REC2, LWARM, WILD
- Santa Ana River, Reach 3	801.21, 801.25, 801.27,	AGR, GWR, REC1, REC2, WARM, WILD, RARE

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Watershed Management Areas in Riverside County	**Hydraulic Unit**	**Beneficial Uses**
San Jacinto San Jacinto River reaches 1 and 6	802.31, 802.32 & 802.21	INTERMITTENT - MUN, AGR, GWR, REC1, REC2, WARM, WILD
San Jacinto San Jacinto River reaches 3-5	802.11, 802.14, 802.21,	INTERMITTENT - AGR, GWR, REC1, REC2, WARM, WILD
San Jacinto San Jacinto River reach 2 **See Canyon Lake**		
San Jacinto San Jacinto River reach 7	802.21	MUN, AGR, GWR, REC1, REC2, WARM, WILD
- Bautista Creek	802.21, 802.23	MUN, AGR, GWR, REC1, REC2, COLD, WILD,
Strawberry Creek	802.21	MUN, AGR, GWR, REC1, REC2, COLD, W ILD
Fuller Mill Creek	802.22	MUN, AGR, GWR, REC1, REC2, COLD, WILD
Stone Creek	802.21	MUN, AGR, GWR, REC1, REC2, COLD, W ILD
Salt Creek	802.12	INTERMITTENT - REC1, REC2, WARM, WILD
Logan, Black Mtn, Juaro Canyon, Indian, Hurkey, Poppet and Protrero Creeks, and other Tributaries to these Creeks	802.21, 802.22	INTERMITTENT - MUN, AGR, GWR, REC1, REC2, WARM, WILD,
Lakes		
Lake Elsinore	802.31	REC1, REC2, WARM, WILD
Canyon Lake	802.11	MUN, AGR, GWR, REC1, REC2, WARM, WILD
Lake Hemet	802.22	MUN, AGR, GWR, POW, REC1, REC2, WARM, COLD, WILD, SPWN
Lake Fulmor	802.21	MUN, AGR, REC1, REC2, WARM, COLD, WILD
Lake Perris	802.11	MUN, AGR, IND, PROC, GWR, REC1, REC2, WARM, COLD, WILD,
Lake Evans	801.27	REC1, REC2, WARM, COLD, WILD
Lake Mathews	801.33	MUN, AGR, IND, PROC, GWR, REC1, REC2, WARM, WILD, RARE
Lee Lake	801.34	AGR, IND, GWR, REC1, REC2, WARM, WILD
Mockingbird Reservoir	801.26	AGR, REC1, REC2, WARM, WILD

AGR: Agricultural Supply; MUN: Municipal and Domestic Supply; GWR: Groundwater Recharge; IND – Industrial Service Supply, POW – Hydropower generation, REC1: Water Contact Recreation; REC2: Non-Contact Water Recreation; WARM: Warm Freshwater Habitat; LWARM: Limited Warm Freshwater Habitat, COLD - Cold freshwater habitat, WILD: Wildlife Habitat, RARE – Rare threatened or endangered species. SPWN – Spawning, reproduction and development waters.

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6. Urban Runoff is defined in the Glossary (Appendix 4). It includes those discharges from residential, commercial, industrial, and construction areas within the Permit Area and excludes discharges from Open Space[9], feedlots, dairies, farms and agricultural fields. Urban Runoff consists of storm water and "authorized non-storm water" (see Section V) surface runoff from drainage sub-areas with various, often mixed, land uses within all of the hydrologic drainage areas that discharge into the Receiving Waters. In addition to Urban Runoff, the MS4 regulated by this Order receives flows from Open Space, agricultural activities, state and federal properties and other non-urban land uses not under the control of the Permittees. The quality of the discharges from the MS4 varies considerably and is affected by, among other things, past and present land use activities, basin hydrology, geography and geology, season, the frequency and duration of storm events, and the presence of past or present illegal and allowed disposal practices and Illicit Connections.

7. Pathogens (from sanitary sewer overflows, septic system leaks, and spills and leaks from portable toilets, pets, wildlife, and human activities) can impact water contact recreation and non-contact water recreation. Floatables (from trash) are an aesthetic nuisance and can be a substrate for algae and insect vectors. Oil and grease can coat birds and aquatic organisms, adversely affecting respiration and/or thermoregulation. Other petroleum hydrocarbon components may cause Toxicity (as defined in Appendix 4, Glossary) to aquatic organisms and may impact human health. Suspended and settleable solids (from sediment, trash, and industrial activities) may be deleterious to benthic organisms and may cause anaerobic conditions to form. Sediments and other suspended particulates may cause turbidity, clog fish gills and interfere with respiration in aquatic fauna. They may also screen out light, hindering photosynthesis and normal aquatic plant growth and development. However, it is recognized that storm flows from non-urbanized areas such as national forest, state parks, wilderness, and agriculture, as shown on Appendix 1, naturally exhibit high levels of suspended solids due to climate, hydrology, geology and geography.[10] Toxic substances (from pesticides, petroleum products, metals, and industrial wastes (as defined in Appendix 4, Glossary) can cause acute and/or chronic Toxicity, and can bioaccumulate in organisms to levels that may be harmful to human health. Nutrients (from fertilizer use, fire fighting chemicals, decaying plants, confined animal facilities, pets, and wildlife) may cause excessive algal blooms. These blooms may lead to problems with taste, odor, color and increased turbidity, and may depress the dissolved oxygen content, leading to fish kills.

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[9] Only includes Open Space in strictly unurbanized areas. See Glossary definition of Urban Runoff.

[10] Riverside County Flood Control and Water Conservation District's "Hydrology Manual," dated April 1978 and page II-4 of "Santa Ana River, Design Memorandum No. 1, Phase II GDM on the Santa Ana River Mainstem, including Santiago Creek, Volume 2, Prado Dam." dated August 1988 and D.I. Inman & S.A. Jenkins "Climate Change and the Episodicity of Sediment Flux in Small California Rivers," Journal of Geology, Volume 107, pp. 251-270, 1999.

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8. Bacteria and nutrients are the Pollutants of Concern for a majority of the inland waters that are listed under the 303(d) list of impaired waterbodies or an adopted TMDL. This Order requires the Permittees to identify sources of bacteria and nutrients in Urban Runoff to their MS4s and to control those Pollutant sources.

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9. Recent information[11] shows that plastic wastes and materials released to surface water bodies can harm aquatic species by entanglement or ingestion. This Order requires the Permittees to consider facilities that handle nurdles[12] as a high priority site for inspection, and outreach. Nurdles are a major contributor to marine debris. During a three month study of Orange County researchers found them to be the most common beach contaminant[13]. Nurdles comprised roughly 98% of the beach debris collected in a 2001 Orange County study.

10. The Permittees' water quality monitoring data submitted to date document a number of violations of Basin Plan Water Quality Objectives for various Urban Runoff-related Pollutants (fecal coliform bacteria, nutrients, total suspended solids, turbidity, metals, etc.) at various watershed monitoring stations.

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11. This Order includes requirements for control of dry weather flows from Permittee activities that may cause an exceedance of Water Quality Objectives in Receiving Waters for TDS or total inorganic nitrogen (TIN). Storm water was considered to be an insignificant source for nitrogen/TDS in groundwater.

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12. The Permittees' 2003-2004, 2004-2005, 2005-2006, 2006-2007 and 2007-2008 Annual Reports indicate exceedances of Water Quality Objectives for each core MS4 monitoring station as follows:

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a. Corona Storm Drain (40) - Six samples were collected and analyzed for fecal coliforms. Three samples were collected in the dry season and three during wet weather events. All samples analyzed exceeded bacteria (as fecal coliform) Basin Plan Objectives with a maximum value of 160,000 MPN fecal coliforms. Boron analyses exceeded Basin Plan Objectives of 0.75 mg/L in one out of eighteen samples collected (0.78 mg/L). Six samples were collected and analyzed for Total Dissolved Solids (TDS) in 2003-2004. All samples were below the Santa Ana River Reach 3 Basin Plan Objectives of 700 mg/L TDS and only one of eighteen samples exceeded the 10 mg/L total nitrogen objective.

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[11] http://www.bestlifeonline.com/cms/publish/health-fitness/Our_oceans_are_turning_into_plastic_are_we_2_printer.shtml,

[12] A nurdle is a plastic pellet, also known as pre-production plastic pellet or plastic resin pellet.
[13] Moore, Charles (2002). "A comparison of neustonic plastic and zooplankton abundance in Southern California's coastal waters and elsewhere in the North Pacific". *Algalita Marine Research Foundation*. http://www.mindfully.org/Plastic/Ocean/Marine-Debris-Panel30oct02.htm.

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b. Sunnymead Channel (316) - Three samples were collected during wet weather events and analyzed for fecal coliforms in this time frame. All exceeded bacteria Basin Plan Objectives of 200 MPN fecal coliforms. Two samples were collected during wet weather events and analyzed for TDS and were below the Basin Plan Objective of 700 mg/L for Canyon Lake. Total nitrogen values in all ten samples collected during wet weather events were below the Basin Plan Objective of 8 mg/L.

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c. Hemet Channel (318) - All four samples collected during this time frame exceeded the bacteria Basin Plan Objective of 200 MPN for fecal coliforms. As Salt Creek does not have numeric objectives for TDS, the Receiving Water for Salt Creek is Canyon Lake with an objective of 700 mg/L TDS. All eighteen samples collected during wet weather events and analyzed for TDS were below the Canyon Lake Basin Plan Objective. Total nitrogen values in all nine samples collected during wet weather events were below the Basin Plan Objective of 8 mg/L.

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d. Magnolia Center (364) – Eleven out of thirteen samples collected exceeded the Basin Plan Objective for fecal coliform (200 MPN). Two (both collected during wet weather events) out of thirty-four samples identified total nitrogen concentrations in excess of the 10 mg/L Basin Plan Objective. The maximum concentration measured was 13 mg/L. Basin Plan Objective of 700 mg/L TDS were exceeded in six out of twenty-one samples analyzed. The maximum TDS concentration was 1000 mg/L TDS. The maximum TDS concentration was 1,000 mg/L.

e. University Wash Channel (702) – All three samples collected during this time frame exceeded the fecal coliform Basin Plan Objective of 200 MPN. The maximum concentration was greater than 13,000 MPN. One (11 mg/L) out of sixteen samples analyzed for total nitrogen was above the Santa Ana River Reach 4 Basin Plan Objective of 10 mg/L. Ten samples analyzed for TDS were below Basin Plan objective of 550 mg/L.

f. North Norco Channel (707) – Three out of four samples analyzed for bacterial indicators exceeded bacteria Basin Plan Objective of 200 MPN fecal coliform. Three out of four samples analyzed for TDS were above the Santa Ana River-Reach 3 Basin Plan Objective of 700 mg/L. One out of ten samples analyzed for total nitrogen exceeded the Basin Plan Objective of 10 mg/L for total nitrogen.

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g. Perris Line J Channel (752) – All four samples analyzed exceeded bacterial indicator Basin Plan Objective the highest value was 13,000 MPN fecal coliform. Two of four samples analyzed for TDS exceeded the Basin Plan Objective of 700 mg/L for Canyon Lake. One out of twelve samples analyzed exceeded the Basin Plan Objective of 8 mg/L for total nitrogen.

13. The Permittees are participating in several studies in conjunction with the Storm Water Monitoring Coalition (SMC), Storm Water Quality Standards Task Force, the Lake Elsinore and Canyon Lake TMDL Task Force, the Middle Santa Ana River TMDL Task Force and Southern California Coastal Water Research Project (SCCWRP) to address the elevated fecal indicator bacteria levels. Also, the Permittees are anticipating that the use of fecal indicator bacteria will be changed to E. coli and the reclassification of REC uses for several MS4 facilities in the near future. However, E. coli data still indicates Basin Plan Objective exceedances that will need to be addressed as part of the TMDL.

14. The above monitoring results, the 303(d) list of Impaired Waterbodies and the approved TMDLs indicate that bacterial contamination is one of the persistent problems in Urban Runoff. TMDL Implementation Plans including Urban Runoff Waste Load Allocations (WLAs) have been adopted by the Regional Board for the Middle Santa Ana River to address this problem. It should be noted, however, that the work of the Storm Water Quality Standards Task Force is likely to result in changes to Recreational Water Quality Objectives which would suspend recreational uses during high flow events. Further, some MS4 facilities may be recategorized as REC 2 or REC X under a proposed use attainability analysis (UAA) process. These changes will likely allow the Permittees to focus their TMDL compliance resources on bacterial contamination that is affecting recreational swimming areas used during the dry season as the highest priority.

15. The Santa Ana River is the major Receiving Water in the Permit Area. During non-storm periods the flow in the River is dominated by effluent from POTW discharges. POTW discharges are regulated under NPDES permits issued by the Regional Board. In addition, the quality of the Santa Ana River within the Upper Santa Ana sub-watershed is greatly influenced by runoff from agricultural activities. Urban Runoff from the Permit Area constitutes a minor component of the dry weather flow in the Upper Santa Ana and San Jacinto sub-watersheds of the Santa Ana River. However, Urban Runoff may be more polluted than POTW discharges and therefore a more significant concern based on monitoring results identified in the Annual Reports.

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F. F. CWA SECTION 303(D) LISTED WATERBODIES AND TMDLS

1. Water quality assessment conducted by Regional Board staff has identified a number of Beneficial Use Impairments due, in part, to Urban Runoff. Section 305(b) of the CWA requires the USEPA and each state that has been delegated NPDES permitting authority to routinely monitor and assess the quality of waters of their respective regions. If this assessment indicates that Beneficial Uses are not met, then that waterbody must be listed under Section 303(d) of the CWA as an Impaired Waterbody.

2. Based on the Regional Board's 2006[14] water quality assessment a number of water bodies within the Permit Area are listed (see Table 4, below) as Impaired pursuant to Section 303(d).

Table 4 - Impaired Waterbodies

Waterbody	Pollutant	Potential Sources	Proposed TMDL Completion
Santa Ana River, Reach 3,	Pathogens	Dairies	Approved 2007
Canyon Lake	Nutrients	Non-point Source	Approved 2005
	Pathogens	Non-point Source	Listing under evaluation
Lake Elsinore	Nutrients	Non-point Source	Approved 2005
	Unknown Toxicity PCBs	Unknown Unknown Non-point Source	2021 2019
Lake Fulmor	Pathogens	Unknown Non-point Source	2019
Santa Ana River, Reach 4	Pathogens	Non-point Source	2019

3. Federal regulations require that a total maximum daily load (TMDL) be established for each 303(d) listed waterbody for each of the Pollutants causing Impairment. The TMDL is the total amount of a Pollutant that can be discharged to a subject waterbody, while still enabling the waterbody to attain Water Quality Standards in the receiving water. Attaining Water Quality Standards means that the receiving waterbody's Water Quality Objectives are met and its Beneficial Uses are

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[14] On April 24, 2009, the Regional Board adopted Resolution No. R8-2009-0032 approving the Clean Water Act Section 305(b) Integrated Report/Clean Water Act Section 303(d) List of Impaired Waterbodies. When the revised list is approved by the State Board and the USEPA, the 2006 list will be updated.

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protected. The TMDL is the sum of the individual WLAs for point source inputs, Load Allocations (LAs) for Non-Point Source inputs and natural background, and a margin of safety. The TMDLs are one of the bases for limitations established in Waste Discharge Requirements.

4. The Basin Plan amendment incorporating the Middle Santa Ana River Watershed Bacterial Indicator TMDLs (MSAR TMDL) was approved by the Regional Board on August 26, 2005 (Resolution No. R8-2005-0001), by the State Board on May 15, 2006, by the state's Office of Administrative Law on September 1, 2006, and by the USEPA on May 16, 2007. The WLA for these TMDLs do not take effect within the Term of this Order. The WLA will be incorporated into future Orders as they take effect, Implementation Tasks that take effect within the term of this Order have been incorporated into the Order.

5. The purpose of the MSAR TMDL is to assure that REC1 Beneficial Uses are protected. To that end, the Regional Board adopted WLA for fecal coliform and *E.coli* in the following impaired waterbodies: Santa Ana River (Reach 3), Chino Creek (Reaches 1 and 2), Prado Park Lake, Mill Creek (Prado Area), and Cucamonga Creek (Reach 1). Because the initial compliance date specified in the TMDL is not until 2015, and because the Regional Board is in the process of reviewing and revising the water quality objectives for pathogen indicator bacteria, the permit does not contain numeric effluent limits for fecal coliform or E. coli. Rather, the MS4 dischargers are required to develop and implement BMPs designed to reduce bacterial pollution to the maximum extent practicable and to evaluate the effectiveness of those efforts. The Regional Board reserves the right to reopen the permit to add numeric effluent limits if the iterative BMP approach proves inadequate to assure attainment of water quality standards.

6. The MSAR TMDLs specifies WLAs for Urban Runoff, and discharges from concentrated animal feeding operations. LAs are specified for runoff from other types of agriculture and from natural sources (open space/undeveloped forest land). WLAs and LAs are specified for both dry season discharges and wet season discharges, with separate compliance dates.

7. The MSAR TMDL Implementation Plan assigns responsibilities to stakeholders to identify sources of impairment, to propose BMPs to address those sources, and to monitor, evaluate, and revise BMPs as needed, based on the effectiveness of the BMP implementation program. Specific Implementation Plan tasks are described in Chapter 5 of the Basin Plan and are assigned to one or more of the Permittees. Requirements of the TMDL Implementation Plan tasks are incorporated into this Order. A number of these Implementation Plan tasks are also jointly assigned to non-Permittee stakeholders. The stakeholders have established TMDL task forces to jointly implement and coordinate the TMDL Implementation Plan tasks.

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8. The MSAR TMDL Task Force members are listed in Table 5.

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Table 5 - Middle Santa Ana River Bacterial Indicator TMDL Task Force

MS4 Permittees	Non-MS4 Permittees
Corona, City of	Santa Ana Watershed Project Authority
Norco, City of	US Department of Agriculture
Riverside, City of	US Department of Forest Service
Riverside, County of	
RCFC&WCD,	Region 4 MS4 Permittees - Claremont and Pomona
San Bernardino County Flood Control District (representing the county of San Bernardino and the municipalities named in the TMDL)	

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9. Pursuant to Task 3 of the MSAR TMDL, on June 29, 2007, the Regional Board approved the monitoring program (Resolution No. R8-2007-0046) proposed by the TMDL Task Force. Pursuant to Task 4 of the MSAR TMDL, on April 18, 2008, the Regional Board approved the Urban Source Evaluation Plan (Resolution No. R8-2008-0044) proposed by the TMDL Task Force. This Order requires the Permittees on the Task Force to continue to implement the approved monitoring program and the Urban Source Evaluation Plan.

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10. Within the Permit Area, there are two watershed-wide MSAR TMDL monitoring stations (WW-S1 Santa Ana River Reach 3 @ MWD Crossing and WW-S4 Santa Ana River Reach 3 @ Pedley Avenue). Permittees within the MSAR TMDL area are required to comply with the numeric bacterial indicator targets at these monitoring locations as soon as possible but no later than December 31, 2015 for dry weather conditions (April 1 through October 31, as defined in the TMDL) and no later than December 31, 2025 for wet weather conditions (November 1 through March 31, as defined by the TMDL).

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11. Stakeholders in the Santa Ana Region have formed the Storm Water Quality Standards Task Force (SWQSTF) to evaluate USEPA's bacterial indicator recommendations and appropriate recreational beneficial use designations for waterbodies throughout the Region. The SWQSTF is expected to make recommendations for the adoption of alternative bacterial indicators such as E.coli, based on USEPA's "Ambient Water Quality Criteria for Bacteria -1986". These and other recommendations of the SWQSTF for revisions to recreational beneficial use designations will be considered through the Basin Planning process. When and if the Basin Plan is amended to incorporate new beneficial use designations and/or bacterial standards, the MSAR TMDLs will be revised, as appropriate.

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12. On December 20, 2004, the Regional Board adopted Resolution R8-2004-0037 amending the Basin Plan to incorporate the Lake Elsinore and Canyon Lake Nutrient TMDLs. These TMDLs were subsequently approved by the State Board on May 19, 2005, by the Office of Administrative Law on July 26, 2005 and by the USEPA on September 30, 2005. These TMDLs include urban WLAs that are now

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incorporated into Chapter 5 of the Basin Plan. For both Canyon Lake and Lake Elsinore, the TMDLs specify numeric targets (nitrogen and phosphorus) and response numeric targets (chlorophyll *a*, dissolved oxygen and un-ionized ammonia). The TMDLs also specify nitrogen and phosphorus WLAs (point source discharges) and LAs (nonpoint source discharges) for each lake. Compliance with the numeric targets and WLAs and LAs is to be achieved as soon as possible but no later than December 31, 2020. The LAs and WLAs are specified as 10-year running average. The WLA for these TMDLs do not take effect within the Term of this Order. The WLA will be incorporated into future Orders as they take effect, Implementation Tasks that take effect within the term of this Order have been incorporated into this Order.

13. The nitrogen and phosphorus WLAs and LAs for Canyon Lake are applicable to those discharges tributary to Canyon Lake. The nitrogen and phosphorus WLAs and LAs for Lake Elsinore apply to those areas downstream of Canyon Lake and to overflows from Canyon Lake.

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14. TMDL Implementation Plans for each TMDL assign responsibilities to specific stakeholders to identify sources of Impairment, to propose BMPs to address those sources, and to monitor, evaluate and revise BMPs based on monitoring results. Specific implementation plan tasks are described in Chapter 5 of the Basin Plan and are assigned to one or more of the Permittees. Requirements of the TMDL implementation plan tasks are incorporated into this Order and were proposed for inclusion in Chapter 13 of the DAMP (see 2007 ROWD). Several of these tasks are also jointly assigned to non-Permittee stakeholders. The Permittees have established TMDL Task Forces to jointly implement and coordinate those tasks.

15. To evaluate implementation of TMDL WLAs and Implementation Plans, the Permittees proposed to include in future ROWDs an:

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Evaluation of the progress towards compliance with the nutrient WLA allocation for Urban Runoff.¶
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i. Evaluation of the progress towards compliance with the nutrient WLA allocation for Urban Runoff.

14. The Canyon Lake and Lake Elsinore Nutrient TMDL Task Force (also referred to as the San Jacinto Watershed Urban Dischargers) members are tabulated below:

Table 6 - Canyon Lake and Lake Elsinore Nutrient TMDL Task Force

Riverside MS4 Permittees	Non-Permittees
Beaumont, City of	California Department of Fish and Game
Canyon Lake, City of	California Department of Transportation (Caltrans),
Hemet, City of	Eastern Municipal Water District
Lake Elsinore, City of	Elsinore Valley Municipal Water District
Moreno Valley, City of	U.S. Air Force (March Air Reserve Base), March Joint Powers Authority,
Murrieta, City of	U.S. Forest Service
Perris, City of	Western Riverside County Agricultural Coalition
San Jacinto, City of	
Riverside, City of	
Riverside, County of	
RCFC&WCD	

15. The cities of Menifee and Wildomar were recently incorporated and are responsible for compliance with the Canyon Lake and Lake Elsinore Nutrient TMDL requirements. They have the option to participate in the TMDL Task Force or comply with the TMDL requirements on their own.

G. G. NEW DEVELOPMENT/SIGNIFICANT REDEVELOPMENT – WQMP /LID

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1. The California Constitution and Government Code provide the Co-Permittees planning policy powers that mandate that the Co-Permittees review and condition New Development consistent with the Subdivision Map Act, CEQA, and their respective general plans, ordinances, and resolutions to ensure the general public's health and safety. If these constitutional and statutory mandates are not properly implemented and local ordinances and resolutions are not properly enforced, there is a creditable potential that New Development could result in the discharge of Pollutants via Urban Runoff to the Waters of the U.S within the Permit Area.

2. Significant development has taken place in Riverside County in the last decade. These developments have resulted in the urbanization of many areas. Urbanization generally increases Urban Runoff volume and velocity of runoff and the amount of Pollutants in the runoff. As development occurs, natural vegetated pervious ground cover is converted to impervious surfaces such as highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove Pollutants providing an effective natural purification process.

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In contrast, impervious surfaces can neither absorb water nor remove Pollutants, and the natural purification characteristics are lost. Additionally, urban development can significantly increase Pollutant loads as the increased population density causes proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage wastes, pesticide, household hazardous wastes, pet wastes, trash, and other anthropogenic Pollutants.

3. Urbanization can especially threaten environmentally sensitive areas (ESAs) and stream geomorphology. ESAs typically have a much lower capacity to withstand Pollutant loads. In essence, development that is ordinarily insignificant in its impact on the environment may in a particular sensitive environment become significant. Designated ESAs are defined in the Glossary (Appendix 4).

4. Unmitigated high volumes and velocities of discharges from MS4 facilities associated with new development (which may include non-Urban Runoff) into natural watercourses can alter the natural rate of change of a stream and adversely impact aquatic ecosystems and stream habitat and cause stream bank erosion and physical modifications. These changes are the result of Hydromodification. Typically, Hydromodification especially impacts those natural streams in the developing foothills and in other urbanizing fringe portions of the Permit Area.

5. On October 5, 2000, the State Board adopted Order No. WQ-2000-11, which is a precedential order. Order No. WQ-2000-11 required that Urban Runoff generated by 85th percentile storm events from specific types of development categories be infiltrated, filtered or treated. The essential elements of this precedential order were incorporated into the 2002 MS4 Permit and are incorporated herein. In accordance with the requirements specified in the 2002 MS4 Permit, the Permittees developed a model Water Quality Management Plan (WQMP) and Template.

6. The WQMP and Template provide a framework to incorporate some of the watershed protection principles into the Co-Permittees' planning, construction and post-construction phases of New Development and Significant Redevelopment projects. The WQMP includes site design (including, where feasible, Low Impact Development principles) (LID, see Appendix 4), Source Control and Treatment Control elements to reduce the discharge of Pollutants in Urban Runoff. On September 17, 2004, the Regional Board approved the WQMP. The Co-Permittees are requiring proponents of New Developments and Significant Redevelopments to develop and implement site-specific WQMPs. This Order requires Co-Permittees to continue requiring preliminary project-specific WQMPs as early as possible during the environmental review or planning phase (land use entitlement) and to review and approve final project–specific WQMP that is in substantial conformance with the preliminary project-specific WQMP prior to the

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issuance of any building or grading permit. This Order also requires Co-Permittees to verify functionality of post-construction BMPs prior to issuance of certificate of occupancy and to track and ensure long term operation and maintenance of those BMPs as per the approved project-specific WQMPs.

7. An audit of each of the Pemittees' Urban Runoff management programs during the term of the 2002 MS4 Permit indicated no clear nexus between the watershed protection principles, including LID techniques specified in the WQMP and the Permittees' General Plan or related documents such as Development Standards, Zoning Codes, Conditions of Approval and Project Development Guidance. Existing procedures, ordinances, local codes, and development standards may be barriers to implementation of LID practices. This Order requires the Permittees to evaluate their General Plans, comprehensive or master plans, zoning codes, subdivision ordinances, project development standards, conditions of approval or related documents to determine whether the removal of any barriers, within their control, is feasible for implementation of LID techniques and other requirements of this Order. Where feasible, the Co-Permittees will make appropriate changes to remove barriers to implementation of LID techniques and other requirements of this Order.
8. This Order also requires the Permittees to review and enforce covenants, conditions and restrictions (CC&R) or develop other mechanisms to ensure proper long term operation and maintenance of post-construction BMPs.

9. In addition to addressing post-development water quality, the WQMP includes requirements to protect ESAs and address potential hydromodification issues. Section 4.4 of the WQMP requires identification of hydrologic conditions of concern (HCOC). An HCOC exists when a site's hydrologic regime is altered and there are significant impacts on downstream channels and aquatic habitats, alone or in conjunction with impacts of other projects. Currently, New Development and Significant Re-development projects are required to perform this assessment and incorporate appropriate BMPs to ensure existing hydrologic conditions are maintained. This Order requires the Permittees to implement LID techniques to minimize HCOC.

10. Management of the impacts of urbanization on water quality and stream stability in the Permit Area is more effective if the techniques are implemented at the project site, within the neighborhood and within each Co-Permittee's jurisdiction based on an overall watershed plan. The Permittees have identified major Outfalls (with a pipe diameter of 36 inches or greater or drainage areas draining 50 acres or more) and have submitted maps of existing MS4 facilities. This Order requires the Permittees to expand upon the existing maps to include a map of its lined and unlined channels and streams within the Permit Area with the goal of identifying, prioritizing, and developing specific action plans for protecting those segments of streams that are vulnerable to development impacts.

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11. This Order further requires the Permittees to develop a Watershed Action Plan that would address TMDL Implementation Plan BMP strategies and provide regional tools to address Hydromodification sensitivity assessment. The Permittees may choose to implement a single Watershed Action Plan for the entire Permit Area, or subdivide the Permit Area into sub-watersheds as appropriate to cost-effectively address TMDL requirements. The Watershed Action Plan integrates existing watershed based planning efforts and incorporates watershed tools to manage cumulative impacts of development on vulnerable streams, preserve structure and function of streams, and protect source, surface and groundwater quality and water supply in the permitted area. The Watershed Action Plan should integrate hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction. Existing Permittee watershed planning efforts include the Western Riverside County Multiple Species Habitat Conservation Plan, Special Area Management Plan, Santa Ana and San Jacinto Integrated Regional Watershed Management Plans, Lake Elsinore and Canyon Lake and Middle Santa Ana River TMDL Task Forces, SCCWRP hydromodification sensitivity mapping project, and various regional BMP evaluations being conducted by the Principal Permittee in conjunction with various water districts should be evaluated and incorporated into the Watershed Action Plan as necessary to address TMDL Implementation Plan requirements and Hydromodification. The regional efforts should be evaluated, and if necessary, enhanced to provide Permittees with the tools to integrate Hydromodification and TMDL management strategies with Permittee MS4 Permit compliance programs and land use planning policies, ordinances, and plans within appropriate Permittee jurisdictions within the Permit Area.

12. Pending completion of a Watershed Action Plan and implementing tools, management of the impacts of urbanization shall be accomplished on a per project and per jurisdiction basis through jurisdictional implementation of the watershed tools incorporated into the local general plans, ordinances and other requirements and the project-specific WQMPs.

13. The Southern California Monitoring Coalition (SMC) in collaboration with SMC member Southern California Coastal Water Research Project (SCCWRP) and the California Storm Water Quality Association (CASQA) with funding from the State Water Resources Control Board and CASQA is developing a LID manual for southern California. This manual will be incorporated into the CASQA BMP Handbooks. The Permittees are encouraged to utilize the LID manual as a resource to implement LID techniques once completed.

14. This Order requires the project proponents to first consider preventative and conservation techniques (e.g., preserve and protect natural features to the MEP) prior to considering mitigative techniques (structural treatment, such as infiltration systems). The mitigative measures should be prioritized with the highest priority

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for BMPs that remove Pollutants in Urban Runoff and reduce the volume of Urban Runoff, such as infiltration, then other BMPs, such as harvesting and re-use, evapotranspiration and bio-treatment should be considered. Consistent with the MEP standard, these LID BMPs must be implemented at the project site. Consideration of "highest and best use" of the discharge should also be considered. For example, Lake Elsinore is evaporating faster than runoff from natural precipitation can recharge it. Requiring infiltration of 85% of runoff events for projects tributary to Lake Elsinore would only exacerbate current water quality problems associated with Pollutant concentration due to lake water evaporation. In cases such as this, requiring infiltration of Urban Runoff from projects is counterproductive to the overall watershed goals. Project proponents, in these cases, would be allowed to discharge Urban Runoff, provided they used equally effective filtration-based BMPs. The Regional Board also recognizes that site conditions, including site soils, contaminant plumes, high groundwater levels, etc., could limit the applicability of infiltration and other LID BMPs at certain project sites. Where LID BMPs are not feasible or appropriate at the project site, more traditional, but equally effective control measures should be implemented. This Order provides for alternatives and in-lieu programs where preferred LID BMPs are infeasible or inappropriate.

15. The USEPA has determined that LID/green infrastructure can be a cost-effective and environmentally preferable approach for the control of storm water pollution and to minimize downstream impacts by mimicking pre-development hydrology. LID techniques promote the reduction of impervious areas which may achieve multiple environmental and economic benefits in addition to enhanced water quality and supply, stream and habitat protection, cleaner air, reduced urban temperature, increased energy efficiency and other community benefits such as aesthetics recreation, and wildlife areas. This Order incorporates a volume capture metric based on the design volume specified in the WQMP and also includes a metric based on EIA.

16. If not properly designed and maintained, the structural Treatment Control BMPs could create a nuisance and/or habitat for vectors[19] (e.g., mosquitoes and rodents). The 2002 MS4 Permit required the Permittees to closely collaborate with the local vector control agencies during the development and implementation of such Treatment Control BMPs The Permittees should continue these collaborative efforts with the vector control agencies to ensure that Treatment Control BMPs do not become a Nuisance or a potential source of Pollutants. The requirements specified in this Order include identification of responsible agencies for maintaining the Treatment Control BMPs and for providing funding for operation and maintenance.

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[19] Managing Mosquitoes in Storm water Treatment Devices, Marco E. Metzger, University of California Davis, Division of Agriculture and Natural Resources, Publication 8125.

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17. If not properly designed and maintained, groundwater infiltration systems may adversely impact groundwater quality. Restrictions placed on Urban Runoff infiltration in this Order (Section XI.D.9) are based on recommendations provided by the USEPA Risk Reduction Laboratory. The Permittees should work closely with the water districts and water conservation districts to insure groundwater protection.

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18. This Order incorporates new project categories and revised thresholds for several categories of new development and redevelopment projects that trigger the requirement for a WQMP. The 2008 National Research Council (NRC) report[20] indicates that roads and parking lots constitute as much as 70% of total impervious cover in ultra-urban landscape, and as much as 80% of the directly connected impervious cover. Roads tend to capture and export more storm water pollutants than other impervious covers. As such, roads are included as a priority development category for which WQMPs are required. Private New Development and Significant Redevelopment projects incorporating roads typically allow road runoff to be addressed as part of the overall water quality strategy for the larger common plans of development. Permittee streets, roads and highways capital projects have special limitations. For example, the footprint of street, road and highway capital projects is often limited and may have hydraulic constraints due to lack of underground storm drain systems that would otherwise be necessary to hydraulically facilitate treatment of runoff. There are also limitations specified in state and federal design and code specifications that may limit or prohibit BMPs. Permittees may also be subject to flow diversion liability and limited road maintenance budgets and equipment. Street, road and highway projects that function as part of the MS4 also receive runoff and associated Pollutants from both existing urban areas and other external sources, including–adjacent land use activities, aerial deposition, brake pad and tire wear and other sources that may be outside the Co-Permittee's authority to regulate and/or economic or technological ability to control. These offsite flows can overwhelm Treatment Control BMPs designed to address the footprint (consistent with the typical requirements for a WQMP) of street, road or highway capital projects incorporating curb and gutter as part of its stormwater conveyance function. Despite these limitations, the Regional Board finds that Permittee construction of streets, roads and highway capital projects may provide an opportunity to address Pollutant loads from existing urban areas. However, due to the nature of the facilities and projects, it would be unduly burdensome for the Co-Permittees to maintain WQMP documents for transportation projects (in addition to Facility Pollution Prevention Plans and other overlapping requirements of this Order). The Permittees are therefore not required to prepare WQMP documents for street, road and highway capital projects, but instead are required to develop equivalent documents that include site specific consideration utilizing BMP guidance to address street, roads and highway capital project runoff to the MEP.

19. The NRC report also indicates that there is a direct relationship between impervious cover and the biological condition of downstream receiving waters. The Permittees are required to address hydrologic conditions of concern from new development and significant redevelopment projects to minimize downstream impacts.

[20] National Research Council Report (2008), http://www.nap.edu/catalog.php?record_id=12465

H. H. MUNICIPAL INSPECTION PROGRAMS

1. Each Co-Permittee conducts inspections of those construction sites for which it has issued either a grading or building permit to determine compliance with its ordinances, regulations, and codes, including its Storm Water Ordinance. Each Co-Permittee, consistent with its ordinances, rules and regulations, inspects each site for compliance with the conditions of approval governing the grading or building permit. These inspections have been expanded by the Co-Permittees to determine that sites requiring coverage under the General Construction Activity Storm Water Permit have filed an NOI.

2. The DAMP addresses compliance strategies with regard to industrial and commercial facilities. As part of their Urban Runoff management activities, the Principal Permittee and the County entered into an agreement, dated August 10, 1999 by which they have developed and funded, in cooperation with the Riverside County Environmental Health Department, the "Compliance Assistance Program" (CAP) which includes a storm water survey component as part of existing inspections of hazardous material (as defined in Appendix 4, Glossary) handlers and retail food service activities. The CAP consists of educational outreach to the inspected facilities and detailed storm water compliance surveys for each facility that must secure a hazardous materials permit for either storing, handling or generating such materials (there are approximately 5,500 facilities of which approximately 2,300 are inspected annually, and all facilities are inspected at least once during a two year cycle) and retail food facilities (there are approximately 6,750 facilities, all of which are inspected 1 to 3 times annually). Storm Water Compliance Surveys are conducted with each inspection of hazardous materials facilities, and at least once during the MS4 Permit term for restaurants. Restaurant inspectors are authorized to conduct additional surveys if they observe an IC/ID or ordinance violation. The type of industrial/commercial establishment that is inspected includes, but is not limited to, automobile mechanical repair, maintenance, fueling, or cleaning operation, automobile or other vehicle body repair or painting operations, and painting or coating operations. Completed surveys that indicate non-compliance are forwarded to the appropriate Co-Permittee's enforcement division for follow up action. In addition, the cities of Corona and Riverside, which operate publicly owned treatment works (POTW), conduct annually on average, approximately 4,400 wastewater pre-treatment inspections, on a variety of industrial and commercial establishments within their respective jurisdictions, including, but not limited to, retail food establishments, car washes, and carpet, drape & furniture cleaning establishments. The Permittees have agreed to notify Regional Board staff when conditions are observed during such inspections that appear to be in violation of either the Storm Water General Permits or a permit issued by the Regional Board.

3. An evaluation of the Permittees' inspection programs during the 2002 MS4 Permit indicated a wide range of compliance and non-compliance with the construction

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site and industrial and commercial facilities inspection requirements. In many instances, the facilities' return to compliance was not properly documented. This Order includes requirements for a more effective inspection program and includes a performance measure, time to return to compliance, as a metric for program effectiveness.

I. ILLICIT CONNECTIONS/ ILLEGAL DISCHARGES (IC/ID)

1. Illegal Discharges to the MS4 can contribute to contamination (as defined in Appendix 4, Glossary) of Urban Runoff and other surface waters. During the term of the 1990 MS4 Permit, the underground MS4 facilities were inspected and only one Illicit Connection was identified. Open channels and other aboveground elements of the MS4 are inspected for evidence of Illegal Discharges as an element of routine maintenance by the Permittees. The Permittees also developed a program to prohibit IC/IDs to their MS4 facilities. Continued surveillance and enforcement of these programs are required to eliminate IC/IDs. The Permittees have a number of procedures in place to eliminate IC/IDs to the MS4, including construction, commercial, and industrial facility inspections, MS4 facility inspections, water quality monitoring and reporting programs, and public education.

2. The Permittees have the authority to control Pollutants in Urban Runoff, to prohibit IC/ID, to control spills, and to require compliance and carry out inspections of the MS4 facilities within their respective jurisdictions. The Co-Permittees have been extended necessary legal authority through California statutes and local charters. Consistent with this statutory authority, each of the Co-Permittees have adopted their respective Storm Water Ordinances.

3. Even though the Permittees have established the authority and the procedures to detect and eliminate IC/IDs, audits conducted during the term of the 2002 MS4 Permit indicated that this program element is generally carried out passively through complaint response. IC/IDs are also detected through inspection programs and maintenance activities. Reports from maintenance inspectors are also typically logged as complaints. This Order requires each Permittee to revise this program element based on the Center for Watershed Protection's Illegal Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments, or equivalent program.

4. The Principal Permittee currently implements a facility inspection program to identify MS4 maintenance needs and identify IC/IDs. This facility inspection program or an equivalent meets the intent of this requirement. As long as the Co-Permittees continue to coordinate response to IC/IDs identified by the Principal Permittee as part of its facility inspection program, the Co-Permittees

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shall be considered in compliance with this requirement as well. The facility inspection program shall be described in the updated DAMP.

J. TECHNOLOGY-BASED EFFLUENT LIMITATIONS (Not Applicable)

K. WATER QUALITY-BASED EFFLUENT LIMITATIONS (WQBELs) AND TMDL WLA

1. 40 CFR 122.44(d) requires that NPDES permits include WQBELs to attain and maintain applicable numeric and narrative water quality criteria to protect the Beneficial Uses of the receiving water. Where numeric water quality criteria have not been established, 40 CFR 122.44(d) specifies that WQBELs may be established using USEPA criteria guidance under CWA section 304(a), proposed State criteria or a State policy interpreting narrative criteria supplemented with other relevant information, or an indicator parameter. In *Defenders of Wildlife, et al* v. *Browner,* No. 98–71080 (9th Cir, October 1999), the Court held that the CWA does not require strict compliance with State Water Quality Standards for MS4 permits under section 301(b)(1)(C), but that at the same time, the CWA does give the permitting authority the discretion to incorporate appropriate water quality-based Effluent Limitations under another provision, CWA Section 402(p)(3)(B)(iii). The use of BMPs to control or abate the discharge of Pollutants is allowed by 40 CFR 122.44(k)(3) when Numeric Effluent Limitations are infeasible or when practices are reasonably necessary to achieve Effluent Limitations and standards or to carry out the purposes and intent of the CWA. The legislative history and the preamble to the federal storm water regulations indicate that the Congress and the USEPA were aware of the difficulties in regulating Urban Runoff solely through traditional end-of-pipe treatment. It is the Regional Board's intent to require the Permittees to implement BMPs consistent with the MEP standard in order to support attainment of Water Quality Standards. This Order includes Receiving Water Limitations based on Water Quality Objectives; it prohibits the creation of Nuisance and requires the reduction of water quality Impairment in Receiving Waters. The Permit includes a procedure for determining whether Urban Runoff is causing or contributing to exceedances of Receiving Water Limitations and for evaluating whether DAMP must be revised to meet Water Quality Standards. The Order establishes an iterative process to determine compliance with the Receiving Water Limitations.

2. To support attainment of Water Quality Standards, consistent with the MEP standards, this Order aims to reduce the discharge of Pollutants in Urban Runoff from the MS4s by requiring Permittees to:

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a. Implement BMPs at Permittee facilities and activities,

b. Require BMPs, including LID techniques, to be implemented at New Development and Significant Redevelopment project sites prior to accepting discharges into their MS4 facilities, where feasible,

c. Implement and annually evaluate the DAMP and each Permittee's LIP, for effectiveness in reducing Pollutants in Urban Runoff, and

d. Perform monitoring and reporting to determine adequacy of BMPs within the Permit Area and compare the results to Basin Plan Water Quality Standards including applicable, WLAs or interim goals and USEPA numeric benchmarks.

3. This Order includes permit conditions necessary to implement the TMDLs already approved by the Regional Board as required by federal regulations at 40 CFR 122.44(d)(vii(B). This Order requires Permittees to achieve the WLA for Urban Runoff through an iterative process of implementing BMPs to the MEP. Failure to submit a BMP implementation plan to the Regional Board or failure to implement the approved plan in a timely manner will be deemed to violate the conditions of this Order. The CWA requires the Permittees to have appropriate controls to reduce the discharge of pollutants to the MEP, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants (33 USC 1342(p)(3)(B)). MEP is a dynamic performance standard and it evolves as the knowledge of urban runoff control measures increases. Permittees are required to monitor and report effectiveness of their BMPs with respect to pollutant reduction goal(s) as one measure of progress toward reducing pollutant loads from urban sources in accordance with the compliance schedules specified in the TMDL implementation plans. If on-going monitoring indicates that implemented BMPs are insufficient to assure compliance with the relevant water quality standard(s), then the Permittees are required to develop and implement additional and/or more effective BMPs for the controllable urban sources within their jurisdiction to the MEP. In addition, the Permittees are required to submit a revised BMP implementation plan documenting the completion schedule for any additional and/or more effective BMPs and must execute the plan upon approval by the Regional Board. Taken together, these permit conditions are consistent with the facts and assumptions specified in the TMDLs, including the TMDL Implementation Plans, and are expected to achieve compliance with the related WLAs.

4. Since some of the compliance dates for the TMDLs are outside this permit term, this Order does not impose the WLA for bacteria or nutrients as numeric effluent limits. However, the Regional Board reserves the right to reopen the permit and add such limitations if MS4 dischargers fail to implement the BMPs approved by the Board or the iterative BMP process proves inadequate to achieve the urban WLA. Numeric effluent limits are included for de-minimus types of discharges from

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<#> This Order includes TMDL WLAs that are expressed as WQBELs. The TMDLs adopted by the Regional Board and approved by the State Board, Office of Administrative Law and the USEPA are incorporated into this Order. USEPA's Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 60 FR 43761 (Aug 26, 1996) recognizes the need for an iterative approach to control pollutants in urban storm water discharges. Since the compliance dates for the TMDLs in this Order are outside the five year term of this Order, the Permittees are required to monitor and report effectiveness of the BMPs specified in the TMDL Implementation Plans and this Order with respect to pollutant reduction goal(s) as one measure of progress towards attainment of WLAs in accordance with the compliance schedules specified in the TMDL implementation plans. The two approved TMDLs within the Permit Area are described in Section F, above. These include the following: ¶
¶
<#>MSAR Bacterial Indicator TMDL¶
¶
<#>The TMDL relies on this Order to implement the WLAs for Urban Runoff. ¶
¶
<#>This Order requires the Permittees within the MSAR TMDL area to fully comply with the implementation plan. The implementation plan includes requirements for monitoring, and submittal of plans and schedules to implement short term solutions and develop long-term solutions to achieve TMDL compliance by the compliance dates.¶
¶
<#>Canyon Lake and Lake Elsinore Nutrient TMDLs¶
¶
<#>This Order is consistent with the urban WLAs specified in the Canyon Lake and Elsinore Nutrient TMDLs.¶
¶
This Order requires the Permittees to identify sources of impairment, propose BMPs to address those sources, and to monitor, evaluate and revise BMPs based on the monitoring results.

Moved up [3]: Specific Implementation Plan tasks are described in Chapter 5 of the Basin Plan and are assigned to one or more of the Permittees.

Permittee-owned or permittee-operated facilities and activities and for total dissolved solids and total inorganic nitrogen for dry weather discharges.

i.

Deleted: <#> Requirements of the TMDL implementation plan tasks are incorporated into this Order and Chapter 13 of the DAMP. ¶
¶
<#>In Chapter 13 of the DAMP submitted with the ROWD, the Permittees have proposed BMP programs, consistent with the aforementioned TMDL implementation plan tasks. ¶
¶
<#>This Order also requires the Permittees to monitor at representative urban runoff monitoring locations, the effectiveness of BMPs implemented in the watershed in reducing pollutants of concern in urban runoff to determine progress towards attainment of WLAs by the compliance date. ¶

L. WATER QUALITY CONTROL PLAN (BASIN PLAN)

1. The Regional Board adopted a revised Water Quality Control Plan for the Santa Ana River Basin (hereinafter Basin Plan) that became effective on January 24, 1995. The Basin Plan designates Beneficial Uses, establishes Water Quality Objectives, and contains implementation programs and policies to achieve those Water Quality Objectives for all waters in the Santa Ana Region addressed through the Plan.

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2. More recently, the Basin Plan was amended significantly to incorporate revised boundaries for groundwater subbasins, now termed "management zones", new nitrate-nitrogen and TDS objectives for the new management zones, and new nitrogen and TDS management strategies applicable to both surface and ground waters. This Basin Plan Amendment was adopted by the Regional Board on January 22, 2004. The State Board and the Office of Administrative Law (OAL) approved the amendment on September 30, 2004 and December 23, 2004, respectively. The USEPA approved the surface water standard and related provisions of the amendment on June 20, 2007.

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3. TDS and TIN limitations in Table 4-1 of the Basin Plan are specified in this Order for Permittees' discharges subject to the de minimus permit. Where dry weather flows are identified as part of the IC/ID program element, this Order also requires Permittees to establish their baseline discharge concentration for dry weather conditions.

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4. As discussed in Section K, Water Quality Based Effluent Limitations, the Basin Plan has been amended to incorporate several TMDLs and TMDL Implementation Plans adopted for waterbodies within the Permit Area. In addition, the Basin Plan implements State Board Resolution 88-63, which established a state policy that all waters, with certain exceptions, are suitable or potentially suitable for municipal or domestic water supply. Thus, as discussed in detail in the Fact Sheet, Beneficial Uses recognized in the Basin Plan for Receiving Waters in the Permit Area are as follows:

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   a. Municipal and Domestic Supply,
   b. Agricultural Supply,
   c. Industrial Service Supply,
   d. Industrial Process Supply,

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e. Groundwater Recharge,
f. Hydropower Generation,
g. Water Contact Recreation,
h. Non-contact Water Recreation,
i. Warm Freshwater Habitat,
j. Limited Warm Freshwater Habitat,
k. Cold Freshwater Habitat,
l. Preservation of Biological Habitats of Special Significance,
m. Wildlife Habitat,
n. Rare, Threatened or Endangered Species, and
o. Spawning, Reproduction, and Development

5. The existing and potential Beneficial Uses of groundwater that could be impacted by the discharge of Urban Runoff within the Permit Area include one or more of the following:

   a. Municipal and Domestic Supply,
   b. Agricultural Supply,
   c. Industrial Service Supply, and
   d. Industrial Process Supply

6. The Basin Plan also incorporates by reference all State Board water quality control plans and policies including the 1990 Water Quality Control Plan for Ocean Waters of California (Ocean Plan) and the 1974 Water Quality Control Policy for Enclosed Bays and Estuaries of California (Enclosed Bays and Estuaries Policy). Water quality objectives specified in the Basin Plan are local numeric and narrative objectives that may be more stringent than the national or statewide water quality criteria.

M. NATIONAL TOXICS RULE (NTR) AND CALIFORNIA TOXICS RULE (CTR)

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NTR and CTR are blanket water quality criteria that apply to all surface water discharges. However, the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* states that the Policy does not apply to regulation of storm water discharges. Regional Board believes that compliance with Water Quality Standards through implementation of BMPs is appropriate for regulating Urban Runoff. The USEPA articulated this position on the use of BMPs in storm water permits in the policy memorandum entitled, ''Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits'' (61 FR 43761, August 9, 1996).[21]

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[21] See discussions on Wet Weather Flows in the Federal Register/Vol. 65, No. 97/Thursday, May 18, 2000/Rules and Regulations

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N. STATE IMPLEMENTATION POLICY (SIP)

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See Section M, above.

O. COMPLIANCE SCHEDULES AND INTERIM REQUIREMENTS

The Basin Plan contains schedules for achieving compliance with WLAs for bacterial indicators in the Middle Santa Ana River watershed and nutrients in the San Jacinto watershed (Canyon Lake/Lake Elsinore). It is appropriate to require Permittees within the Permit Area to comply with those time schedules for various deliverables as specified in the approved TMDL Implementation Plans. Additionally, since the TMDL compliance dates are outside the term of this MS4 Permit, it is also appropriate to require the Permittees to monitor and report the effectiveness of BMPs implemented in the Permit Area to evaluate progress towards attainment of WLAs by the time schedules specified in the adopted TMDLs. This Order includes the schedules for deliverables as part of the TMDL Implementation Plans as well as a requirement to monitor the effectiveness of BMPs in the Permit Area in reducing Pollutant discharges and to report progress towards compliance with the TMDL WLAs by the compliance dates.

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P. ANTIDEGRADATION POLICY

40 CFR 131.12 requires that State Water Quality Standards include an antidegradation policy consistent with the federal policy. The State Board established California's antidegradation policy in Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. As discussed in detail in the Fact Sheet (see sections IV and V), the permitted discharges are consistent with the antidegradation provisions of 40 CFR 131.12 and State Board Resolution No. 68-16.

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Q. ANTI-BACKSLIDING

Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at 40 CFR 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require Effluent Limitations in a reissued NPDES permit to be as stringent as those in the previous permit, with some exceptions where Effluent Limitations may be relaxed. All Effluent Limitations in this Order are at least as stringent as the Effluent Limitations in the 2002 order.

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R. PUBLIC EDUCATION/PARTICIPATION

1. Public participation during the development of Urban Runoff management programs and implementation plans is necessary to ensure that all stakeholder interests and a variety of creative solutions are considered. In addition, the federal storm water regulations require public participation in the development and implementation of the Urban Runoff management program. As such, the Permittees are required to solicit and consider all comments received from the public and submit copies of the comments to the Executive Officer of the Regional Board with the Annual Reports. In response to public comments, the Permittees may modify reports, plans, or schedules prior to submittal to the Executive Officer.

2. There are Pollutants in Urban Runoff from privately owned and operated facilities such as residences, businesses and commercial establishments and public and private institutions. A successful NPDES MS4 permit program should include the participation and cooperation of public entities, private businesses, and public and private institutions. Therefore, public education is a critical element of the DAMP. As the population increases in the Permit Area, it will be even more important to continue to educate the public regarding the impact of human activities on the quality of Urban Runoff.

3. In addition to the Regional Board, a number of other stakeholders are involved in the management of the water resources of the Region. These include, but are not limited to, the incorporated cities in the Region, POTWs, the three counties, and the Santa Ana Watershed Project Authority and its member agencies. The entities listed in Appendix 2 are considered as potential dischargers of Urban Runoff in the Permit Area. It is expected that these entities will also work cooperatively with the Permittees to manage Urban Runoff. The Regional Board, pursuant to 40 CFR 122.26(a), has the discretion and authority to require non-cooperating entities to participate in this Order or to issue individual MS4 permits. The Permittees may request the Regional Board to issue a separate NPDES Permit to any discharger into MS4 facilities they own or operate.

4. Cooperation and coordination among the stakeholders (regulators, Permittees, the public, and other entities) are critical to optimize the use of finite public resources and ensure economical management of water quality in the Region. Recognizing this fact, this Order focuses on integrated watershed management and seeks to integrate the programs of the stakeholders, especially the holders of the three MS4 permits within the Regional Board's jurisdiction.

5. Education is an important aspect of every effective Urban Runoff management program and the basis for changes in behavior at a societal level. Education of municipal planning, inspection, and maintenance department staff is especially critical to ensure that in-house staff understand how their activities impact water quality, how to accomplish their jobs while protecting water quality, and their

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specific roles and responsibilities for compliance with this Order. Public education, designed to target various urban land users and other audiences, is also essential to inform the public of how individual actions affect receiving water quality and how adverse effects can be minimized.

6. Some Urban Runoff issues, such as public education and training, can be effectively addressed on a regional or statewide basis. Regional approaches to Urban Runoff management can improve program consistency and promote sharing of resources, which can result in implementation of more efficient programs. In particular the counties of San Bernardino and Riverside and their collective municipalities are encouraged to cooperatively work together and generate a unified education and training program.

S. PERMITTEE FACILITIES AND ACTIVITIES

1. The Permittees own/operate facilities where industrial or related activities take place that may have an impact on Urban Runoff quality. Some of the Permittees enter into contracts with outside parties to carry out activities that may also have an impact on Urban Runoff quality. These facilities and related activities include, but are not limited to, street sweeping, catch basin cleaning, maintenance yards, vehicle and equipment maintenance areas, waste transfer stations, corporation and storage yards, parks and recreational facilities, landscape and swimming pool maintenance activities, MS4 maintenance activities and the application of herbicides, algaecides and pesticides.

2. This Order requires continued implementation of BMPs intended to reduce Pollutant discharges from those Permittee activities/facilities that are found to be significant sources of Pollutants in Urban Runoff. This Order prohibits non-storm water discharges from facilities owned or operated by the Permittees unless the discharges are exempt under Section V of this Order or are permitted by the Regional Board under an individual NPDES permit.

3. Program evaluations conducted during the term of the 2002 MS4 Permit indicated varying degrees of compliance/noncompliance at Permittee facilities and activities. This Order requires each Permittee to review its inventory of fixed facilities, field operations and drainage facilities to ensure that Permittee facilities do not cause or contribute to a Pollution or Nuisance in Receiving Waters. Permittee fixed public facilities and field operations are to be inspected annually.

T. MUNICIPAL CONSTRUCTION PROJECTS

1. The 2002 MS4 Permit authorized the discharge of storm water from construction activities on an acre or more, that are under ownership or direct responsibility of the Permittees. Permittees were required to notify the Regional Board prior to

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commencement of construction activities, and to comply with the latest Statewide General Construction Permit. Permittees were also required to develop a SWPPP and monitoring program specific to the construction site. Program evaluations conducted during the term of the 2002 MS4 Permit indicated that some Permittees were not submitting or were not aware of the requirement to submit a Notice of Intent and subsequent Notice of Termination for Permittee construction projects. This Order continues the notification requirement.

2. This Order builds upon the requirement of the 2002 MS4 Permit by requiring Permittees to include post-construction BMP information for Permittee projects meeting WQMP and General Construction Permit criteria along with the Notice of Termination submitted to the Executive Officer upon completion of the construction activity. The Notice of Termination must include photographs of the completed project, a site map including structural post-construction BMP locations, long term operation and maintenance responsibility information, field verification report and copies of the final field verification reports required under Section XII.H. Permittees are required to develop a database of post-construction BMPs per Section VII.J for which they are responsible and reference this database in the LIPs.

3. Emergency Permittee public works projects required to protect public health and safety are exempted from these requirements, until the emergency ends, at which time they need to comply with the requirements.

U. MONITORING AND REPORTING

1. 40 CFR 122.48 requires that all NPDES permits specify requirements for monitoring and reporting. Sections 13267 and 13383 of the CWC authorize the Regional Board to require technical and monitoring reports. The Monitoring and Reporting Program, Attachment 3, establishes monitoring and reporting requirements to implement federal and State requirements.

2. An effective monitoring program characterizes Urban Runoff, identifies problem areas, and determines the impact of Urban Runoff on receiving waters and the effectiveness of BMPs. The Principal Permittee administers the Consolidated Program for Water Quality Monitoring[22] (CMP) for the Permittees. The CMP includes wet and dry weather monitoring of MS4 Outfalls and Receiving Waters throughout Riverside County.

3. The Regional Board recognizes the importance of watershed management efforts and regional planning and coordination in the development and implementation of programs and policies related to Receiving Water quality protection, including the

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[22] Consolidated Program for Water Quality Monitoring, Riverside County Flood Control and Water Conservation District, March 1994.

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Urban Runoff program and TMDL processes. In light of recent TMDLs that have been developed and the expectation of future TMDLs, this Order allows the Permittees to develop a Coordinated Watershed Monitoring Plan that shows the nexus among various Urban Runoff related monitoring programs that the Permittees are participating and the MS4 permit requirements including but not limited to WLA pre-compliance, BMP effectiveness, urban source and trend evaluation, Receiving Water quality and Hydromodification effects monitoring as part of the requirements of the Monitoring and Reporting Program.

4. Multiple entities, such as POTWs, MS4s, CAFOs, and other permitted and non-permitted dischargers, discharge into the same water bodies. The discharges from these various sources could potentially affect the water quality of these water bodies even when these dischargers are complying with their discharge permits. Monitoring the Receiving Waters where these multiple types of discharges take place is necessary to determine these water bodies' compliance with Water Quality Objectives and their attainment of Beneficial Uses.

5. In the past, multiple entities have individually monitored the water bodies receiving their discharges to determine impacts to these waters from their discharges. The monitoring has resulted in fragmented data that is inconsistent in quality, and that has potentially resulted in duplication of resources.

6. The Storm Water Monitoring Coalition's "Model Monitoring Program for Municipal Separate Storm Sewer Systems in Southern California", August 2004 Technical Report #419 indicated that "…the lack of mass emissions stations in the inland counties hampers their ability to estimate the proportional contribution of these inland areas to cumulative loads downstream." The coalition consists of representatives from the Counties of Ventura, Los Angeles, Orange, San Bernardino, Riverside, and San Diego and the City of Long Beach. Consistent with this coordinated effort, this Order includes requirements for mass emissions monitoring.

7. Every two years, the Regional Board will assess readily available data to determine if the water bodies within its jurisdiction comply with the Water Quality Objectives and attain the assigned Beneficial Uses. The data reviewed for the assessment comes from sources such as municipalities, POTWs, individual public submittals, TMDL monitoring, and special studies. The data necessary for the assessment is of known and documented quality and generated under the auspices of a Quality Assurance Project Plan (QAPP). The data also is required to be statistically sufficient to assess if the water body is meeting Water Quality Objectives and to determine if water quality is declining over time.

8. A coordinated monitoring effort is needed for each sub-watershed in the Santa Ana Region that will provide statistically sufficient data. These data should be

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collected with appropriate quality control and quality assurance programs and should be made available in an electronic format to meet assessment objectives.

9. The Regional Board has identified sub-watersheds in the Santa Ana Region where potential duplication of effort is taking place. These sub-watersheds include: the Upper Santa Ana River watershed, Middle Santa Ana River watershed, Lower Santa Ana River watershed, and the San Jacinto River watershed.

10. Regional Board staff proposes to require the various entities discharging into the waterbodies in these sub-watersheds to coordinate monitoring efforts, prepare, submit for approval, and implement a watershed monitoring plan; a QAPP, and a data management, validation, verification mechanism in order to meet the assessment objectives.

11. Under the direction of the MS4 permittees in Southern California, the Southern California Coastal Water Research Project is coordinating a watershed monitoring effort in Southern California. The Santa Ana Region is included in their monitoring effort. This effort will potentially produce data that will meet the needs of the Regional Board in assessing water quality. This Order requires the Permittees to continue their participation in this regional effort.

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V. STANDARD AND SPECIAL PROVISIONS

The dischargers must comply with all standard provisions and with those additional conditions that are applicable under Federal NPDES Regulations 40 CFR122.41 and 40 CFR 122.42.

W. NOTIFICATION OF INTERESTED PARTIES

The Regional Board has notified the dischargers and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet for this Order.

X. CONSIDERATION OF PUBLIC COMMENT

The Regional Board has notified the Permittees, all known interested parties, and the public of its intent to issue Waste Discharge Requirements for this discharge and has provided them with an opportunity to submit their written views and recommendations.

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The Regional Board, in a public meeting, heard and considered all comments pertaining to the discharge and the requirements of this Order. Details of the Public Hearing are provided in the Fact Sheet for this Order.

Y. ALASKA RULE

On March 30, 2000, USEPA revised its regulation that specifies when new and revised State and Tribal water quality standards become effective for CWA purposes (40 CFR 131.21, 65 FR 24641, April 27, 2000). Under the revised regulation (also known as the Alaska rule), USEPA must approve new and revised water quality standards submitted to USEPA after May 30, 2000 before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000 may be used for CWA purposes, whether or not approved by USEPA.

Z. COMPLIANCE WITH CZARA

The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Section 6217(g), 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 pollution: agriculture, silviculture, urban, marinas, and Hydromodification. This Order addresses the management measures required for the urban category, with the exception of septic systems. Compliance with requirements specified in this Order relieves the Permittees for developing a non-point source plan, for the urban category, under CZARA. The Regional Board addresses septic systems through the administration of other programs.

AA. NON-POINT SOURCE (NPS) DISCHARGES

Consistent with the State Board's 2004 "Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program," the Regional Board may issue Waste Discharge Requirements for non-point source (NPS) Pollutant discharges, such as agricultural irrigation runoff or return flows that are not subject to NPDES requirements, if identified as a significant source of Pollutants. In addition, if the water quality significance of NPS discharges is not clearly understood, the Regional Board may issue conditional waivers of Waste Discharge Requirements to NPS dischargers, and require monitoring to gather the information necessary to effectively manage these discharges.

BB. STRINGENCY REQUIREMENTS FOR INDIVIDUAL POLLUTANTS. (N/A)

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California is experiencing a fiscal crisis unprecedented since the Great Depression. The June 2009 unemployment rate is 11.6 percent in California and 13.9 percent in Riverside County.[23] The Federal Reserve projected that the national unemployment rate, currently at a 26-year high of 9.5 percent, will pass 10 percent by the end of the year. Most federal policymakers said it could take "five or six years" for the economy and the labor market to get back on a path of long-term health.[24] State and local governments are experiencing significant budgetary shortfalls and are reducing staffing and programs across the board. Given this economic environment, priority will be given to preserving the most essential elements of existing Urban Runoff programs and identifying and implementing strategies to improve the efficiency of existing programs in protecting Receiving Waters.

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PERMIT REQUIREMENTS:

IT IS HEREBY ORDERED that the Riverside County Flood Control and Water Conservation District, the County of Riverside, and the incorporated cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, and Wildomar, in order to meet the provisions contained in Division 7 of the Water Code and regulations adopted thereunder, and the provisions of the CWA, as amended, and the regulations and guidelines adopted there under, must comply with the following:

III. PERMITTEE RESPONSIBILITIES:

A. RESPONSIBILITIES OF THE PRINCIPAL PERMITTEE:

1. The Principal Permittee shall be responsible for managing the overall Urban Runoff program and shall:

   a. Coordinate revisions to the DAMP.

   b. Implement area-wide management programs, monitoring and reporting programs, and related plans as required by this Order.

   c. Coordinate chemical and biological water quality monitoring and any other monitoring as required by the Executive Officer.

   d. Prepare, coordinate the preparation of, and submit to the Executive Officer, those reports and programs necessary to comply with this Order.

[23] Employment Development Department, State of California, July 17, 2009. http://www.calmis.ca.gov/file/lfmonth/rive$pds.pdf
[24] http://www.msnbc.msn.com/id/31963779/ns/business-stocks_and_economy/

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e. Provide staff support to the Management Steering Committee (Appendix 4, Glossary) to address Urban Runoff management policies for the Permit Area and coordinate the review, and necessary revisions to the DAMP and Implementation Agreement. The Management Steering Committee will continue to meet consistent with the requirements of Section XVII.C of this Order.

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f. Coordinate and conduct Technical Committee (Appendix 4) meetings consistent with the requirements of Section XVII.C of his Order. The Technical Committee will continue to direct the development of the DAMP and coordinate the implementation of the overall Urban Runoff program.

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g. Take the lead role in initiating and developing area-wide programs and activities necessary to comply with this Order.

h. Coordinate activities and participate in committees/subcommittees formed to comply with this Order.

i. Coordinate the implementation of this Order with the Regional Board and Co-Permittees, including the submittal of joint reports, plans, and programs as required under this Order.

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j. Provide technical and administrative support to the Co-Permittees, including informing them of the status of known pertinent municipal programs, pilot projects, and research studies.

k. Coordinate with the Co-Permittees the implementation and necessary updates to Urban Runoff quality management programs, monitoring and reporting programs, implementation plans, public education, other Pollution Prevention measures, household hazardous waste collection, and BMPs outlined in the DAMP and take other actions consistent with the MEP standard.

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l. Gather and disseminate information on the status of statewide Urban Runoff programs and evaluate the information for potential use in the execution of this Order. Hold workshops focused on Urban Runoff regulatory requirements, BMPs, and other related topics.

m. Compile information provided by the Co-Permittees and determine the effectiveness of the overall Urban Runoff program in attaining Receiving Water Quality Standards. This determination must include a comparative analysis of monitoring data to the applicable Water Quality Objectives for Receiving Waters as specified in Chapter 4 of the Basin Plan.

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TENTATIVE

n. Solicit and coordinate public input for major changes to the Urban Runoff management programs and the implementation thereof.

o. Coordinate the development and implementation of procedures and performance standards, to assist in the consistent implementation of BMPs consistent with the MEP standard, as well as Urban Runoff management programs, among the Co-Permittees.

p. Participate in watershed management programs and regional and/or statewide monitoring and reporting programs.

q. In collaboration with the Co-Permittees, other MS4 Programs and/or CASQA, develop guidelines for defining expertise and competencies of storm water program managers and inspectors and develop and submit for approval a training program for various positions in accordance with these guidelines and Section XV of this Order.

r. Within 6 months of adoption of this Order, the Principal Permittee shall develop a library of BMP performance reports, and revise the library annually thereafter. At a minimum, obsolete performance reports should be removed and updated reports from the Permittees, CalTrans, CASQA, ASCE or other appropriate sources that include more effective and proven BMPs should be added. The library may use national, statewide or regional reports. The purpose of this library is to facilitate the Permittees approval of BMPs, review and approval of WQMPs, etc.

s. Within 6 months of adoption of this Order, the Principal Permittee shall coordinate a review of the DAMP with the Co-Permittees to determine the need for update or revisions to ensure compliance with the requirements of this Order and establish a schedule for those revisions.

2. The activities of the Principal Permittee shall also include, but not be limited to, the following for MS4 owned or operated by the Principal Permittee:

a. To cause appropriate enforcement actions as necessary against IC/IDs to its MS4 to ensure compliance with Urban Runoff management programs, ordinances and implementation plans, including physical removal of Illicit Connections and prohibition of Illegal Discharges.

b. Ensure that encroachment permits for permanent connection to its MS4 facilities notify applicants in writing of their obligations to comply with Storm Water Ordinances, WQMP, and General Stormwater Permit requirements. The Principal Permittee shall make sure that encroachment activities within the limits of its rights-of-way comply with the General Construction Permit post construction standards. An encroachment project

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reviewed and approved by the Co-Permitee with jurisdictional authority constitutes compliance with the General Construction Permit post construction requirements[25].

c. Conduct inspections and maintain the MS4 facilities over which it has jurisdiction.

d. Review and revise, if necessary, those agreements to which it is a party and those regulations and policies it deems necessary to provide adequate legal authority to maintain the MS4 facilities for which it has jurisdiction and to take those actions required of it by this Order and the federal Storm Water Regulations (see Section VIII);

e. Monitor, document, and report that appropriate enforcement actions against Illegal Discharges to the MS4 facilities for which it has jurisdiction are taken and pursued as necessary to ensure compliance with Urban Runoff management programs, implementation plans, and regulations and policies, including physical elimination of IC/IDs (see Section VIII);

f. Continue to respond or cause the appropriate entity or agency to respond to emergency situations such as accidental spills, leaks, and IC/IDs to prevent or reduce the discharge of Pollutants to its MS4 facilities and to the Receiving Waters (see Section IX).

g. Track, monitor, and keep training records of all personnel involved in the implementation of the Principal Permittee's Urban Runoff program.

B. RESPONSIBILITIES OF THE CO-PERMITTEES:

1. Each Co-Permittee shall complete a LIP, in conformance with Section IV of this Order and the approved LIP template.

2. Each Co-Permittee shall be responsible for managing the Urban Runoff program within its jurisdiction and shall:

a. Maintain adequate legal authority to control the contribution of Pollutants to the MS4 and enforce those authorities.

b. Conduct inspections of and maintain its MS4 facilities in accordance with the criteria developed pursuant to Section XIV.E.

c. Continue to implement management programs, monitoring and reporting programs, appropriate BMPs listed in the DAMP and LIP, and related plans as

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[25] The State General Construction Permit Section XII

TENTATIVE

required by this Order and take such other actions consistent with the MEP standard.

d. Continue to seek sufficient funding for the area-wide Urban Runoff management plan, local Urban Runoff program management, Urban Runoff enforcement, public outreach and education activities and other Urban Runoff related program implementation.

e. Continue to coordinate with other public agencies as appropriate, to facilitate the implementation of this Order and the DAMP/LIP.

f. Ensure that applicants for encroachment permits for permanent connection to Permittee MS4 facilities notify applicants of their obligations to comply with Storm Water Ordinances, WQMP, and the State General Construction Permit post construction standards. The Permittees shall enforce their Storm Water Ordinances to the extent of their legal authority. A encroachment project reviewed and approved by the Co-Permitee who owns the MS4 constitutes compliance with the General Construction Permit post construction requirements[26].

g. Maintain up-to-date MS4 facility maps. Annually review these maps and if necessary, submit revised maps to the Principal Permittee with the information required for preparation of the Annual Report.

h. Prepare and submit to the Principal Permittee in a timely manner specific reports/information, related to the Co-Permittees' Urban Runoff program, necessary to develop an Annual Report for submittal to the Executive Officer.

3. The Co-Permittees' activities shall include, but not be limited to, the following:

a. Participate in the Management Steering Committee and the Technical Committee meetings consistent with the requirements of Section XVII.C of this Order.

b. Conduct and coordinate with the Principal Permittee surveys and monitoring needed to identify Pollutant sources and drainage area characteristics within its jurisdiction. Where an Illegal Discharge crosses jurisdictional boundaries, to the extent feasible coordinate with neighboring jurisdictions to locate and end the Illegal Discharge.

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<#>Obtain public input for any proposed major changes to its urban storm water management program and implementation plans. ¶
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c. Prepare and submit reports to the Principal Permittee to facilitate compilation of joint reports to the Regional Board in compliance with submittal deadlines.

d. Participate in the development and implementation of plans, strategies, management programs, monitoring and reporting programs that are proposed by the Principal Permittee, Technical Committee, or the Management Steering Committee to comply with this Order.

e. Participate in subcommittees formed by the Principal Permittee, Technical Committee, or the Management Steering Committee to comply with this Order.

f. Respond to or arrange for the appropriate entity or agency to respond to emergency situations such as accidental spills, leaks, IC/IDs, etc., to prevent or reduce the discharge of Pollutants to their MS4 facilities and the Receiving Waters.

g. Continue to pursue enforcement actions as necessary within its jurisdiction for violations of Storm Water Ordinances, and other elements of its Urban Runoff management program.

C. IMPLEMENTATION AGREEMENT

1. In accordance with the scheduling requirement specified in Section III.A.1.r, the Permittees shall allow any cities that were not signatories to the original Implementation Agreement but have been subsequently added to this Order to participate in the Implementation Agreement. The Permittees must also evaluate their Implementation Agreement and determine the need, if any, for additional revision. The first Annual Report following the completion date for the review must include the findings of this review and a schedule for any necessary revision(s) to the Implementation Agreement. A copy of the signature page and any revisions to the Agreement shall be included in the Annual Report.

IV. LOCAL IMPLEMENTATION PLAN:

A. Within 18 months of adoption of this Order, the Principal Permittee, in coordination with the Co-Permittees, shall develop and submit for approval of the Executive Officer a Local Implementation Plan (LIP) template. The LIP template shall facilitate a description of the Co-Permittee's individual programs to implement the DAMP and address::

1. A procedure for how each program element of the DAMP shall be implemented;
2. List of project categories over which the Co-Permittee has ministerial authority;

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3. A list and description of the ordinances, personnel responsible for enforcing the ordinance, plans, policies, procedures, and tools (e.g., checklists, forms, educational materials, LID BMPs, etc.) used to review WQMP, erosion and sediment control plans, grading plans, control measures to reduce and mitigate potential pollutant sources within each Co-Permittee's jurisdiction, etc.
4. The organizational units responsible for implementation of each program element including the interagency or interdepartmental sewer spill response coordination within each Permittee's jurisdiction. Identify the Departments and Sections whose programs may have an impact on water quality and/or quantity (hydrology) (e.g., Public Works, Planning, and Engineering). Identify positions (and current organizational chart) responsible for Urban Runoff program implementation. Identify the training needs for each position to implement Urban Runoff program;
5. Document database(s) for documenting training, inspections, storm drain cleaning and waste characterization of storm drain cleanouts and street sweeping wastes;
6. Identify enforcement procedures and actions and procedures for tracking return to compliance;
7. Establish internal reporting requirements to ensure and promote accountability;
8. Specify the verification procedure(s) and any tools utilized to verify that coverage under the General Construction Permit;
9. Identify and map stream channels susceptible to Hydromodification from Urban Runoff and identify conservation and maintenance measures for these channels that will be followed. This requirement may be met through development of areawide Watershed Action Plan, HCOC maps or other joint efforts.
10. Each Permittee shall include the ordinances, design standards, procedures and other tools it uses to implement green infrastructure/low impact development principles for public and private development projects.
11. A description of development strategies including incentives for redevelopment, brownfield development, high density, vertical density, mixed use and transit-oriented developments, and water conservation and re-use projects.
12. Identify landform grading techniques[27], LID techniques and revegetation as an alternative to traditional approaches, particularly in areas susceptible to erosion and sediment loss including hillside development projects;
13. Include pollutant source investigation and control plan required by Section VII.D.1, of this Order; and
14. Describe an adaptive method of evaluation and assessment of program effectiveness for the purpose of identifying program improvements.

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[27] http://www.swrcb.ca.gov/water_issues/programs/nps/encyclopedia/3_2d_const_gradexcv.shtml

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15. The interagency or interdepartmental sewer spill response coordination within each Permittee's jurisdiction shall be described.

16. The Co-Permittees shall identify in their LIP the staff positions responsible for different components of their IC/ID and IDDE programs.

17. A list of Permittee facilities that are subject to regulation under this Order; At a minimum this list shall include the following:

    a) Parking facilities;
    b) Fire fighting training facilities;
    c) Facilities and activities discharging directly to environmentally sensitive areas such as 303(d) listed waterbodies or those with a RARE beneficial use designation;
    d) Publicly owned treatment works (including water and wastewater treatment plants) and sanitary sewage collection systems;
    e) Solid waste transfer facilities;
    f) Land application sites;
    g) Corporate yards including maintenance and storage yards for materials, waste, equipment and vehicles; and
    h) Household hazardous waste collection facilities.
    i) Municipal airfields.
    j) Parks and recreation facilities.
    k) Special event venues following special events (festivals, sporting events).
    l) Other municipal areas and activities that the Permittee determines to be a potential source of pollutants.

B. Within 6 months of approval of the LIP template by the Executive Officer, each Permittee shall complete a LIP[28], in conformance with the LIP template. The LIP shall be signed by the principal executive officer or ranking elected official or their duly authorized representative pursuant to Section XX.M of this Order.

1. Each Permittee shall annually review and evaluate the effectiveness of its Urban Runoff programs to determine the need for revisions to its LIP, as necessary, in

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[28] As the Principal Permittee is not a general purpose government, some portions of the NPDES MS4 Program may not be applicable to it. The Principal Permittee should identify the basis for its exclusion from the applicable program elements in the appropriate LIP section.

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compliance with Sections VIII.L of this Order, and document revisions in the Annual Report.

V. DISCHARGE PROHIBITIONS:

A. In accordance with the requirements of 40 CFR 122.26(d)(2)(i)B) and 40 CFR 122.26(d)(2)(i)(F), the Permittees shall prohibit IC/IDs (see Appendix 4) from entering the MS4.

B. The discharge of Urban Runoff from the MS4 to Receiving Waters containing Pollutants, including trash and debris, that have not been reduced consistent with the MEP standard is prohibited.

C. Non-Storm Water discharges from public agency activities into Waters of the U.S. are prohibited unless the Non-storm Water discharges are permitted by a NPDES permit, granted a waiver, or are as otherwise specified in Section V, below.

D. Discharges from the MS4 shall be in compliance with the discharge prohibitions contained in Chapter 5 of the Basin Plan.

E. Discharges of Urban Runoff from the Permittee's MS4 shall not cause or contribute to a condition of Pollution, Contamination, or Nuisance (as defined in CWC Section 13050).

F. The discharge of any substances in concentrations toxic to animal or plant life is prohibited.

VI. EFFLUENT LIMITATIONS, DISCHARGE SPECIFICATIONS AND OTHER TMDL RELATED REQUIREMENTS

For purposes of this Order, a discharge may include storm water or other types of discharges identified below.

A. ALLOWED DISCHARGES:

The discharges identified need not be prohibited by the Permittees unless identified by the Permittees or the Executive Officer as a significant source of Pollutants. The DAMP shall include public education and outreach activities directed at reducing these discharges even if they are not substantial contributors of Pollutants to the MS4s.

1. Discharges composed entirely of storm water;
2. Air conditioning condensate;

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A plan and schedule to incorporate control measures necessary to meet Receiving Water Limitations and WLAs

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<#>The disposal of pollutants onto public or private land is prohibited.¶
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3. Irrigation water from agricultural sources ;
4. Discharges covered by a NPDES Permit, Waste Discharge Requirements, or waivers issued by the Regional Board or State Board.
5. Discharges from landscape irrigation, lawn/garden watering and other irrigation waters;These shall be minimized through public education and water conservation efforts, as prescribed under this Order Section XI.E., Residential Program.
6. Passive foundation drains[29];
7. Passive footing drains[30];
8. Water from crawl space pumps[31];
9. Non-commercial vehicle washing,(e.g. residential car washing (excluding engine degreasing) and car washing fundraisers by non-profit organization);
10. Dechlorinated swimming pool discharges (cleaning wastewater and filter backwash shall not be discharged into the MS4s or to Waters of the U.S.)
11. Diverted stream flows[32];
12. Rising ground waters[33] and natural springs;
13. Uncontaminated ground water infiltration as defined in 40 CFR 35.2005 (20) and uncontaminated pumped groundwater (as defined in Appendix 4, glossary),
14. Flows from riparian habitats and wetlands;
15. Emergency fire fighting flows (i.e., flows necessary for the protection of life and property do not require BMPs and need not be prohibited. However, appropriate BMPs to reduce the discharge of Pollutants to the MEP must be implemented when they do not interfere with health and safety issues [see also Appendix K of the DAMP]).
16. Waters not otherwise containing Wastes as defined in California Water Code Section 13050 (d), and
17. Other types of discharges identified and recommended by the Permittees and approved by the Regional Board.

When types of discharges listed above are identified as a significant source of Pollutants to Waters of the U.S., a Permittee must either: prohibit the discharge category from entering the MS4 or ensure that Source Control BMPs and Treatment

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[29] Allowed discharges only if the source water drained from the foundation is storm water or uncontaminated groundwater. Discharges from contaminated groundwater may require coverage under the De Minimus Permit (Order No. R8-2003-0061, NPDES Permit No CAG998001)29 or its latest version.
[30] See footnote 27, above.
[31] Allowed discharges only if the discharge is uncontaminated, otherwise permit coverage under the De Minimus Permit or Order No. 2006-0008-DWQ (NPDES No. CAG990002), General NPDES Permit for Discharges from Utility Vaults and Underground Structures to Surface Waters (General Permit-Utility Vaults).
[32] Diversion of stream flows that encroach into Waters of the US requires a 404 permit from the US Army Corps of Engineers and a 401 Water Quality Certification from the Regional Board. Stream diversion that requires active pumping also requires coverage under the De Minimus Permit.
[33] Discharge of rising ground water and natural springs into surface water is only allowed if groundwater is uncontaminated. Otherwise, coverage under the De Minimus Permit may be required.

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Control BMPs are implemented to reduce or eliminate pollutants resulting from the discharge. The Permittees shall evaluate the permitted discharges, as listed above to determine if any are a significant source of Pollutants to the MS4 and notify the Executive Officer if any are a significant source of Pollutants to the MS4s.

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B. DISCHARGE SPECIFICATIONS FOR DISCHARGES FROM PERMITTEE OWNED AND/OR OPERATED FACILITIES AND ACTIVITIES - DE-MINIMUS DISCHARGES[34] :

The following types of discharges from Permittee owned and/or operated facilities and activities , are authorized by this Order provided they, are, in compliance with the terms and conditions of the General De Minimus Permit except that separate coverage under that permit is not required.

1. *Discharges from potable water sources, including water line flushing, superchlorinated water line flushing, fire hydrant system flushing, and hydrostatic test water from pipelines, tanks and vessels*: These discharges shall be dechlorinated to a concentration of 0.1 ppm[36] or less, pH adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments.

2. *Discharges from lawn, greenbelt and median watering and other irrigation runoff[37] from non-agricultural operations*: These discharges shall be minimized through requirements consistent with Section 5.3 of the DAMP and Section XIV of this Order.

3. *Dechlorinated swimming pool discharges:* Dechlorinated to a concentration of 0.1 ppm[38] or less, pH adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4s.

4. *Discharges from facilities that extract, treat and discharge water diverted from Waters of the US*: These discharges shall meet the following conditions:

   a. The discharges to Waters of the US must not contain Pollutants added by the treatment process or Pollutants in greater concentration than the influent;
   b. The discharge must not cause or contribute to a condition of erosion;
   c. The extraction and treatment must be in compliance with Section 404 of the Clean Water Act; and
   d. Conduct monitoring in accordance with Section XIV.K.2 of this Order.

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[34] General De Minimus Permit for Discharges to Surface Waters, Order NO. R8-2009-0003[34], NPDES No. CAG 998001 (General De Minimus Permit).

[36] Total residual chlorine = 0.1 mg/l or parts per million (ppm) or less; compliance determination shall be at a point before the discharge mixes with any Receiving Water.

[37] Non-agricultural irrigation using recycled water must comply with the statewide permit for Landscape Irrigation Using Recycled Water and the State Department Health guidelines.

[38] See footnote 27.

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5. *Construction dewatering wastes:* The maximum daily concentration limit for Total suspended solids (TSS) shall not exceed 75 mg/L; sulfides shall not exceed 0.4 mg/l; total petroleum hydrocarbons shall not exceed 0.1 mg/L; and oil and grease shall not exceed 15 mg/L.

6. *For all De-minimus type of discharges:* The pH of the discharge shall be within 6.5 to 8.5 pH units and there shall be no visible oil and grease in the discharge.

7. Table 4-1 of the Basin Plan incorporates TDS/TIN objectives for groundwater and surface waters within the Santa Ana Region. Permittees discharging to those Receiving Waters shall ensure compliance with the following for dry weather conditions:

a. For discharges to surface waters where groundwater will not be affected by the discharge, the maximum daily concentration (mg/L) of TDS and/or TIN of the effluent shall not exceed the Water Quality Objectives for the Receiving Water where the effluent is discharged, as specified in Table 4-1 of the Basin Plan[39].

b. For discharges to surface waters where the groundwater will be affected by the discharge, the TDS and/or TIN concentrations of the effluent shall not exceed the Water Quality Objectives for the surface water where the effluent is discharged and the affected groundwater management zone, as specified in Table 4-1 of the Basin Plan. The more restrictive Water Quality Objectives shall govern. However, treated effluent exceeding the groundwater management zone Water Quality Objectives may be returned to the same management zone from which it was extracted without reduction of the TDS or TIN concentrations so long as the concentrations of those constituents are no greater than when the groundwater was first extracted. Incidental increases in the TDS and TIN concentrations (such as may occur during air stripping) of treated effluent will not be considered increases for the purposes of determining compliance with this discharge specification.

8. The Regional Board may add categories of Non-Storm Water discharges that are not significant sources of pollutants or remove categories of Non-Storm Water discharges listed above based upon a finding that the discharges are a significant source of Pollutants.

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C. NON-POINT SOURCE (NPS) DISCHARGES:

Consistent with the State Water Resources Control Board's 2004 "Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control

[39] Resolution No. R8-2004-0001

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Program," the Regional Board may issue Waste Discharge Requirements for Non-Point Source (NPS) Pollutant discharges, such as agricultural irrigation runoff or return flows that are not subject to NPDES requirements, if identified as a significant source of Pollutants. In addition, if the water quality significance of NPS discharges is not clearly understood, the Regional Board may issue conditional waivers of Waste Discharge Requirements to NPS dischargers, and require monitoring to gather the information necessary to effectively manage these discharges.

D. TOTAL MAXIMUM DAILY LOADS (TMDLS)

d. MIDDLE SANTA ANA RIVER (MSAR) WATERSHED BACTERIA INDICATOR TMDL

a. Waste Load allocations: Discharges from the County of Riverside and the cities of Corona, Riverside and Norco (see Table 13-1 of the DAMP, herein called MSAR Permittees) shall implement for the Middle Santa Ana River Watershed Bacterial Indicator TMDLs Implementation Plan task. Compliance may be achieved by implementing the tasks identified in paragraphs b through *e*, below and by implementing BMPs designed to reduce pathogen indicator bacteria contamination from controllable sources to the MEP.

b. **MSAR TMDL Urban Source Evaluation Program and Waste Load Allocation Monitoring and Reporting**:

i. On June 14, 2007, the TMDL taskforce members submitted a source evaluation plan and a monitoring plan. The Regional Board approved these plans on June 29, 2007, Resolution No. R8-2007-0046. A revised monitoring plan and an urban bacterial indicator source evaluation plan were approved by the Regional Board on April 18, 2008, Resolution No. R8-2008-0044. The MSAR Permittees shall continue to conduct monitoring and source evaluations in accordance with the approved plans and report the findings in accordance with the schedules specified in the approved plans as specified in Regional Board Orders R8-2007-0046 and R8-2008-0044, or Regional Board approved revisions.

ii. Within 18 months of adoption of this Order, the MSAR Permittees shall revise the DAMP to incorporate a plan and a schedule to implement bacterial indicator WLAs within their jurisdictions based on the schedule established in the TMDL Implementation Plans. The plan shall at a minimum be based on actual or literature documentation of estimated effectiveness of BMPs to address identified or potential controllable urban pathogen indicator bacterial sources in the watershed. The plan shall

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Deleted: *coli* WLA¶ 5–sample/30–day logarithmic mean less than 113 organisms/100mL, and not more than 10% of the samples exceed 212 organisms/100mL for any 30–day period.¶ <#>**Wet Winter Conditions** (November 1 through March 31): Compliance shall be achieved as soon as possible, but no later than December 31, 2025.¶ i. Fecal Coliform WLA[34]¶ 5–sample/30–day Logarithmic Mean less than 180 organisms/100mL,
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include workplans or actions proposed by each Permittee within the MSAR[41] to be implemented within its jurisdiction to attain necessary Pollution reductions.

iii. In the event that MSAR Permittees or any other discharger subject to the MSAR TMDL refuses or otherwise fails to participate in the development and implementation of the plans described in paragraphs d.i., above, the remaining MSAR Permittees shall only be responsible for development and implementation of such plans to the extent that they monitor and regulate discharges from their respective jurisdictions.

iv. The Permittees shall implement the Urban Source Evaluation Plan to ensure Urban Runoff sources of contamination detected by MSAR TMDL compliance monitoring sites are addressed and mitigated.

v. Describe short and long term effectiveness measures, including application of TMDL and MS4 monitoring data, that will be used to determine the need for refined or better tailored BMPs to implement Urban WLAs. Short-term effectiveness measures, shall incorporate results of the Urban Source Evaluation Plan and are expected to be focused on refining BMPs based on each Permittees experience with BMP implementation under this plan. Long term effectiveness measures will be incorporated into the ROWD and incorporate MS4 and receiving water monitoring data analysis to assess progress towards WLA implementation. The results of the long-term effectiveness assessment shall be used to assess the need for additional or better-refined BMPs to implement the applicable WLA. Based on the outcome of the effectiveness evaluation, each MSAR Permittee shall submit a report, as part of the Annual Report, summarizing the findings of their effectiveness analysis and identifying any additional BMPs that will be implemented to address deficiencies.

vi. An iterative approach is appropriate to demonstrate bacterial source reduction in drainage areas tributary to Receiving Waters with WLAs based on TMDL Implementation Plan requirements. In Order to protect REC 1 Beneficial Uses and comply with the MSAR TMDL, the MSAR Permittees must shall develop and implement BMPs designed to reduce pathogen indicator bacteria contamination from controllable sources to the MEP.

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¶
<#>If results of the monitoring and assessment at the specified monitoring locations show that the WLAs are not met, the Permittees within the affected drainage areas shall comply with the following procedure:¶
¶
a) Each Permittee (or the TMDL taskforce) upstream of the urban source monitoring points shall evaluate and characterize discharges from its significant (36 inches or larger in diameter) outfall locations. ¶
¶
b) . Each Permittee (or the TMDL taskforce) shall submit a report to the Executive Officer with proposed actions that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the failure to attain bacterial source reduction goals.¶
¶
c) The report may be incorporated in the annual report unless the Executive Officer directs a different submittal date. In the annual report due beginning November 15, 2010 and every year thereafter, the Permittees in the MSAR watershed shall report any revisions to the DAMP, LIP or WQMP in response to TMDL requirements. Future workplans or actions to reduce bacterial sources shall consider the impact of projected population growth in the watershed and within each jurisdiction. Effectiveness evaluations shall be based on actual population change.¶
¶
During the pre-compliance period, an

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Deleted: Compliance with the WLAs at the urban source monitoring locations or as modeled in accordance with the TMDL Implementation Plan must be achieved by the compliance dates.

[41] The TMDL Taskforce may propose a consolidated workplan to address the problem, in lieu of individual workplans and actions.

TENTATIVE

c. **Watershed-wide Monitoring Program:** The Permittees shall continue to participate in the watershed-wide monitoring program. Revisions to the watershed wide monitoring will be considered through a public participation process once the TMDLs have been achieved.

d. Failure to submit or implement the required Plans on time is inconsistent with the MS4's obligation to reduce controllable sources of phosphorus within their jurisdiction to the maximum extent practicable and shall be deemed a violation of this Order.

e. The Regional Board reserves the right to reopen the permit to add numeric effluent limits if the iterative BMP approach proves inadequate to meet the Urban WLAs.

2. LAKE ELSINORE/CANYON LAKE (SAN JACINTO WATERSHED) NUTRIENT TMDLS

a. The Permittees identified in Attachment 1 of Resolution R8-2004-0037 and the Cities of Wildomar and Menifee (herein SJR Permittees) shall implement the applicable Implementation Plan tasks specified in the San Jacinto Watershed Nutrient TMDLs. Compliance may be achieved by implementing the various tasks identified for each SJR Permittee in the TMDL implementation plan and by implementing BMPs designed

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Table 8 - Canyon Lake¶
Nitrogen and Phosphorus Waste Load

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Canyon Lake Nutrient TMDL ...

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[b] Final allocation compliance to the MEP.be

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TENTATIVE

b. Lake Elsinore In-Lake Sediment Nutrient Reduction Plan: Pursuant to Resolution No. R8-2007-0083, each MS4 Permittee identified in Table 13-1 of the DAMP shall continue to implement the approved strategy for reducing in-lake sediment nutrient loads as established in Resolution No. R8-2007-0083, or as updated by subsequent Regional Board approved revisions:

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¶
Table 9 - Lake Elsinore¶
Nitrogen and Phosphorus Waste Load and Load Allocations[a]¶
¶
Lake Elsinore¶
Nutrient TMDL ...

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Table 10 - Lake Elsinore In-lake Sediment Nutrient Reduction Strategy

Lake Elsinore In-lake Sediment Reduction Strategy Task	Due Date
Submit Phase 2 Alternatives	December 31, 2010
Submit O&M for Agreement for Fishery Management Program	December 31, 2010
Submit O&M for Agreement for Aeration and Mixing Systems	December 31, 2010
Submit Phase 2 Projects Plans	June 30, 2011
Complete Phase 2 Project Implementation	December 31, 2014
Implement in-lake and watershed monitoring programs	Annual reports due August 31 every year.

c. *Model Update Plan:* Pursuant to Resolution No. R8-2007-0083, each SJR Permittee shall continue to implement the Model Update Plan established in Resolution No. R8-2007-0083, or as updated by subsequent Regional Board approved schedule revisions:

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Table 11 - Model Update Plan

Model Update Task	Due Date
In-lake Processes Evaluation Study	December 31, 2009
Linkage Analysis Study	December 31, 2009
Watershed Source Loading Study	August 31, 2010
Model Evaluation	December 31, 2010
Construct/Calibrate Model	June 30, 2011
Conduct Model Scenarios	August 31, 2011
Model Update Final Report	November 30, 2011

d. Pollutant Trading Plan: Pursuant to Resolution No. R8-2007-0083, each SJR Permittee shall continue to participate in the development and implementation of the Pollutant Trading Plan and schedule established in Resolution No. R8-2007-0083, or as updated by subsequent Regional Board approved schedule revisions:

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Table 12 - Pollutant Trading Plan

Description	Due Date
Conduct Feasibility analysis and ID Pollutant Trading Framework	March 2012
Create and Adopt Program Protocols and Program Implementation	August 2012
Submit Pollutant Trading Program	November 30, 2012

e. In the event that any discharger subject to the Lake Elsinore and Canyon Lake TMDL refuses or otherwise fails to participate in the development and implementation of the plans described in Resolution No. R8-2007-0083, or this Order, the remaining dischargers shall remain responsible for development and implementation of plans to monitor and regulate direct discharges from their respective jurisdictions into Canyon Lake and/or Lake Elsinore.

f. Describe short and long term effectiveness measures including application of TMDL and MS4 monitoring data, that will be used to determine the need for refined or better tailored BMPs to implement Urban WLAs. Short-term effectiveness measures are expected to be focused on refining BMPs based on each Permittees experience with BMP implementation under this plan. Long term effectiveness measures will be incorporated into the ROWD and incorporate MS4 and receiving water monitoring data analysis to assess progress towards WLA implementation. The results of the long-term effectiveness assessment shall be used to assess the need for additional or better-refined BMPs to implement the applicable WLA. Based on the outcome of the effectiveness evaluation, each SJR Permittee shall submit a report, as part of the Annual Report, summarizing the findings of their effectiveness analysis and identifying any additional BMPs that will be implemented to address deficiencies.

g. Failure to submit or implement the required Plans on time is inconsistent with the MS4's obligation to reduce controllable sources of phosphorus within their jurisdiction to the maximum extent practicable and shall be deemed a violation of this Order.

h. The Regional Board reserves the right to reopen the permit to add numeric effluent limits if the iterative BMP approach proves inadequate to meet the Urban WLAs.

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VII. RECEIVING WATER LIMITATIONS

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Deleted: <#>The Permittees shall annually evaluate their compliance with the adopted TMDLs and TMDL Implementation Plan tasks. If necessary, the Permittees shall propose additional control measures necessary to achieve compliance with the Permittees' WLAs for total phosphorus and TIN. ¶
¶
<#>Prior to the TMDL compliance date and pending development and approval of a watershed model, pollutant trading plan and other implementation tasks identified above, the Permittees shall monitor and report the effectiveness of the control measures implemented in the watershed to control nutrient inputs into the lakes from Urban Runoff by implementing the following: ¶
¶
<#>Within twelve months of adoption of this Order, the Permittees within the San Jacinto watershed shall identify representative urban storm water runoff monitoring locations for discharges into the lakes. Selection of those monitoring locations shall take into account the size of the drainage area and potential sources of nutrients within each drainage area. Those monitoring locations may include existing storm water core monitoring locations and the Phase II watershed wide TMDL monitoring locations. ¶
¶
<#>In the third annual report due after adoption of this Order, include an evaluation of nutrient source reductions during the prior three years. This evaluation should indicate how the source reduction plans implemented by each Permittee are geared towards meeting the WLAs by the 2020 compliance date. Since the WLAs are based on a 10-year running average, data from storm water core monitoring locations may be used to project loading reductions.¶
<#>The source reduction plans shall at a minimum be based on actual or literature documentation of estimated effectiveness of BMPs to address identified or potential nutrient sources in the watershed. The plan should include proposed actions and schedules that each Permittee is proposing to implement within its jurisdiction to attain nutrient loading reductions. ¶
<#>The source reduction plans should be reevaluated on a triennial basis. Any needed revisions should consider the impact of projected population growth in the watershed. ¶
<#>If triennial nutrient source reduction goals are not met, the Permittees within the affecte ...

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A. Urban Runoff discharges from the Permittees' MS4 shall not cause or contribute to exceedances of Receiving Water Quality Standards (as defined by Beneficial Uses and water quality objectives in Chapter 4 of the Basin Plan) for surface waters or ground waters.

B. The DAMP and its components, including the LIPs, must be designed to achieve compliance with Receiving Water Limitations associated with discharges of Urban Runoff to the MEP. It is expected that compliance with Receiving Water Limitations will be achieved through an iterative process and the application of increasingly more effective BMPs.

C. The Permittees shall comply with Section V.B and VII.A of this Order, through timely implementation of control measures and other actions to reduce pollutants in Urban Runoff in accordance with the DAMP and other requirements of this Order, including modifications thereto.

D. If exceedances of Water Quality Standards (WQSs) persist notwithstanding implementation of the DAMP and other requirements of this Order, the Permittees shall assure compliance with Sections V.B and VII.A of this Order, by complying with the following procedure:

1. Upon a determination by either the Permittees or the Executive Officer that the discharges from the MS4 are causing or contributing to an exceedance of an applicable WQS, the Permittees shall promptly, within two (2) working days, provide oral or e-mail and thereafter submit a report to the Executive Officer that describes the BMPs that are currently being implemented and the additional BMPs that will be implemented to prevent or reduce those Pollutants that are causing or contributing to the exceedance of the applicable receiving Water Quality Standards. The report may be incorporated in the annual update to the DAMP, unless the Executive Officer directs an earlier submittal. The report shall include an implementation schedule. The Executive Officer may require modifications to the report.

a. Submit any modifications to the report required by the Exectuve Officer within 30 days of notification;

b. Within 30 days following approval by the Executive Officer of the report described above, the Permittees shall revise the DAMP, applicable LIPs, and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required;

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<#>Following oral or e-mail notification, a pollutant source investigation and control plan must be developed and implemented. This plan must be submitted to the Executive Officer within thirty (30) calendar days of becoming aware of the situation. If the exceedance is detected as part of the preparation of the annual monitoring report, the plan can be included in the Annual Report, if submitted within the 30 day period. The plan submitted for review and approval must at a minimum:¶
¶
Describe

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c. Implement the revised DAMP, applicable LIPs and monitoring program in accordance with the approved schedule.

If the exceedance is solely due to discharges to the MS4 from activities or areas outside the Permittees jurisdiction or control, the Permittees must, within two (2) working days of becoming aware of the situation, provide oral or e-mail notice to the Executive Officer of the determination of the exceedance and provide written documentation of these discharges to the Executive Officer within ten (10) calendar days of becoming aware of the situation.

So long as the Permittees have complied with the procedures set forth above and are implementing the revised LIP, DAMP, and monitoring program, the Permittees do not have to repeat the same procedure for continuing or recurring exceedances of the same Receiving Water Limitation unless the Executive Officer determines it is necessary to develop additional BMPs.

E. Nothing in Section VII.D prevents the Regional Board from enforcing any provision of this Order while the Permittee prepares and implements the above report.

VIII. LEGAL AUTHORITY/ENFORCEMENT

A. The Permittees shall maintain adequate legal authority to control the discharge of Pollutants to the MS4 from Urban Runoff and enforce those authorities. This may be accomplished through ordinance, statute, permit, contract or similar means. Such legal authority must address all IC/IDs into the MS4, including those from residential, commercial, industrial and construction sites. The Permittees shall use the enforcement guidelines developed in Section 3.4 and 4.5 of the DAMP or develop their own enforcement program and shall encorporate the enforcement program into their LIP. Such legal authority must also at a minimum include and authorize the Permittees to:

1. Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with their ordinances and permits. The Permittee must have authority, to the extent permitted by California and federal Law and subject to the limitations on municipal action under the constitutions of California and the United States, to enter, monitor, inspect, and gather evidence (pictures, videos, samples, documents, etc.) from residential, industrial, commercial, and construction sites discharging into the MS4 within the limits of its statutory authority. The Permittees shall progressively and decisively take enforcement actions against any violators of the Storm Water Ordinance. These enforcement actions must, at minimum, meet the guidelines and procedures listed in Sections 3.4 and 4.5 of the DAMP.

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¶
<#>Include a BMP implementation schedule.¶
¶
<#>Contain a comparative analysis of the Permittees' monitoring data to the applicable water quality objectives specified in Chapter 4 of the Basin Plan. ¶
¶
<#>A status report on the effectiveness of the pollution source investigation and control plan implementation to address exceedance of water quality objectives or elevated pollutant levels above benchmark values may be incorporated in the Annual Report unless the Executive Officer directs a different submittal date. The transmittal letter shall indicate that the Annual Report contains a description of additional BMPs proposed, pollution investigation report, and/or pollution source investigation and control plan.¶
¶

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<#>Within ninety (90) calendar days following approval by the Executive Officer of the pollutant source investigation and control plan required by Subsection VII.D.2, the Permittee ...

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2. Control the contribution of Pollutants to the MS4;

3. Stop pollutant discharge or threat of discharge if a discharger is unable or unwilling to correct significant non-compliance where there is a serious threat to public health or the environment;

4. Require the use of BMPs to prevent or reduce the discharge of pollutants into MS4s consistent with the MEP standard.

5. Require documentation on the effectiveness of BMPs implemented to reduce the discharge of Pollutants to the MS4;

6. The Co-Permittees' Storm Water Ordinances or other local regulatory mechanisms shall include sanctions to ensure compliance. Sanctions shall include but are not limited to: oral and/or written warnings, notice of violation or non-compliance, administrative compliance orders, stop work or cease and desist order, a civil citation or injunction, the imposition of monetary penalties or criminal prosecution (infraction or misdemeanor). These sanctions shall be issued in a decisive manner within a predetermined timeframe, from the time of the violation's occurrence and/or follow-up inspection.

B. The Co-Permittees shall take progressive and decisive enforcement actions against violators of their Storm Water Codes and Ordinances, in accordance with the federal storm water regulations (40CFR, Part 122.26(d)(2)(I)(A-F)), and adopted/established guidelines and procedures as described in Section 3.4 of the DAMP. The Permittees shall consider the time to return to compliance as one measure of effectiveness of their ordinances or enforcement response procedure. The Permittees shall document these actions in their records (including electronic databases as outlined in the DAMP) and Annual Reports. The Co-Permittees shall use their authority to bring dischargers into immediate compliance with enforcement actions.

C. Within four (4) years of adoption of this Order, the Co-Permittees shall promulgate ordinances that would control known pathogen or bacterial indicator sources such as animal wastes if necessary.

D. The Co-Permittees shall continue to provide notification to the Executive Officer of storm water related information obtained during site inspections of construction and industrial sites regulated by the General Storm Water Permits and of sites that should be regulated under the General Storm Water Permits. The notification should include perceived violations of the General Storm Water Permits or local requirements, prior

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<#>The Permittees shall use the most effective tool(s) at their disposal (such as Stop Work Orders and suspended inspections) to achieve immediate compliance with enforcement actions. Permittees must have the ability to enforce violation of the Stop Work Order by either an automatic fine or other effective means.¶

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history of violations of the Permittee's Storm Water Ordinance, enforcement actions related to the Storm Water Ordinance taken by the Permittee, and other relevant information. In addition, Sections XI.A of this Order addresses additional notification requirements for construction, industrial and commercial sites not covered under the General Storm Water Permits. Notification shall not prevent or delay the Co-Permittees from independently taking appropriate actions to bring construction and industrial sites into compliance with their local ordinances, rules, regulations and WQMP.

E. The Permittees are encouraged to enter into interagency agreements with owners of other MS4, such as CalTrans, school and college districts, universities, Department of Defense, Native American Tribes, etc., to control the contribution of pollutants into their MS4 from the non-permittee MS4. The Regional Board will continue to notify the owner/operator of the MS4 systems and the Permittee if the Board issues a permit for discharges into the MS4.

F. The Co-Permittees shall annually review their Storm Water Ordinances and provide findings within the Annual Report on the effectiveness of these ordinances and enforcement programs in prohibiting the following types of discharges to the MS4 (the Permittees may propose appropriate control measures in lieu of prohibiting these discharges, where the Permittees are responsible for ensuring that dischargers adequately maintain those control measures):

1. Sewage, where a co-permittee operates the sewage collection system (also prohibited under the Statewide SSO order[42]);
2. Wash water resulting from the hosing or cleaning of gas stations, auto repair garages, and other types of automobile service stations;
3. Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility, including motor vehicles, concrete mixing equipment, portable toilet servicing, etc.;
4. Wash water from mobile auto detailing and washing, steam and pressure cleaning, carpet/upholstery cleaning, pool cleaning and other such mobile commercial and industrial activities;
5. Water from cleaning of municipal, industrial, and commercial sites, including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc.;
6. Runoff from material storage areas or uncovered receptacles that contain chemicals, fuels, grease, oil, or other hazardous materials[7];

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[42] State Board WQO No. 2006-0003.

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7. Discharges of runoff from the washing of Toxic Substances from paved or unpaved areas;
8. Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; pool filter backwash containing debris and chlorine;
9. Pet waste, yard waste, litter, debris, sediment, etc.; and,
10. Restaurant or food processing facility wastes such as grease, floor mat and trash bin wash water, food waste, etc.

G. Consistent with the Schedule required in Section III.A.1.r, each Permittee shall submit a certification statement, signed by its legal counsel, that the Permittee has obtained all necessary legal authority in accordance with 40 CFR 122.26(d)(2)(i) (A-F) and to comply with this Order through adoption of ordinances and/or municipal code modifications. A copy of the certification shall also be placed in the LIP.

H. Annually thereafter, Co-Permittees shall evaluate the effectiveness of implementation and enforcement response procedures with respect to the above items. The findings of these reviews, along with recommended corrective actions, where appropriate, and schedules shall be submitted as part of the Annual Report for the corresponding reporting period. The LIP shall be updated accordingly.

IX. ILLICIT CONNECTIONS/ILLEGAL DISCHARGES (IC/ID); LITTER, DEBRIS AND TRASH CONTROL

A. Consistent with each Co-Permittees statutory authority, the Co-Permittees have adopted Storm Water Ordinances. The Co-Permittees must continue to prohibit IC/IDs to the MS4 through their Storm Water Ordinances and the Principal Permittee must do so through its statutory authority. In addition, the Permittees must continue to implement and improve routine inspection and monitoring and reporting programs for their MS4s. If routine inspections or dry weather monitoring indicate IC/IDs, they must be investigated and eliminated or permitted within sixty (60) calendar days of receipt of notice by its staff or from a third party.

B. The Permittees upon being put on notice by staff or a third party must immediately (within 24 hours of receipt of notice by its staff or from a third Party) investigate all spills, leaks, and/or other illegal discharges to the MS4s. Based upon their assessment and as specified below, the Permittees must provide notifications and reporting as described in Section 4 of the DAMP and Section XVI of this Order.

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[7] Hazardous material is defined as any substrate 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 EPA to be reported if a designed quantity of the material is spilled into the waters of the United States or emitted into the environment.

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C. The Permittees shall control illegal dumping that may result in a discharge of pollutants to the MS4 to the MEP. The Permittees shall describe their procedures and authorities for managing illegal dumping in their LIP.

D. Within 18 months of adoption of this Order, the Permittees shall review and revise their IC/ID program to include a pro-active illegal discharge detection and elimination program (IDDE) using the Guidance Manual for Illicit Discharge, Detection, and Elimination by the Center for Watershed Protection[43] or any other equivalent program consistent with Section IX.E below. The result of this review shall be reported in the Annual Report for that reporting period and include a description of the Permittees' revised pro-active program, procedures and schedules. The LIP shall be updated accordingly.

E. The Permittees' revised IC/ID programs shall specify an IDDE program for each Co-Permittee to individually, or in combination:

a. Develop an inventory and map of Permittee MS4 facilities and Outfalls to Receiving Waters.

b. Develop a schedule to be submitted within 18 months to conduct and implement systematic investigations of MS4 Open Channels and Outfalls..

c. Use field indicators to identify potential Illegal Discharges, if applicable;

d. Track Illegal Discharges to their sources[44] where feasible; and

e. Educate the public about Illegal Discharges and Pollution Prevention where problems are found.

F. The Permittees shall continue to integrate IC/ID detection and elimination into their inspection programs, training of Permittee staff, and monitoring data collection and other indicator data.

G. The Permittees shall annually review and evaluate their IC/ID program, including litter/trash BMPs, to determine if the program needs to be adjusted. Findings of the review and evaluation shall be submitted with the Annual Report.

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Deleted: <#>The Permittees shall link implementation of their IC/ID and IDDE programs with other Permittee programs and urban watershed protection efforts. These may include: a) use of GIS map of the Permittees' conveyance systems to track sources; b) aerial photography to detect IC/IDs; c) municipal inspection programs of construction, industrial, commercial, storm drain systems, municipal facilities, etc.; d) analysis of watershed monitoring and other indicator data; e) watershed education to educate the public about illegal discharges; f) pollution prevention for generating sites; g) stream restoration efforts/opportunities; and h) rapid assessment of stream corridors to identify dry weather flows and illegal dumping. ¶
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<#>The Permittees shall identify in their LIP the staff positions responsible for different components of their IC/ID and IDDE programs.¶
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[43] USEPA (Illicit Discharge Detection and Elimination - A Guidance Manual for Program Development and Technical Assessments) by the Center for Watershed Protection and Robert Pitt, University of Alabama, October 2004, updated 2005).

[44] Table 2: Land uses, Generating Sites and Activities that Produce Indirect Discharges from IDDE, A Guidance Manual for Program Development and Technical Assessments, October 2004 CWP.

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H. The Permittees shall maintain a database summarizing IC/ID incident response (including IC/IDs detected as part of field monitoring activities). This information shall be updated on an ongoing basis and submitted with the Annual Report.

I. The Permittees shall control, consistent with the MEP standard, Illegal Discharges (including the discharge of spills, leaks, or dumping of any materials other than storm water and authorized non-storm water) into the MS4s. All reports of Illegal Discharge shall be promptly investigated and reported as specified in Section XVI (Notification Requirements).

J. In the 2004-2005 Annual Report, the Permittees characterized trash, determined its main source(s) and developed and implemented appropriate BMPs to reduce and/or to eliminate the discharge of trash and debris to Waters of the U.S. to the MEP. The BMPs should be continued and their effectiveness must be reported in the Annual Report.

K. Where non-jurisdictional IC/IDs within a Permittees jurisdiction are identified, the Permittees will notify the responsible party and the Executive Officer of the discharge.

X. SEWAGE SPILLS, INFILTRATION INTO THE MS4 SYSTEMS FROM LEAKING SANITARY SEWER LINES, SEPTIC SYSTEM FAILURES, AND PORTABLE TOILET DISCHARGES

A. The Permittees shall continue to provide local sanitation districts 24-hour access to the MS4s to address sewage spills. The Permittees shall continue to work cooperatively with the local sewer agencies to determine and control the impact of infiltration from leaking sanitary sewer systems on Urban Runoff quality. Each Permittee shall implement control measures necessary to minimize infiltration of seepage from sanitary sewers to the MS4 through routine preventative maintenance of the MS4.

B. Each Permittee shall continue to cooperate and coordinate with the sewage collection/treatment agencies as described in Appendix I of the DAMP to swiftly respond to and contain sewage spills that may discharge into its MS4. Management and/or preventive measures shall continue to be implemented for sources including portable toilets, failing septic systems, and failing private laterals that may cause or contribute to Urban Runoff Pollution problems in Permittee jurisdictions.

C. Permittees who are regulated under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ, (SSO Order), shall continue to comply with that Order to control sanitary system overflows.

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<#>The Permittees shall annually review their litter/trash control measures to determine the need for any revision. The findings of this review shall be included in the Annual Report. ¶

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D. Permittees with septic systems in their jurisdiction shall maintain the inventory of septic systems within its jurisdiction completed in 2008. Updates to the inventory will be maintained by County Environmental Health via a database of new septic systems approved since 2008.

XI. CO-PERMITTEE INSPECTION PROGRAMS

The Permittee inspection programs are outlined in Sections 7 and 8 of the DAMP and describe some of the minimum inspection and enforcement procedures utilizing existing inspection programs, provides criteria for characterizing the significance of violations, criteria for prioritizing violations, appropriate response actions corresponding to the priority of violations and identifies the hierarchy of enforcement/compliance responses. Section 3.4 of the DAMP provides a framework to standardize the implementation and enforcement by the Co-Permittees of their respective Storm Water Ordinances. The Co-Permittees shall continue to enforce their respective Storm Water Ordinances consistent with the DAMP and this Order.

A. GENERAL REQUIREMENTS

1. The Co-Permittees shall continue to maintain and update a database inventory of all active Construction Sites, and Industrial, and Commercial Facilities within their jurisdiction consistent with the database requirements of Section 7 and 8 of the DAMP. Construction Sites and Industrial and Commercial Facilities shall be included in the database inventories regardless of whether the Construction Sites or Commercial and Industrial Facilities are subject to the General Construction Permit or the General Industrial Permit or other individual NPDES permit or Waste Discharge Requirements.
2. The Co-Permittee inspection database inventory described in Section XI.A.1 shall be maintained in an electronic database format that may be made available to the Regional Board upon request (e.g. request via phone call, e-mail, letter, etc,). The database inventory must be consistent with the requirements of Sections 7 and 8 of the DAMP. Supporting paper (or electronic) files shall also be maintained and made available upon Regional Board request. Supporting files should include a record of inspection dates, the results of each inspection, photographs (if any), video (if any) and a summary of any enforcement actions taken. The inventory databases shall be updated on an annual basis and an electronic copy shall be provided with each Annual Report.
3. The Co-Permittee shall not issue an occupancy permit to an industrial facility or other license authorizing the facility to operate, unless the applicant is informed of the General Industrial Permit and that it may have to secure coverage thereunder. The Co-Permittees shall verify during Industrial Facility inspections whether a site has obtained necessary permit coverage under the General Industrial Permit.

Deleted: <#>The Permittees shall collaborate with the local sewering agencies to review and revise, as needed, the Sanitary Sewer Overflow Response Plan to insure its consistency with the SSO Order. ¶
<#>The interagency or interdepartmental sewer spill response coordination within each Permittee's jurisdiction shall be described in the LIP. ¶
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Deleted: include relevant information on ownership, Standard Industrial Classification (SIC) codes, General Permit Waste Discharge Identification (WDID) number (if any), size, Geographic Information System (GIS) data in NAD83/WGS84[46] compatible formatting with latitude/longitude in decimal degrees, and …

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4. If the Industrial facility's SIC code falls under the mandatory category the Co-permittee shall notify the Regional Board and the applicant that they may be required obtain coverage under the Industrial Permit.

5. Permits for Construction Sites shall not be granted until appropriate coverage under the General Construction Permit (s) is verified.

6. Perceived Non-filers for the General Stormwater Permits shall be reported consistent with Section XVI.E.

7. If a Co-Permittee receives notice by its staff or from a third party of a non-Emergency Situation representing a possible violation of the General Stormwater Permit or other permit issued by the State or Regional Board to an Industrial Facility or Construction Site, the Co-Permittee shall, within two (2) working days, provide oral or e-mail notice to Regional Board staff of the location within its jurisdiction where the incident occurred and describe the nature of the incident. After notifying the Regional Board, no further action is necessary regarding the General Stormwater Permits. However, each Co-Permittee shall take appropriate actions to bring an Industrial Facility or Construction Site into compliance with its Storm Water Ordinances.

8. The Co-Permittees need not inspect facilities already inspected by Regional Board staff if the inspection was conducted within the specified time period. Regional Board staff inspection information is available at www.ciwqs.ca.gov[47].

9. Each Co-Permittee shall respond to complaints received from third parties regarding Construction Sites and Industrial and Commercial Facilities in a timely manner to ensure that the sites are not a source of Pollutants to the MS4s and the Receiving Waters.

10. The Co-Permittees shall enforce their ordinances and permits at all Construction Sites and Industrial, and Commercial Facilities in a fair, firm and consistent manner. Sanctions for non-compliance as required under Section VIII (Legal Authority/Enforcement) shall be deemed adequate to bring the site into compliance with their Ordinances and permits.

11. Each Co-Permittee shall document, evaluate and annually report the effectiveness of its enforcement procedures in achieving prompt and timely compliance with inspection programs. Sanctions for non-compliance shall be adequate to bring the site into compliance and to stop the pollutant discharge consistent with the requirements of Section VIII of this Order.

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[47] To obtain access to the State database, registration at the following link is necessary: http://www.waterboards.ca.gov/water_issues/programs/ciwqs/chc_npdes.shtml. Contact information is available at http://www.waterboards.ca.gov/water_issues/programs/ciwqs/contactus.shtml.

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12. The Principal Permittee and the County have implemented the Compliance Assistance Program (CAP). Through the Riverside County Department of Environmental Health, the CAP addresses storm water compliance issues at restaurant facilities and businesses that must have a hazardous material permit for either storing, handling or generating hazardous materials. As described in Section 8 of the DAMP, the Permittees must either participate in the CAP or implement an equivalent inspection program. The cities of Corona and Riverside maintain such programs through their respective POTW pre-treatment programs that may be supplemented by the activities of the Department of Environmental Health during routine inspections. The County is establishing a stand alone NPDES Storm water Compliance Inspection and Enforcement Program (CIEP) for Industrial and Commercial Facilities in the unincorporated areas of the County.

13. Where inspections and/or enforcement required by this Order are carried out on behalf of the Co-Permittee by other agencies or departments such as the County Department of Environmental Health, county and local fire departments, hazardous materials programs, code enforcement, industrial pretreatment, and building and safety, the Co-Permittee shall monitor and annually evaluate and report adequacy of program coverage and enforcement response in complying with this Order.

14. All inspectors shall be trained in accordance with Section XV.

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B. CONSTRUCTION SITES

1. Each Co-Permittee shall include in the electronic database identified in Section XI.A.2 an inventory of all active Construction Sites within its jurisdiction for which building or grading permits have been issued and activities at the site include: soil movement; uncovered storage of materials or wastes, such as dirt, sand or fertilizer; or exterior mixing of cementaceous products, such as concrete, mortar or stucco.

2. Each Permittee shall continue to prioritize Construction Sites within its jurisdiction as a high, medium or low threat to water quality. Evaluation of construction sites shall be based on factors, which shall include but not be limited to: soil erosion potential, project size, proximity and sensitivity of Receiving Waters and any other relevant factors. At a minimum, high priority Construction Sites shall include: sites disturbing 50 acres and greater; sites disturbing over 1 acre with Direct Discharge to Receiving Waters with Clean Water Act Section 303(d) listed waters for sediment or turbidity impairments; site specific characteristics[48] ; and any other relevant factor. At a minimum, medium priority construction sites shall include: sites disturbing between 10 to less than 50 acres of disturbed soil.

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[48] The draft General Construction Permit includes risk-based characterization of construction sites based on site-specific conditions.

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3. Each Permittee shall conduct Construction Site inspections for compliance with its ordinances (grading, WQMPs, etc.) and local permits (building, grading, etc.). The Permittees shall develop a checklist for conducting Construction Site inspections. Inspections of Construction Sites shall include, but not be limited to:

   a. Verification of coverage under the General Construction Permit (Notice of Intent [NOI] or Waste Discharge Identification Number [WDID]) during the initial inspection. As Permittees become aware of changes in ownership, they shall notify Regional Board staff.
   b. Ensure that the BMPs implemented on-site are effective for the appropriate phase of construction (preliminary stage, mass grading stage, streets and utilities stage, etc.).
   c. Visual observations for Illegal Discharges, potential Illicit Connections, and potential Pollutant sources.
   d. Implementation and maintenance of BMPs required under local requirements.
   e. An assessment of the effectiveness of BMPs implemented at the site and the need for any additional BMPs.

4. At a minimum, the inspection frequency shall include the following:

   a. During the wet season (October 1 through May 31 of each year), all high priority Construction Sites are to be inspected, in their entirety, once a month. All medium priority Construction Sites are to be inspected at least twice during the wet season. All low priority Construction Sites are to be inspected at least once during the wet season. Construction Sites that disturb less than one acre may be inspected on an as needed basis. When BMPs or BMP maintenance is deemed inadequate or out of compliance, an inspection frequency of at least once per week should be maintained until BMPs and BMP maintenance are brought into compliance.

   b. During the dry season (June 1 through September 30 of each year), all Construction Sites shall be inspected at a frequency sufficient to ensure that sediment and other pollutants are properly controlled and that unauthorized, non-storm water discharges are prevented.

C. INDUSTRIAL FACILITIES

1. To establish priorities for inspection, the Permittees shall continue to prioritize Industrial Facilities within their jurisdiction as a high, medium, or low threat to water quality. Continual evaluation of these Industrial Facilities should be based on such factors as type of industrial activities (i.e., SIC codes)[49], materials or wastes used

[49] Industrial Facilities, as defined at 40 CFR § 122.26(b)(14), including those subject to the General Industrial Permit or other individual NPDES permit;

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<#>The Permittees' implementation of their construction storm water program shall be consistent with the latest version of the statewide General Construction Permit and the federal effluent guideline limitations, if any. At the time of drafting of this Order, action levels and numeric effluent limits were under consideration as part of the most recent draft of the General Construction Permit and the USEPA has released its draft federal effluent guideline limitations for construction sites.¶
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<#>Should it be determined by the Permittee that any applicable action levels or effluent guideline limitations are exceeded, the Permittee shall require the discharger to ...
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or stored outside, pollutant discharge potential, compliance history, facility size, proximity and sensitivity of Receiving Waters and any other relevant factors described in Section 8 of the DAMP. At a minimum, a high priority shall be assigned to: Industrial Facilities subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA); Industrial Facilities that handle or generate pollutants for which the receiving water is impaired, facilities that have a significant potential to release pre-production plastics or nurdles into the environment, and Industrial Facilities with a high potential for or history of unauthorized, Non-Storm Water discharges.

2. Each Co-Permittee shall conduct Industrial Facility inspections for compliance with its ordinances, permits and this Order. Industrial Facility inspections shall be consistent with the requirements of the CAP program or equivalent as described in Section 8.4 of the DAMP. If a CAP or equivalent inspection indicates the need for follow-up, Co-Permittee follow-up inspections shall include a review of the Industrial Facility's material and waste handling and storage practices, written documentation of pollutant control BMP implementation and maintenance procedures, digital photographic documentation of water quality violations as well as evidence of past or present unauthorized, Non-Storm Water discharges and enforcement actions issued at the time of the Co-Permittee inspection. Report of inspections shall be included in the Annual Report and shall provide the basis for downgrading or upgrading priority ranking of Industrial Facilities.

3. All high priority Industrial Facilities are to be inspected at least once a year; all medium priority Industrial Facilities are to be inspected at least once every two years; and all low priority Industrial Facilities are to be inspected at least once during the term of this Order. In the event that inappropriate material or waste handling or storage practices are observed, or unauthorized, non-storm water discharges are observed, an enforcement order shall be issued and a re-inspection frequency adequate to bring the Industrial Facility into compliance must be maintained (at a minimum, once a month or within the compliance schedule prescribed by the Co-Permittee in a written notice to the discharger). Once compliance is achieved, a minimum inspection frequency of once every six months should be maintained for the annual reporting period.

4. Each Co-Permittee shall continually identify undocumented Industrial Facilities within its jurisdiction and shall add them to the database, as identified in Section XI.A.2. Additionally, each Industrial Facility shall be listed as per the criteria in specified in Section XI.C.1 within 15 days from the initial date of discovery of the Industrial Facility.

5. Each Permittee shall require Industrial Facilities to implement source control and pollution prevention measures consistent with the requirements of Section 8.4.1 of the DAMP.

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D. COMMERCIAL FACILITIES

1. Each Permittee shall continue to implement the CAP or equivalent, pursuant to Section 8.4.1 of the DAMP and Section XI.A.9 of this Order;
2. The Permittees shall continue to develop BMPs applicable for each of the Commercial Facilities described in Section 8.4 of the DAMP.
3. The Co-Permittees shall continue to prioritize Commercial Facilities within their jurisdiction as a high, medium, or low threat to water quality based on such factors as the type, magnitude, and location of the commercial activity, proximity and sensitivity of Receiving Waters, potential for discharge of pollutants to the MS4, Commerical Facilities that handle or generate pollutants for which the Receiving Water is Impaired, frequency of CAP inspections and facilities with a high potential for or history of unauthorized, Non-Storm Water discharges.
4. All high priority Commercial Facilities shall be inspected at least once per year; all medium priority Commercial Facilities shall be inspected at least every two years; and all low priority Commercial Facilities shall be inspected at least once during the term of this Order. At a minimum, each Commercial Facility shall be required to implement source control and pollution prevention BMPs consistent with the requirements of Section 8.4.1 of the DAMP. Co-Permittee CAP (or equivalent) follow-up inspections should include a review of BMPs implemented, their effectiveness and maintenance; written and photographic documentation of materials and waste handling and storage practices; evidence of past or present unauthorized, Non-Storm Water discharges; and an assessment of management/employees awareness of storm water pollution prevention measures.
5. In the event that inappropriate material or waste handling or storage practices are observed, or there is evidence of past or present unauthorized, non-storm water discharges, a written enforcement order shall be issued at the time of the initial inspection for CAP equivalent inspection programs or at the time of the CAP follow-up inspection, to bring the Commercial Facility into compliance.
6. Within 18 months of adoption of this Order, the Co-Permittee shall notify all mobile businesses based within their jurisdiction concerning the minimum Source Control and Pollution Prevention BMPs that they must develop and implement. For purposes of this Order, mobile businesses include: mobile auto washing/detailing; equipment washing/cleaning; carpet, drape, furniture cleaning; and mobile high pressure or steam cleaning activities that are based out of a Co-Permittee's jurisdiction. The mobile businesses shall be required to implement appropriate BMPs within 3 months of being notified by the Co-Permittees. The Co-Permittees shall also notify mobile businesses discovered operating within their jusrisdiction.
7. Within 24 months of adoption of this Order, the Co-Permittees shall develop an enforcement strategy to address mobile businesses.

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8. The Co-Permittees should continue to maintain the CAP restaurant inspection program, or equivalent. Inspections for Commercial Facilities with restaurants shall, at a minimum, address:
   a. Oil and grease disposal to verify that these wastes are not poured onto a parking lots, streets or adjacent catch basins;
   b. Trash bin areas, to verify that these areas are clean, the bin lids are closed, the bins are not used for liquid waste disposal and wash water from the bins is not disposed of into the MS4s;
   c. Parking lot, alley, sidewalk and street areas to verify that floor mats, filters and garbage containers are not washed in those areas and that no wash water is disposed of in those areas;
   d. Parking lot areas to verify that they are cleaned by sweeping, not by hosing down, and that the facility operator uses dry methods for spill cleanup; and,
   e. Violations of the Storm Water Ordinance shall be enforced by the jurisdictional Co-Permittee.

E. RESIDENTIAL PROGRAM

1. Within 18 months of adoption of this Order, each Co-Permittee shall develop and implement a residential program consistent with these requirements to reduce the discharge of pollutants from residential activities to the MS4s, consistent with the MEP standard.
2. The Co-Permittees shall identify residential activities that are potential sources of pollutants and develop and/or enhance Fact Sheets/BMPs as appropriate. At a minimum, this should include: residential auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes. The Permittees shall distribute the Fact Sheets/BMPs and appropriate information from organizations such as the Riverside Corona Resource Conservation District[50] and USDA's Backyard Conservation Program[51] to the residents to ensure that discharges from the residential areas are not causing or contributing to a violation of Water Quality Standards in the Receiving Waters.
3. The Co-Permittees, collectively or individually, shall facilitate the proper collection and management of used oil, toxic and hazardous materials, and other household wastes. The Permittees should continue distribution of information regarding the

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<#>All violations of the Water Quality Ordinance shall be enforced by the Permittees and all violations of the Health and Safety Code should be enforced by the Public Health Agency.¶
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[50] The Riverside County Resource Conservation District (RCRCD) provides gardening and horticulture information appropriate for the area including native plant selection, backyard management, alternatives to pesticide, irrigation scheduling and composting. The RCRCD is sponsored by the cities and county of Riverside Storm water/Clean Water Protection Program.

[51] Backyard Conservation, Bringing Conservation from the Countryside to Your Backyard, USDA Natural Resources Conservation Service, National Association of Conservation Districts, Wildlife Habitat Council and National Audubon Society.

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dates and locations of temporary and permanent household hazardous waste and antifreeze, oil, battery and paint collection events and facilities, and financial support of household hazardous waste and antifreeze, oil, battery and paint collection facilities and events or curbside or special collection sites managed by the Co-Permittees or private entities, such as solid waste haulers.

4. The Regional Board recommends continuation of Co-Permittee efforts to coordinate with local water purveyors and other stakeholders to encourage efficient irrigation and minimize runoff from residential areas.

5. The Co-Permittees shall enforce their Storm Water Ordinance as appropriate to control the discharge of Pollutants associated with residential activities.

6. Each Co-Permittee shall include an evaluation of its residential program in the Annual Report starting with the third Annual Report after adoption of this Order.

XII. NEW DEVELOPMENT (INCLUDING SIGNIFICANT REDEVELOPMENT)

A. GENERAL REQUIREMENTS:

1. Each Co-Permittee, consistent with the DAMP, and requirements of this Order, when considering any map or permit for a New Development or Significant Redevelopment project for which discretionary approval is sought, must continue to require such map or permit to obtain coverage under the General Construction Permit, where applicable, prior to the issuance of grading or construction permits. Each Co-Permittee shall specify its verification procedure and any tools utilized for this purpose in its LIP.

2. Each Co-Permittee must continue to implement those BMPs identified in Section 7.1 of the DAMP. Each Permittee shall ensure that the erosion and sediment control plans it approves include appropriate erosion and sediment control BMPs (i.e., erosion measures for slopes greater than a certain length or hill-side developments, ingress/egress controls, perimeter controls, run-on diversion, if significant) such that a distinct and effective combination of BMPs consistent with site risk is implemented through all phases of construction.

3. The land use approval process of each Co-Permittee must continue to require post-construction BMPs, including Source Control BMPs and Treatment Control BMPs and identify their locations and long-term maintenance responsibilities consistent with the requirements of this Order.

4. Each Permittee shall ensure, consistent with the MEP standard and within the limits of its legal authority, that runoff from New Development and Significant Redevelopment projects not regulated under this Order but that require encroachment permits for connections to the MS4 regulated under this Order are

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consistent with the requirements of this Order including the model WQMP for the Permit Area.

5. Each Permittee shall ensure that appropriate BMPs to reduce erosion mitigate Hydromodification are included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings to the MEP[53].

6. Each Permittee shall require applicants to minimize the short and long-term adverse impacts on Receiving Water quality from New Development and Significant Redevelopment maps or permits where discretionary approval is sought, as required in Section XII.D below, by: (1) continuing to review, approve, and verify implementation of project-specific WQMPs, implementation of LID principles, where feasible; (2) addressing hydrologic conditions of concern; and (3) ensuring that long term BMP operation and maintenance mechanisms are in place prior to project closure or issuance of certificates of occupancy.

7. The requirements of Section XII.D below shall apply to Permittee projects that meet the New Development and Significant Redevelopment criteria.

8. Each Permittee shall participate in the development of a Watershed Action Plan, described in Section XII.B, below, to integrate water quality, stream protection and storm water management and re-use within the Permit Area with land use planning policies, ordinances, and plans.

B. WATERSHED ACTION PLAN

1. An integrated watershed management approach may facilitate integration of planning and project approval processes with water quality and quantity control measures. Management of the impacts of Permit Area urbanization on water quality and stream stability is more effectively done on a per-site, neighborhood and municipal basis based on an overall watershed plan. Pending completion of the Watershed Action Plan consistent with this section, management of the impacts of urbanization shall be accomplished on a per-project and per-jurisdiction basis through jurisdictional implementation of the watershed protection principles and project-specific WQMPs. The Permittees shall develop a Watershed Action Plan to address the entire Permit Area. The Permittees may choose to develop sub-watershed action plans based on the overall Watershed Action Plan in the future based on new 303(d) impairments, TMDL requirements, or other factors.

2. Within six months of adoption of this Order, the Management Steering Committee shall facilitate the formation of a technical advisory committee (TAC) of the

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[53] This type of project may require a CWA Section 404 Permit

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Permittees to develop a Watershed Action Plan and to address other issues related to urban and storm water runoff management and planning and approval processes within each jurisdiction. Each Permittee shall participate in this watershed effort to address Urban TMDL WLA and stream system vulnerability to Hydromodification from Urban Runoff in the Permit Area, and protect water quality.

3. Within three years of Permit adoption, the Co-Permittees shall develop the Watershed Action Plan and implementation tools to address impacts of urbanization in a holistic manner. At a minimum, the Watershed Action Plan shall include the following:

   a. Description of proposed Regional BMP approaches that will be used to address Urban TMDL WLA.

   b. Description of regional efforts that benefit water quality (e.g. Western Riverside County Multiple Species Conservation Plan, TMDL Task Forces, Water Conservation Task Forces, Integrated Regional Watershed Management Plans). The Permittees shall describe how these efforts link to their Urban Runoff Programs and identify any further coordination that should be promoted to address Urban WLA or Hydromodification from Urban Runoff to the MEP.

   c. Delineate existing unarmored or soft-armored stream channels in the Permit Area that are vulnerable to Hydromodification from New Development and Significant Redevelopment projects and describe how the delineation will be used on a per project, sub-watershed, and watershed basis.

   d. Identify Impaired Waters [CWA § 303(d) listed] with identified Urban Runoff pollutant sources causing impairment, existing monitoring programs addressing those Pollutants, any BMPs that the Permittees are currently implementing, and any BMPs the Permittees are proposing to implement consistent with the other requirements of this Order.

   e. Develop integrated maps of the impaired waters [CWA § 303(d) listed] and stream channels in the Permit Area that are vulnerable to Hydromodification from Urban Runoff.

4. Within three years of adoption of this Order, the The Watershed Action Plan shall be submitted to the Executive Officer for approval and incorporation into the DAMP. Within six months of approval, each Permittee shall implement applicable provisions of the approved revised DAMP.

C. INCORPORATION OF WATERSHED PROTECTION PRINCIPLES INTO PLANNING PROCESSES

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Deleted: Integrate water quality, water supply, habitat protection, stream protection, Urban Runoff management, LID, water conservation and re-use and flood protection within the Permit Area with land use planning policies and ordinances. The Plan shall identify existing Regional Planning and Coordination Efforts that link to Water Quality (e.g.
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a. 1. Within twenty-four months of adoption of this Order, each Co-Permittee shall review its general plan and related documents including, but not limited to its development standards, zoning codes, conditions of approval and development project guidance to eliminate any barriers to implementation of the LID principles and Hydrologic Conditions of Concern discussed in Section

i. XII.E of

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b. this Order. The results of this review along with any proposed action plans and schedules shall be reported in the Annual Report for the corresponding reporting year. Any changes to the project approval process or procedures shall be reflected in the LIP.

2. The Co-Permittees shall continue to ensure that their general plan and related land use ordinances and land use approval processes (including, but not limited to, its approved development standards, zoning ordinances, standard conditions of approval, or project development guidelines) ensure the principles and policies enumerated below are properly considered and are incorporated, as appropriate, into the land use approval process to the MEP:

a. Limit disturbance of natural water bodies and drainage systems; conserve natural areas; protect slopes and channels; minimize significant adverse impacts from Urban Runoff on the biological integrity of natural drainage systems and water bodies;

b. Minimize changes in hydrology and Pollutant loading; require incorporation of controls including Source Control and Treatment Control BMPs to mitigate any projected increases in Pollutant loads and flows; ensure that post-development runoff rates and velocities from a site do not adversely impact downstream erosion and stream habitat; minimize the quantity of Urban Runoff directed to impermeable surfaces and the MS4s; and maximize the percentage of permeable surfaces to allow more percolation of Urban Runoff into the ground;

c. Preserve wetlands, riparian corridors, and buffer zones that provide important water quality benefits; establish reasonable limits on the clearing of vegetation from the project site;

d. Encourage the use of BMPs to manage Urban Runoff quantity and quality, consistent with XII.C.1 above;

e. Provide for appropriate permanent measures to reduce Pollutant loads in Urban Runoff from the development site; and

f. Establish development guidelines for areas particularly susceptible to erosion and sediment loss.

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3. The Co-Permittees, when acting as a CEQA Lead Agency for a project requiring a CEQA document, must identify at the earliest possible time in the CEQA process resources under the jurisdiction by law of the Regional Board which may be affected by the project. The preliminary WQMP should identify the need for any CWA Section 401 certification. The Co-Permitees should coordinate project review with Regional Board staff pursuant to the requirements of CEQA. Upon request by Regional Board staff, this coordination shall include the timely provision of the discharger's identity and their contact information and the facilitation of early-consultation meetings.

4. The following potential impacts shall be considered during CEQA review:

   iii. Potential impact of project construction on Urban Runoff.

   iv. Potential impact of project's post-construction activity on Urban Runoff.

   v. Potential for discharge of Pollutants from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoorareas.

   vi. Potential for discharge of Urban Runoff to affect Beneficial Uses of the Receiving Waters.

   vii. Potential for significant changes in the flow velocity and/or volume of Urban Runoff that could cause environmental harm.

   viii. Potential for significant increases in erosion of the project site or surrounding areas.

5. Each Permittee shall provide the Regional Board with the draft amendment or revision when a pertinent General Plan element or the General Plan is noticed for comment in accordance with Govt. Code § 65350 et seq.

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D. WATER QUALITY MANAGEMENT PLAN (WQMP) FOR URBAN RUNOFF (FOR NEW DEVELOPMENT/ SIGNIFICANT REDEVELOPMENT):

1. Each Permittee shall continue to require project-specific Water Quality Management Plans (WQMP) for those maps and permits described below for which discretionary approval is sought and as further described in Section 6 and Appendix O of the DAMP. Within 18 months of adoption of this Order, the Principal Permittee shall submit a revised WQMP to incorporate new elements required in this Order. The primary objective of the WQMP, by addressing Site Design, Source Control and Treatment Control BMPs applied on a regional, sub-regional or site specific basis, is to ensure that the land use approval process of each Co-Permittee will minimize Pollutant loads in Urban Runoff from maps or permits for which discretionary approval is given.
2. Each Co-Permittee shall ensure that an appropriate WQMP is prepared for the following categories of New Development and Significant Redevelopment projects for which a map or permit for discretionary approval is sought:

   a. *All significant re-development projects:* Significant re-development is defined as the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site. Significant Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of the facility, or emergency redevelopment activity required to protect public health and safety. Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing developed site, and the existing development was not subject to WQMP requirements, the numeric sizing criteria discussed below applies only to the addition or replacement, and not to the entire developed site. Where redevelopment results in an increase of more than fifty percent of the impervious surfaces of a previously existing developed site, the numeric sizing criteria applies to the entire development.

   b. For purposes of this Order, the categories of development identified below, shall be collectively referred to as "New Development"

      i. *New developments that create 10,000 square feet or more of impervious surface (collectively over the entire project site) including* commercial and industrial projects and residential housing subdivisions requiring a Final Map. (i.e., detached single family home subdivisions, multi-family attached subdivisions, condominiums, apartments, etc.); mixed use and public projects (excluding Permittee road projects). This category includes development projects on public and private land, which fall under the planning and building authority of the Co-Permittees.

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ii. Automotive repair shops (with SIC codes 5013, 5014, 5541, 7532-7534, 7536-7539).

iii. Restaurants (with SIC code 5812) where the land area of development is 5,000 square feet or more.

iv. Hillside developments disturbing 5,000 square feet or more which are located on areas with known erosive soil conditions or where the natural slope is twenty-five percent or more.

v. Developments of 2,500 square feet of impervious surface or more adjacent to (within 200 feet) or discharging directly into ESAs.

vi. Parking lots of 5,000 square feet or more exposed to storm water. Parking lot is defined as land area or facility for the temporary parking or storage of motor vehicles.

vii. Retail Gasoline Outlets (RGOs) that are either 5,000 sq feet or more with a projected average daily traffic of 100 or more vehicles per day.

viii. Emergency public safety projects in any of the above-listed categories may be excluded if the delay caused due the requirement for a WQMP compromises public safety, public health and/or environmental protection.

3. WQMPs shall reflect consideration of the following goals, which may be addressed through on-site-and/or watershed-based BMPs:

a. The discharge of any urban sourced 303(d) listed Pollutant to an Impaired Waterbody on the 303(d) list such that the discharge shall not cause or contribute to an exceedance of Receiving Water Quality Objectives.

4. Treatment Control BMPs shall be in accordance with the approved WQMP and must be sized to comply with one of the following numeric sizing criteria:

a. VOLUME - Volume–based Treatment Control BMPs shall be designed to infiltrate, filter, or treat either:

i. The volume of runoff produced from a 24-hour, 85th percentile storm event, as determined from the County of Riverside's 85th Percentile Precipitation Isopluvial Map; or,

ii. The volume of annual runoff produced by the 85th percentile, 24-hour rainfall event determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1998); or,

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iii. The volume of annual runoff based on unit basin storage volume, to achieve 80% or more volume treatment by the method recommended in California Storm water Best Management Practices Handbook – Industrial/Commercial (1993); or,

iv. The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile, 24-hour runoff event;

OR

b. FLOW - Flow-based BMPs shall be designed to infiltrate, filter, or treat either:

i. The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour; or,

ii. The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity, as determined from the local historical rainfall record, multiplied by a factor of two; or,

iii. The maximum flow rate of runoff, as determined from the local historical rainfall record that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.

5. Within 24 months of adoption of this Order, the Principal Permittee shall develop a procedure for streamlining regulatory agency approval of regional Treatment Control BMPs. The recommendations should include information needed to be submitted to Regional Board for consideration of regional Treatment Control BMPs. At a minimum, it should include: BMP location; type and effectiveness in removing Pollutants of Concern; projects tributary to the regional treatment system; engineering design details; funding sources for construction, operation and maintenance; and parties responsible for monitoring effectiveness, operation and maintenance.

6. The Permitees shall continue to require other development projects for which a map or permit for discretionary approval is sought (projects that are not New Developments or Significant Developments required to develop project-specific WQMPs) to incorporate conditions of approval, to require appropriate Site Design, Source Control and any other BMPs which may or may not include Treatment Control BMPs.

7. The Permittees shall ensure that the revised WQMP addresses:

a. A review and update of Source Control BMPs required for New Development and Significant Redevelopment.

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¶
<#>The identification of those characteristics of the development of a commercial or industrial site that are likely to be a source of Pollutants in Urban Runoff that should be addressed during the land use approval process, and¶
<#>The identification of regional or sub-regional Urban Runoff treatment/infiltration BMPs that would address post-construction Urban Runoff issues.¶

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b. Update of the list of Treatment Control BMPs, including an evaluation of their effectiveness based on national, statewide or regional studies.

8. Groundwater Protection:

To protect groundwater resources any structural infiltration BMPs shall meet the following minimum requirements:

a. Use of structural infiltration treatment BMPs shall not cause or contribute to an exceedance of groundwater Water Quality Objectives.
b. Infiltration Treatment Control BMPs shall not cause a nuisance or Pollution as defined in Water Code Section 13050.
c. Structural infiltration Treatment Control BMPs shall not be used in areas of known soil or groundwater contamination, without written authorization from the Regional Board Executive Officer.
d. Infiltration systems must be located at least 100 feet horizontally from any water supply well.
e. The vertical distance from the bottom of any infiltration Treatment Control BMP to the historic high groundwater mark shall be at least 10 feet. Where the groundwater basins do not support Beneficial Uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained.

f. Source control and pollution prevention control BMPs shall be implemented to protect groundwater quality.
g. Adequate pre-treatment of runoff prior to structural infiltration Treatment Control BMPs (per Section XII.D.8.f) shall be required in gas stations and large commercial parking lots.
h. Unless adequate pre-treatment of runoff is provided (per Section XII.D.8.f) prior to infiltration, structural Treatment Control BMPs must not be used in areas of industrial or light industrial activity, areas subject to high vehicular traffic (25,000 or more daily average traffic); automotive repair shops; car washes; fleet storage areas; nurseries; or any other high threat to water quality or activities.
i. Motor vehicle waste disposal wells are prohibited by Class V injection well regulations and must not be placed in areas subject to vehicular[56] repair or maintenance activities[57], such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work.

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[56] Vehicles include automobiles; motor vehicles include trucks, trains, boats, motor cycles, farm machineries, airplanes, and recreation vehicles such as snow mobiles, all terrain vehicles, and jet skis.
[57] United States Environmental Protection Agency, Office of Water, EPA 816-R-00-008, September 2000 *State Implementation Guidance - Revisions to the UIC Regulations for Class V Injection Wells and* "Class V Rule" (*Revisions to the Underground Injection Control Regulations for Class V Injection Wells*, 64 FR 68546) *indicate that these activities are prohibited from Class V injection wells.*

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E. LOW IMPACT DEVELOPMENT (LID) AND HYDROMODIFICATION MANAGEMENT TO MINIMIZE IMPACTS FROM NEW DEVELOPMENT/SIGNIFICANT REDEVELOPMENT PROJECTS:

1. Within 18 months of adoption of this Order, the Permittees shall update the WQMP to address LID principles and Hydrologic Conditions of Concern consistent with the MEP standard. A copy of the updated WQMP shall be submitted to the Executive Officer for approval. Within six months of approval, each Permittee shall implement the updated WQMP. Onsite LID principles as close to Pollution sources as possible shall be given preference, however, project site, sub-regional or regional LID principles may also be applied.

2. The Permittees shall require those projects identified in Section XII.D.2. to infiltrate, harvest and re-use, evapotranspire and/or bio-treat[58] the 85th percentile storm event ("design capture volume"). The design capture volume should be calculated as specified in Section XII.D.4.a, above. It is recognized that LID principles are not universally applicable and they are dependent on factors such as: soil conditions including soil compaction and permeability, groundwater levels, soil contaminants (Brownfield development), space restrictions (in-fill projects, redevelopment projects, high density development, transit-oriented developments), highest and best use of Urban Runoff (to support downstream uses), etc. Any portion of this volume that is not infiltrated, harvested and re-used, evapotranspired, and/or bio-treated shall be treated and discharged in accordance with the requirements set forth in Section XII.F, below.

3. The Permittees shall incorporate LID site design principles into the revised WQMP to reduce runoff to a level consistent with the MEP standard. The Co-Permittees shall require that New Development and Significant Redevelopment projects include Site Design BMPs during the development of the project-specific WQMP. The design goal shall be to maintain or replicate the pre-development hydrologic regime through the use of design techniques that create a functionally equivalent post-development hydrologic regime through site preservation techniques and the use of integrated and distributed infiltration, retention, detention, evapotranspiration, filtration and treatment systems. The revised WQMP should continue to consider Site Design BMPs described in Appendix O of the DAMP and LID principles described in the pending Southern California Stormwater Monitoring Coalition/CASQA *LID Guidance Manual for Southern California*.

4. Within 18 months of adoption of this Order, each Permittee shall identify barriers for implementation of LID and should consider revising ordinances, codes, building

[58] A properly engineered and maintained bio-treatment system may be considered only if infiltration, harvesting and reuse and evapotranspiration cannot be feasibly implemented at a project site (feasibility criteria will be established in the WQMP [Section XII.F.2]. Specific design, operation and maintenance criteria for bio-treatment systems shall be part of the WQMP that will be produced by the Permittees.

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The Permittees shall require those projects identified in D.3. to infiltrate, harvest and re-use, evapotranspire and/or bio-treat the 85th percentile storm event ("design capture volume"). The design capture volume should be calculated as specified in Section XII.D.5.a.1, above.

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and landscape design standards to promote green infrastructure/LID techniques including, but not limited to, the following:

a. Landscaping designs that promote longer water retention and evapotranspiration such as 1 foot depth of compost/top soil in commercial and residential areas on top of 1 foot of non-compacted subsoil, concave landscape grading to allow runoff from impervious surfaces, and water conservation by selection of water efficient native plants, weather-based irrigation controllers, etc.

b. Allow permeable surface designs in low traffic roads and parking lots. This may require land use/building code amendment.

c. Allow natural drainage systems for street construction and catchments (with no drainage pipes) and allow vegetated ditches and swales where feasible.

d. Require landscape in parking lots to provide treatment, retention or infiltration.

e. Reduce curb requirements where adequate drainage, conveyance, treatment and storage are available.

f. Amend land use/building codes to allow no curbs, curb cuts and/or stop blocks in parking areas and residential streets with low traffic.

g. Use of green roof, rain garden, and other green infrastructure in urban/suburban area.

h. Allow rainwater harvesting and reuse.

i. Narrow streets, provide alternatives to minimum parking requirements, etc. to facilitate LID where acceptable to public safety departments.

j. Consider vegetated landscape for storm water treatment as an integral element of streets, parking lots, playground and buildings.

k. Other site design BMPs identified in the WQMP not included above.

5. Each Permittee shall implement effective education programs to educate property owners to use Pollution Prevention measures and to maintain on-site hydrologically functional landscape controls.

6. To reduce Pollutants in Urban Runoff, address hydromodification, and manage Urban Runoff as a resource to the MEP, the revised WQMP shall specify

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Deleted: 5.Each Permittee shall update its landscape ordinance consistent with the requirements of AB 1881. The bill requires the local agencies to adopt the State Model Water Efficient Landscape Ordinance[59] or prepare one that is "at least as effective" as the State Model by January 2010. The proposed state model ordinance applies to landscape requiring a building or landscape permit, plan check or design review. The Permittees shall annually evaluate and report the effectiveness of their landscape ordinance with respect to water efficiency and conservation goals. ¶

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preferential use of site design BMPs that incorporate LID techniques, where feasible, in the following manner (from highest to the lowest priority): (1) Preventative measures (these are mostly non-structural measures, e.g., preservation of natural features to a level consistent with the MEP standard; minimization of Urban Runoff through clustering, reducing impervious areas, etc.) and (2) mitigation measures (these are structural measures, such as, infiltration, harvesting and reuse, bio-treatment, etc.). The mitigation or structural Site Design BMPs shall also be prioritized (from highest to lowest priority): (1) Infiltration BMPs (examples include permeable pavement with infiltration beds, dry wells, infiltration trenches, surface and sub-surface infiltration basins. The Permittees should work with local groundwater management agencies to ensure that infiltration Treatment Control BMPs are designed appropriately; (2) BMPs that harvest and re-use (e.g., cisterns and rain barrels); and (3) Vegetated BMPs that promote infiltration and evapotranspiration including bioretention, biofiltration and bio-treatment. Upon the Permittees' determination of LID infeasibility per Section XII.F, design capture volume specified in Section XII.D.4, that is not addressed by onsite or offsite LID Site Design BMPs as listed above shall be treated using Treatment Control BMPs as described in Section XII.F.

8. Hydrologic Condition of Concern (HCOC):

a. The Permittees shall continue to ensure, consistent with the MEP standard, through their review and approval of project-specific WQMPs that New Development and Significant Redevelopment projects do not pose a hydrologic condition of concern due to increased runoff volumes and velocities.

b. New Development and Significant Redevelopment projects does not cause a Hydrologic Condition of Concern if any one of the following conditions is met:

i) The project disturbs less than one acre and is not part of a common plan of development.

ii) The flow rate and volume of storm water runoff for the post-development condition is not significantly different from pre-development condition for a 2-year return frequency storms (a difference of 5% or less is considered insignificant). This may be achieved through Site Design and Treatment Control BMPs.

iii) If the project site infiltrates, harvests and re-uses or evapotranspires at least the design capture volume.

iv) All downstream conveyance channels to an adequate sump (e.g. Prado Dam, Lake Elsinore, Canyon Lake, Santa Ana River or other lake, reservoir or natural resistant feature) that will receive runoff from the project are:

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a) engineered and regularly maintained to ensure design flow capacity, and no sensitive stream habitat areas will be affected; or

b) not identified in the Permittees hydromodification sensitivity maps required in Section XII.B.3.b., and no sensitive stream habitat areas will be affected.

v) If there is no discharge from the project site to receiving waters under the 2--year storm event.

vi) The Permittees may request a variance from these criteria based on studies conducted by the Southern California Stormwater Monitoring Coalition, Southern California Coastal Watershed Research Project, CASQA, or other regional studies. Requests for consideration of any variances should be submitted to the Executive Officer.

c. If a hydrologic condition of concern exists, the WQMP shall include an evaluation of whether the project will adversely impact downstream erosion, sedimentation or stream habitat. This evaluation should include consideration of pre- and post-development hydrograph for a 2-year storm event. If the evaluation determines adverse impacts are likely to occur, the project proponent shall implement additional Site Design BMPs, on-site BMPs, Treatment Control BMPs and/or in-stream BMPs[63] to mitigate the impacts. The project proponent should first consider Site Design BMPs and on-site BMPs prior to proposing in-stream BMPs; in-stream BMPs must not adversely impact Beneficial Uses or result in sustained degradation of Receiving Water quality and shall require all necessary regulatory approvals[65].

d. Hydrologic conditions of concern are considered mitigated if they meet one of the following conditions:

i. Require additional onsite or offsite mitigation to address potential erosion or habitat impact using LID BMPs.

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1) Evaluation of the project's potential to cause a HCOC including the project's

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a) Require additional onsite or offsite mitigation to address potential erosion or habitat impact using LID BMPs.¶
b) Require in-stream controls[64] to mitigate the impacts.

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[63] In-stream measures involve modifying the receiving stream channel slope and geometry so that the stream can convey the new flow regime without increasing the potential for erosion and aggradation. In-stream measures are intended to improve long-term channel stability and prevent erosion by reducing the erosive forces imposed on the channel boundary.

[65] In-stream control projects require a Stream Alteration Agreement from the California Department of Fish & Game, a CWA section 404 permit from the U.S. Army Corps of Engineers, and a section 401 certification from the Water Board. Early discussions with these agencies on the acceptability of an in-stream modification are necessary to avoid project delays or redesign.

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ii. BMPs address sensitivity of the Receiving Waters in proximity to the project site to changes in storm water discharge, flow rates, velocities, durations and volumes.

iii The project is developed consistent with an approved Watershed Action Plan that addresses hydrologic conditions of concern for the downstream Receiving Waters.

iv. Mimicking the pre-development hydrograph with the post-development hydrograph, for a 2- year return frequency storm. Generally, the hydrologic conditions of concern are not significant, if the post-development hydrograph is no more than 10% greater than pre-development hydrograph. In cases where excess volume cannot be infiltrated or captured and reused, discharge from the site must be limited to a flow rate no greater than 110% of the pre-development 2-year peak flow.

If site conditions do not permit items i, ii, iii or iv above, the alternatives and in-lieu programs discussed under Section XII.F, below, may be considered.

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F. ALTERNATIVES AND IN-LIEU PROGRAMS

1. Within 18 months of adoption of this Order, the Permittees shall develop technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs which may include factors such as a groundwater protection assessment to determine if infiltration BMPs are appropriate for the site[66]. These criteria shall be submitted to the Executive Officer for approval. Only those projects that have completed a feasibility analysis as per the approved criteria should be considered for alternatives and in-lieu programs. If a particular BMP is not technically feasible, other BMPs should be implemented to achieve the same level of compliance, or if the cost of BMP implementation greatly outweighs the Pollution control benefits, the Co-Permittees may grant a waiver of the BMPs. All waivers, along with waiver justification documentation, must be submitted to the Executive Officer in writing within 30 days.
2. 2. The Permittees may collectively or individually propose to establish an Urban Runoff fund to be used for urban water quality improvement projects within the same watershed that is funded by contributions from developers granted waivers.

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[66] Such feasibility determinations may be based on regional analyses conducted by the Permittees (see finding G-14) or on site specific conditions. Site specific determinations shall be certified by a Professional Civil Engineer registered in the State of California, and will be documented in the project WQMP, which shall be approved by the Permittee prior to submittal to the Executive Officer. Within 30 days of submittal to the Executive Officer, the Permittee will be notified if the Executive Officer intends to take any action.

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The contributions should be at least equivalent to the cost savings for waived projects. If a waiver is granted and an Urban Runoff fund is established, the Annual Report for the year should include Total amount deposited into the funds and the party responsible for managing the Urban Runoff fund:

a.

3. The obligation to install Treatment Control BMPs at a New Development or Significant Redevelopment project is met if, for a common plan of development, BMPs are constructed with the requisite capacity to serve the entire common project, even if certain phases of the common project may not have BMP capacity located on that phase in accordance with the requirements specified above. The goal of the WQMP is to develop and implement practicable programs and policies to minimize the effects of urbanization on site hydrology, Urban Runoff flow rates, velocities, duration and time of concentration and Pollutant loads. This goal may be achieved through watershed-based Treatment Control BMPs, in combination with site-specific BMPs. All Treatment Control BMPs should be located as close as possible to the Pollutant sources, should not be located within waters of the US, and Pollutant removal should be accomplished prior to discharge to Waters of the US. Regional Treatment Control BMPs shall be operational prior to occupation of any of the New Development or Significant Redevelopment project sites tributary to the regional Treatment Control BMP.

4. The Permittees may establish, where feasible and practicable, a water quality credit system for alternatives to infiltration, harvesting and re-use, evapotranspiration and other LID and Hydromodification requirements specified above. A summary of any waivers of LID, Hydromodification and Treatment Control BMPs should be included in the Annual Report. The following types of projects may be included in this credit system:

a. Redevelopment projects that reduces the overall impervious area
b. Brownfield redevelopment
c. High density developments (>7 units per acre)
d. Mixed use and transit-oriented development (within ½ mile of transit)
e. Dedication of undeveloped portions of the project site to parks, preservation areas and other pervious uses
f. Regional treatment systems with a capacity to treat flows from all upstream developments
g. Contribution to an Urban Runoff fund (see XII.F.2, above)
h. Offsite mitigation or dedicated mitigation areas within the same watershed
i. Highly urbanized areas such as city center area

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j. Historic Districts and Historic Preservation areas

k. Live-work developments

l. In-fill projects

G. APPROVAL OF WQMP

Within 18 months of adoption of this Order, each Permittee shall develop and implement standard procedures and tools and include in its LIP the following:

1. The Permittees shall utilize a mechanism for review and approval of WQMPs, including a checklist that incorporates the minimum requirements of the WQMP. The process for review and approval shall be described in the Permittees LIP.
2. The Co-Permittees shall maintain a database to track Treatment Control BMPs consistent with XII.J.4 below).
3. Continue to ensure that the entities responsible for BMP maintenance and the mechanism for BMP funding is identified prior to WQMP approval.
4. The Permittees shall train those involved with WQMP reviews in accordance with Section XV, Training Requirements.

H. FIELD VERIFICATION OF BMPS

1. The Co-Permittees' permit close-out procedures shall include field verification that structural Site Design, Source Control, and Treatment Control BMPs are designed, constructed and functional in accordance with the approved WQMP.
2. Prior to occupancy, the Co-Permittees shall verify through visual observation that the BMPs are working and functional.
3. The Co-Permittees may accept self-certification or third-party certification of BMPs from State-licensed professional engineers.

I. CHANGE OF OWNERSHIP AND RECORDATION

The Co-Permittees shall establish a mechanism to ensure that appropriate easements and ownerships are properly recorded in public records at the County and/or the city and the information is conveyed to all appropriate parties when there is a change in project or site ownership.

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<#>Tools or procedures to incorporate in project conditions of approval proper maintenance and operation of all structural treatment control BMPs. The parties responsible for the long-term maintenance and operation of the facilities upon project close-out and a funding mechanism for operation and maintenance shall be identified prior to approval of the WQMP.¶
<#>A mechanism to ensure that appropriate easements and ownerships are properly recorded in public records at the County and/or the city that provides access for operation and maintenance of post-construction BMPs. (See I.1 below)¶
A final project close-out procedure and checklist to ensure that post-construction BMPS (site design, structural source control and treatment control BMPs have been built as intended and are fully functional prior to issuance of certificates of occupancy (COO). (See H.1 and 2 below)

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J. OPERATION AND MAINTENANCE OF POST-CONSTRUCTION BMPS

1. The Co-Permittees shall ensure that Treatment Control BMPs are designed and implemented with control measures necessary to effectively minimize the creation of nuisance or pollution associated with vectors, such as mosquitoes, rodents, flies, etc. The Co-Permittee should work with the local vector agencies to ensure that Treatment Control BMPs are designed to minimize the potential for vector breeding during operation and maintenance.

2. The Co-Permittees shall specify conditions of approval and as built inspections ensure that require proper maintenance and operation of any Treatment Control BMPs including requirements for vector control.

3. The parties responsible for the maintenance and operation of the Treatment Control BMPs and a funding mechanism for operation and maintenance of Treatment Control BMPs for the life of the project shall be identified prior to issuance of occupancy permits. Design of these structures shall allow adequate access for maintenance.

4. Each Co-Permittee shall maintain a database to track the operation and maintenance of the Treatment Control BMPs installed after adoption of this Order. The database shall include: type of BMP; watershed where it is located; date of certification; party responsible for maintenance and any problems identified during inspection including any vector or nuisance problems.

5. Within 18 months of adoption of this order and annually thereafter, all Permittee owned Treatment Control BMPs installed after the date of this Order shall be inspected prior to the Rainy Season. The Co-Permittees shall also develop an inspection frequency for New Development and Significant Redevelopment projects, based on the project type and the type of Treatment Control BMPs deployed. Pursuant to XII.J.4, all New Development and Significant Redevelopment Treatment Control BMPs shall be inspected within the five-year Permit Term. The Co-Permittees shall ensure that the BMPs are operating and are maintained properly and all control measures are working effectively to remove Pollutants in runoff from the site. If vector problems are identified, the Co-Permittees should work with the vector control agencies to remedy vector control problems. All inspections shall be documented and kept as Permittee record. The Co-Permittees may accept inspection reports conducted and certified by state licensed professional engineers in lieu of Co-Permittee inspections.

6. The Annual Report shall include a list of all Treatment Control BMPs contained in the database required in XII.J.4 above.

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K. PRE-APPROVED PROJECTS

The above provisions for LID and hydrologic conditions of concern are not applicable to projects that have an approved WQMP, as of the date of approval of the revised WQMP. The above provisions shall be implemented in a manner consistent with the MEP standard for all other projects 45 days from the date of approval of the revised WQMP. The Regional Board recognizes that full implementation may not be feasible for certain projects which have received tentative tract or parcel map or other discretionary approvals.

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L. PERMITTEE ROAD PROJECTS

1. The Principal Permittee, in cooperation with the Co-Permittees, shall develop standard design and post-development BMP guidance to be incorporated into projects for public streets, roads, highways, and freeway improvements, for public street, road highway or freeway projects to reduce the discharge of Pollutants from the projects to the MEP. The guidance and BMPs shall address any paved surface used for transportation of automobiles, trucks, motorcycles, and other vehicles, and excludes routine road maintenance activities and where the surface footprint is not increased those paved surface areas already tributary to an existing and maintained BMP. The guidance shall include the following:
   a. Guidance specific to new road projects,
   b. Guidance specific to projects for existing roads;
   c. Size or impervious area criteria that trigger project coverage;
   d. Preference for green infrastructure approaches wherever feasible; and
   e. Criteria for design and BMP feasibility analyses on a project specific basis.
   f. Should evaluate potential for infiltrating design capture volume and mitigating any HCOC.

XIII. PUBLIC EDUCATION AND OUTREACH

A. The Permittees shall continue to implement the public education efforts already underway and shall continue to promote the most effective elements of the comprehensive public and business education strategy contained in the ROWD, and Section 10 of the DAMP. As part of the Annual Report, the Permittees shall review their public education and outreach efforts and revise their activities to adapt to the needs identified in the annual reassessment of program priorities with particular emphasis on addressing the Pollutants of Concern. Results of this review shall direct the focus of its public education effort and cause recommendations for any changes to the public and business education program including: (1) how to make the multimedia efforts more effective; (2) a reevaluation of audiences and key messages

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for targeted behaviors; and (3) opportunities for participation in regional and statewide public education efforts. The goal of the public and business education program shall be to target 100% of the residents, including businesses, commercial and industrial establishments.

B. A status report on the requirements of this section and any changes to the on-going public education program shall be described in the Annual Report.

C. The Permittees shall implement an assessment program to measurably increase public knowledge of its communities regarding MS4s and impacts of Urban Runoff on Receiving Waters. The Permittees shall implement programs that can measure the change in behavior of its target communities to reduce Pollutant releases to the MS4s and the environment. Within 18 months of adoption of this Order, a description of the program tasks, schedule and measurable goals shall be included in the DAMP.

D. When feasible, the Permittees shall participate in joint outreach programs with other agencies including, but not limited to, the Santa Ana Watershed Project Authority, Caltrans, and other county and municipal storm water programs to ensure that a consistent message on storm water pollution prevention is disseminated to the public.

E. The Permittees shall continue to ensure that appropriate outreach materials are available for construction, industrial and commercial inspection programs. Outreach materials should be provided to Permittee inspectors for distribution to inspected facilities.

F. Within 18 months from the date of adoption of this Order, the Permittees shall ensure that they have developed, maintained and distributed BMP guidance for the control of those potentially polluting activities identified during the term of the 2002 MS4 Permit, which are not otherwise regulated by any agency, including guidelines for the household use of fertilizers, pesticides, herbicides and other chemicals, and guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting. These guidance documents shall be distributed to the public, trade associations, etc., through participation in community events, trade association meetings and/or by mail.

G. The Permittees shall ensure that appropriate educational materials, including the BMP brochures, are provided to all new industrial and commercial enterprises within their jurisdiction at the time appropriate permits (e.g. business licenses or occupancy permits) are issued.

H. The Permittees shall continue to maintain, and if necessary enhance, public education materials to encourage the public to report: illegal dumping and unauthorized, non-storm water discharges from residential, industrial, construction and commercial sites into public streets, storm drains and to surface waterbodies and their tributaries;

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clogged storm drains; and faded stencils or missing catch basin markers. The Principal Permittee's hotline and web site shall provide guidance regarding where to locate information regarding general Urban Runoff pollution control measures. The hotline and website information shall be included in outreach materials and shall be listed in the governmental pages of prominent regional phone books and on the Co-Permittees' website.

I. The Permittees shall maintain a Public Education Committee to provide oversight and guidance for the implementation of the public education program. The Permittees shall continue to participate in the Public Education Committee to review and update existing guidance for the implementation of the public education program. One of the functions of the Public Education Committee shall be to review outreach materials for construction, industrial and commercial inspection programs and residential outreach to ensure they appropriately address common violations observed during inspections. Once deficiencies are identified, alternative text to address the deficiency shall be developed within 6 months and reported in the Annual Report. The Public Education Committee shall meet at least twice per year.

J. The Permittees shall continue to sponsor or staff a table or booth at community, regional, and/or countywide events to distribute public education materials related to Urban Runoff pollution prevention to the public. Each Permittee shall participate in at least one event per year.

K. Successful implementation of the provisions and limitations in this Order will require the cooperation of all the public agency organizations within Riverside County having programs/activities that have an impact on Urban Runoff quality. This may include, but not be limited to, those listed in Appendix 2. As such, the Permittees should coordinate their efforts with those organizations where feasible and appropriate to ensure participation in implementing the requirements of this Order. The Permittees should notify the Regional Board where assistance is needed improving local cooperation.

L. Within 18 months of adoption of this Order, each Permittee shall develop BMP Fact Sheets for mobile businesses for distribution consistent with the requirements of Section XI.D.6. At a minimum, the mobile business Fact Sheets/training program should include: laws and regulations dealing with Urban Runoff and discharges to MS4; appropriate BMPs and proper procedures for disposing of wastes generated from each mobile business category.

M. The Principal Permittee shall continue to develop and distribute BMP guidance for Permittee and contract field operations and maintenance staff to provide guidance in appropriate Pollution Prevention measures, how to respond to spills and reports of Illegal Discharges, etc

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XIV. PERMITTEE FACILITIES AND ACTIVITIES

A. Each Permittee shall continue to implement measures to ensure that their facilities and activities do not cause or contribute to a Pollution or Nuisance in Receiving Waters, as defined in Section 13050 of the Water Code. The Permittees must annually review their activities and facilities to determine the need for revisions to Section 5 of the DAMP and to their LIP. The Annual Report shall include the findings of this review and a schedule for any needed revisions. The Permittees should continue to use Facility Pollution Prevention Plans as noted in Chapter 5 of the DAMP to ensure that the Permittee facilities are not sources of Pollutants to the Waters of the U.S. to the MEP.

B. Within 12 months of adoption of this Order, each Permittee shall review its inventory of fixed facilities listed in the DAMP, its field operations and drainage facilities to ensure that Permittee facilities and activities are addressed by Facility Pollution Prevention Plans consistent with Chapter 5 of the DAMP and do not cause or contribute to a Pollution or Nuisance in Receiving Waters. Existing Facility Pollution Prevention Plans shall be reviewed to insure proper BMPs for these facilities. For Permittee facilities and/or activities tributary to CWA Section 303(d) Impaired Water Bodies that generate Pollutants for which the water body is Impaired, additional Pollutant-specific source control BMPs to target that Pollutant shall be identified and implemented in the Facility Pollution Prevention Plan to the MEP.

C. Each Permittee shall conduct inspections of its fixed facilities and field operations identified in Chapter 5 of the DAMP annually to ensure that they do not contribute Pollutants to Receiving Waters. The Permittees shall record the findings in the inspection forms developed by the Permittees. Each Permittee shall implement BMPs to manage the application, storage, and disposal of pesticides, herbicides, and fertilizers associated with their facilities and activities. At a minimum, the Facility Pollution Prevention Plans for these facilities and activities shall:

1. Ensure that Permittee applicators (including contractors) and distributors have appropriate training, permits, and certifications;
2. Utilize integrated pest management measures that rely on non-chemical solutions, to the extent practicable;
3. Promote the use of native vegetation into facility landscaping;
4. Include schedules for irrigation and chemical application to the extent feasible; and
5. Collect and properly dispose of unused pesticides, herbicides, and fertilizers.
6. The following BMP fact sheets are identified as minimum BMPs::
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ii. SC-41, Building & Grounds Maintenance

iii. SC-60, Housekeeping Practices

iv. SC-73, Landscape Maintenance

D. Each Permittee shall review, update, and implement the individual clean out schedules and frequency for its MS4, including open channel MS4, catch basins, retention/detention facilities and wetlands created for Urban Runoff treatment during the wet and dry season to protect Receiving Water quality consistent with the MEP standard. The inspection and cleaning frequency for all portions of the specified MS4s shall be included in each Permittee's LIP and shall be evaluated annually to determine the need for adjusting the inspection and cleaning frequency. Each Permittee must clean those MS4 facilities where there is evidence of Illegal Discharge. In addition, each Permittee must clean those retention/detention basins and conveyance systems where the inspection reveals that the storage volume is about 25% full or if accumulated sediment or debris impairs the hydraulic capacity of the facility.

E. Unless otherwise supported by field information, each Permittee shall at a minimum inspect, clean, and maintain at least 80% of its open channels, catch basins, retention/detention basins, and wetlands created for Urban Runoff treatment on an annual basis, with 100% of the facilities in a two year period. The MS4 clean out schedule shall continue to be included in the Annual Report.

F. Each Permittee shall examine opportunities to retrofit existing MS4 facilities with water quality protection measures, where feasible.

H. PERMITTEE COMPLIANCE WITH GENERAL PERMITS

1. GENERAL CONSTRUCTION PERMIT

a. All Permittee construction activities shall be in compliance with the latest adopted version of the General Construction Permit.

b. This Order authorizes the discharge of storm water runoff from Permittee construction projects that may result in land disturbance consistent with the acreage criteria of the General Construction Permit.

c. Prior to commencement of construction activities, the Permittees shall notify the Executive Officer of the proposed construction project by submitting a NOI, or Permit Registration Documents (PRDs) as provided in Attachment 5, and a location map depicting the project location. The filing fees for these NOIs/PRDs are waived for the Permittees.

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<#>The Permittees shall maintain an updated site-specific Urban Runoff Pollution Prevention Plan for their facilities and activities that have a potential to contribute to pollution or nuisance in receiving waters. ¶
<#>The Permittees shall ensure that their flood management processes and projects do not contribute Pollutants to Receiving Waters. ¶

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d. Upon completion of the construction project, the Executive Officer shall be notified of the completion of the project by submitting (1) A Notice of Termination (NOT), provided in Attachment 5. , (2) Photographs of the completed project; (3) A site map (depicting the project location and the locations of structural post-construction BMPs, including the latitude and longitude, if appropriate); and (4) copies of the final field verification reports required under Section VII.H..

e. The Permittees shall develop, approve, and implement a WQMP for Permittee projects that meet the requirements of Section XII.D. of this Order.

f. The Permittees shall develop and implement a SWPPP and the monitoring and reporting program for their construction projects that meet the requirements of the latest version of the General Construction Permit. The Permittee must review and approve SWPPPs prepared by their contractors.

g. The Permittees shall give advance notice to the Executive Officer of planned changes in the construction activity, which may result in non-compliance with the latest version of the General Construction Permit.

h. Emergency Permittee projects required to protect public health and safety are exempted from compliance with the requirements of this subsection until the emergency ends, at which time they need to comply with the requirements of this section.

2. GENERAL DE-MINIMUS PERMIT DISCHARGES

a. The Permittees are authorized to discharge de-minimus types of discharges listed under the latest adopted version of the Regional Board's General De Minimus Discharge Permit, currently Order No. R8-2009-0003. The de-minimus discharges from Permittee owned and/or operated facilities and/or activities shall be in compliance Order No. R8-2009-0003 except that the Permittees need not file a NOI under the de-minimus permit and need not pay the filing fee. However, the Permittees shall notify the Executive Officer of each proposed discharge at least 15 days prior to start of the discharge.

b. The Permittees shall comply with the monitoring and reporting requirements of specified below. The Permittees may amend Section 5 of the DAMP to specify minimum BMPs for Permittee De-minimus discharges less than 25,000 gallons per day for Executive Officer approval in lieu of conducting monitoring.

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Deleted: and long term operation and maintenance responsibility for applicable post-construction BMPs. A database of structural post-construction BMPs for which the Permittees are responsible shall be developed and used as a compliance measure to determine compliance with this Order.
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c. Compliance determination shall be based on the following: If a daily discharge or when the median for multiple sample data of a daily discharge exceeds the maximum daily concentration limit for a given parameter, the Permittee will be considered out of compliance for that parameter for that day only within the reporting period.

d. Permittee owned and/or operated facilities and activities discharging constituents with concentration limitations specified in Section VI.B of this Order shall be monitored at least once per year. Permittees who are enrolled under the General De Minimus Permit may also continue their existing authorized monitoring programs under this Order.

e. In the event the Permittee does not comply or will be unable to comply for any reason, with any prohibition, discharge limitation (e.g., maximum daily concentration limit), or Limitation specified in the Regional Board's latest adopted General De Minimus Discharge Permit, the Permittee shall notify the Regional Board consistent with the requirements of Section XVI.A of this Order, unless the Executive Officer waives the written notification requirement. The written notification shall state the nature, time, duration, and cause of noncompliance, and shall describe the measures being taken to remedy the current noncompliance and, prevent recurrence including, where applicable, a schedule of implementation.

f. Monitoring reports shall be submitted at least annually and shall include:

i. The results of all chemical analyses,

ii. The daily flow data, where applicable

iii. A summary of the monthly activities including a report detailing compliance or noncompliance, and

iv. Where the requirements are not met, the monitoring report shall include a statement discussing the reasons for noncompliance, and of the actions undertaken or proposed which will bring the Permittee into full compliance with requirements at the earliest time, and an estimate of the date when the Permittee will be in compliance. The Permittee shall notify the Executive Officer by letter when compliance with the time schedule has been achieved.

g. The Permittees discharging 150,000 gallons per day or more shall submit semi-annual reports. Where the discharge lasts less than 6 months, a report covering the period of the discharge shall be submitted.

XVI. TRAINING PROGRAM FOR STORM WATER MANAGERS, PLANNERS, INSPECTORS AND MUNICIPAL CONTRACTORS

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<#>For a specific constituent, reduction of bi-monthly (every two weeks) monitoring to monthly monitoring can be considered for approval by the Executive Officer when the effluent monitoring data for the last 6 months shows compliance with the effluent limitations.¶
<#>For a specific constituent, reduction of monthly monitoring to quarterly monitoring can be considered for approval by the Executive Officer when the effluent monitoring data for the last 12 months show compliance with the effluent limitations.¶

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1. Within 24 months of adoption of this Order, the DAMP and each Permittee's LIP shall be updated to include a program to provide formal and where necessary, informal training to Permittee staff that implement the provisions of this Order. Formal training must be implemented as described herein and may consist of regional training provided by the Principal Permittee or individual Co-Permittee training provided in-lieu of Principal Permittee training. Informal training (i.e. tailgate training) shall be implemented by each Permittee on an as-needed basis to supplement the formal training. Each Permittee shall maintain a written and/or electronic record of stormwater training provided to its storm water and related program staff.

B. The training programs should be coordinated with the local Vector Control District to ensure that vector control issues related to post-construction BMPs maintenance and operation are incorporated into the training curriculum.

C. **Formal Training**: The formal training programs shall educate Permittee employees responsible for implementing requirements of this Order, by providing training on the following Permittee activities: construction site inspection, WQMP review, residential/industrial/commercial site inspection, and Permittee facility maintenance. Formal training may be conducted in classrooms or using videos, DVDs or other multimedia. The program shall consider all applicable Permittee staff such as storm water program managers, construction/industrial/ commercial/residential inspectors, planners, engineers, public works crew, etc. and shall: define the required knowledge and competencies for each Permittee Activity, outline the curriculum, include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as Certificate of Completion, and/or attendance sheets. The formal training curriculum shall:

1. Highlight the potential effects that Permittee or Public activities related to their job duties can have on water quality.
2. Overview the principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP.
3. Discuss the provisions of the DAMP that relate to the duties of the target audience, including but not limited to;
4. The requirements of the DAMP regarding Storm Water Ordinances, resolutions, codes, and standards that relate to the duties of the target audience, including enforcement thereof;
5. Overview of CEQA requirements contained in Section XII.C of this Order
6. Implementation and assessment of appropriate pollution prevention plans relative to the duties of the target audience;
7. Selection, implementation and maintenance of appropriate BMPs relative to the duties of the target audience;

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Deleted: staff insomuch as they are involved in the implementation of the provisions of this Order:, inspectors, maintenance crews, those involved in the review and approval of WQMPs, public works employees, planning staff, and for
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<#>Applicable water quality laws and regulations as they apply to construction and grading activities, industrial and commercial activities; ¶
<#>potential effects of construction, industrial and commercial activities and urbanization on water quality; ¶
<#>implementation and maintenance of erosion and sediment control BMPs and pollution prevention measures; ¶
<#>proper use and maintenance of erosion and sediment controls; erosion and sediment control ordinances; the provisions of the General Construction Permit, the General Industrial Permit, General De-Minimus Permit and any other permit issued within the Permitted area by the State or Regional Board that is appropriate due to the relationship of the permit provisions to the duties of the target audience; ¶ ...
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a. Tools, checklists and procedures included in the DAMP to assist in implementing the requirements of this Order relative to the duties of the target audience.

D. **Informal Training:** The informal training shall ensure that staff have the requisite knowledge to implement the applicable provisions in the local LIP, such as (but not limited to):

1. The requirements of local Storm Water Ordinances, resolutions, codes, and standards that relate to the duties of the target audience;

8. Local tools, checklists and/or procedures to implement the requirements of this Order relative to the duties of the target audience.

2. The proper use and maintenance of erosion and sediment controls;

3. Vector control issues related to storm water pollution control BMPs.

E. **Reporting**: Formal training shall be summarized and documented in the Annual Reports.

F. **Schedule**: At a minimum, the training schedule should include the following:

1. New Permittee employees responsible for implementing requirements of this Order must receive informal training within six months of hire and formal training within one year of hire.

2. Permittee Facility Maintenance staff must receive formal training at least once every two years.

3. Permittee inspection and code enforcement (if applicable) employees must receive formal or informal refresher training focused on appropriate BMP implementation at least once a year prior to the rainy season.

G. Other existing Permittee employees responsible for implementing the requirements of this Order must receive formal training at least once during the term of this Order.

The start date for training programs described in this Section shall be included in the schedule required in Section III.A.1.s, but shall be no later than six months after Executive Officer approval of DAMP updates applicable to the Permittee activities described in Section XV.C.

H. The Permittees shall require verification of BMP training from contract staff where applicable.

I. The Principal Permittee, or where applicable, the Co-Permittee(s) shall include

I. designated Regional Board staff on training notification e-mails announcing upcoming formal training sessions.

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Deleted: every two years, the Principal Permittee shall provide and document training to applicable public agency staff on area wide procedures such as the updated Municipal Facilities Strategy (MFS) contained in the DAMP, and any other applicable guidance and procedures developed by the Permittees to address municipal activities in fixed facilities as well as field operations, including MS4 facility maintenance. The Permittee training program should include Model Integrated Pest Management, Pesticide and Fertilizer Guidelines. . The training sessions may be conducted in classrooms or using videos, DVDs, or other multimedia with appropriate documentation and a final test to verify that the material has been properly reviewed and understood. In instances where applicable municipal operations are performed by contract staff, each Permittee shall require evidence that contract staff have received a level of training equivalent to that listed above.

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XVI. NOTIFICATION REQUIREMENTS

A. Within 24 hours of discovery, the Permittees shall provide oral or email notification to Regional Board staff of noncompliant sites within its jurisdiction that are determined to be an Emergency Situation. Following oral notification, a written report must be submitted within 10 days of receipt of notice of the Emergency Situation, detailing the nature of the non-compliance, any corrective action taken by the site/facility owner, other relevant information (e.g., past history of the Emergency Situation, environmental damage resulting from the Emergency Situation, site/facility owner responsiveness) and the type of enforcement, consistent with Section 4 of the DAMP, that will be carried out by the Co-Permittee. Further, incidences of noncompliance shall be recorded along with the information noted in the written report and the final outcome/enforcement for the incident in the databases for construction, industrial or commercial inspections, as appropriate.

B. Notification requirements for non-Emergency Situations that are discovered during the course of Construction Site and Industrial Facility inspections that may be a violation of the General Stormwater Permits are addressed in Sections XI.A.5 of this Order.

C. Sewage spill notification shall be consistent with the timelines specified in the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ.

D. All reportable quantities of hazardous waste spills as per 40CFR 117 and 302 shall be reported within 24 hours. All spill incidents shall be also included in the annual report. These requirements are consistent with the Notification requirements for IC/IDs that are addressed in Section IX.B of this Order.

E. Enforcement requirements for facilities operating without an applicable General Stormwater Permit are specified in Section XI.A.4. These facilities shall be reported within 14 calendar days to Regional Board staff by electronic mail or other written means. Permittees' notifications of facilities' failure to obtain required permits under the General Construction Permit, General Industrial Permit, including requirements to file a NOI or No Exposure Certification, Notice of Non-applicability, and/or 401 Certification must include, at a minimum, the following documentation:

1. Name of the facility
2. Operator of the facility
3. Owner of the facility
4. Construction/Commercial/industrial activity being conducted at the facility that is subject to the Construction/Commercial/industrial Permit or 401 Certification
5. Records of communication with the facility operator regarding the violation, which must include at least an inspection report.

F. The Permittees shall report to the Executive Officer:

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<#>At a minimum, all sewage spills above 1,000 gallons and all reportable quantities of¶

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As specified in Section XI.A.3, the Permittees shall deem facilities operating without a proper permit to be in significant non-compliance.

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1. Any enforcement actions and known discharges of Urban Runoff to MS4 facilities, known to the Permittees, which may have an impact on human health or the environment consistent with Sections XI.A and XI.B above; if the discharge is to Canyon Lake or any tributary to Canyon Lake, Elsinore Valley Municipal Water District shall also be notified immediately; and
2. Any suspected or reported activities on federal, state, or other entity's land or facilities, where the Permittees do not have any jurisdiction, and where the suspected or reported activities may be contributing Pollutants to waters of the U.S.

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XVII. PROGRAM MANAGEMENT ASSESSMENT/DAMP REVIEW

A. By November 30 of each year, the Permittees shall evaluate the effectiveness of the Urban Runoff management program described in the DAMP to determine the need for any revisions in order to reduce Pollutants in MS4 discharges consistent with the MEP standard consistent with the reporting requirements in Appendix 3, Section IV.B. In addition, the first Annual Report (November 2010) after adoption of this Order shall include the following:

1. Review of the formal training needs of Permittee employees
2. Review of coordination meeting/training for the designated NPDES inspectors.
3. Proposal for assessment of Urban Runoff management program effectiveness on an area wide as well as jurisdiction-specific basis. Permittees shall utilize the CASQA Guidance[67] for developing these assessment measures at the six outcome levels. The assessment measures must target both water quality outcomes and the results of municipal enforcement activities consistent with the requirements of Appendix 3, Section IV.B.

B. The Annual Report shall include the findings of this review and a schedule to address necessary revisions, or a copy of the amended DAMP with the proposed changes. Replacement pages are acceptable if modifications are not extensive. Annual Reports shall also be submitted in electronic format.

Upon the effective date of this Order, the Permittees shall implement the 2007 DAMP and modify it to be consistent with the requirements of this Order and the schedules contained herein.

C. Each Permittee shall designate at least one representative to the Management Steering Committee and Technical Committee. The Principal Permittee shall be notified immediately, in writing, of changes to the designated representative to either Committee. The designated representative for each Committee shall attend that

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[67] CASQA, May 2007. Municipal Storm water Program Effectiveness Assessment Guidance.

TENTATIVE

Committee's meeting as follows: at least one (1) out of two (2) Management Steering Committee meetings and eight (8) out of ten (10) Technical Committee meetings per year to discuss issues related to permit implementation and regional and statewide issues.

D. The Permittees shall continue to implement all elements of the approved DAMP. Program elements revised in compliance with the requirements of this Order must be implemented in conformance with the schedules specified in this Order following approval of the Executive Officer.

XVIII. FISCAL RESOURCES

A. Each Permittee shall exercise its full authority to secure the resources necessary to meet the requirements of this Order. This Order may be revised to adjust time schedules to accommodate prioritization of available resources.

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B. The Permittees shall prepare and submit a financial summary to the Executive Officer. The financial summary shall be submitted with the Annual Report each year and shall, at a minimum, include the following:

1. Each Permittee's MS4 Permit compliance expenditures for the previous fiscal year,
2. Fiscal developments that may impact availability of funding for MS4 Permit compliance program implementation and to achieve the required implementation schedule.
3. Each Permittee's MS4 Permit compliance program budget for the current fiscal year,
4. A description of the source of funds to implement the MS4 Permit compliance program, and
5. Each Permittee's estimated budget to implement the MS4 Permit compliance program for the next fiscal year.

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XIX. MONITORING AND REPORTING PROGRAM

The Permittees must comply with Monitoring and Reporting Program No. R8-2009-0033, Appendix 3, and any revisions thereto, which are hereby made a part of this Order. The Executive Officer is hereby authorized to revise the Monitoring and Reporting Program in a manner consistent with this Order to allow the Permittees to participate in regional, statewide, national or other monitoring and reporting programs in lieu of or in addition to Monitoring and Reporting Program No. R8-2009-0033. In addition, dates for completion and implementation of certain program elements and reporting requirements are outlined in the Monitoring and Reporting Program.

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XX. PROVISIONS

A. All reports submitted by the Permittees as per the requirements in this Order for the approval of the Executive Officer shall be publicly noticed and made available on the Regional Board's website, or through other means, for public review and comments. The Executive Officer shall consider all comments received prior to approval of the reports. Any unresolved significant issues shall be scheduled for a public hearing at a Regional Board meeting prior to approval by the Executive Officer.

B. Permittees shall demonstrate compliance with all the requirements in this Order and shall implement the DAMP and any modifications, revisions, or amendments thereto, which are developed pursuant to this Order or determined by the Permittees to be necessary to meet the requirements of this Order. The DAMP, including any approved amendments thereto is hereby made an enforceable component of this Order.

C. The Permittees shall implement all elements of the DAMP and its components. Where the dates in the DAMP are different from the corresponding dates in this Order, the dates in this Order shall prevail. Any proposed revisions to the DAMP shall be submitted with the Annual Report for review and approval by the Executive Officer. All approved revisions to the DAMP shall be implemented as per the time schedules approved by the Executive Officer. In addition to those specific controls and actions required by: (1) the terms of this Order and (2) the DAMP and its components, each Permittee shall implement additional controls, if any are necessary, to reduce the discharge of pollutants in Urban Runoff consistent with the MEP standard.

D. Certain BMPs implemented or required by the Permittees for Urban Runoff management may create habitat for vectors (e.g., mosquitoes and rodents) if not properly designed and maintained. Close collaboration and cooperative effort between the Permittees and local vector control agencies and the State Department of Health Services are necessary to minimize potential vector habitat and public health impacts resulting from vector breeding. Nothing in this Order is intended to prohibit inspection or abatement of vectors by the State or local vector control agencies in accordance with the respective Health and Safety Code.

E. Upon approval by the Executive Officer all plans, reports and subsequent amendments required by this Order shall be implemented and shall become an enforceable part of this Order. Prior to approval by the Executive Officer, these plans, reports and amendments shall not be considered as an enforceable part of this Order.

F. The permit application and special NPDES program requirements are contained in 40 CFR 122.21 (a), (b), (d)(2), (f), (p); 122.41 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l); and 122.42 (c), and are incorporated into this Order by reference.

G. 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, Order termination, Order

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revocation and re-issuance, denial of an application for re-issuance, Order revisions, or a combination thereof.

H. Permittees must continue to take reasonable steps to minimize or prevent any discharge to the MS4s that has a reasonable likelihood of adversely affecting human health or the environment.

I. Regional Board staff, USEPA, and other authorized representatives must be allowed to:

1. Inspect Permittee records associated with compliance of this Order.

2. Access and copy records that are kept under the conditions of this Order.

3. Photograph and inspect any facilities or equipment (including monitoring and control equipment) that are related to or may impact storm water discharge or authorized Non-storm Water discharge.

4. Conduct sampling, and monitoring activities for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and/or the Water Code.

5. Review the Permittee's programs and request the Regional Board to authorize modification to Permittee programs to comply with the requirements of this Order.

6. Request copies of data, monitoring reports, and sampling data and copies of the Permittee's conclusions and evaluations of the data.

J. This Order does not convey any property rights or any exclusive privileges.

K. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

L. When Permittees become 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 Regional Water Board, State Board, or USEPA, the Permitttees must promptly submit such facts or information.

M. All applications, reports, or information submitted to the Regional Water Board, State Board, and/or USEPA are to be signed and certified by either:

1. A principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having

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<#>Permittees 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 Permittees to achieve compliance with the conditions of this Order.¶
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responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA)

2. A duly authorized representative of the person in 1, above. A person is a duly authorized representative only if the authorization is made in writing by a person described above;

3. The authorization specified 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.); and

4. The written authorization is submitted to the Executive Officer.

5. If an authorization described above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the Executive Officer prior to or together with any reports, information, or applications, to be signed by an authorized representative.

6. Any person signing a document described above must 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".

XXI. PERMIT MODIFICATION

A. Following appropriate public notice, and in accordance with 40 CFR 122.41(f), this Order may be modified, revoked or reissued prior to its expiration date for the following reasons:

1. To address significant changes in conditions identified in the technical reports required by the Regional Board which were unknown at the time of the issuance of this Order;
2. To incorporate applicable requirements of statewide water quality control plans adopted by the State Water Resources Control Board or any amendments to the

TENTATIVE

Basin Plan (including TMDLS) approved by the Regional Board, the State Board and, if necessary, by the Office of Administrative Law and the USEPA;

1. To comply with any applicable requirements, guidelines, or regulations issued or approved under the Clean Water Act, if the requirements, guidelines, or regulations contain different conditions or additional requirements than those included in this Order; or,
2. To incorporate new or revised program elements and compliance schedule(s) necessary to comply with this Order;

B. The filing of a request by the Permittees for modification, revocation and re-issuance, or termination or a notification of planned changes or anticipated noncompliance does not stay any conditions of this Order.

C. Pursuant to Section 13228 of the Water Code, the Regional Board may exercise its option for allowing the portion of the City of Murrieta located within the Santa Ana Region to be regulated by the San Diego Regional Water Quality Control Board under its Riverside County MS4 Permit. Similarly, if the San Diego Regional Water Quality Control Board authorizes this Regional Board to exercise authority over the City of Menifee within the portions of the City regulated by the San Diego Regional Water Quality Control Board, this Regional Board will exercise its authority under this Order in those Regions.

XXII. PERMIT EXPIRATION AND RENEWAL

A. This Order expires on XXXXXX(DATE), 2014 and the Permittees must file a ROWD no later than 180 days in advance of such expiration date as application for issuance of new waste discharge requirements. The ROWD shall, at a minimum, include the following:

1. Names and mailing address(es) of the primary administrative and technical contacts for the Permittees that operate the MS4;
2. Any revisions to the DAMP including, but not limited to, all the activities the Permittees propose to undertake during the next permit term, goals and objectives of such activities, an evaluation of the need for additional source control and/or structural BMPs, any proposed pilot studies, etc.;
3. Changes in land use and/or population including map updates;
4. Any significant changes to the MS4 including map updates of the MS4; and
5. An assessment of the overall Urban Runoff management program and its effectiveness in meeting Water Quality Standards. If Water Quality Standards are not being met, the ROWD shall include new or revised program elements and compliance schedule(s) necessary to comply with Section VI of this Order.

Deleted: <#>To incorporate any requirements imposed upon the Permittees through the TMDL process.¶

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Deleted: <#>This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittees for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition.¶
<#>Permittees must furnish to the Regional Board, State Board, or USEPA within a reasonable time, any information which the Regional Board, State Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Permittee must also furnish to the Regional Water Board, State Board, or USEPA copies of records required to be kept by this Order.¶
¶

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B. The ROWD, Annual Reports and other information submitted under this Order shall be signed by either a principal executive officer or a ranking elected official (40 CFR 122.22(a)(3)) or a duly authorized representative as per 40 CFR 122.22(b).

Deleted: annual reports

C. This Order shall serve as an NPDES Permit pursuant to Section 402(p) of the Clean Water Act, or amendments thereto, and shall become effective ten days after the date of its adoption provided the Regional Administrator of the USEPA has no objections. If the Regional Administrator objects to its issuance, the Permit shall not become effective until such objection is withdrawn.

D. The Regional Board is authorized to enforce the terms of this permit under several provisions of the CWC, including, but not limited to, sections 13385, 13386, and 13387.

E. Order No. R8-2002-0011 is hereby rescinded.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on XXXX(___**DATE), 2009.**

_____
Gerard J. Thibeault
Executive Officer

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APPENDIX 1

PERMITTED AREA

ORDER NO. R8-2009-0033

APPENDIX 2

OTHER ENTITIES THAT MAY DISCHARGE POLLUTANTS TO THE MS4

ORDER NO. R8-2009-0033

APPENDIX 3

MONITORING AND REPORTING PROGRAM

ORDER NO. R8-2009-0033

APPENDIX 4

GLOSSARY

ORDER NO. R8-2009-0033

APPENDIX 5

NOTICE OF INTENT AND NOTICE OF TERMINATION

ORDER NO. R8-2009-0033

APPENDIX 6

FACT SHEET

ORDER NO. R8-2009-0033

First Draft: July 23, 2009

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escal Creek – Reach 2	801.32, 801.25	INTERMITTENT - AGR, IND, GWR, REC1, REC2, WARM, WILD

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	Nutrients	Non-point Source	2011 (In Progress)
Canyon Lake	Nutrients	Non-point Source	Approved 2005

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Load Allocations[a]

Canyon Lake Nutrient TMDL	Final Total Phosphorus Waste Load Allocation (kg/yr)[b, c]	Final TN Waste Load Allocation (kg/yr)[b, c]
Urban	306 (675 lbs/yr)	3,974 (8763 lbs/yr)
Septic systems	139 (306 lbs/yr)	4,850 (10692 lbs/yr)

[a] The WLAs for Canyon Lake apply

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[c] TMDL and allocations specified as 10-year running average.

Table 9 - Lake Elsinore
Nitrogen and Phosphorus Waste Load and Load Allocations[a]

Lake Elsinore Nutrient TMDL	Final Total Phosphorus Waste Load Allocation (kg/yr)[b, c]	Final TN Waste Load Allocation (kg/yr)[c, d]
Urban	124 (273.3 lbs/yr)	349 (769.4 lbs/yr)

[a] The Lake Elsinore TMDL allocations for septic systems only apply to those land uses located downstream of Canyon Lake.
[b] Final compliance to be achieved as soon as possible, but no later than December 31, 2020.
[c] TMDL and allocations specified as 10-year running average.
[d] WLA for supplemental water should be met as soon as possible as a 5 year running average.
[e] Allocation for Canyon Lake overflows

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The Permittees shall annually evaluate their compliance with the adopted TMDLs and TMDL Implementation Plan tasks. If necessary, the Permittees shall propose additional control measures necessary to achieve compliance with the Permittees' WLAs for total phosphorus and TIN.

Prior to the TMDL compliance date and pending development and approval of a watershed model, pollutant trading plan and other implementation tasks identified above, the Permittees shall monitor and report the effectiveness of the control measures implemented in the watershed to control nutrient inputs into the lakes from Urban Runoff by implementing the following:

Within twelve months of adoption of this Order, the Permittees within the San Jacinto watershed shall identify representative urban storm water runoff monitoring locations for discharges into the lakes. Selection of those monitoring locations shall take into account the size of the drainage area and potential sources of nutrients within each drainage area. Those monitoring locations may include existing storm water core monitoring locations and the Phase II watershed wide TMDL monitoring locations.

In the third annual report due after adoption of this Order, include an evaluation of nutrient source reductions during the prior three years. This evaluation should indicate how the source reduction plans implemented by each Permittee are geared towards meeting the WLAs by the 2020 compliance date. Since the WLAs are based on a 10-year running average, data from storm water core monitoring locations may be used to project loading reductions.

The source reduction plans shall at a minimum be based on actual or literature documentation of estimated effectiveness of BMPs to address identified or potential nutrient sources in the watershed. The plan should include proposed actions and schedules that each Permittee is proposing to implement within its jurisdiction to attain nutrient loading reductions.

The source reduction plans should be reevaluated on a triennial basis. Any needed revisions should consider the impact of projected population growth in the watershed.

If triennial nutrient source reduction goals are not met, the Permittees within the affected drainage areas shall comply with the following procedure:

shall characterize discharges and identify significant nutrient sources from its significant outfall locations.

Each Permittee shall submit a report with proposed actions to the Executive Officer that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to further reduce nutrients that are causing or contributing to the failure to attain nutrient source reduction goals.

The report may be incorporated in the annual report unless the Executive Officer directs a different submittal date.

If necessary, the Permittees shall update Section 13 of the DAMP to incorporate appropriate tasks in compliance with the approved TMDLs.

As Part of the Permittees' next ROWD (permit renewal application), the Permittees must evaluate their compliance with the approved TMDLs and propose any new or modified BMPs necessary to achieve compliance with the WLAs in the TMDLS by the dates specified in the TMDLs.

i.

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The Executive Officer may by written notice require modifications to the plan and/or report, required by Subsection VII.D.2, above. If required, such modifications must be submitted within thirty (30) calendar days of receipt of said written notice.

Within ninety (90) calendar days following approval by the Executive Officer of the pollutant source investigation and control plan required by Subsection VII.D.2, the Permittees must revise the DAMP and their monitoring and reporting programs to incorporate the approved, modified, or additional BMPs that were implemented.

The revised DAMP and monitoring program are to be implemented in accordance with the proposed schedule, above, until approved or modified by the Executive Officer.

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Control the contribution of Pollutants in discharges of Urban Runoff to the MS4 from sources within its jurisdiction.

Prohibit all Illicit Discharges within and under the Permittee's jurisdiction not otherwise allowed pursuant to Section V;

Control the discharge of spills, dumping, or disposal of materials other than storm water to the MS4;

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include relevant information on ownership, Standard Industrial Classification (SIC) codes, General Permit Waste Discharge Identification (WDID) number (if any), size, Geographic Information System (GIS) data in NAD83/WGS84[1] compatible formatting with latitude/longitude in decimal degrees, and other pertinent details describing the nature of activities at the site. The database shall also include

[1]

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Permittees shall deem facilities operating without a proper permit to be in significant non-compliance. Appropriate enforcement measures shall be implemented including a time schedule to obtain coverage, or suspension of business license until evidence of permit coverage is provided. Non-filers shall be reported within 14 calendar days to the Regional Board by electronic mail or other written means. The Permittees shall specify the non-filer verification and Regional Board notification procedures in their LIP. Notification information shall be consistent with Section XV.

Within 24 months of adoption of this Order, each Permittees shall have its inspection and enforcement information available through an electronic database available to the public. At a minimum, this database should include: the inspection dates, inspectors present, adequacy of site plans, any observed violations, corrective actions required, any enforcement actions and follow-up actions taken by the Permittee, date compliance was achieved, prior history of violations, and any other relevant information.

Permittees shall maintain hard or electronic copies and make available upon request all information related to its inspections, observed violations and enforcement actions including photographs, videotapes, notices of correction or any other enforcement action. This information shall be linked to the electronic database identified in Section X.A.2 above.

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The Permittees' implementation of their construction storm water program shall be consistent with the latest version of the statewide General Construction Permit and the federal effluent guideline limitations, if any. At the time of drafting of this Order, action levels and numeric effluent limits were under consideration as part of the most recent draft of the General Construction Permit and the USEPA has released its draft federal effluent guideline limitations for construction sites.

Should it be determined by the Permittee that any applicable action levels or effluent guideline limitations are exceeded, the Permittee shall require the discharger to immediately implement additional BMPs and revise its ESCP.

.

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The Watershed Action Plan should specify hydromodification management standards for each sub-watershed and provide assessment tools.

Incorporate low impact development techniques, Smart Growth principles[2], New Urbanism[3], urban runoff capture, treatment, and re-use, water conservation principles in landscape choices and design, preservation of existing unarmored or soft-armored drainages and flood plains, and implementation tools and standards.

Include development strategies that provide incentives for redevelopment, brownfield development, high density, vertical density, mixed use and transit-oriented development, and water conservation and re-use projects.

Specify control measures, for highly developed areas to prevent further degradation and restore functionality of streams consistent with the maximum extent practicable standard.

Specify development strategies that provide incentives for redevelopment, brownfield development, high density, vertical density, mixed use and transit-oriented development, and water conservation and re-use.

Includes effectiveness tools to determine the effectiveness of the strategies in minimizing the impacts on hydromodification and water quality.

Specify common development standards, zoning codes, conditions of approval and other principles and policies necessary for water quality protection.

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and without adopted TMDLs, Pollutants

d.

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. In addition, if a TMDL has been developed and an implementation plan is yet to be developed, the DAMP shall specify that the responsible Permittees develop constituent specific source control measures, conduct additional monitoring and/or cooperate with the development of an implementation plan as required by the RWQCB.

---

[2] Smart Growth refers to the use of creative strategies to develop ways that preserve natural lands and critical environmental areas, protect water and air quality, and reuse already-developed land.

[3]

e.

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planning for water quality/quantity that includes Urban Runoff management, stream channel and hydromodification management by developing

f.

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Specify monitoring requirements for hydromodification and water quality to evaluate the effectiveness of the control measures contained in the Watershed Action Plan.

Invite participation and comments from water and utility agencies, state and federal agencies, non-governmental organizations and other interested parties in the development of the Watershed Action Plan for incorporation into the appropriate section of the DAMP.

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CALIFONRIA ENVIONMENTAL QUALITY ACT (CEQA) AND

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planning process for each project. The potential need for CWA

a.

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401 certification for a project should be identified early in the CEQA review, if appropriate, to enable coordination with Regional Board 401 staff. The preliminary WQMP should identify the need for any CWA Section 401 certification. The CEQA document preparation processes should be revised to consider any significant short and long term adverse impacts that the project may have on urban storm water runoff quality and quantity and shall specify measures that must be implemented to avoid or mitigate those impacts, where feasible. If the proposed mitigation measures include structural treatment control system, then the CEQA document shall identify the responsible parties for the long term operation and maintenance activities and the funding mechanism.

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storm water runoff.

Potential impact

i.

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project's post-construction activity on storm water runoff.

Potential for discharge of pollutants from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas.

Potential for changes in Urban Runoff quality and quantity that could have an impact on stream channels and the Beneficial Uses of the Receiving Waters.

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ii. Potential for significant changes in the flow velocity and/or volume of Urban Runoff that could cause environmental harm.

iii. Potential for significant increases in erosion of the project site or surrounding areas.

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Identify and recommend solutions to eliminate barriers to implementation of the watershed protection principles and policies, including but not limited to the low impact development principles (LID) and management of hydrologic conditions of concern in Section E, below.

b.

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The watershed protection principles and policies include the following:

c.

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and where possible, create or restore areas that provide important water quality benefits, such as

d.

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Encourage the use of water quality wetlands, biofiltration swales, watershed-scale retrofits, etc., where such measures are likely to be effective and technically and economically feasible and not likely to create vector problems;

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or establish development guidance and control measures to protect these areas from erosion and sediment loss.

e.

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reduce Pollutants in Urban Runoff, address hydromodification, and manage Urban Runoff as a resource to the MEP, WQMPs shall specify preferential use of site design BMPs that incorporate LID techniques in the following manner (from highest to the lowest priority): (1) Preventative measures (these are mostly non-structural measures, e.g., preservation of natural features to a level consistent with the MEP standard; minimization of Urban Runoff through clustering

structural measures, such as, infiltration, harvesting and reuse, bio-treatment, etc.). The mitigative or structural site design BMPs shall also be prioritized (from highest to lowest priority): (1) Infiltration BMPs (examples include permeable pavement with infiltration beds, dry wells, infiltration trenches, surface and sub-surface infiltration basins and bioretention and bio-treatment BMPs that maximize infiltration). (2) BMPs that harvest and re-use (e.g., cisterns and rain barrels); and (3) Vegetated BMPs that do not infiltrate but promote evapotranspiration including bioretention, biofiltration and bio-treatment. Upon the Permittees' determination of LID infeasibility, water quality volume specified in item 4, below, that is not addressed by onsite or offsite LID site design BMPs as listed above shall be treated using structural treatment control BMPs that infiltrate, filter or treat the runoff.

Structural treatment control systems

1.

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8. The Permittees shall reflect in the Water Quality Management Plan Guidance and Template and require each priority development project to infiltrate, harvest and re-use, evapotranspire, or bio-treat[4] the 85th percentile storm event ("design capture volume"), as specified in Section XI.D.5.I.1, above. Any portion of the design capture volume that is not infiltrated, harvested and re-used, evapotranspired or bio-treated[5] onsite by LID BMPs shall be treated and discharged in accordance with the requirements set forth in Section XI.E.8 and/or Section XI.F, below.

Within twelve months of adoption of this Order, the Permittees shall review and update the Water Quality Management Plan Guidance and Template to incorporate LID principles and to address the impact of urbanization on downstream hydrology. At a minimum, the following elements shall be included during the update:

Site Design BMPs:

Review and update the menu of site design BMPs to include any LID BMP that is currently not listed.

Include as a reference for design and installation of LID BMPs the *LID Guidance Manual for Southern California* developed by the Southern California Coastal Water Research Project upon its completion.

Techniques or specifications to minimize soil compaction in areas designated for site design BMPs, especially infiltration.

[4] A properly engineered and maintained bio-treatment system may be considered only if infiltration, harvesting and reuse and evapotranspiration cannot be feasibly implemented at a project site (feasibility criteria will be established in the WQMP [Section XI.E.6] and the technically-based feasibility criteria [Section XI.E.6.a.vi]). Specific design, operation and maintenance criteria for bio-treatment systems shall

Review and update design, installation and test specifications for retention BMPs to prevent unwanted ponding.

Develop and utilize a credit system[6] for using site design BMPs.

Within 12 months of adoption of this Order the Principal Permittee shall establish technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID. Collaboration with Orange County and San Bernardino County Permittees is encouraged in the development of these criteria.

Develop in lieu programs for projects seeking a waiver of LID BMPs.

Source Control BMPs:

Review and update the menu of source control BMPs.

Include design and installation standards for each structural source control BMP.

Treatment Control BMPs:

Update the list of treatment control BMPs, including an evaluation of their effectiveness based on national, statewide or regional studies.

Prioritize treatment control BMPs based on their effectiveness in pollutant removal and require project proponents to select the most appropriate BMPs.

Include design and installation standards for each treatment control BMP.

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ii. A development/redevelopment project

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it causes no adverse downstream impacts on the physical structure, aquatic and riparian habitats and

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for flow rates greater than 10% of the 2 year event.

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The curriculum content shall address:

[6]

Applicable water quality laws and regulations as they apply to construction and grading activities, industrial and commercial activities;

potential effects of construction, industrial and commercial activities and urbanization on water quality;

implementation and maintenance of erosion and sediment control BMPs and pollution prevention measures;

proper use and maintenance of erosion and sediment controls; erosion and sediment control ordinances; the provisions of the General Construction Permit, the General Industrial Permit, General De-Minimus Permit and any other permit issued within the Permitted area by the State or Regional Board that is appropriate due to the relationship of the permit provisions to the duties of the target audience;

enforcement protocols and methods established in the DAMP, the Municipal Facilities Strategy and Enforcement Compliance Strategy, and ID/IC Elimination Program.

Local Implementation Plan, Water Quality Management Plan, including Low Impact Development Principles and Hydrologic Conditions of Concern as they apply to the MS4 permit.,

ATTACHMENT 8

V. REPORTING SCHEDULE

All reports required by this Order shall be submitted to the Executive Officer in accordance with the following schedule:

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
II.A.1.e III.B.3.a,d,e & XVII.C		Management Steering Committee meetings to discuss MS4 Permit implementation	Held at least twice per year.	Annual Report
II.A.1.f III.B.3.a,d,e & XVII.C		Permittee Technical Committee meetings to discuss permit implementation	Held at least 10 times each year	Annual Report
II.B.3.a,d,e & XVII.C		Co-Permittees participate in Management Steering and Technical Committee meetings to discuss MS4 Permit implementation	Attend at least 1 out of 2 Management and 8 out of 10 Technical meetings each year	Annual Report
III.A.1.r		The Principal Permittee shall develop a library of BMP performance reports, and revise the BMP performance report annually thereafter.	Within 6 months of permit adoption	
III.A.1.s		The Principal Permittee shall coordinate a review of area-wide documents with the Co-Permittees to determine the need for update or revisions and establish a schedule for those revisions.	Within 6 months of permit adoption	
II.B.2.g		Submit up-to-date MS4 facility maps	Annually to Principal Permittee	Annual Report
II.B.2.h		Submit reports & information for Annual Report	Annually to Principal Permittee	Annual Report
III.C		Allow new Permittees to join MS4 Permit	Per schedule required in Section III.A.1.s	Report findings and schedule for revisions to the Implementation Agreement in 2009-2010 Annual Report.
III.C.		Evaluate Urban Runoff Management structure and Implementation Agreement annually to determine need for revision.	Annually	Report findings and schedule for revisions to the Implementation Agreement in 2009-2010 Annual Report.

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
IV.A.		Principal Permittee shall develop and maintain a LIP Template	Within 18 months of adoption of Order and update annually thereafter.	
IV.B.		Complete a Co-Permittee specific LIP	Within 6 months of approval of the Template	Within 6 months of approval of the Template
VI.D.1.b.		Implement WLA for Dry Weather bacterial indicators in MSAR	Dec. 31, 2015.	
VI.D.1.c.		Implement WLA for Wet Weather bacterial indicators in MSA River	Dec. 31, 2025.	
VI.D.1.d.ii.		Revise DAMP to incorporate a plan and schedule to achieve BacT indicator WLAs	Within 18 months	
VI.D.1.d.iv.		Report progress toward implementing WLAs		Annual Report
VI.D.2..b.		Submit Phase 2 Alternatives	December 31, 2010	
		Submit O&M for Agreement for Fishery Management Program	December 31, 2010	
		Submit O&M for Agreement for Aeration and Mixing Systems	December 31, 2010	
		Submit Phase 2 Projects Plans	June 30, 2011	
		Complete Phase 2 Project Implementation	December 31, 2014	
		Implement in-lake and watershed monitoring programs	Annual Reports due August 31 every year.	
VI.D.2.c.		In-lake Processes Evaluation Study	December 31, 2009	
		Linkage Analysis Study	December 31, 2009	
		Watershed Source Loading Study	August 31, 2010	
		Model Evaluation	December 31, 2010	
		Construct/Calibrate Model	June 30, 2011	
		Conduct Model Scenarios	August 31, 2011	
		Model Update Final Report	November 30, 2011	

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TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
VII.D.2.d.		Conduct Feasibility analysis and ID Pollutant Trading Framework	March 2012	
		Create and Adopt Program Protocols and Program Implementation	August 2012	
		Submit Pollutant Trading Program	November 30, 2012	
VII.D.1		Notify Regional Board if Section VI.A. discharges from MS4 causes exceedance of Receiving Water Quality Objectives.	---	2 working days verbal or email notice and written report in Annual Report unless directed otherwise by EO.
VII.D.1.a		Submit modified report required under VI.D.1		30 calendar days following receipt of written notice to modify report.
VII.D.1.b		Modify DAMP, LIP, and MRP to address Receiving Water Limit Violations and implementation schedule.	---	30 days after approval of Subsection VI.D.1 report by Executive Officer
VII.D.1		Report discovery of exceedances of Receiving Water Standards from non-jurisdictional sources.	---	Oral or email notice within 2 working days of becoming aware of situation and written documentation within 10 days from time of becoming aware of the situation.
VIII.C.		Promulgate ordinances that would specify BMPs for known pathogen or bacterial indicator sources	Within 4years of adoption	Annual Report
VIII.F.		Review of the effectiveness of ordinances and associated enforcement programs in prohibiting IC/ID to the MS4s	Annually	Annual Report
VIII. G.		Certification statement, signed by the Chief legal counsel, that the Permittee has obtained all necessary legal authority	Consistent with the Schedule required in Section III.A.1.r	Annual Report after scheduled completion date.

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	DAMP[(a)]			
VIII. H.		Permittees shall effectiveness of, implementation and enforcement response procedures.	Annually	Annual Report
IX.D		Review and revise IC/ID program	18 months after Order adoption	Annual Report,
IX. .G.		Annually review and evaluate their IC/ID or IDDE program to determine if the program needs to be adjusted.	Annually	Annual Report
IX.H.		Maintain database summarizing IC/ID incident response	Annually	Annual Report
X.D.		Maintain inventory of septic systems within its jurisdiction completed in 2008.	Ongoing	Annual Report.
XI.A.1. & XI.A 2.		Submit a sortable electronic database of all construction, industrial, and commercial facilities within their jurisdiction that have a reasonable potential to discharge pollutants.		Annual Report
XI.A.10.		Each Permittee shall document, evaluate and annually report the effectiveness of its enforcement procedures in achieving prompt and timely compliance.	Annually	Annual Report
XI.A.12		Permittees to evaluate and report adequacy of inspection programs conducted by other agencies on behalf of Permittee.	Annually	Annual Report

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XI.B.1. & XI.B.4.		An inventory and inspection frequency of: Wet Season(Oct 1 – May 31): High = 1/mo., Med = 2/season, low = 1/season Dry Season: All construction sites shall be inspected at a frequency sufficient to ensure that sediment and other Pollutants are properly controlled and that unauthorized, Non-Storm Water discharges are prevented		Annual Report
XI.C.2. & XI.C.3		All high priority industrial facilities are to be inspected at least once a year; all medium priority sites are to be inspected at least once every two years; and all low priority sites are to be inspected at least once per permit cycle.		Annual Report
XI.D.1. & XI.D.4		All high priority sites shall be inspected at least once a year; all medium priority sites shall be inspected at least every two years; and all low priority sites shall be inspected at least once per MS4 Permit cycle.		Annual Report
XI.D.6		Notify all mobile businesses operating within the County concerning the minimum source control and pollution prevention measures that they must develop and implement.	Within 18 months of adoption of this Order	Annually
XI.D.7		The Co-Permittee shall develop an enforcement strategy to address mobile businesses.	Within 24 months of adoption of this Order	Annual Report

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XII.E.1		Each Permittee shall develop and implement a residential program to reduce the discharge of Pollutants from residences to the MS4s to the MEP.	Within 18 months of adoption of this Order	Annual Report
XII.E.6.		Co-Permittees to provide an evaluation of its residential program	Annually starting with the third Annual Report following MS4 Permit adoption	Annual Report
XII.B.2.		The Principal Permittee shall facilitate the formation of a technical advisory committee (TAC)	Within 6 months of adoption of this Order	Annual Report
XII.B.3 & 4.		The Principal Permittee shall submit to the Regional Board a Watershed Action Plan	Within three years of adoption of MS4 Permit	Annual Report
XII.B.4		Within six months of Executive Officer approval of WAP DAMP revisions, Permittees shall implement.		Annually, starting with fourth Annual Report following adoption
XII.C.1.		Each Permittee shall review the watershed protection principles and policies in its General Plan	Within 24 months of adoption of this Order	Annually
XII.D.1.		Principal Permittee to submit a revised WQMP to incorporate new elements required in the Order	Within 18 months of adoption of this Order	Annual Report
XII.D.6.		Principal Permittee to develop recommendations for streamlining regulatory agency approval of regional Treatment Control BMPs.	Within 24 months of adoption of this Order	Annually
XII.E.1		Permittees shall update the WQMP to incorporate LID principles,	18 months of Order adoption	
		Implement the updated WQMP.	Within six months of WQMP approval.	

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Deleted: Develop technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs
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TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XII.E.4		Each Permittee shall identify barriers to LID implementation and should consider revising ordinances, codes, building and landscape design standards to promote green infrastructure/LID implementation.	Within 18 months of adoption of this Order	Annual Report.
XII.E.5.		Each Permittee to update its landscape ordinance consistent with requirements of AB 1881 and annually evaluate effectiveness with respect to water efficiency and water conservation goals	Annually	Annual Report
XII.F.1		The Permittees shall develop technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs which may include factors such as a groundwater protection assessment to determine if infiltration BMPs are appropriate for the site	18 months of adoption of this Order	Annual Report
XII.G.		Each Permittee shall develop and implement standard procedures and tools, and include in its LIP.	Within 18 months of adoption of this Order	Annual Report
XII.J.4.		The Permittees shall develop a database to track operation and maintenance of post-construction BMPs.		Annual Report
XII.J.6		Provide list of all post-construction Treatment Control BMPs approved, constructed and/or operating	Annually	Annual Report
XIII.A.		Review public education and outreach efforts and revise their activities to adapt to the needs identified in the annual reassessment.		Annual Report

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All public agency and 25% of priority dev. Proj. 100% within 4 years.
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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XIII.B.		Status report on Public Education and Outreach requirements and changes to the ongoing program	Annually	Annual Report
XIII.C.		Implement assessment program to measure increases in public knowledge of impacts of Urban Runoff on Receiving Waters	18 months after Order adoption	Annual Report
XIII.F.		The Permittees shall develop, maintain and distribute BMP guidance for the control of those potentially polluting activities identified during the previous permit cycle, which are not otherwise regulated by any agency, including guidelines for the household use of fertilizers, pesticides, herbicides and other chemicals, and guidance for mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting.	Within 18 months of adoption of this Order	Annual Report
XIII.I.		The Public Education Committee shall meet at least twice per year.		Annual Report
XIII.J..		Sponsor or staff an Urban Runoff table or booth at community, regional, and/or countywide events to distribute public education materials to the public. Each Permittee shall participate in at least one event per year.	Annually	Annual Report
XIII.K.		Involve public agency organizations, listed in Appendix 2, in Urban Runoff program. Notify the Regional Board where assistance is needed in improving local cooperation.		Annual Report
XIII.L		Develop and distribute BMP Fact Sheets for mobile businesses	Within 18 months of adoption of this Order	Annual Report

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XIV.A.		Review activities and facilities to determine the need for revisions to Section 5 of the DAMP and LIP.	Annually	Annual Report
XIV.B.		Each Permittee shall review its inventory of fixed facilities listed in the DAMP, its field operations and drainage facilities to ensure that public agency facilities and activities do not cause or contribute to a Pollution or nuisance in Receiving Waters.	Within 12 months of adoption of this Order	Annual Report
XIV.C.		Conduct inspections of its fixed facilities and field operations.	Annually	Annual Report
XIV.F.		Unless otherwise determined, each Permittee shall inspect, clean & maintain at least 80% of it's open channels, catch basins, retention/detention basins, and wetlands created for Urban Runoff treatment.	Annually	Annual Report
XIV.H1.c.		Notify the Executive Officer of the proposed construction project by electronically submitting Permit Registration Documents (PRDs).	Prior to commencement of each construction project.	
XIV.H1.d.		the Executive Officer shall be notified of the completion of the project by submitting a Notice of Termination (NOT).	Upon completion of each construction project.	
XIV.H2.a.		Notify the Executive Officer of each proposed deminimus discharge at least 15 days prior to start of the discharge	At least 15 days prior to discharge.	At least 15 days prior to discharge.
XIV.H2.g.		Discharge greater than 150,000 gallons.		Semi-Annual reports or for period of discharge, whichever is sooner.

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Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
XV.A		DAMP and each Permittee's LIP shall be updated to include a program to provide formal and where necessary, informal training to Permittee staff that implement the provisions of this Order	Within 12 months of adoption of Order	DAMP will be updated within 12 months of adoption of Order. LIP will be updated within 12 months of approval of LIP template by EO
XV.A., XV.E. .		Each Permitee's LIP shall describe a program to provide formal and informal training to Permittee staff and contractors that implement the provisions of this Order. Provide the specified training.	Within 24 months of adoption of this Order and annually thereafter.	Annual Report
XV.H*		Permittees shall notify Regional Board staff of training		When notifying Permittees of training session.
XVI.A.		Notify of noncompliant sites within its jurisdiction.		Within 24 hours of discovery
XVI.C		Sewage spill notification shall be consistent with the timelines specified in the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ.		Within 24 hours of discovery
XVI.E		Facilities operating without an applicable General permit.		Reported within 14 calendar days
XVII.A.		Evaluate the effectiveness of the Urban Runoff management program.	By November 30 of each year.	Annually by November 30.
XVII.B.		Amended DAMP pages.		Annual Report
XVIII.B.		Financial analysis report		Annual Report
XXII.A.		Report of Waste Discharge	180 days before permit expires	Month Day, 2014
Appendix 3, III.C.		Review CMP to determine their effectiveness in Urban Runoff program assessment	Within 12 months of adoption of this Order	N/A
		Submit Revised CMP	Within 16 months of adoption of this Order and implement within 6 months of approval.	

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TENTATIVE

Reference		Item	Completion Time after Permit Adoption or Frequency	Report Due Date
Permit	**DAMP[(a)]**			
Appendix 3, IV.B.2.		Annual Report	Annually	November 30th

(a) This column to be completed by Permittees.

Date:_____ Ordered by_____

Gerard J. Thibeault
Executive Officer

TENTATIVE

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review adequacy of their ordinances

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review adequacy of their ordinances

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Prepare a focused outfall reconnaissance inventory

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50% completed within three years after Order adoption. 100% by end of permit term.

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Control the contribution of pollutants from its MS4 systems prior to connecting to privately owned or maintained stormwater conveyance systems.

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Immediately if notified by Permittee staff or within 24 hours of receipt of notice from third party.

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Review and revise, as needed, the Sanitary Sewer Overflow Unified Response Plan developed during the previous permit term to control and mitigate sanitary sewer overflows in the permit area.

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Develop an

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Develop an

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2011-2012

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Starting 6 months after Order adoption. Updated at least quarterly.

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Report of storm water related information gathered during site inspections of industrial, commercial, and construction sites.

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Within 24 months after Order adoption

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Available through an internet accessible database.

ATTACHMENT 9

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31 ELR 10322 3-2001

ELR
NEWS & ANALYSIS

Antibacksliding: Understanding One of the Most Misunderstood Provisions of the Clean Water Act

by Melissa A. Thorme

Under the Clean Water Act (CWA), point source dischargers are required to obtain federal discharge permits and to comply with permit limits sufficient to make progress toward the achievement of water quality standards or goals. As water quality standards become increasingly stringent, industrial and municipal dischargers are being pressured to accept permit limits that are difficult, if not impossible, to meet. Since a discharge permit is equivalent to a contract between the discharger and the regulatory agency, permit holders must be increasingly wary of the contract terms and must carefully evaluate the effluent limitations agreed to in discharge permits. Such caution is especially warranted in light of the "antibacksliding" provisions contained in the CWA. Unknowingly, dischargers may be agreeing to permit limits that are not reasonably attainable yet may not be relaxed.

The CWA provides that the discharge of any pollutant into the waters of the United States by any person is unlawful except when these discharges are subject to a national pollutant discharge elimination system (NPDES) permit or some other statutory exception.[1] In order to make strides toward achieving the Act's goal of eliminating the discharge of all pollutants,[2] point source dischargers are issued NPDES permits that contain conditions whereby publicly owned treatment works (POTWs) and industrial dischargers must meet minimum technology-based requirements. The applicable treatment technologies for these dischargers are secondary treatment and best available technology (BAT), respectively.[3]

Where the congressionally prescribed technology-based treatment was not adequate to meet promulgated state water quality standards by the statutory July 1, 1977 cutoff date, states could choose to include more stringent water quality-based effluent limitations[4] in NPDES permits that would be sufficient to achieve the applicable water quality standards.[5] A water quality standard defines the water quality goals of a water body by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses.[6]

After July 1, 1977, water quality-based effluent limitations (WQBELs) for individual dischargers are to be established pursuant to §302, a state's continuing planning process under §303(e), or based on the waste load allocation (WLA)[7]

Melissa A. Thorme is Counsel for the law firm of Downey, Brand, Seymour & Rohwer LLP, Sacramento. She specializes in municipal wastewater and stormwater permitting and regulatory assistance. Her educational background includes B.S., Environmental Biology (Cal. Polytechnic State University, San Luis Obispo 1985); M.S., Ecology (U.C. Davis 1988); J.D. (U.C. Davis 1990); and LL.M., Masters in Energy and Environmental Law (Tulane University 1992). The views represented herein do not necessarily reflect those of Ms. Thorme's firm or clients.

1. 33 U.S.C. §1311(a), ELR STAT. FWPCA §301(a).
2. *Id.* §1251(a)(1), ELR STAT. FWPCA §101(a)(1).
3. *Id.* §1311(b)(1)(B), (2)(A), ELR STAT. FWPCA §301(b)(1)(B), (2)(A).
4.

> The term "effluent limitation" means any restriction established by a [state or the U.S. Environmental Protection Agency (EPA)] Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, *including schedules of compliance*.

Id. §1362(11), ELR STAT. FWPCA §502(11) (emphasis added).

5. *Id.* §1311(b)(1)(C), ELR STAT. FWPCA §301(b)(1)(C). CWA §301(b)(1)(C) plainly states that requirements necessary to meet water quality standards must be placed in permits "*not later than* July 1, 1977." *Id.* (emphasis added). Post-1977 exceedances of water quality standards were to be dealt with through CWA §§302, 303(d) and (e), and 304(*l*). *See* 33 U.S.C. §1312(a), ELR STAT. FWPCA §302(a) (water quality-related effluent limitations); *id.* §1313(d), ELR STAT. FWPCA §303(d) (maximum daily load); *id.* §1313(e), ELR STAT. FWPCA §303(e) (continuing planning process); *id.* §1314(*l*), ELR STAT. FWPCA §304(*l*) (individual control strategies for toxic pollutants). Thus, more stringent limits based on §301(b)(1)(C) had to be in place *by 1977*. *See* Natural Resources Defense Council v. Train, 510 F.2d 692, 707, 5 ELR 20046, 20053 (D.C. Cir. 1977) ("Section 301(b) contains a broad description of *phase one* and phase two effluent limitations, *to be achieved by July 1, 1977* and July 1, 1983, respectively.") (emphasis added).

   Because Congress amended the 1972 CWA three times (in 1977, 1981, and 1987) and failed to extend or remove this 1977 date, Congress meant what it said. Attempts by regulatory agencies to read this language out of the Act is contrary to fundamental precepts of statutory construction. *See*, *e.g.*, Brown v. Superior Court, 37 Cal. 3d 477, 484 (1984) ("A construction rendering statutory language surplusage 'is to be avoided.'"); People v. Sylvester, 58 Cal. App. 4th 1493, 1496 (1997) ("[E]ach word and phrase in the statute should be interpreted to 'give meaning to every word and phrase in the statute.'"). Thus, after July 1, 1977, more stringent water quality-based effluent limitations (WQBELs) are not properly based on 33 U.S.C. §1311(b)(1)(C), ELR STAT. FWPCA §301(b)(1)(C). The one exception to this rule was contained in *id.* §1311(i)(1), ELR STAT. FWPCA §301(i)(1) related to municipal time extensions, which allowed an extension of this 1977 date until 1988.

> Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) [secondary treatment] or (b)(1)(C) of this section, but (A) construction cannot be completed within the *time required in such subsection*, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations *by the time specified in such subsection* [a POTW may request that the time for compliance be extended.]

Id. (emphasis added).

6. 33 U.S.C. §1313(c)(2)(A), ELR STAT. FWPCA §303(c)(2)(A).
7. A WLA is defined as the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. 40 C.F.R. §130.2(h).

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and total maximum daily load (TMDL)[8] processes required under §303(d) of the Act. The TMDL-setting process involves the assessment of significant sources of specific pollutants within a water body, and the allocation of the total allowable pollutant load among the individual sources in a manner that will result in the achievement of the applicable water quality standard.

In reality, however, the CWA's continuing planning and TMDL processes have not been widely utilized until recently.[9] Instead, the U.S. Environmental Protection Agency (EPA) and many state regulatory agencies calculate WQBELs on a discharger-by-discharger basis using a simple mixing equation that does not address other sources. This process, often called a "reasonable potential analysis," is intended to ensure that a specific discharge does not cause or contribute to a violation of water quality standards at the point of discharge.[10] This approach may result in more stringent limitations than the TMDL approach, which is designed to consider all dischargers (both point and nonpoint sources) to a water body.

Regardless of the basis or method of calculation, WQBELs are eventually incorporated into NPDES permits. Upon permit reissuance, modification, or renewal, a discharger may seek a relaxation of these permit limits. However, according to the CWA, relaxation of WQBELs is permissible only if the requirements of the antibacksliding rule[11] are met.

History of the Antibacksliding Provision

The concept of antibacksliding as it relates to effluent limitations had its genesis in the congressional record from the 1977 CWA Amendments.[12] This concept was then incorporated into EPA regulations enacted under the CWA in 1979.[13] Later, in 1982, EPA proposed to remove the antibacksliding provisions from its regulations during the regulatory revision process.[14] However, the revised regulations, which EPA adopted in final form on September 26, 1984, ultimately retained the antibacksliding rules.[15] Generally, the antibacksliding regulations prohibit EPA from reissuing NPDES permits containing interim effluent limitations, standards or conditions less stringent than the final limits contained in the previous permit, with limited exceptions.[16] These regulations also prohibit, with some exceptions, the reissuance of permits originally based on best professional judgment (BPJ) to incorporate the effluent guidelines promulgated under CWA §304(b), which would result in limits less stringent than those in the previous BPJ-based permit.[17]

EPA's antibacksliding regulations were legally challenged by both industrial and environmental groups in the U.S. Court of Appeals for the District of Columbia Circuit,[18] and were judicially upheld. To avoid further controversy over the legality of the regulations, Congress statutorily ratified the general prohibition against backsliding by enacting §§402(o) and 303(d)(4) under the 1987 Amendments to the CWA. The intent of these statutory amendments was to preserve present pollution control levels achieved by dischargers by prohibiting the adoption of less stringent effluent limitations[19] than those already con-

8. TMDLs are calculated so as to assure that in-stream concentrations for the various criteria are not exceeded by the cumulative discharges to the stream segment, or, in other words, to meet water quality standards in the receiving water bodies. U.S. EPA, Water Quality Standards Handbook: Second Edition 7-1 (1994) (available from the ELR Document Service, Order No. AD-1171) [hereinafter Standards Handbook]; AMSA, Toxic Substances in Municipal Wastewater: A Guidance Manual for Negotiating Permits 4-2 (1991); *see also* U.S. EPA, Guidance for Water Quality-Based Decisions: The TMDL Process (1991) (available from the ELR Document Service, Order No. AD-3550) [hereinafter TMDL Process].

9. Until numerous lawsuits alleging the failure of states and EPA to adopt impaired water bodies lists and to develop and implement TMDLs were filed and won by environmental organizations, the TMDL provisions of §303(d) were virtually ignored. The history of the TMDL program, and the litigation that resulted in the implementation of §303(d), are discussed in depth in Oliver A. Houck, The Clean Water Act TMDL Program: Law, Policy, and Implementation (Envtl. L. Inst. Monograph 1999). *See, e.g.,* Sierra Club v. Hankinson, 939 F. Supp. 865, 27 ELR 20280 (N.D. Ga. 1996); Natural Resources Defense Council v. Fox, 30 F. Supp. 2d 369, 29 ELR 20592 (S.D.N.Y. 1998); San Francisco BayKeeper v. Browner, No. C000132 (N.D. Cal. filed Jan. 12, 2000).

10. *See* 40 C.F.R. §122.44(d).

11. 33 U.S.C. §1342(o), ELR Stat. FWPCA §402(o).

12.

> The committee intends that current effluent limitations, i.e., those represented by [Best Practicable Control Technology] BPT and any more stringent requirements of the first round of NPDES permits, should represent a "floor" or minimum requirement of the modifications authorized by this section. Current levels of discharge must not be relaxed by this provision because that would imply additional treatment requirements on other point or nonpoint source dischargers.

See S. Rep. No. 95-370 (1977), *reprinted in* 1977 U.S.C.C.A.N. 4326.

13. 40 C.F.R. §122.15(i) (1979).

14. EPA Consolidated Permit Regulations, 47 Fed. Reg. 52072, 52084-86, 52089 (Nov. 18, 1982). EPA's revisions were proposed for two reasons: first, EPA sought to apply effluent guidelines in a nationally consistent manner so that companies operating under less stringent, subsequently promulgated guidelines would not have an unfair advantage over companies with more stringent permits based on best professional judgment (BPJ). *Id.* at 52084. Second, EPA feared that the limit on backsliding might encourage dischargers to challenge second-round permits containing BPJ limits in order to avoid being locked into more stringent limits that might ultimately be contained in effluent guidelines. Such challenges, EPA contemplated, would result in a drain on EPA's resources. *Id.; see also* Natural Resources Defense Council v. EPA, 859 F.2d 156, 203, 19 ELR 20016, 20040 (D.C. Cir. 1988).

15. 49 Fed. Reg. 37998 (Sept. 26, 1984). In its final rule, EPA maintained the antibacksliding prohibition, concluding that sufficient justification did not exist to change the policy. *Id.* at 38021.

16. 40 C.F.R. §122.44(*l*)(1). One exception is where the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 C.F.R. §122.62. *Id.* The remainder of the exceptions are found in 40 C.F.R. §122.44(*l*)(2)(i) as limited by 40 C.F.R. §122.44(*l*)(2)(ii).

17. *Id.* §122.44(*l*)(2). EPA observes that its regulations allow for equitable considerations, permitting the agency to relieve BPJ permittees of any undue burden in two situations: first, where a permit holder can show that the BPJ limits are unattainable despite installation and proper operation of necessary treatment equipment; and second, where compliance with permit limits would result in costs wholly disproportionate to those considered in the subsequently promulgated effluent limitations guidelines. *Id.* §§122.44(*l*)(2)(i), 122.62(a)(16); *see also Natural Resources Defense Council*, 859 F.2d at 199 n.96, 19 ELR at 20038 n.96.

18. *See Natural Resources Defense Council*, 859 F.2d at 195-204, 19 ELR at 20016-41 (industry attacked the regulations on three grounds: that the Agency lacked statutory authority for such rules, that EPA failed to adequately explain its retention of the rule after its proposal to abolish the rule in 1982, and that the Agency had no authority to prohibit backsliding from new source performance standards (NSPS) permits).

19. The Senate and Conference Reports from the 99th Congress clearly stated that these additions were intended to "clarify the Clean Water

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tained in their discharge permits, except in certain narrowly defined circumstances.[20]

Synopsis of the Act's Antibacksliding Rule

Section 402(o) of the CWA sets forth the general rule prohibiting backsliding from effluent limitations contained in previously issued permits that were based on §§402(a)(1)(B), 301(b)(1)(C), 303(d), or 303(e).[21] The main thrust of §402(o) is to bar EPA from allowing permit holders to "backslide" or weaken BPJ-based limits or WQBELs contained in an NPDES permit except under very limited circumstances.[22] Thus, permits issued with these types of limitations may not be reissued, renewed, or modified to contain less stringent effluent limitations than the previous permit *unless* the proposed new limitations comply with the antidegradation rule contained in §303(d)(4), or the permit falls into one of the statutory exceptions to this ban on backsliding.[23]

Nevertheless, backsliding from BPJ-based permits is ultimately restricted to permit limits that are not less stringent than the effluent limitation guidelines in effect at the time of the relaxation.[24] Furthermore, when attempting to backslide from WQBELs under either the antidegradation rule or an exception to the antibacksliding rule, *relaxed permit limits must not result in a violation of the applicable water quality standard*.[25] This final provision is probably the most important part of the antibacksliding rule.

To understand the effect of the antibacksliding rule on NPDES permit relaxation, it is necessary to examine permit relaxation requirements both under the antidegradation rule and under the exceptions to the antibacksliding rule. An analysis of each is set forth below.

Backsliding Under the Antidegradation Rule

Under the exceptions to the antibacksliding rule contained in §402(o), the first way a discharger may relax the effluent limitations contained in its NPDES permit is to demonstrate compliance with an antidegradation rule found in CWA §303(d)(4).[26] The Act's antidegradation rule is two-pronged depending on whether or not applicable water quality standards have been met in the receiving waters.[27]

Where Water Quality Standards Have Not Been Attained

Where the applicable water quality standard has not yet been attained, §303(d)(4)(A) provides that any effluent limitation based on a TMDL or other WLA may be revised in one of two ways. This section allows permit limits to be relaxed if the cumulative effect of all revised effluent limitations based on the TMDL or WLA will assure the attainment of the applicable water quality standard.[28] This scenario could occur if EPA or a designated state agency were to perform a new TMDL analysis, which would allow for resetting WLAs and effluent limitations due to decreased loading by other pollutant sources, such as nonpoint source dischargers.

As stated previously, post-1977 WQBELs are properly based on TMDLs.[29] The current regulatory definition of a TMDL is "the sum of the individual WLAs for point sources and [load allocations (LAs)] for nonpoint sources and natural background."[30] This definition goes on to state that if

Act's prohibition of backsliding on *effluent limitations*." *See* H.R. Conf. Rep. No. 99-1004 (1986) (emphasis added); *see also* S. Rep. No. 99-50, at 45 (1985). The EPA regulations are not as narrow and apply to permit conditions in addition to effluent limitations. 40 C.F.R. §122.44(*l*). However, CWA §402(o) is silent on the issue of permit *conditions*, and only addresses backsliding from effluent *limitations*.

20. Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 99-1004, at 153 (1986).

21. As previously stated, CWA §301(b)(1)(C) is no longer a valid basis for the incorporation of WQBELs into NPDES permits. *See supra* note 5. Interestingly, water quality-related effluent limitations adopted pursuant to §302 do not seem to be subject to the prohibition on backsliding, unless they are specifically determined to be "necessary to carry out the provisions of this chapter" pursuant to §402(a)(1)(B). *See* 33 U.S.C. §1342(o)(1), ELR Stat. FWPCA §402(o)(1). Furthermore, restrictions on backsliding do not apply to challenged permit limits that have been stayed pending final agency action. *See* EPA Memorandum from James R. Elder, Director, Office of Water Enforcement and Permits, to Water Management Division Directors, Regions I-X, NPDES State Directors re: Interim Guidance on Implementation of Section 402(o) Anti-Backsliding Rules for Water Quality-Based Permits 3 (1989) [hereinafter 1989 EPA Memo].

22. 33 U.S.C. §1342(o)(2), ELR Stat. FWPCA §402(o)(2). EPA contends that its existing antibacksliding regulations continue to apply to effluent limitations not covered by CWA §402(o), e.g., permit limits based on the effluent guidelines or on NSPS. *See* 1989 EPA Memo, *supra* note 21, at 2.

23. 33 U.S.C. §1342(o)(1), (o)(2), ELR Stat. FWPCA §402(o)(1), (o)(2). EPA guidance states that §§402(o)(2) and 303(d)(4) of the CWA "constitute independent exceptions to the prohibition against relaxation of permit limits. If either is met, relaxation is permissible." U.S. EPA, Technical Support Document for Water Quality-Based Toxics Control 113 (1991) [hereinafter Technical Support Document]. Thus, according to EPA, dischargers must only meet the requirements of one of these statutory provisions in order to relax their permit limits. *See* U.S. EPA Region IX Memorandum, Antibacksliding—Effect on Water Quality-Based Effluent Limitations 1 (Aug. 8, 1994); *see also* American Iron & Steel Inst. v. EPA, 115 F.3d 979, 993 n.6, 27 ELR 21241, 21246 n.6 (D.C. Cir. 1997) (citing 58 Fed. Reg. 20802, 20837 (Apr. 16, 1993) ("§402(o) allows relaxation of water quality-based limits if the requirements of either §402(o)(2) or §303(d)(4) are met.")).

24. "Effluent limitation guidelines" are defined as the regulations published by the Administrator under §304(b) of CWA to adopt or revise effluent limitations. 40 C.F.R. §122.2. The effluent limitation guideline regulations are published at 40 C.F.R. pts. 401-471. Generally, the effluent limitation guidelines identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of pollution reduction available through the application of control measures and treatment technologies for a particular industry.

25. 33 U.S.C. §1342(o)(3), ELR Stat. FWPCA §402(o)(3).

26. *See id.* §1342(o)(1), ELR Stat. FWPCA §402(o)(1). *See* Mark C. Van Putten & Bradley D. Jackson, *The Dilution of the Clean Water Act*, 19 U. Mich. J.L. Reform 863, 900 (1986) (citing S. Rep. 99-1128 (1986)). The antidegradation rule had its inception in a report first issued by the U.S. Department of the Interior in 1966. *Id.* at 895, n.133-34 (citing U.S. Dep't of the Interior, Federal Water Pollution Control Admin., Guidelines for Establishing Water Quality Standards for Interstate Waters (1966)).

27. 33 U.S.C. §1313(d)(4)(A), (B), ELR Stat. FWPCA §303(d)(4)(A), (B). Congress added subsections (4)(A) and (B) to CWA §303(d) with the 1987 Amendments to ensure consistency with the water quality standards process and with the NPDES antibacksliding requirements. TMDL Process, *supra* note 8, at 6.

28. 33 U.S.C. §1313(d)(4)(A)(i), ELR Stat. FWPCA §303(d)(4)(A)(i).

29. *Id.* §1313(d)(2), (e)(3)(c), ELR Stat. FWPCA §303(d)(2), (e)(3)(c).

30. 40 C.F.R. §130.2(i). New TMDL regulations, including a new definition of a TMDL, were promulgated on July 13, 2000. 65 Fed. Reg. 43586 (July 13, 2000). The new definition of a TMDL is "a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollut-

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best management practices (BMPs) or other nonpoint source pollution controls make more stringent LAs practicable, then WLAs (and effluent limitations based upon WLAs) can be made less stringent.[31] Thus, as the current definition concludes, the TMDL process provides for point/nonpoint source control trade offs.[32]

Accordingly, if a planned nonpoint source control program or watershed management plan would assuredly result in the attainment of a water quality standard, effluent limitations for point sources may be able to be relaxed accordingly. However, compliance problems relating to antibacksliding may still occur if the new TMDLs and WLAs produce effluent limitations that still cannot be met by the discharger despite the level of relaxation allowed. This is because backsliding is only allowed to a level that will not result in a violation of water quality standards. Conversely, for a given water quality standard, if the new WLAs produce effluent limitations greater or equal to the effluent concentration or mass being discharged, no backsliding problem occurs.

Section 303(d)(4)(ii) allows permit limits to be relaxed if the designated use, which is not being attained, is removed in accordance with EPA regulations.[33] The downgrading or removal of uses may lead to a revised water quality standard that is more readily attainable. However, states may not remove designated uses if they are *existing* uses, or if the uses could be attained through the implementation of effluent limitations on point sources and of cost-effective and reasonable BMPs on nonpoint sources.[34] States may remove a use that is *not* an existing use, if the state can demonstrate that attaining the designated use is not feasible because, inter alia, naturally occurring pollutant concentrations prevent the attainment of the use, human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place, or more stringent technology controls would result in substantial and widespread economic and social impacts.[35] Although this option may at face value appear to be an easy remedy, many difficult regulatory hoops must be jumped through in order to downgrade or de-designate a use. Furthermore, past attempts at de-designation or removal of uses has not been well received by the public, environmental organizations, regulatory agencies, or the press.

In summary, if the water quality standards (including standards revised as a result of use de-designation) have not been attained and no reasonable assurance exists that the standard will be achieved, no backsliding would be allowed.[36]

Where Water Quality Standards Have Been Attained

Where the quality of the receiving waters exceed levels necessary to protect the designated use for such waters or otherwise meet the applicable water quality standards,[37] effluent limitations may be revised only if such revision is subject to and consistent with the state's antidegradation policy.[38] EPA regulations require each state to adopt an antidegradation policy, which must contain certain minimum requirements.[39]

A state antidegradation policy, and its accompanying implementation procedures, must specify how a state will determine on a case-by-case basis whether, and to what extent, water quality levels may be lowered.[40] Often state policies require that water quality levels may be lowered only upon a showing that such a lowering is "necessary to accommodate important economic or social development."[41] However, even upon such a showing, state antidegradation policies must, at a minimum, protect existing uses.[42] In addition, state antidegradation policies must strive to maintain high quality waters by promoting the "fishable/swimmable" goals of the Act and protecting the water quality in Outstanding National Resource Waters, such as those found in national parks, wildlife refuges, and wilderness areas.[43]

Since each state's antidegradation policy is different, it is difficult to identify the specific requirements for backsliding under these policies. It is enough to state that a discharger must meet the requirements of the applicable state antidegradation policy before its effluent limitations for discharges into high quality waters, i.e., waters that meet or exceed the water quality standards, may be relaxed.[44] Without

ant." *Id.* at 43662. However, these new regulations do not take effect until Oct. 1, 2001, the beginning of fiscal year 2001. *See* H.R. 4425 (2000). *See* Robert W. Adler, *Controlling Nonpoint Source Water Pollution: Is Help on the Way (From the Courts or EPA)?*, 31 ELR 10270 (Mar. 2001).

31. 40 C.F.R. §130.3(i). However, EPA guidance states that all WLAs, LAs, and TMDLs must meet the state antidegradation provisions and the federal requirements under §131.12. *See* Technical Support Document, *supra* note 23, at 68.

32. *Id.*

33. 33 U.S.C. §1313(d)(4)(A)(ii), ELR Stat. FWPCA §303(d)(4)(A)(ii); 40 C.F.R. §131.10(g).

34. 40 C.F.R. §131.10(h).

35. *Id.* §131.10(g)(1), (3), and (6); *see also* Standards Handbook, *supra* note 8, at 2-6 through 2-9.

36. EPA notes that while CWA §303(d)(4)(A) clearly allows for the relaxation of WQBELs based on a revision of water quality standards, CWA §402(o) would not allow this relaxation since the new information exception excludes revised regulations. *See* 1989 EPA Memo, *supra* note 21, at 5.

37. A revision of water quality standards may result in a situation where the new standards are now being attained, thus allowing the analysis to proceed under CWA §303(d)(4)(B).

38. 33 U.S.C. §1313(d)(4)(B), ELR Stat. FWPCA §303(d)(4)(B).

39. 40 C.F.R. §131.12(a). Once formally adopted, EPA regulations assert that a state's antidegradation policy as well as any implementing procedures, become a part of the state's water quality standards, and are subject to EPA review and approval. 40 C.F.R. §§131.12-131.21. However, the statutory definition of water quality standards does not include antidegradation policies or implementation procedures. *See* 33 U.S.C. §1313(c)(2)(A), ELR Stat. FWPCA §303(c)(2)(A) (standards made up of uses and criteria).

40. *See* Standards Handbook, *supra* note 8, at 4-2.

41. 40 C.F.R. §131.12(a)(2).

42. *Id.* §131.12(a)(1). Thus, relaxation of effluent limitations might be justified upon a showing that new limits protect existing uses, e.g., through a use attainability analysis (UAA) process as defined in 40 C.F.R. §131.3(g). "Existing uses" are defined as those uses actually attained in the water body on or after Nov. 28, 1975, whether or not these uses are contained in the water quality standards. *Id.* §131.3(e).

43. *Id.* §131.12(a)(2), (a)(3).

44. In areas in which water quality standards are being met and where there is no reasonable potential for a discharger's effluent to cause or contribute to an excursion above those standards, dischargers should attempt to avoid having numeric effluent limitations placed in their permits altogether. *See accord id.* §122.44(d)(1). If the discharger can convince EPA or the designated state agency to issue the permit without rigid numeric effluent limits, backsliding will not be a concern.

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a demonstration of compliance with the state antidegradation policy, no backsliding would be allowed under this exception despite the fact that the water quality exceeds the applicable standards.

Backsliding Under the Statutory Exceptions to the Antibacksliding Rule

The general prohibition against backsliding found in §402(o)(1) of the Act contains several exceptions. Specifically, under §402(o)(2), a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant *if*:

> (A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;
> (B)(i) information is available which was not available at the time of permit issuance (other than revised regulations,[45] guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance[46]; or
> (ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;
> (C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy [(e.g., Acts of God)];
> (D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or
> (E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit, and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).[47]

The most likely way for a discharger to fall under an exception to the antibacksliding rule is in the case where a discharger has been unable to meet the effluent limits in its *previous* permit despite the installation and maintenance of the required pollution control technology. For example, assume that a discharger's effluent concentration of mercury exceeds the WQBEL for mercury contained in its NPDES permit. Although the discharger has installed the required level of treatment technology and has implemented mercury source control measures, it is still unable to meet its permit limit for mercury. Under CWA §402(o)(2)(E), a new mercury permit limit may be issued to reflect the effluent concentration actually being achieved by the discharger as long as this revised limit is not less stringent than the applicable effluent guidelines (such guidelines do not exist for POTWs).

The Act's Ultimate Limit on Backsliding

Even if a discharger can meet either the requirements of the antidegradation rule under §303(d)(4) or one of the statutory exceptions listed in §402(o)(2), there are still limitations as to how far a permit may be allowed to backslide.[48] Section 402(o)(3) acts as a *floor* to restrict the extent to which BPJ and water quality-based permit limitations may be relaxed under the antibacksliding rule. Under this subsection, even if EPA allows a permit to backslide from its previous permit requirements, EPA may *never* allow the reissued permit to contain effluent limitations which are less stringent than the current effluent limitation guidelines for that pollutant, or which would cause the receiving waters to violate the applicable state water quality standard adopted under the authority of §303.[49]

These apparently inviolable restrictions are the hidden trap of the antibacksliding rule. Many regulators and dischargers assume that if a discharger qualifies for one of the exceptions to the antibacksliding rule, then backsliding is allowable. However, even if the requirements for an exception to the rule can be met, the lower limits on relaxation set forth under CWA §402(o)(3) may prevent the incorporation of less stringent effluent limitations. Effluent limits may not be relaxed if the proposed new permit limits are predicted to result in a violation of either the applicable effluent limitation guidelines or the applicable water quality standards through EPA effluent limitation derivation methods, TMDLs, or other means.

The scenario becomes more complicated when the permit limits were not based upon a TMDL/WLA but instead were derived for an individual discharger from the water quality standard itself. When the regulatory agency calculates backwards from the water quality standard using EPA calculation methods to obtain a permit limit that will not violate the standard, it is hard to imagine a situation in which the effluent limitation would or could be relaxed unless the water quality standard itself is relaxed.[50]

45. As previously noted, EPA contends that revised water quality standards would fall under the definition of "revised regulations" and thus not be subject to this exception. *See supra* note 36.

46. It should be noted, however, that §402(o)(2)(B) of the Act does not allow permits to be adjusted to require less stringent effluent limitations based on any revised WLAs unless the cumulative effect of the revised WLAs results in a decrease of the amount of pollutants being discharged. The Act further states that these revised WLAs cannot be due to a discharger reducing or eliminating its discharge due to compliance with the Act (e.g., point source discharger finally meeting permit limits), or due to some other nonwater quality-related reason (e.g., discharger terminates its operation and discontinues discharging). 33 U.S.C. §1342(o)(2), ELR STAT. FWPCA §402(o)(2); *see also* John P.C. Fogarty, *A Short History of Federal Water Pollution Control Law*, *in* CLEAN WATER DESKBOOK 38 (Envtl. L. Inst. 1991).

47. Arguably, if an industry has installed the required treatment technologies under BAT or if a POTW has installed secondary treatment and limits cannot be attained, this exception would apply.

48. *See* 33 U.S.C. §1342(o)(3), ELR STAT. FWPCA §402(o)(3).

49. *See* Crown Simpson Pulp Co. v. Costle, 642 F.2d 323, 11 ELR 20450 (9th Cir. 1981). In this case, the court stated:

> [I]f we were to permit companies to seek variances from these guidelines on the basis of water quality at particular sites, we would be returning water pollution control to its ineffective pre-1972 status in defiance of Congress's desire "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

Id. at 328, 11 ELR at 20453; *see also* TECHNICAL SUPPORT DOCUMENT, *supra* note 23, at 114; EPA Region IX Memorandum, *supra* note 23.

50. The more likely situation is that, as science progresses and detection limits decrease, water quality standards will continue to become more stringent, thus requiring permits, upon renewal, to contain more stringent effluent limitations to ensure attainment and maintenance of these more stringent standards.

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The provisions of §402(o)(3) become even more onerous when it has become clear that some of the current water quality standards for toxics may be unattainable. For example, most states adopt EPA-recommended water quality criteria developed under §304(a) verbatim as the state's water quality standards for toxic pollutants.[51] Certain of these EPA criteria, e.g., mercury, lead, copper, are very stringent and may cause widespread attainability problems. If the water quality standards are per se unattainable, then relaxation of permit limits for those substances may be unallowable, irrespective of whether the discharger qualifies for one of the statutory exceptions.

Unless a discharger is able to demonstrate its ability to backslide, the Act seems to require dischargers to implement source control measures to lower the pollutant loading in its effluent in order to meet the currently imposed effluent limitations. Dischargers may even be required to install additional pollution control measures and practices, even possibly high-cost pollution control technologies such as reverse osmosis, if source controls are ineffective in meeting effluent limitations.[52] Once the new technology is installed and effluent limitations are being met, a discharger is then locked into effluent limitations at least as stringent as those being achieved, even if the water quality standards are subsequently altered in a way that would potentially allow lower effluent limitations for a particular pollutant.[53]

Other Antibacksliding Issues

Effect of Compliance Schedules

One question that has arisen is whether the CWA's antibacksliding provisions prohibit the relaxation of WQBELs when a compliance schedule has not yet expired. Compliance schedules are often included in permits to allow dischargers time to phase in new pollution control technologies or to implement source control programs. Generally, compliance schedules include interim limits during the phase-in period, and final effluent limitations that go into effect at the expiration of the schedule.

EPA contends that prior to the expiration of the compliance schedule, effluent limitations may be relaxed without concern for antibacksliding. The Agency's most recent interpretation of the CWA is that the antibacksliding requirements of §402(o) do not apply to revisions to effluent limitations made before the scheduled date of compliance for those limitations.[54] The presumed reason for this interpretation would be that these effluent limitations have not become enforceable, and thus, can be changed prior to becoming enforceable limits.[55]

While EPA's current interpretation is beneficial to dischargers, others could contend that the Agency has exceeded its administrative authority by stating that final permit limits delayed by a compliance schedule are not affected by CWA §402(o)'s antibacksliding provisions, and that EPA cannot by regulation overrule a congressional mandate. Since EPA's interpretation arguably conflicts with the terms of the CWA as described above, a judicial challenge could render EPA's interpretation of the antibacksliding rules unenforceable. Therefore, dischargers should be aware that EPA's contention, which allows relaxation of final or interim effluent limitations prior to the expiration of a compliance schedule without concern for antibacksliding, is not bulletproof.[56] It should also be remembered that, in situations in which the standards have not been met, backsliding prior to the expiration of a compliance date, even if legally possible, would not provide much relief.

Another question is whether schedules of compliance, which are included in the definition of "effluent limitation,"[57] are themselves subject to the backsliding prohibi-

51. Such verbatim adoption of standards set in a laboratory with no consideration of economic or technological feasibility or local water quality conditions, while encouraged by EPA, may not realistically be attainable given the actual water quality characteristics of each state or each water body. States are required to biennially determine the cost and environmental impact of meeting EPA's §304(a) criteria, and should adjust these criteria accordingly to meet site-specific conditions. 33 U.S.C. §1315(b)(1)(A)-(E), ELR STAT. FWPCA §305(b)(1)(A)-(E); *see also* Melissa Thorme, *Clean Water Act Section 305(b): A Potential Vehicle for Incorporating Economics Into the "TMDL" and Water Quality Standards-Setting Processes*, 13 TUL. ENVTL. L.J. 71 (1999).

52. Columbus and Franklin County Metropolitan Park District v. Shank, Director of EPA, 65 Ohio St. 3d 86, 111, 600 N.E.2d 1042, 1065 (Ohio 1992) (incorporation of the best available demonstrated control technology (BADCT) may be required when a discharge would violate the water quality standards even with the utilization of generally applicable technological controls). Although the BADCT standard applies primarily to new industrial sources, an argument could be made that any available, demonstrated control technology that would allow dischargers to achieve their effluent limitations is required under the Act. However, these technologies may create other environmental impacts that should be explored prior to implementation. For example, reverse osmosis creates brines containing the pollutants that have been removed from the waste stream. The concentrated brines must be disposed of somewhere, and may create pollution problems in other media (e.g., air impacts from trucking the wastes, land impacts for landfilling the wastes), or water quality impacts in other waters (e.g., brine is disposed of in the ocean, instead of inland surface waters).

53. Although seemingly harsh in its application, Congress' prohibition on the relaxation of permit limits where a discharger has demonstrated its ability to meet existing limits could be construed as being consistent with the Act's stated goal of eventually achieving zero discharge of pollutants. Van Putten & Jackson, *supra* note 26, at 894. "EPA's antibacksliding approach obviously results in the discharge of fewer pollutants in conformity with the overriding goal of the CWA." Natural Resources Defense Council v. EPA, 859 F.2d 156, 201, 19 ELR 20016, 20039 (D.C. Cir. 1988) (citing American Frozen Food Inst. v. Train, 539 F.2d 107, 124, 6 ELR 20485 (D.C. Cir. 1976) ("The principal purpose of the Act is to achieve complete elimination of all discharges of pollutants into the nation's waters . . . .")).

54. *See* U.S. EPA, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Rule (also known as the California Toxics Rule (CTR)), 65 Fed. Reg. 31682, 31704 (May 18, 2000); *see also* Preamble to the Great Lakes Water Quality Initiative, 50 Fed. Reg. 20837, 20981 (Apr. 16, 1993) ("anti-backsliding requirements do not apply to changes made in an effluent limitation prior to its compliance date"); *but see* 1989 EPA Memo, *supra* note 21, at 3 ("The restrictions on backsliding *do* apply to limits with a delayed implementation date which have not been challenged.") (emphasis added).

55. This interpretation seems to be more consistent with EPA's guidance regarding the inapplicability of backsliding prohibitions to appealed limits that have not yet become legally valid. *See* 1989 EPA Memo, *supra* note 21, at 3.

56. However, until successfully challenged, EPA's current interpretation stands. For added protection, dischargers with compliance schedules of more than one permit term should encourage the permit writer to include the final effluent limitations in the nonenforceable findings section of the permit instead of within the enforceable order section of the permit. If not included in the enforceable section of the permit, these final effluent limitations may then be altered truly without concern for antibacksliding.

57. *See supra* note 4.

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tion. It could be argued that compliance schedules may not be made less stringent, i.e., extended, without complying with the antibacksliding rule. However, the better argument is that, since compliance schedules are merely a *part* of an effluent limitation and do not themselves constitute restrictions on pollutants discharged from point sources, changing a compliance schedule does not make the underlying restriction "less stringent," but merely delays compliance with that restriction.

Enforcement Issues

Dischargers may not be aware of, or may have chosen to ignore, the problems that can result from the antibacksliding provisions of the Act because regulators often assure them that no enforcement actions will be taken to enforce unattained effluent limitations as long as the dischargers make reasonable efforts to attain the limits. Some regulators have given assurances to dischargers that effluent limitations will subsequently be relaxed or that enforcement will not be pursued if such limits prove to be unattainable. As to the assurances not to pursue enforcement actions against any discharger not achieving compliance with the permit effluent limitations, the Act does not allow such inaction. There are no "de minimus" violation theories contained in the CWA.[58] EPA and the states are obligated to enforce these limitations and any related compliance schedules.[59]

If the state fails to enforce the applicable requirements, EPA may seek a judicial order preventing any additional sources from discharging into the POTW,[60] or imposing civil or criminal penalties on a discharger in violation of its NPDES permit.[61] Furthermore, private citizens have the right to require dischargers to comply with the effluent limitations contained in their discharge permits through the citizen suit provisions of the Act.[62]

Additionally, if a regulatory agency were to go back on its assurances not to enforce the limits against a discharger or if a citizen suit was filed, penalties could be imposed upon that discharger for violation of the applicable effluent limitations. Violators are subject to any number of civil or criminal penalties depending on state law.[63] Under federal law, permit noncompliance is grounds for an enforcement action, imposition of civil penalties, permit termination or revocation, or denial of a permit renewal application.[64]

Ultimately, the only way to avoid enforcement actions for a failure to meet permit limits is to implement source control actions, install additional available control technologies, or change the NPDES permit limits to limits that are actually attainable. Any attempt to relax a BPJ or WQBEL triggers the application of the CWA's antibacksliding rule. If the provisions of the antibacksliding rule cannot be met and stringent source control programs do not result in compliance with the permit limits, dischargers must install additional control technologies to avoid becoming the target of an enforcement action or citizen suit.

Conclusion

The antibacksliding and antidegradation rules bring into conflict two competing interests: the interest of Congress in achieving the CWA's goal of continued progress toward eliminating all pollutant discharges,[65] and the interest of dischargers in avoiding expensive, and possibly unnecessary, end-of-pipe water pollution control requirements. Congress seems to have statutorily forsaken the discharger's economic interest in favor of an overriding environmental interest in clean water through discharge reduction.[66] Congress made its choice clear through its imposition of technological controls and often more stringent effluent limitations based upon water quality, and its adoption of a rule against relaxation of these limitations.

If effluent limitations will not be achieved by a discharger, the regulatory agencies ultimately have no choice but to pursue enforcement. The only ways for dischargers to avoid enforcement is to either stop discharging altogether (which is not an option for POTWs), to reduce pollutants by adding additional pollution control devices or by implementing more stringent source controls (which may be hampered by technological limitations), or to modify permit effluent limitations to levels that are achievable, i.e., backslide. Permit modification clearly appears to be the most economical choice, but for the reasons provided above, may not necessarily be the easiest.

Unfortunately for dischargers with attainability problems, backsliding from existing permit effluent limits is no easy task. Besides the difficult task of maneuvering through the regulatory hoops, dischargers must face another difficult task of persuading the public that it should be allowed to "weaken" its permit limits.[67] A more expedient means of influencing the permit limits incorporated into a discharge permit is by participating in the water quality standards setting and TMDL/WLA adoption processes.[68] Early partici-

58. Oklahoma v. EPA, 908 F.2d 595, 632 n.53, 21 ELR 20206, 20225 n.53 (10th Cir. 1990).

59. 33 U.S.C. §1319(a), ELR Stat. FWPCA §309(a).

60. *Id.* §1342(h), ELR Stat. FWPCA §402(h). Where the EPA Administrator determines that the state "has not commenced appropriate enforcement action with respect to such permit, [she] may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated." *Id.*

61. *Id.* §1319(b)-(d), ELR Stat. FWPCA §309(b)-(d).

62. *Id.* §1365(a)(1), ELR Stat. FWPCA §505(a)(1) ("any citizen may commence a civil action on his own behalf against any person . . . who is alleged to be in violation of [an] effluent standard or limitation. . . . The district courts shall have jurisdiction . . . to enforce such an effluent standard or limitation. . . .")

63. *See, e.g.,* Cal. Water Code §13385 (West 1999).

64. 33 U.S.C. §1319, ELR Stat. FWPCA §309; 40 C.F.R. §122.41(a).

65. "The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that . . . (1) it is the *national goal that the discharge of pollutants into the navigable waters be eliminated* . . . ." 33 U.S.C. §1251(a), ELR Stat. FWPCA §101(a) (emphasis added).

66. However, Congress has also recognized that "technology for the sake of technology where no water quality gains will result is an unconscionable waste of the Nation's resources." *See* Additional Views of Mr. James A. McClure, S. Rep. No. 95-370 (1977), *reprinted in* 1977 U.S.C.C.A.N. 4326.

67. The public becomes involved because permit modifications must be publicly noticed unless classified as "minor modifications." 40 C.F.R. §122.62; *id.* pt. 124.

68. For a discussion of the importance of participation in the regulatory development process and tips and techniques for developing and submitting effective comments to environmental agencies, see Elizabeth D. Mullin, The Art of Commenting (Envtl. L. Inst. Monograph 2000).

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pation in state standard and WLA setting may assist in the incorporation of more reasonable and attainable effluent limitations in discharge permits.

The bottom line on antibacksliding is awareness. Many dischargers are unaware of the dangers that lurk in the terms of the Act's antibacksliding provisions. Dischargers must be aware that this provision exists and understand that it will likely be difficult, if not impossible, to backslide from unattainable permit limits. This information will make it less likely that dischargers will accept well-intentioned promises made by regulatory agencies regarding future enforcement or future modification of permit limits. Additionally, with this knowledge, dischargers will be in a much better position when renewing or modifying the terms of their NPDES permit. Dischargers should be careful not to accept permit limits that cannot be met. Since the NPDES permit is equivalent to a contract, dischargers would be wise to carefully negotiate, and where necessary even litigate, the terms rather than suffer the consequences.

ATTACHMENT 10

October 13, 2004

Mr. Gerard J. Thibeault
Executive Officer
California Regional Water Quality
Control Board - Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Dear Mr. Thibeault:

Re: Comments on Draft Lake Elsinore and Canyon Lake Nutrient TMDL and Basin Plan Amendment

The Riverside County Flood Control and Water Conservation District (District) is the Principal Permittee on the Riverside County municipal separate storm sewer system (MS4) permit. The District is submitting the following comments on the Draft Lake Elsinore and Canyon Lake Nutrient TMDLs and Basin Plan Amendment (BPA) released September 3, 2004.

Adaptive Management

During the June workshop, several issues were raised by the District and other stakeholders regarding the feasibility of the TMDL. As you noted at the close of that workshop, the Regional Board is effectively being required to implement legal requirements without practical solutions. In recognition of this, however, Regional Board staff has made efforts to provide flexibility to the TMDL by incorporating adaptive management concepts. The adaptive management concepts are premised on allowing the science upon which the TMDL is based to continue to develop, then allowing for review and modification of the TMDL based on the improved science at specified future dates.

Adaptive management requires the ongoing participation and coordination of all stakeholders, including Regional Board staff. It also requires that the TMDL incorporate language identifying likely and potential deficiencies with the TMDL so that:

- Future Regional Board members reviewing revisions of the TMDL clearly understand that the existing TMDL was adopted with reservation;
- Stakeholders can justify expenditures of funds to support development of the science in those areas where the TMDL is understood to be deficient;
- Regional Board staff can continue to justify expenditure of staff time and resources to support the stakeholders efforts to revise and improve the TMDL, including justification of expenditures for future Basin Plan amendments; and

- The stakeholders are allowed to apply for grants to further develop the science and technology necessary to address TMDL deficiencies, including lack of technology to address the problem.

Without this clear and transparent understanding of the known and potential deficiencies, it is likely that the adaptive management concepts will fail as those most familiar with the TMDL problems move on and current informal agreements and understanding are lost or forgotten. Recent reviews of Basin Plans for other Regional Board regions, including the Los Angeles Region, clearly indicate this potential for failure. These reviews of the administrative record for the aforementioned Basin Plans identify Basin Plan Amendments where Regional Board staff adopted inappropriate or tentative Water Quality Objectives for various waterbodies. The Water Quality Objectives were adopted to meet deadlines with the intention of reviewing them at a future date when more resources and time were available. In many cases, those staff members involved with the Basin Plan moved on and the intentions were forgotten, leading to presumptions by subsequent Board Members and staff that these Water Quality Objectives were appropriate and properly vetted prior to adoption. To avoid the mistakes made in other regions, it is important that the TMDL Basin Plan Amendment and Technical Support document clearly and transparently identify deficiencies.

To date, Board staff has made outstanding efforts to work with stakeholders to develop the TMDL, to incorporate adaptive management concepts, and to address stakeholder concerns. It is for this reason, that despite the District's position that the TMDL is both economically and technologically unachievable, we are willing to look past these deficiencies and participate in a cooperative effort with other responsible parties. However, the District believes that the following concepts and data need to be incorporated into the TMDL to ensure that known and potential deficiencies are clearly understood by present and future stakeholders.

Scientific Limitations

The District requests that the following discussion be appended to the end of the Introduction of the Technical Report:

In summary, the science supporting the interim and final TMDL numeric targets for total phosphorous and final TMDL numeric target for total nitrogen (numeric targets) proposed in the BPA is preliminary. Where science was lacking, Staff selected numeric target values conservatively for nutrients. The ability of the TMDL to achieve these standards has been called into question by the Regional Board's own peer reviewer, Dr. Josselyn:

> "The proposed targets rely heavily on controls for internal nutrient cycling for Lake Elsinore which may not be achievable for practical and methodological reasons. The [Regional Board] staff needs to demonstrate that such technologies as suggested could actually work in this system."

Although Dr. Josselyn indicated an alternative approach would be to require additional nutrient reductions in the upper watershed, several stakeholders, including the Riverside County Flood Control and Water Conservation District, have provided evidence that currently available technologies are not capable of addressing the proposed interim and final numeric targets for nutrients.

There is some concern that Lake Elsinore cannot naturally support the beneficial uses assigned to it. As stated by Dr. Josselyn:

> "I concur with the statements that the Lake is naturally eutrophic given the observations of fish kills previously and the terminal nature of the Lake in this watershed…The targets for phosphorus as proposed reflect both the 'natural' eutrophic nature of Lake Elsinore, the reality of the high levels of phosphorus regeneration from the sediments, and the practicalities of trying to 'treat' sediments in-situ. The shallow nature of the lake leads to wind resuspension [a major source of phosphorus regeneration] that cannot be controlled."

It is clear that further analysis and review of the TMDL is necessary. If the additional science and analysis does not indicate that more assimilative capacity is available in the lakes, then a review of the Basin Plan Beneficial Uses may be in order to determine whether the existing designated beneficial uses for the lakes can be supported by natural conditions. The State Water Resources Control Board has issued draft guidance that indicates that standards should be revised based on attainability:

> "If the failure to attain standards is due to the fact that the applicable standards are not appropriate to natural conditions, an appropriate regulatory response is to correct the standards" (December 2003 State Board Draft Water Quality Control Policy for Addressing Impaired Waters)

It is Staff's expectation that the phased analysis proposed by this TMDL will lead to the identification of additional assimilative capacity in the lakes and upper watershed.

Legality

The legal basis for the TMDL requirements is not clear. Although the District does not contend the right of the Regional Board to adopt a TMDL to regulate discharges to impaired receiving waters, the regulatory authority to require "retroactive clean up" of the sediments or nutrients in the lakes does not appear to exist in either the Clean Water Act or Porter-Cologne. The District requests that the authority to regulate the removal of sediments from the lakes by the upstream stakeholders be cited in the TMDL basin plan amendment. Without this authority, the Regional Board must assign Tasks 8 and 9 to place responsibility solely on the entities who own the lakes.

Staff's contention that the proposed numeric targets are only interpretations of existing water quality standards and not Water Quality Objectives does not comport with California Water

Code. Upon adoption, the numeric targets would carry the weight of water quality objectives. The District supports EMWD's June 3 verbal comments regarding this issue.

The recent Superior Court ruling in City of Arcadia *et al* versus The SWRCB and Los Angeles Region RWQCB (December 24, 2003), states that any amendment of a Basin Plan, independent of whether it adopts water quality objectives is subject to Section 13241 of the California Water Code. Despite the appeal of this decision, the District holds that the Superior Court ruling was consistent with the intent of the law.

Are Permittees required to meet the same concentrations as specified in the Lakes?

Current nutrient BMP technologies, particularly those referenced in the September 17th Regional Board staff report are not capable of economically or technologically addressing the volume of water generated during a wet year. These BMPs are generally sized to treat flows from the average annual storm event and would short-circuit during wet year events. However, wet years are the only years that the upper watershed stakeholders contribute significant nutrient loads to Canyon Lake and Lake Elsinore. If the wet years cannot be treated, compliance with the interim phosphorus target for the TMDL is mathematically impossible for discharges to Canyon Lake. The following table clarifies this:

Allowable and Existing TP Discharges for Upper Watershed Stakeholders (Urban, CAFO, Agriculture, Open/Forest, Septic) to Canyon Lake

1. Allowable Annual TP Load for Upper Watershed	3,844 kg/yr
2. Cumulative 10 yr. Allowable TP Load	38,444 kg
3. Estimated Existing TP Load for Wet Year	43,031 kg/yr
4. Estimated Cumulative Existing TP Load for 1.6 Wet Years	68,849 kg
5. Mandatory Minimum TP Load Reduction for Wet Year (Row 4 – Row 2)	30,405 kg
6. Mandatory Minimum TP Load Reduction to Allow 1674 kg/yr [existing dry year TP discharge) TP discharge during 8 non-wet years (Row 4 – (1674*8)]	43,797 kg
7. Allowable Wet Year TP Load based on Row 6 (Row 4 – Row 6)/1.6 wet years	15,657 kg/yr
8. Estimated volume of flow during a typical wet year	139,345 ac ft
9. Mandatory Minimum Concentration for Influent to Canyon Lake From Upper Watershed	0.09 mg/l
10. Interim Target for TP Concentrations at Canyon Lake	0.10 mg/l

It is clear from the table that a single untreated wet year would exceed the entire 10-year allowable TP load for the upper watershed stakeholders. As stated before, this event is economically and technologically impossible to treat. Further, this statistic is particularly disconcerting considering that 1.6 wet years, or enough TP to generate nearly twice the allowable TP load to Canyon Lake are expected in a given 10-year compliance period. In order to allow a TP load of 1674 kg/yr into Canyon Lake during non-wet years, the wet year events MUST be reduced by approximately 63% to an allowable TP load of 15,657 kg into Canyon Lake. Based

on a the wet year storm volume of 139,345 ac ft, a concentration of 0.09 mg/l, or slightly less than the interim 0.1 mg/l concentration required in-lake must be achieved. Again, as stated in our June 3rd letter, this is neither technologically nor economically feasible for dry or moderate years, much less during the extreme storm volume of a wet year.

In addition, as stated in our June 3rd letter and as supported by Dr. Josselyn's peer review of the TMDL, the ability of the available in-lake treatment technologies to meet the 30% and 70% load reductions is suspect at best. As noted by Dr. Josselyn, "the reduction levels for phosphorus sought for Lake Elsinore rely significantly on proposals that have not been tested for their effectiveness in this particular situation". Although Dr. Josselyn notes that alum may be an alternative treatment mechanism, current chemical conditions in Lake Elsinore are not ideal for alum addition; flocculation and sedimentation processes require lower pH levels than currently exist in Lake Elsinore in order to achieve successful phosphate removal.

Cost Estimates

Based on the EPA's Urban Nutrient Reduction BMP Costs (1999) referenced in the Regional Board Staff Report, the following table estimates the costs associated with the construction of nutrient reduction BMPs in the San Jacinto River Watershed to address the wet year flow volume (139,345 ac ft or approximately 6 billion cubic feet). The cost estimates below presume each stakeholder in the watershed tributary to Canyon Lake would implement the specified BMP. Urban Stakeholder BMP costs, based on a rough estimation of land use (both urban areas and non-urban areas tributary to urban systems) and runoff rates, could represent between 50-60% of the total cost identified below:

BMP Construction Costs to Treat Wet Year Flow

BMP	**EPA, 2003 $s** (per ft^3 treated)	**Cost, 2003 $s** ($V_{wet}$ = 6 Billion ft^3)
Constructed Wetland	$0.60 - $1.13	$ 3.6 B – $ 6.78 B
Infiltration Trench	$4.00	$ 24 B
Infiltration Basin	$1.18	$ 7.08 B
Sand Filter	$2.72 - $5.96	$ 16.3 B – $ 35.7 B
Bioretention	$4.79	$ 28.7 B
Retention & Detention Basin	$0.45 - $0.90	$ 2.7 B – $ 5.4 B
Grass Swale	$0.45	$ 2.7 B
Filter Strip	$0.00 - $1.18	$0 – $ 7.1 B

In addition, costs are provided for BMPs to treat moderate year events:

BMP Construction Costs to Treat Moderate Year Flow

BMP	**EPA, 2003 $s** (per ft^3 treated)	**Cost, 2003 $s** ($\forall_{mod}$ = 253 M ft^3)
Constructed Wetland	$0.60 - $1.13	$ 152 M – $ 286 M
Infiltration Trench	$4.00	$ 1,000 M
Infiltration Basin	$1.18	$ 299 M
Sand Filter	$2.72 - $5.96	$ 688 M – $ 1,500 M
Bioretention	$4.79	$ 1,200 M
Retention & Detention Basin	$0.45 - $0.90	$ 114 M – $ 228 M
Grass Swale	$0.45	$ 114 M
Filter Strip	$0.00 - $1.18	$0 – $ 299 M

The above table does not include land acquisition, design, geotechnical testing, legal fees, and other unexpected or additional costs such as maintenance and operation of each BMP. It should be noted that in the arid climate of the San Jacinto River Watershed, BMPs such as constructed wetlands, grass swales and filter strips would require a reliable year-round supply of water, aside from storm and urban runoff, in order to operate. It is clear from the above referenced tables that it is neither economically nor technologically feasible to treat either the wet and/or moderate year flows. In addition, none of the BMPs referenced above are guaranteed to meet the 0.09 mg/l phosphorus concentration required of wet year discharges to comply with TMDL interim targets. The District would also note that the costs for constructed wetlands identified above are commensurate with our June 3rd cost estimates for wetlands.

Newport Bay TMDL

Several references have been made at the stakeholder and Regional Board workshops regarding the success of the Newport Bay Nutrients TMDL. Although Orange County (OC) has had great success with achieving nutrient TMDL targets in Newport Bay, the OC-Permittees have noted that nitrogen concentrations in their upper watershed can exceed 10 mg/l TN and that they have been able to reduce nitrogen concentrations to 2 mg/l. The OC-Permittees estimate expenditures of approximately $5 million per year in capital and operational costs in order to achieve the nutrient targets. Stormwater discharges in the San Jacinto Watershed average 2-5 mg/l TN and stakeholders in this watershed will be required to reduce nitrogen concentrations to 0.75 mg/l. The TMDL programs are not numerically comparable – the proposed runoff concentrations to be achieved in the San Jacinto Watershed are significantly lower and economically unachievable under the best available BMP technologies. Further, treatment efficiency for available nutrient treatment BMPs diminishes as the effluent concentration is reduced and as the influent concentration approaches the required effluent concentration. The costs neither balance nor justify the anticipated benefits.

Additional Proposed Recommendations

The District believes that the following recommendations would reasonably address the current deficiencies in the TMDLs:

1. Set narrative targets for nutrients since the TMDL is predicated on numeric targets that are intended to be more flexible than Water Quality Objectives. Another alternative is to consider the adoption of narrative targets for TP and TN. The narrative nutrient targets could require that discharges from the upper watershed not lead to exceedances of numeric dissolved oxygen concentration targets established for the Lakes; this would provide the stakeholders with additional flexibility to address the algal problems in the Lakes and would ensure that they are not penalized for non-compliance with an arbitrary numeric target;

2. The Regional Board should facilitate the stakeholder organizational effort by clearly identifying all responsible parties, including agricultural entities in either the Technical Report or the Basin Plan.

3. The Regional Board should also clearly identify in the Basin Plan the regulatory tools, such as NOV's, written requests or other actions that can be utilized to assist the stakeholders in gaining the support of the various responsible parties. The list should also identify how these tools may be used to ensure cooperation in and compliance with this proposed TMDL. For instance, how will regulatory tools be applied to assure all responsible parties financially support the joint monitoring requirements and the formulation and implementation of the Lake Sediment Nutrient Treatment requirements?

4. The Regional Board provide a launching point for TMDL implementation by recommending a fair and rational basis for allocating financial responsibility among all parties.

5. The compliance schedule for joint tasks should be extended by at least one year to accommodate the formation of a stakeholder organization, allow time for stakeholders to secure funding, and provide time for necessary consultants to be selected and contracted with.

6. If further analysis indicates that the lakes are naturally eutrophic, and thus the applicable standards are not appropriate to the natural conditions, the Regional Board should support a Use Attainability Analysis, or other appropriate mechanism, per the Water Quality Control Policy for Addressing Impaired Waters, to revise designated Beneficial Uses for the lakes.

Summary

It is critical that the adaptive management process succeeds, especially upon careful consideration of the cumulative cost of the current and future TMDLs affecting stakeholders in the San Jacinto Watershed. Failure of the adaptive management program for this TMDL may require watershed stakeholders to unnecessarily expend billions of dollars toward a solution-less problem. Funds unnecessarily spent on this TMDL will also subtract from the stakeholders' abilities to respond to future TMDLs that could provide measurable benefits to receiving waters. The District believes that the aforementioned recommended changes are necessary to ensure that this adaptive management process succeeds.

If you have any questions, please contact Stephen Stump at 951.955.8411 of our Regulatory Division.

Very truly yours,

WARREN D. WILLIAMS
General Manager-Chief Engineer

JEU:ABC:cw
PC/90371

ATTACHMENT 11

ITEM 4

TEST CLAIM
PROPOSED STATEMENT OF DECISION

Los Angeles Regional Quality Control Board Order No. 01-182
Permit CAS004001
Parts 4C2a., 4C2b, 4E & 4Fc3

Municipal Storm Water and Urban Runoff Discharges
03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21

County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Co-claimants

On Remand from the Los Angeles County Superior Court
(Consolidated case nos. BS089769 and BS089785)
County of Los Angeles et al. v. Commission on State Mandates (2007) 150 Cal.App.4th 898

EXECUTIVE SUMMARY

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects any decision made by the Commission at the July 31, 2009 hearing on the above named test claim.[1]

Recommendation

Staff recommends that the Commission adopt the proposed Statement of Decision that accurately reflects the staff recommendation on the test claim. Minor changes, including those to reflect the hearing testimony and the vote count will be included when issuing the final Statement of Decision.

However, if the Commission's vote on Item 3 modifies the staff analysis, staff recommends that the motion on adopting the proposed Statement of Decision reflect those changes, which would be made before issuing the final Statement of Decision. In the alternative, if the changes are significant, it is recommended that adoption of a proposed Statement of Decision be continued to the September 2009 Commission hearing.

[1] California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Los Angeles Regional Quality Control Board Order No. 01-182 Permit CAS004001 Parts 4C2a., 4C2b, 4E & 4Fc3 Filed September 2, 2003, (03-TC-04) September 26, 2003 (03-TC-19) by the County of Los Angeles, Claimant Filed September 30, 2003 (03-TC-20 & 03-TC-21) by the cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Claimants	Case Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 *Municipal Stormwater and Urban Runoff Discharges* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Proposed for adoption July 31, 2009*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 31, 2009. [Witness list will be included in the final Statement of Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the staff analysis to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Summary of Findings

The consolidated test claim, filed by the County of Los Angeles and several cities, allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of various facilities to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board.

The Commission finds that the following activity in part 4F5c3 of the permit is a reimbursable state mandate on local agencies subject to the permit that are not subject to a trash total maximum daily load:[2] "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission also finds that the remainder of the permit (parts 4C2a, 4C2b & 4E) does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution because the claimants have fee authority (under Cal. Const. article XI, § 7) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

BACKGROUND

The claimants allege various activities related to placement and maintenance of trash receptacles at transit stops and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board (LA Regional Board), a state agency.

History of the test claims

The test claims were filed in September 2003,[3] by the County of Los Angeles and several cities within it (the permit covers the Los Angeles County Flood Control District and 84 cities in Los Angeles County, all except Long Beach). The Commission originally refused jurisdiction over the permits based on Government Code section 17516's definition of "executive order" that excludes permits issued by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Boards (regional boards). After litigation, the Second District Court of Appeal held that the exclusion of permits and orders of the State and Regional Water Boards from the definition of "executive order" is unconstitutional. The court issued a writ commanding the Commission to set aside the decision "affirming your Executive Director's

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[2] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

[3] Originally, test claims 03-TC-04 (*Transit Trash Receptacles*) and 03-TC-19 (*Inspection of Industrial/Commercial Facilities)* were filed by the County of Los Angeles in September 2003. Test claim 03-TC-21 (*Stormwater Pollution Requirements*) was filed by the Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina on September 30, 2003. Test claim 03-TC-20 (*Waste Discharge Requirements*) was filed by Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palos Verdes, San Marino, and Westlake Village on September 30, 2003.

rejection of Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20 and 03-TC-21" and to fully consider those claims.[4]

The County of Los Angeles and the cities re-filed their claims in October and November 2007. The claims were consolidated by the Executive Director in December 2008. Thus, the reimbursement period is as though the claims were filed in September 2003, i.e., beginning July 1, 2002.[5]

Before discussing the specifics of the permit, an overview of municipal stormwater pollution puts the permit in context.

Municipal stormwater

One of the main objectives of the permit is "to assure that stormwater discharges from the MS4 [Municipal Separate Storm Sewer Systems][6] shall neither cause nor contribute to the exceedance of water quality standards and objectives nor create conditions of nuisance in the receiving waters, and that the discharge of non-stormwater to the MS4 has been effectively prohibited." (Permit, p. 13.)

Stormwater runoff flows untreated from urban streets directly into streams, lakes and the ocean. To illustrate the effect of stormwater[7] on water pollution, the Ninth Circuit Court of Appeal has stated the following:

> Storm water runoff is one of the most significant sources of water pollution in the nation, at times "comparable to, if not greater than, contamination from industrial and sewage sources." [Citation omitted.] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, and estuaries across the United States. [Citation omitted.] In 1985, three-quarters of the States cited urban storm water runoff as a major cause of waterbody impairment, and forty percent reported construction site

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[4] *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898.

[5] Government Code section 17557, subdivision (e).

[6] Municipal separate storm sewer means 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 a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. (40 C.F.R. § 122.26 (b)(8).)

[7] Storm water means "storm water runoff, snow melt runoff, and surface runoff and drainage." (40 C.F.R. § 122.26 (b)(13).)

> runoff as a major cause of impairment. Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters. Among the sources of storm water contamination are urban development, industrial facilities, construction sites, and illicit discharges and connections to storm sewer systems.[8]

Because of the stormwater pollution problems described by the Ninth Circuit above, California and the federal government regulate stormwater runoff as described below.

California law

The California Supreme Court summarized the state statutory scheme and regulatory agencies applicable to this test claim as follows:

> In California, the controlling law is the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which was enacted in 1969. (Wat. Code, § 13000 et seq., added by Stats.1969, ch. 482, § 18, p. 1051.) Its goal is "to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) The task of accomplishing this belongs to the State Water Resources Control Board (State Board) and the nine Regional Water Quality Control Boards; together the State Board and the regional boards comprise "the principal state agencies with primary responsibility for the coordination and control of water quality." (§ 13001.) As relevant here, one of those regional boards oversees the Los Angeles region (the Los Angeles Regional Board).
>
> Whereas the State Board establishes statewide policy for water quality control (§ 13140), the regional boards "formulate and adopt water quality control plans for all areas within [a] region" (§ 13240).[9]

Much of what the regional board does, especially as pertaining to permits like the one in this claim, is based in federal law as described below.

Federal law

The Federal Clean Water Act (CWA) was amended in 1972 to implement a permitting system for all discharges of pollutants[10] from point sources[11] to waters of the United States, since

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[8] *Environmental Defense Center, Inc. v. U.S. E.P.A.* (2003) 344 F.3d 832, 840-841.

[9] *City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619.

[10] According to the federal regulations, "Discharge of a pollutant" means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other

discharges of pollutants are illegal except under a permit.[12] The permits, issued under the national pollutant discharge elimination system, are called NPDES permits. Under the CWA, each state is free to enforce its own water quality laws so long as its effluent limitations[13] are not "less stringent" than those set out in the CWA (33 USCA 1370). The California Supreme Court described NPDES permits as follows:

> Part of the federal Clean Water Act is the National Pollutant Discharge Elimination System (NPDES), "[t]he primary means" for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma, supra,* 503 U.S. at p. 101, 112 S.Ct. 1046.) The NPDES sets out the conditions under which the federal EPA or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)[14]

In the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13370 et seq.), the Legislature found that the state should implement the federal law in order to avoid direct regulation by the federal government. The Legislature requires the permit program to be consistent with federal law, and charges the State and Regional Water Boards with implementing the federal program (Wat. Code, §§ 13372 & 13370). The State Water Resources Control Board (State Board) incorporates the regulations from the U.S. EPA for implementing the federal permit program, so both the Clean Water Act and U.S. EPA regulations apply to California's permit program (Cal.Code Regs., tit. 23, § 2235.2).

When a regional board adopts an NPDES permit, it must adopt as stringent a permit as U.S. EPA would have (federal Clean Water Act, § 402 (b)). As the California Supreme Court stated:

> The federal Clean Water Act reserves to the states significant aspects of water quality policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority

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conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 C.F.R. § 122.2.)

[11] A point source is "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 operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

[12] 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

[13] *Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean. (40 C.F.R. § 122.2.)

[14] *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th 613, 621. Actually, State and regional board permits allowing discharges into state waters are called "waste discharge requirements" (Wat. Code, § 13263).

> to "enforce any effluent limitation" that is not " *less stringent* " than the federal standard (*id.* § 1370, italics added). It does not prescribe or restrict the factors that a state may consider when exercising this reserved authority, and thus it does not prohibit a state-when imposing effluent limitations that are *more stringent* than required by federal law-from taking into account the economic effects of doing so.[15]

Actions that dischargers must implement as prescribed in permits are commonly called "best management practices" or BMPs.[16]

Stormwater was not regulated by U.S. EPA in 1973 because of the difficulty of doing so. This exemption from regulation was overturned in *Natural Resources Defense Council v. Costle* (1977) 568 F.2d 1369, which ordered U.S. EPA to require NPDES permits for stormwater runoff. By 1987, U.S. EPA still had not adopted regulations to implement a permitting system for stormwater runoff. The Ninth Circuit Court of Appeals explained the next step as follows:

> In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act § 402(p), 33 U.S.C. § 1342(p), "Municipal and Industrial Stormwater Discharges." Sections 402(p)(2) and 402(p)(3) mandate NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a two-phase overall program of stormwater regulation.[17]

NPDES permits are required for "A discharge from a municipal separate storm sewer system serving a population of 250,000 or more."[18] The federal Clean Water Act specifies the following criteria for municipal storm sewer system permits:

> (i) may be issued on a system- or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the

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[15] *City of Burbank v. State Water Resources Control Bd., supra,* 35 Cal.4th 613, 627-628.

[16] Best management practices, or BMPs, means "schedules of activities, 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." (40 CFR § 122.2.)

[17] *Environmental Defense Center, Inc. v. U.S. E.P.A., supra,* 344 F.3d 832, 841-842.

[18] 33 USCA 1342 (p)(2)(C).

> Administrator or the State determines appropriate for the control of such pollutants.[19]

In 1990, U.S. EPA adopted regulations to implement Clean Water Act section 402(p), defining which entities need to apply for permits and the information to include in the permit application. The permit application must propose management programs that the permitting authority will consider in adopting the permit. The management programs must include the following:

> [A] comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate.[20]

General state-wide permits

In addition to the regional stormwater permit at issue in this claim, the State Board has issued two general statewide permits,[21] as described in the permit as follows:

> To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. … Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations. (Permit, p. 11.)

The State Board has statutory fee authority to conduct inspections to enforce the general statewide permits.[22] The statewide permits are discussed in further detail in the analysis.

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[19] 33 USCA 1342 (p)(3)(B).

[20] 40 Code of Federal Regulations section 122.26 (d)(2)(iv).

[21] A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA within a geographical area." (40 CFR § 122.2.)

[22] Water Code section 13260, subdivision (d)(2)(B)(i) - (iii).

The Los Angeles Regional Board permit (Order No. 01-182, Permit CAS004001)

To obtain the permit, the County of Los Angeles, on behalf of all permittees, submitted on January 31, 2001 a Report of Waste Discharge , which constitutes a permit application, and a Stormwater Quality Management Program, which constituted the permittees' proposal for best management practices that would be required in the permit.[23]

The permit states that its objective is: "to protect the beneficial uses of receiving waters in Los Angeles County."[24] The permit was upheld by the Second District Court of Appeal in 2006, which described it as follows:

> The 72-page permit is divided into 6 parts. There is an overview and findings followed by a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees.[25]

After finding that "the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems)" and that the discharges were the subject of regional board permits in 1990 and 1996, the regional board found that the storm drain systems in the county discharged a host of specified pollutants into local waters. The permit summed up by stating: "Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region."[26]

The permit also specifies prohibited and allowable discharges, receiving water limitations, the implementation of the Storm Water Quality Management Program "requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible."[27] As the court described the permit:

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[23] State Water Resources Control Board, comments submitted April 18, 2008, page 8 & attachment 36.

[24] Permit page 13. The permit also says: "This permit is intended to develop, achieve, and implement a timely comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP) from the permitted areas in the County of Los Angeles to the waters of the US subject to the Permittees' jurisdiction."

[25] *County of Los Angeles v. California State Water Resources Control Board* (2006) 143 Cal.App.4th 985, 990.

[26] *County of Los Angeles v. California State Water Resources Control Board , supra,*143 Cal.App.4th 985, 990

[27] *County of Los Angeles v. California State Water Resources Control Board,, supra,* 143 Cal.App.4th 985, 994.

> In the prohibited discharges portion of the permit, the county and the cities were required to "effectively prohibit non-stormwater discharges" into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-stormwater emission; natural springs and rising ground water; flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the regional board; "uncontaminated ground water infiltrations" … and waters from emergency fire-fighting flows.[28]

There is also a list of permissible discharges that are incidental to urban activity, as specified (e.g., landscape irrigation runoff, etc.). In the part on receiving water limitations, the permit prohibits discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans. Storm or non-stormwater discharges from storm sewer systems which constitute a nuisance are also prohibited.[29]

To comply with the receiving water limitations, the permittees must implement control measures in accordance with the permit.[30]

The permittees are also to implement the Storm Water Quality Management Program (SQMP) that meets the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduces the pollutants in stormwaters to the maximum extent possible with the use of best management practices. And the permittees must revise the SQMP to comply with specified total maximum daily load (TMDL) allocations.[31] If a permittee modified the countywide SQMP, it must

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[28] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985, 991-992.

[29] "'Nuisance' means anything that 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." *Id.* at 992.

[30] If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee must immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that describes the best management practices currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes these changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board. *Id.* at 993.

[31] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <http://www.epa.gov/OWOW/tmdl> as of October 3, 2008.

implement a local management program. Each permittee is required by November 1, 2002, to adopt a stormwater and urban runoff ordinance. By December 2, 2002, each permittee must certify that it had the legal authority to comply with the permit through adoption of ordinances or municipal code modifications.[32]

The permit gives the County of Los Angeles additional responsibilities as principal permittee, such as coordination of the SQMP and convening watershed management committees. In addition, the permit contains a development construction program under which permittees are to implement programs to control runoff from construction sites, with additional requirements imposed on sites one acre or larger, and more on those five acres or larger. Permittees are to eliminate all illicit connections and discharges to the storm drain system, and must document, track and report all cases.

In this claim, however, claimants only allege activities in parts 4C2a, 4C2b, 4E and 4F5c3 of the permit. These parts concern placement and maintenance of trash receptacles at transit stops, and inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I industrial facilities (as defined) and construction sites, as quoted below.

Co-Claimants' Position

Co-claimants assert that parts 4C2a, 4C2b, 4E and 4F5c3 of the LA Regional Board's permit constitute a reimbursable state-mandate within the meaning of article XIII B, section 6, and Government Code section 17514.

Transit Trash Receptacles: Los Angeles County ("County") filed test claims 03-TC-04 and 03-TC-19. In 03-TC-04, *Transit Trash Receptacles*, filed by the County, and 03-TC-20, *Waste Discharge Requirements*, filed by the cities, the claimants allege the following activities as stated in the permit part 4F5c3 (Part 4, Special Provisions, F. Public Agency Activities Program, 5. Storm Drain Operation and Management):

> c. Permittees not subject to a trash TMDL[33] shall: [¶]…[¶]
>
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Claimant County asserts that this permit condition requires the following:

1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed Management areas.
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles.
3. Designing receptacle pad improvement, if needed.

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[32] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

[33] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards. See <http://www.epa.gov/OWOW/tmdl> as of October 3, 2008.

4. Constructing and installing trash receptacle units.
5. Collecting trash and maintaining receptacles.

Inspection of Industrial and Commercial Facilities: In claim 03-TC-19, *Inspection of Industrial/ Commercial Facilities*, filed by the County, and 03-TC-20, *Waste Discharge Requirements*, filed by the cities, claimants allege the following activities as stated in the permit parts 4C2a and 4C2b (Part 4, Special Provisions, C. Industrial/Commercial Facilities Control Program):

> 2. Inspect Critical Sources – Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:
>
> a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of Inspections-: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with State law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP [Storm Water Quality Management Program]. At each restaurant, inspectors shall verify that the restaurant operator:
>
> - has received educational materials on stormwater pollution prevention practices;
> - does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
> - keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
> - does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;
> - removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.
>
> (2) Automotive Service Facilities
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional

Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO [Retail Gasoline Outlet] and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;
- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices.

b) Phase I Facilities[34]

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.

Frequency of Inspection

Facilities in Tier 1 Categories:[35] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:[36] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity[37] to stormwater. For those facilities that do

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[34] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[35] Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills …; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III …;* Restaurants; *Wholesale trade (scrap, auto dismantling)…;* Automotive service facilities; *Fabricated metal products …; Motor freight …; Chemical/allied products …;* Automotive Dealers/Gas Stations …; *Primary Metals.*"

[36] Attachment B of the Permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary…; Air Transportation …; Rubbers/Miscellaneous Plastics …; Local/Suburban Transit …; Railroad Transportation …; Oil & Gas Extraction …; Lumber/Wood Products…; Machinery Manufacturing …; Transportation Equipment …; Stone, Clay, Glass, Concrete …; Leather/Leather Products…; Miscellaneous Manufacturing …; Food and kindred Products…; Mining of Nonmetallic Minerals …; Printing and Publishing …; Electric/Electronics …; Paper and Allied Products …; Furniture and Fixtures …;* Laundries …; *Instruments…; Textile Mills Products …; Apparel …*"

[37] "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. … <u>The following categories of facilities are considered to be engaging in "industrial activity"</u> for purposes of paragraph (b)(14): [¶]…[¶] (x) Construction activity including clearing, grading and excavation,

have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Inspection of Construction Sites: In claims 03-TC-20 and 03-TC-21, *Waste Discharge Requirements*, the cities allege the activities in permit parts 4C2a, 4C2b, and 4F5c3, as listed in the test claims cited above, in addition to the following activities as stated in part 4E of the permit (Part 4, Special Provisions, E. Development Construction Program):

- For construction sites one acre or greater, each Permittee shall comply with all conditions in section E1 above and shall: …

  (b) Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. The Local SWPPP [Storm Water Pollution Prevention Plan] shall be reviewed for compliance with local codes, ordinances, and permits. For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance will take place within 2 weeks. If compliance has not been attained, the Permittee will take additional actions to achieve compliance (as specified in municipal codes). If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

  Part 4E3 of the Order provides, in relevant part, as follows:

  3. For sites five acres and greater, each Permittee shall comply with all conditions in Sections E1 and E2 and shall:

  a) require, prior to issuing a grading permit for all projects requiring coverage under the state general permit,[38] proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction

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except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;" [40 CFR §122.26 (b)(14), Emphasis added.]

[38] A general permit means "an NPDES 'permit' issued under [40 CFR] §122.28 authorizing a category of discharges under the CWA [Clean Water Act] within a geographical area." (40 CFR § 122.2.) California has issued one general permit for construction activity and one for industrial activity.

Activity Storm Water Permit][39] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.

b) Require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

c) Use an effective system to track grading permits issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

Both county and city claimants allege more than $1000 in costs in each test claim to comply with the permit activities.

In comments submitted June 4, 2009 on the draft staff analysis, the County of Los Angeles asserts that local agencies do not have fee authority to collect trash from trash receptacles that must be placed at transit stops, and that voter approval under Proposition 218 would be required to do so. The County also argues that voter approval under Proposition 218 would be required for stormwater inspection costs, and cites as evidence the City of Santa Clarita's stormwater pollution prevention fee, as well as legislative proposals now in the legislature that would, if enacted, provide fee authority.

In comments submitted June 8, 2009 on the draft staff analysis, the cities disagree with the conclusion that they have fee authority to recoup the costs of the transit-stop trash receptacles, and disagree that they have fee authority to inspect facilities covered by the state-issued general stormwater permits, as discussed in more detail below.

State Agency Positions

Department of Finance: Finance, in comments filed March 27, 2008 on all four test claims, alleges that the permit does not impose a reimbursable mandate within the meaning of section 6 of article XIII B of the California Constitution because "The permit conditions imposed on the local agencies are required by federal laws" so they are not reimbursable pursuant to Government Code section 17556, subdivision (c). Finance asserts that "requirements of the permit are federally required to comply with the NPDES [National Pollutant Discharge Elimination System] program … [and] is enforceable under the federal CWA [Clean Water Act]."

Finance also argues that the claimants had discretion over the activities and conditions to include in the permit application. The permittees submitted a Storm Water Quality Management Program prevention report with their applications, in which they had the option to use "best management practices" to identify alternative practices to reduce water pollution. Since the local agencies prescribed the activities to be included in the permit, the requirements are a downstream result of the local agencies' decision to include the particular activities in the permit. Finance cites the *Kern* case,[40] which held that if participation in the underlying program is voluntary, the resulting new consequential requirements are not reimbursable mandates.

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[39] See page 11, paragraph 22 of the permit for a description of the statewide permits.

[40] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727

Finally, Finance states that some local agencies are using fees for funding the claimed permit activities, so should the Commission find that the permit constitutes a reimbursable mandate, the fees should be considered as offsetting revenues.

Finance submitted comments on the draft staff analysis on June 19, 2009, agreeing that the local agencies have fee authority sufficient to pay for the mandated activities. Finance disagrees, however, with the portion of the analysis that finds that the activities are not federal mandates.

State Water Resources Control Board: The State Board filed comments on the four test claims on April 18, 2008, noting that the federal CWA mandates that municipalities apply for and receive permits regulating discharges of pollutants from their municipal separate storm sewer system (MS4) to waters of the United States. "Pursuant to federal regulations, the Permit contains numerous requirements for the cities and County to take actions to reduce the flow of pollutants into the rivers and the Bay, known as Best Management practices (BMPs)."

The State Board asserts that the permit is mandated on the local governments by federal law, and applies to many dischargers of stormwater, both public and private, so it is not unique to local governments. The federal mandate requires that the permit be issued to the local governments, and the specific requirements challenged are consistent with the minimum requirements of federal law. According to the State Board, even if the permit were interpreted as going beyond federal law, any additional state requirements are de minimis. And the costs are not subject to reimbursement because the programs were proposed by the cities and County themselves, and because they have the ability to fund these requirements through charges and fees and are not required to raise taxes.

In comments filed with the State Board on April 10, 2008 (attached to the State Board comments on the test claim), the United States Environmental Protection Agency (U.S. EPA) asserts that the permit conditions reduce pollutants to the "maximum extent practicable." The transit trash receptacle and inspection programs, according to U.S. EPA, are founded in section 402 (p) of the Clean Water Act, and are well within the scope of the federal regulations (40 CFR § 122.26 (d)(2)(iv)(A)(3)).

In its comments on the draft staff analysis submitted June 5, 2009, the State Board agrees with the conclusion and staff recommendation to deny the test claim, but disagrees with parts of the analysis. The State Board asserts that federal law: (1) requires local agencies to obtain NPDES permits from California Water Boards, and (2) mandates the permit, which is less stringent than permits for private industry. The State Board also states that the permit does not exceed the minimum federal mandate, as found by a court of appeal. Finally, the State Board argues that the federal stormwater law is one of general application, and therefore does not impose a state mandate.

Interested Party Positions

Bay Area Stormwater Management Agencies Association: In comments on the draft staff analysis received June 3, 2009 (although the letter is dated April 29, 2009) the Bay Area Stormwater Management Agencies Association (BASMAA) states that this matter is of statewide importance with broad implications, and fundamentally a matter of public finance. BASMAA also urges keeping the voters' objectives paramount. BASMAA agrees that the permit requirements are a new program or higher level of service and that the requirements go beyond the federal Clean Water Act's mandates. As for the portion of the draft staff analysis that

discusses local agency fee authority, BASMAA calls it "myopic" saying it "falls short in its consideration of all potentially relevant issues and appellate court precedents that need to be presented to the Commission to serve the interest of the public." (Comments p. 3.) BASMAA contends that many permit requirements relate to local communities and their residents rather than specific business activities, and require public services that are essentially incident to real property ownership, and/or may only be financed via fees that remain subject to the Proposition 218 voting requirement or increased property taxes. BASMAA also states that many permit activities would fall on joint power authorities or special districts that have no fee authority, or for which exemptions from Proposition 218 would not be applicable. BASMAA requests that the analysis be revised to revisit the conclusions regarding "funded vs. unfunded" requirements, and to recognize and distinguish the many types of stormwater activities for which regulatory fees would not apply.

League of California Cities and California State Association of Counties (CSAC): In joint comments on the draft staff analysis received June 4, 2009, the League of Cities and CSAC agree with the draft staff analysis that the permit is a mandate, but question whether the *Connell* and *County of Fresno* decisions are still valid as applied to Government Code section 17556, subdivision (d), which prohibit the Commission from finding costs mandated by the state if the local agency has fee authority. This is because of the voters' approval of Proposition 218 in 1996. The League and CSAC urge the Commission not to find that fee authority exists for local agencies (1) to the extent there may be doubt about whether a local agency has it, and (2) to the extent that there is no person upon which the local agency can impose the fee.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[41] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[42] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[43] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

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[41] Article XIII B, section 6, subdivision (a), provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[42] *Kern High School Dist., supra*, 30 Cal.4th 727, 735.

[43] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

task.[44] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[45]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[46] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[47] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[48]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[49]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[50] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[51]

The permit provisions in the consolidated test claim are discussed separately to determine whether they are reimbursable state-mandates.

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[44] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[45] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[47] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[49] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[50] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[51] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) subject to article XIII B, section 6, of the California Constitution?

The issues discussed here are whether the permit provisions are an executive order within the meaning of Government Code section 17516, whether they are discretionary, and whether they constitute a federal mandate.

A. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) an executive order within the meaning of Government Code section 17516?

The Commission has jurisdiction over test claims involving statutes and executive orders as defined by Government Code section 17516, which defines an "executive order" for purposes of state mandates, as "any order, plan, requirement, rule, or regulation issued by any of the following:

(a) The Governor.
(b) Any officer or official serving at the pleasure of the Governor.
(c) Any agency, department, board, or commission of state government."[52]

The LA Regional Water Board is a state agency.[53] The permit it issued is both a plan for reducing water pollution, and contains requirements for local agencies toward that end. Therefore, the Commission finds that the permit is an executive order within the meaning of article XIII B, section 6 and Government Code section 17516.

B. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) the result of claimants' discretion?

The permit provisions require placing and maintaining trash receptacles at transit stops and inspecting specified facilities and construction sites.

The Department of Finance, in comments submitted March 27, 2008, asserts that the claimants had discretion over what activities and conditions to include in the permit application, so that any resulting costs are downstream of the claimant's decision to include those provisions in the permit. Thus, Finance argues that the costs are not mandated by the state.

Similarly, the State Board, in its April 18, 2008 comments, cites the Stormwater Quality Management Program (SQMP) submitted by the county that constituted the claimants' proposal for the BMPs required under the permit. The State Water Board refers to (on p. 28 of the SQMP) the county's proposal to "collect trash along open channels and encourage voluntary trash collection in natural stream channels." The State Water Board further states that the SQMP (pp. 22-23) contains the municipalities' proposal for (1) site visits to industrial and commercial facilities, including automotive service businesses and restaurants to verify evidence of BMP

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[52] Section 17516 also states: "'Executive order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code." The Second District Court of Appeal has held that this statutory language is unconstitutional. *County of Los Angeles v. Commission on State Mandates, supra,* 150 Cal.App.4th 898, 904.

[53] Water Code section 13200 et seq.

implementation, and (2) maintaining a database of automotive and food service facilities including whether they have NPDES stormwater permit coverage.

Claimant County of Los Angeles, in its June 23, 2008 rebuttal comments (pp.3-4), stated whether or not most jurisdictions place transit receptacles at transit stops is not relevant to the existence of a state mandate because Government Code section 17565 provides that if a local agency has been incurring costs for activities that are subsequently mandated by the state, the activities are still subject to reimbursement. The County also states that the permit application only proposed an industrial/commercial *educational* site visit program, not an inspection program. The claimants allege that the inspection program was previously the state's duty, but that the permit shifted it to the local agencies.

Claimant cities in their June 28, 2008 comments also construe the SQMP proposal as involving only educational site visits, which they characterize as very different from compliance inspections. And cities assert that "nowhere in the Report of Waste Discharge do the applicants propose compliance inspections of facilities that hold general industrial and general construction stormwater permits for compliance with those permits." According to the cities, the city and county objected orally and in writing to the inspection permit provision.

In determining whether the permit provisions at issue are a downstream activity resulting from the discretionary decision by the local agencies, the following rule stated by the Supreme Court in the *Kern High School Dist.* case applies:

> [A]ctivities undertaken at the option or discretion of a local government entity … do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.[54]

The Commission finds that the permit activities at issue were not undertaken at the option or discretion of the claimants. The claimants were required by state and federal law to submit the NPDES permit application in the form of a Report of Waste Discharge and SQMP. Submitting them was not discretionary. According to the record,[55] the county on behalf of all claimants, submitted on January 31, 2001 a Report of Waste Discharge (ROWD), which constitutes a permit application, and a SQMP, which constitutes the claimants' proposal for best management practices that would be required in the permit.

The duty to apply for an NPDES permit is not within the claimants' discretion. According to the federal regulation:

> a) *Duty to apply.* (1) Any person[56] who discharges or proposes to discharge pollutants … and who does not have an effective permit … must submit a

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[54] *Kern High School Dist., supra,* 30 Cal.4th 727, 742.

[55] State Water Resources Control Board, comments submitted April 18, 2008, page 8 & attachment 36.

[56] *Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof (40 CFR § 122.2).

> complete application to the Director in accordance with this section and part 124 of this chapter.[57]

Moreover, the ROWD (tantamount to an NPDES permit application) is required by California law, as follows: "Any person discharging pollutants or proposing to discharge pollutants to the navigable water of the United States within the jurisdiction of this state … shall file a report of the discharge in compliance with the procedures set forth in Section 13260 …"[58] Thus, submitting the ROWD is not discretionary.

Federal regulations also anticipate the filing of an application for a stormwater permit, which contains the information in the SQMP. The regulation states in part:

> (d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application.[59]

According to the permit, section 122.26, subdivision (d), of the federal regulations contains the essential components of the SQMP (p. 32), which is an enforceable element of the permit (p. 45). Section 122.26, subdivision (d)(2)(iv)(C), in the federal regulations is interpreted in the permit to "require that MS4 permittees implement a program to monitor and control pollutants in discharges to the municipal system from industrial and commercial facilities that contribute a substantial pollutant load to the MS4." (p. 35.) In short, the claimants were required by law to submit the ROWD and SQMP, with specified contents.

Because the claimants do not voluntarily participate in the NPDES program, the Commission finds that the *Kern High School Dist.* case does not apply to the permit, the contents of which were not the result of the claimants' discretion.

C. Are the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b)?

The next issue is whether the parts of the permit at issue are federally mandated, as asserted by the State Board and the Department of Finance (whose comments are detailed below). If so, the parts of the permit would not constitute a state mandate.

In *County of Los Angeles v. Commission on State Mandates,* the court stated as follows regarding this permit: "We are not convinced that the obligations imposed by a permit issued by a Regional Water Board necessarily constitute federal mandates under all circumstances."[60] But after

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[57] 40 Code of Federal Regulations, section 122.21 (a). The section applies to U.S. EPA-issued permits, but is incorporated into section 123.25 (the state program provision) by reference.

[58] Water Code section 13376.

[59] 40 Code of Federal Regulations, section 122.26 (d).

[60] *County of Los Angeles v. Commission on State Mandates, supra,* 150 Cal.App.4th 898, 914.

summarizing the arguments on both sides, the court declined to decide the issue, stating: "Resolution of the federal or state nature of these [permit] obligations therefore is premature and, thus, not properly before this court."[61] The court agreed with the Commission (calling it an "inescapable conclusion") that the federal versus state issues in the test claims must be addressed in the first instance by the Commission.[62]

The California Supreme Court has stated that "article XIII B, section 6, and the implementing statutes … by their terms, provide for reimbursement only of *state*- mandated costs, not *federally* mandated costs."[63]

When analyzing federal law in the context of a test claim under article XII B, section 6, the court in *Hayes v. Commission on State Mandates* held that "[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations" under article XIII B.[64] When federal law imposes a mandate on the state, however, and the state "freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government."[65]

Similarly, Government Code section 17556, subdivision (c), states that the Commission shall not find "costs mandated by the state" if "[t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation."

In *Long Beach Unified School Dist. v. State of California*,[66] the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.[67] The *Long Beach* court stated that unlike the federal law at issue, "the executive

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[61] *Id.* at page 918.

[62] *Id.* at page 917. The court cited *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal. 3d 830, 837, in support.

[63] *San Diego Unified School Dist. v. Commission on State Mandates, supra,* 33 Cal.4th 859, 879-880, emphasis in original.

[64] *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1593, citing *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 76; see also, Government Code sections 17513 and 17556, subdivision (c).

[65] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1594.

[66] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[67] *Id.* at page 173.

Order and guidelines require specific actions … [that were] required acts. These requirements constitute a higher level of service."[68]

In analyzing the permit under the federal Clean Water Act, we keep the following in mind. First, each state is free to enforce its own water quality laws so long as its effluent limitations are not "less stringent" than those set out in the Clean Water Act.[69] Second, the California Supreme Court has acknowledged that an NPDES permit may contain terms that are federally mandated and terms that exceed federal law.[70] The federal Clean Water Act also allows for more stringent measures, as follows:[71]

> Permits for discharges from municipal storm sewers [¶]…[¶] (iii) shall require controls to reduce the discharges of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the … State determines appropriate for the control of such pollutants. (33 U.S.C.A. 1342 (p)(3)(B)(iii).)

As discussed further below, the Commission finds that the permit activities are not federally mandated because federal law does not require the permittees to install and maintain trash receptacles at transit stops, or require inspections of restaurants, automotive service facilities, retail gasoline outlets or automotive dealerships. As to inspecting phase I facilities or construction sites, the federal regulatory scheme authorizes states to perform the inspections under a general statewide permit, making it possible to avoid imposing a mandate on the local agencies to do so.

In its June 2009 comments on the draft staff analysis, the State Board disagrees that specific mandates in the permit exceed the federal requirements, the State Board argues:

> This approach fails to recognize that NPDES storm water permits, whether issued by U.S. EPA or California's Water Boards, are designed to translate the general federal mandate into specific programs and enforceable requirements. Whether issued by U.S. EPA or the California's Water Boards, the federal NPDES permit will identify specific requirements for municipalities to reduce pollutants in their storm water to the maximum extent practicable. The federally required pollutant reduction is a federal mandate. … The fact that state agencies have responsibility for specifying the federal permit requirements for municipalities does not convert the federal mandate into a state mandate.[72]

The Commission disagrees. Based on the *Long Beach Unified School Dist.* case discussed above and applied in the analysis below, the specific requirements in the permit may constitute a state mandate even though they are imposed in order to comply with the federal Clean Water Act.

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[68] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173.

[69] 33 U.S.C. § 1370.

[70] *City of Burbank v. State Water Resources Control Board, supra,* 35 Cal.4th 613, 618, 628.

[71] 33 USCA section 1370.

[72] State Board comments submitted June 2009, page 6.

Finance, in its June 2009 comments on the draft staff analysis, distinguishes this permit from the issue in the *Long Beach Unified School Dist.* case. According to Finance, in *Long Beach,* the courts had suggested certain steps and approaches that might help alleviate racial discrimination, although the state's executive order and guidelines required specific actions. But in this claim, federal law requires NPDES permits to include specific requirements.

The Commission agrees that NPDES permits are required to include specific measures. But as discussed in more detail below, those measures are not the same as the specific requirements at issue in this permit (in Parts 4C2a, 4C2b, 4E, and 4F5c3).

The State Board's June 2009 comments also discuss *County of Los Angeles v. State Water Resources Control Board,*[73] which involved the same permit as in this test claim. The State Board asserts that this case holds, in an unpublished part, that "the permit did not exceed the federal minimum requirements for the MS4 program."[74] (Comments, p. 5.) The State Board asserts that the Commission is bound by this decision.

The Commission reads the *County of Los Angeles* case differently than the State Board. The plaintiffs (permittees and others) in that case challenged the permit on a variety of issues, including that the regional board did not have jurisdiction to issue it, and that it violated the California Environmental Quality Act. The court did not, however, discuss any of the permit conditions at issue in this test claim. In the portion cited by the State Board, the court was addressing the consideration of the permit's economic effects. One of the plaintiffs' challenges to the permit was that the regional board was required to consider the economic effects in issuing the permit. By not doing so, the plaintiff alleged the permit imposed conditions more stringent than required by the federal Clean Water Act. The court held that the plaintiff's contentions were waived for failure to set forth all the documents received by the regional board, and that the regional board had considered the costs and benefits of implementation of the permit. In other parts of the opinion, however, the court acknowledged the regional board's authority to impose permit restrictions beyond the "maximum extent feasible"[75]

The *County of Los Angeles* case is silent on the permit provisions at issue in this claim[76] (Parts 4C2a, 4C2b, 4E, and 4F5c3) except when it said: "we need no [sic] address the parties'

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[73] *County of Los Angeles v. State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

[74] The court's opinion, including the unpublished parts, are in attachment 26 of the State Board's comments submitted April 18, 2008.

[75] See page 18 of attachment 26 of the State Board's comments submitted April 18, 2008.

[76] In *County of Los Angeles,* the plaintiffs also challenged the following parts of the permit: (1) part 2.1 that deals with receiving water restrictions and that prohibits all water discharges that violate water quality standards or objectives regardless of whether the best management practices are reasonable; (2) part 3.C, which requires the permittees to revise their storm water quality management programs in order to implement the total maximum daily loads for impaired water bodies, and (3) parts 3.G and 4., which authorize the regional board to require strict requirements with numeric limits on pollutants which are incorporated into the total maximum daily load restrictions. The court held that these contentions were waived for failure to set forth all the

remaining contentions concerning trash receptacles."[77] Therefore, the case is not binding on the Commission in deciding the issues in this claim.

California in the NPDES program: By way of background, under the federal statutory scheme, a stormwater permit may be administered by the Administrator of U.S. EPA or by a state-designated agency, but states are not required to have an NPDES program. Subdivision (b) of section 1324 of the federal Clean Water Act, the section that describes the NPDES program (and which, in subdivision (p), describes the requirements for the municipal stormwater system permits) states in part:

> At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator [of U.S. EPA] a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. [Emphasis added.]

And the federal stormwater statute states that the permits:

> [S]hall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B)(iii). [Emphasis added].)

The federal statutory scheme indicates that California is neither required to have an NPDES program nor to issue stormwater permits. According to section 1342 (p) quoted above, the Administrator of U.S. EPA would do so if California had no program. The California Legislature, when adopting the NPDES program[78] to comply with the Federal Water Pollution Control Act of 1972 stated the following findings and declaration in Water Code section 13370:

(a) The Federal Water Pollution Control Act [citation omitted] as amended, provides for permit systems to regulate the discharge of pollutants … to the navigable waters of the United States and to regulate the use and disposal of sewage sludge.

(b) The Federal Water Pollution Control Act, as amended, provides that permits may be issued by states which are authorized to implement the provisions of that act.

(c) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government, of persons already subject to regulation under state law pursuant to this division, to enact this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or

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applicable evidence, and that the regional board has authority to impose restrictions beyond the maximum extent feasible.

[77] See page 22, attachment 26 of the State Board's comments submitted April 18, 2008.

[78] Water Code section 13374 states: "The term 'waste discharge requirements' as referred to in this division is the equivalent of the term 'permits' as used in the Federal water Pollution Control Act, as amended."

> supplementary thereto, and federal regulations and guidelines issued pursuant thereto, provided, that the state board shall request federal funding under the Federal Water Pollution Act for the purpose of carrying out its responsibilities under this program.

Based on this Water Code section 13370, in which California voluntarily adopts the permitting program, and on the federal statutes quoted above that authorize but do not expressly require states to have this program, the state has freely chosen[79] to effect the stormwater permit program.

Any further discussion in this analysis of federal "requirements" should be construed in the context of California's choice to participate in the federal regulatory NPDES program.

In its June 2009 comments on the draft staff analysis, the State Board argues as follows:

> [T]he … analysis treats the state's decision to *administer* the NPDES permit program in 1972 as the 'choice' referred to in *Hayes.* …The state's 'choice' to administer the program in lieu of the federal government does not alter the federal requirement on municipalities to reduce pollutants in these discharges to the maximum extent practicable.[80]

Finance, in its June 2009 comments, also disagrees with this part of the draft staff analysis, asserting that the duty to apply for a NPDES permit is required by federal law on public and private dischargers, which in this case are local agencies.

Even though California opted into the NPDES program, further analysis is needed to determine whether the federal regulations impose a mandate on the local agencies. To the extent that state requirements go beyond the federal requirements, there would be a state mandate.[81] Thus, the permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) are discussed below in context of the following federal law governing stormwater permits: Clean Water Act section 402(p) (33 USCA 1342 (p)(3)(B)) and Code of Federal Regulations, title 40, section 122.26.

<u>Placing and maintaining trash receptacles at transit stops (part 4F5c3)</u>: This part of the permit states:

> c. Permittees not subject to a trash TMDL[82] shall: [¶]…[¶]
> (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

The comments of the State Water Board and U.S. EPA assert that the permit conditions merely implement a federal mandate under the federal Clean Water Act and its regulations. The U.S. EPA submitted a letter to the State Water Board regarding the permit conditions in April 2008,

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[79] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[80] State Board comments submitted June 2009, page 4.

[81] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173. Government Code section 17556, subdivision (b).

[82] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

which the State Water Board attached to its comments. Regarding the trash receptacles, the letter states:

> [M]aintaining trash receptacles at all public transit stops is well within the scope of these [Federal] regulations. Among the minimum controls required to reduce pollutants from runoff from commercial and residential areas are practices for "operating and maintaining public streets, roads, and highways … [40 CFR] § 122.26(d)(2)(iv)(A)(3).[83]

U.S. EPA also cites EPA's national menu of BMPs for stormwater management programs, "which recommends a number of BMPs to reduce trash discharges." Among the recommendations is 'improved infrastructure' for trash management when necessary, which includes the placement of trash receptacles at appropriate locations based on expected need."[84]

The State Water Board, in comments filed April 18, 2008, states that part 4F of the permit (regarding trash receptacles) concerns "the municipalities' own activities, as opposed to its regulation of discharges into its system by others." The State Water Board cites the same section 122.26 regulation as U.S. EPA, and states that the requirements "reflect the federal requirement to reduce pollutants from the MS4 to the maximum extent practicable. It is federal law that animates the requirement and federal law that mandates specificity in describing the BMPs." The State Water Board alleges that two appellate courts[85] have determined that the permit provisions constitute the "maximum extent practicable" standard, which is the minimum requirement under federal law.

The Department of Finance also asserts that the permit requirements are a federal mandate.

The County of Los Angeles, in comments filed June 23, 2008, states that "Nothing in the federal Clean Water Act requires the County to install trash receptacles at transit stops. Nothing in the federal regulations or the Clean Water Act itself imposes this obligation." The county states that the U.S.EPA's citation to BMPs for stormwater management programs "may be permitted under federal law … and even encouraged as 'reasonable expectations.' But such requirements are not mandated on the County by federal law." The County admits the existence of "an abundance of federal guidance and encouragement to have the County install and maintain trash receptacles at all public transit stops. But these are merely federal suggestions, not mandates."

The city claimants, in comments filed June 25, 2008, also argue that the requirement for transit trash receptacles is not a federal mandate, stating that nothing in the Clean Water Act or the federal regulations requires cities to install trash receptacles at transit stops. City claimants also submit a survey of other municipal stormwater permits, finding that none of those issued by U.S. EPA required installation of trash receptacles at transit stops.

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[83] Letter from Alexis Strauss, Director, Water Division, U.S. EPA, to Tam M. Doduc, Chair, and Dorothy Rice, Executive Director, State Water Resources Control Board, April 10, 2008, page 3.

[84] *Id.* at page 3.

[85] The State Water Board cites: *City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region* (2006) 135 Cal.App.4th 1377; *County of Los Angeles v. California State Water Resources Control Board* (2006) 148 Cal.App.4th 985.

The federal law applicable to this issue is section 402 of the Clean Water Act, which states:

> Permits for discharges from municipal storm sewers--
>
> (i) may be issued on a system- or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator[86] or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B).)

The applicable federal regulations state as follows:

> (d) Application requirements for large and medium municipal separate storm sewer discharges. The operator[87] of a discharge[88] from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. … Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]…[¶]
>
> (2) Part 2 of the application shall consist of: [¶]…[¶]
>
> (iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design

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[86] Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative. (40 CFR § 122.2.)

[87] "*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the NPDES program." (40 CFR § 122.2.)

[88] "*Discharge* when used without qualification means the "discharge of a pollutant. *Discharge of a pollutant* means: (a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or (b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger." (40 CFR § 122.2.)

> and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:
>
> (A) A description of structural and source control measures[89] to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include: [¶]…[¶]
>
> (3) A description of practices for <u>operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems</u>, including pollutants discharged as a result of deicing activities. (40 CFR § 122.26(d)(2)(iv)(A)(3).) [Emphasis added.]

The Commission finds that the plain language of the federal statute (33 USCA § 1342 (p)(3)(B)) and regulation (40 CFR § 122.26 (d)(2)(iv)(A)(3)) does not require the permitees to install and maintain trash receptacles at transit stops.

Specifically, the state freely chose[90] to impose the transit trash receptacle requirement on the permittees because neither the federal statute nor the regulations require it. Nor do they require the permittees to implement "practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems"[91] although the regulation requires a description of practices for doing so. Because installing and maintaining trash receptacles at transit stops is not expressly required of cities or counties or municipal separate storm sewer dischargers in the federal statutes or regulations, these are activities that "mandate costs that exceed the mandate in the federal law or regulation."[92]

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[89] Minimum control measures are defined in 40 CFR § 122.34 to include: 1) Public education and outreach on storm water impacts; (2) Public involvement/participation; (3) Illicit discharge detection and elimination. (4) Construction site storm water runoff control; (5) Post-construction storm water management in new development and redevelopment.; (6) Pollution prevention/good housekeeping for municipal operations.

[90] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[91] 40 CFR § 122.26(d)(2)(iv)(A)(3).

[92] Government Code section 17556, subdivision (c).

In *Long Beach Unified School Dist. v. State of California*,[93] the court considered whether a state executive order involving school desegregation constituted a state mandate. The court held that the executive order required school districts to provide a higher level of service than required by federal constitutional or case law because the state requirements went beyond federal requirements.[94] The *Long Beach Unified School District* court stated:

> Where courts have suggested that certain steps and approaches may be helpful [in meeting constitutional and case law requirements] the executive Order and guidelines require *specific actions.* …[T]he point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service.[95] [Emphasis added.]

The reasoning of *Long Beach Unified School Dist.* is applicable to this claim. Although "operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems…"[96] is a federal requirement on municipalities, the permit requirement to place trash receptacles at all transit stops and maintain them is an activity, like in *Long Beach Unified School Dist.,* that is a *specified action* going beyond federal law.[97]

Neither of the cases cited by the State Water Board demonstrate that placing trash receptacles at transit stops is required by federal law. In *City of Rancho Cucamonga v. Regional Water Quality Control Board –Santa Ana Region*[98] the court upheld a stormwater permit similar to the one at issue in this claim. The City of Rancho Cucamonga challenged the permit on a variety of grounds, including that it exceeded the federal requirements for stormwater dischargers to "reduce the discharge of pollutants to the maximum extent practicable"[99] and that it was overly prescriptive. The court concluded that the permit did not exceed the maximum extent practicable standard and upheld the permit in all respects. There is no indication in that case, however, that the permit at issue required trash receptacles at transit stops. Similarly, in a suit regarding the same permit at issue in this case, the *Los Angeles County*[100] court dismissed various challenges to the permit, but made no mention of the permit's transit trash receptacle provision.

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[93] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[94] *Id.* at page 173.

[95] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 173.

[96] 40 Code of Federal Regulations, section 122.26 (d)(2)(iv)(A)(3).

[97] *Ibid*.

[98] *City of Rancho Cucamonga v. Regional Water Quality Control Board- Santa Ana Region, supra,* 135 Cal.App.4th 1377.

[99] 33 USCA section 1342 (p)(3(B)(iii).

[100] *County of Los Angeles v. California State Water Resources Control Board, supra,* 143 Cal.App.4th 985.

Therefore, the Commission finds that placing and maintaining trash receptacles at all transit stops within the jurisdiction of each permittee, as specified, is not a federal mandate within the meaning of article XIII B, sections 6 and 9, subdivision (b).

Part 4F5c3 of the permit states as follows:

> c. Permittees not subject to a trash TMDL shall: (3) Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

Based on the mandatory language (i.e., "shall") in part 4F5c3 of the permit, the Commission finds it is a state mandate for the claimants that are not subject to a trash TMDL to place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003, and to maintain all trash receptacles as necessary.

Inspecting commercial facilities (part 4C2a): Section 4C2a of the permit requires inspections of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships as follows:

> 2. Inspect Critical Sources – Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified in the following subsections:
>
> (a) Commercial Facilities
>
> (1) Restaurants
>
> Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> Level of Inspections: Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that stormwater BMPs are being effectively implemented in compliance with Statw law, County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each restaurant, inspectors shall verify that the restaurant operator:
>
> - has received educational materials on stormwater pollution prevention practices;
> - does not pour oil and grease or oil and grease residue onto a parking lot, street or adjacent catch basin;
> - keeps the trash bin area clean and trash bin lids closed, and does not fill trash bins with washout water or any other liquid;
> - does not allow illicit discharges, such as discharge of washwater from floormats, floors, porches, parking lots, alleys, sidewalks and street areas (in the immediate vicinity of the establishment), filters or garbage/trash containers;

- removes food waste, rubbish or other materials from parking lot areas in a sanitary manner that does not create a nuisance or discharge to the storm drain.

(2) Automotive Service Facilities

Frequency of Inspections: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspections: Each permittee shall inspect all automotive service facilities within its jurisdiction to confirm that stormwater BMPs are effectively implemented in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP. At each automotive service facility, inspectors shall verify that each operator:

- maintains the facility area so that it is clean and dry without evidence of excessive staining;
- implements housekeeping BMPs to prevent spills and leaks;
- properly discharges wastewaters to a sanitary sewer and/or contains wastewaters for transfer to a legal point of disposal;
- is aware of the prohibition on discharge of non-stormwater to the storm drain;
- properly manages raw and waste materials including proper disposal of hazardous waste;
- protects outdoor work and storage areas to prevent contact of pollutants with rainfall and runoff;
- labels, inspects, and routinely cleans storm drain inlets that are located on the facility's property; and
- trains employees to implement stormwater pollution prevention practices.

(3) Retail Gasoline Outlets and Automotive Dealerships

Frequency of Inspection: Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each RGO and automotive dealership within its jurisdiction, in compliance with the SQMP, Regional Board Resolution 98-08, and the Stormwater Quality Task Force Best Management Practice Guide for RGOs. At each RGO and automotive dealership, inspectors shall verify that each operator:

- routinely sweeps fuel-dispensing areas for removal of litter and debris, and keeps rags and absorbents ready for use in case of leaks and spills;
- is aware that washdown of facility area to the storm drain is prohibited;
- is aware of design flaws (such as grading that doesn't prevent run-on, or inadequate roof covers and berms), and that equivalent BMPs are implemented;

- inspects and cleans storm drain inlets and catch basins within each facility's boundaries no later than October 1st of each year;
- posts signs close to fuel dispensers, which warn vehicle owners/operators against "topping off" of vehicle fuel tanks and installation of automatic shutoff fuel dispensing nozzles;
- routinely checks outdoor waste receptacle and air/water supply areas, cleans leaks and drips, and ensures that only watertight waste receptacles are used and that lids are closed; and
- trains employees to properly manage hazardous materials and wastes as well as to implement other stormwater pollution prevention practices. [¶]…[¶]

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and
- is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The state asserts that these inspection requirements in permit part 4C2a are a federal mandate.

In comments filed April 18, 2008, the State Water Board quotes from the MS4 Program Evaluation Guide issued by U.S. EPA, asserting that it requires inspections of businesses. The State Water Board also states:

> The federal regulations also specifically require local stormwater agencies, as part of their responsibilities under NPDES permits, to conduct inspections. [citing 40 CFR § 122.26(d)(2)(iv)(C).] Throughout the federal law, there are numerous requirements for entities that discharge pollutants to waters of the United States to monitor and inspect their facilities and their effluent. [citing Clean Water Act §402(b)(2)(B); 40 CFR § 122.44(i)).] The claimants are the dischargers of pollutants into surface waters; as part of their permit allowing these dischargers they must conduct inspections.

Similarly, the April 10, 2008 letter from U.S. EPA to the State Water Board and attached to the Board's comments submitted April 18, 2008, states:

> A program for commercial and industrial facility inspection and enforcement that includes restaurants and automobile facilities, would appear to be both practicable and effective. Such an inspection program ensures that stormwater discharges from such facilities are reducing their contribution of pollutants and that there are no non-stormwater discharges or illicit connections. Thus these programs are founded in both 402 (p)(3)(B)(ii) and (iii) and are well within the scope of 40 CFR § 122.26(d)(2)(iv)(A) and (B).

The County of Los Angeles, in its June 23, 2008 rebuttal comments, asserts that federal law requires prohibiting non-stormwater discharges into the storm sewers, and reducing the discharge of pollutants in stormwater to the maximum extent practicable (33 USC 1342(p)) but not inspecting restaurants, automotive service facilities, retail gas outlets, or automotive dealerships.

Only municipal landfills, hazardous waste treatment, disposal and recovery facilities and related facilities are required to be inspected (40 CFR § 122.26(d)(2)(iv)(C)).

In comments received June 25, 2008, the city claimants argue that the LA Regional Board freely chose to impose the permit requirements on the permittees, and make the following arguments: (1) The inspection obligations were not contained in two prior permits issued to the cities and the County—thus, the requirements are not federal mandates; (2) No federal statute or regulation requires the cities or the County to inspect restaurants, automotive service facilities, retail gas outlets, automotive dealerships or facilities that hold general industrial permits; (3) Stormwater NPDES permits issued by the U.S. EPA do not contain the requirement to inspect restaurants, auto service facilities, retail gas outlets and automotive dealerships, or require the extensive inspection of facilities that hold general industrial stormwater permits as contained in the Order [i.e. permit]; (4) The Administrator of U.S. EPA, as well as the head of the water division for U.S. EPA Region IX, have specifically stated that a municipality has an obligation under a stormwater permit only to assure compliance with local ordinances; the state retains responsibility to inspect for compliance with state law, including state-issued permits.

The city claimants dispute the State Board's contention that the court in *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377 held that federal law required inspections like those at issue in the permit. The cities quote part of the *City of Rancho Cucamonga* case with the following emphasis:

> Rancho Cucamonga and the other permittees are responsible for inspecting construction and industrial sites and commercial facilities within their jurisdiction for compliance with and enforcement of local municipal ordinances and permits. *But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.* The Regional Board may conduct its own inspections but permittees must still enforce their own laws at these sites. (40 C.F.R. § 122.26, subd. (d)(2) (2005).)

In discussing the federal mandate issue, the applicable federal law is section 402 of the Clean Water Act, which states that municipal storm sewer system permits:

> (i) may be issued on a system- or jurisdiction-wide basis; (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and (iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. (33 USCA § 1342 (p)(3)(B).)

The applicable federal regulations (40 CFR § 122.26 (d)(2)(iv)(B)&(C)) state as follows:

> (d) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such

operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]…[¶]

(2) Part 2 of the application shall consist of: [¶]…[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]…[¶]

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(1) A description of a program, <u>including inspections</u>, to implement and enforce an ordinance, orders or similar means <u>to prevent illicit discharges to the municipal separate storm sewer system</u>; this program description shall address all types of illicit discharges, however the following category of non-stormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States [¶]…[¶]

(C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(1) Identify priorities and procedures <u>for inspections</u> and establishing and implementing control measures for such discharges. (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

There is a requirement in subdivision (d)(2)(iv)(B)(1) for implementing and enforcing "an ordinance, orders, or similar means to prevent illicit discharges to the municipal separate storm system." There is no express requirement in federal law, however, to inspect restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships. Nor does the

portion of the MS4 Program Evaluation Guide quoted by the State Water Board contain mandatory language to conduct inspections for these facilities.

In its April 2008 comments, the State Water Board argues that this reading of the regulations is not reasonable, and that U.S. EPA acknowledged that the initial selection by MS4s was only a starting point. In its comments (p.15), the State Water Board also states:

> Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. … Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.

The State Water Board would have the Commission read requirements into the federal law that are not there. The Commission, however, cannot read a requirement into a statute or regulation that is not on its face or its legislative history.[101]

Based on the plain language of the federal regulations that are silent on the types of facilities at issue in the permit, the Commission finds that performing inspections at restaurants, automotive service facilities, retail gasoline outlets, or automotive dealerships, as specified in the permit, is not a federal mandate.

Moreover, the requirement to inspect the facilities listed in the permit is an activity, as in the *Long Beach Unified School Dist.* case discussed above, [102] that is a specified action going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, the inspections are not federally mandated.

The permit states in part: "Each Permittee shall inspect all facilities in the categories and at a level and frequency as specified …" Based on the mandatory language in part 4C2a of the permit, the Commission finds that this part is a state mandate on the claimants to perform the inspections at restaurants, automotive service facilities, retail gasoline outlets, and automotive dealerships at the frequency and levels specified in the permit.

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[101] *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, 219-220. "Rules governing the interpretation of statutes also apply to interpretation of regulations." *Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1037.

[102] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

<u>Inspecting phase I industrial facilities (part 4C2b)</u>: Part 4C2b of the permit regarding phase I industrial facilities requires the following:

> b) Phase I Facilities[103]
>
> Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below.
>
> Frequency of Inspection
>
> **Facilities in Tier 1 Categories**:[104] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.
>
> **Facilities in Tier 2 Categories**:[105] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity to stormwater. For those facilities that do have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

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[103] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[104] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills …; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III …;* Restaurants; *Wholesale trade (scrap, auto dismantling)…;* Automotive service facilities; *Fabricated metal products …; Motor freight …; Chemical/allied products …;* Automotive Dealers/Gas Stations …; *Primary Metals.*"

[105] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary…; Air Transportation …; Rubbers/Miscellaneous Plastics …; Local/Suburban Transit …; Railroad Transportation …; Oil & Gas Extraction …; Lumber/Wood Products…; Machinery Manufacturing …; Transportation Equipment …; Stone, Clay, Glass, Concrete …; Leather/Leather Products…; Miscellaneous Manufacturing …; Food and kindred Products…; Mining of Nonmetallic Minerals …; Printing and Publishing …; Electric/Electronics …; Paper and Allied Products …; Furniture and Fixtures …;* Laundries …; *Instruments…; Textile Mills Products …; Apparel …*"

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

The issue is whether these inspection requirements for phase I industrial facilities is a federal mandate. The governing federal regulation is 40 CFR section 122.26 (d)(2)(iv)(B)&(C), which is cited above. Specifically on point is subpart (C), which states that the proposed management program must include the following:

> (C) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:
>
> (1) Identify priorities and procedures <u>for inspections</u> and establishing and implementing control measures for such discharges; (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1) & (C)(1).) [Emphasis added.]

The phase I facilities in the permit are defined to include.

> (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) <u>hazardous waste treatment, storage, or disposal facilities</u>; (v) <u>landfills, land application sites, and open dumps</u>; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities. (Permit, p. 62)

And the Tier 1 facilities in the permit include municipal landfills, hazardous waste treatment, disposal and recovery facilities and facilities subject to SARA Title III (see permit attachment B, pp. B-1 to B-2). Thus, there is a federal requirement to inspect these phase I and tier 1 facilities in the permit. The issue is whether this requirement constitutes a federal mandate on local agencies. The Commission finds that it does not.

It is the state that mandates the phase I inspection and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.[106] This is because the federal regulatory scheme provides an alternative means of regulating and inspecting these industrial facilities under the state-enforced, statewide permit, as follows:

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[106] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

> (c) Application requirements for stormwater discharges associated with industrial activity[107] and stormwater discharges associated with small construction activity -
>
> (1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit <u>or seek coverage under a promulgated stormwater general permit.</u> Facilities that are required to obtain an individual permit, or any discharge of stormwater which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph. [Emphasis added.]

The state has issued a statewide general activity industrial permit (GIASP) that is enforced through the regional boards.[108] This, along with the statewide construction permit, is described in the permit itself:

> To facilitate compliance with federal regulations, the State Board has issued two statewide general NPDES permits for stormwater discharges: one for stormwater from industrial sites [NPDES No. CAS000001, General Industrial Activity Storm Water Permit (GIASP)] and the other for stormwater from construction sites [NPDES No. CAS000002, General Construction Activity Storm Water Permit (GCASP)]. The GCASP was reissued on August 19, 1999. The GIASP was reissued on April 17, 1997. Facilities discharging stormwater associated with industrial activities and construction projects with a disturbed area of five acres or more are required to obtain individual NPDES permits for stormwater discharges, or to be covered by a statewide general permit by completing and filing a Notice of Intent (NOI) with the State Board. The USEPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and

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[107] According to 40 CFR § 122.26, (b)(14): "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. … The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]…[¶](x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more."

[108] For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs)."

> non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.[109]

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspections of industrial facilities (specified in part 4C2b of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4C2b of the permit. In fact, the State Board collects fees for the regional boards for performing inspections under the GIASP (see Wat. Code, § 13260, subd. (d)(2)(B)(ii)).

In its April 18, 2008 comments, the State Water Board asserts:

> Because the federal mandate requires Water Boards to choose specific BMPs [Best Management Practices] that are included in MS4 permits as requirements, the 'discretion' exercised in selecting those BMPs is necessarily a part of the federal mandate. It is not comparable to the discretion that the courts in *Hayes* or *San Diego* spoke of, where the state truly had a 'free choice.' The Los Angeles Water Board was mandated by federal law to select BMPs that would result in compliance with the federal MEP [Maximum Extent Practicable] standard. … Therefore, it is clear that the mere exercise of discretion in selecting BMPs does not create a reimbursable mandate.[110]

The Commission disagrees. Inasmuch as the federal regulation (40 CFR § 122.26 (c)) authorizes coverage under a statewide general permit for the inspections of industrial activities, and the federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) does not expressly require those inspections to be performed by the county or cities (or the "owner or operator of the discharge") the Commission finds that the state has freely chosen[111] to impose these activities on the permittees. Therefore, the Commission finds that there is no federal mandate on the claimants to perform inspections of phase I facilities as specified in part 4C2b of the permit.

As to whether the permit is a state mandate, part 4C2b contains the following mandatory language:

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[109] Permit, page 11, paragraph 22.

[110] State Water Board comments, submitted April 18, 2008, page 15.

[111] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

b) Phase I Facilities[112]

Permittees need not inspect facilities that have been inspected by the Regional Board within the past 24 months. For the remaining Phase I facilities that the Regional Board has not inspected, each Permittee shall conduct compliance inspections as specified below. [Emphasis added.]

Frequency of Inspection

Facilities in Tier 1 Categories:[113] Twice during the 5-year term of the Order, provided that the first inspection occurs no later than August 1, 2004, and that there is a minimum interval of one year in between the first compliance inspection and the second compliance inspection.

Facilities in Tier 2 Categories:[114] Twice during the 5-year term of the permit, provided that the first inspection occurs no later than August 1, 2004, Permittees need not perform additional inspections at those facilities determined to have no risk of exposure of industrial activity[115] to stormwater. For those facilities that do

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[112] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[113] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 1 categories as follows (with Phase I facilities listed in italics): "*Municipal landfills …; Hazardous Waste Treatment, Disposal and Recovery Facilities; Facilities Subject to SARA Title III …;* Restaurants; *Wholesale trade (scrap, auto dismantling)…;* Automotive service facilities; *Fabricated metal products …; Motor freight …; Chemical/allied products …;* Automotive Dealers/Gas Stations …; *Primary Metals.*"

[114] Attachment B of the permit (pp. B-1 to B-2) lists the Tier 2 categories as follows (with Phase I facilities listed in italics): "*Electric/Gas/Sanitary…; Air Transportation …; Rubbers/Miscellaneous Plastics …; Local/Suburban Transit …; Railroad Transportation …; Oil & Gas Extraction …; Lumber/Wood Products…; Machinery Manufacturing …; Transportation Equipment …; Stone, Clay, Glass, Concrete …; Leather/Leather Products…; Miscellaneous Manufacturing …; Food and kindred Products…; Mining of Nonmetallic Minerals …; Printing and Publishing …; Electric/Electronics …; Paper and Allied Products …; Furniture and Fixtures …;* Laundries …; *Instruments…; Textile Mills Products …; Apparel …*"

[115] "Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. … The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): [¶]…[¶] (x) Construction activity including clearing, grading and excavation,

have exposure of industrial activities to stormwater, a Permittee may reduce that frequency of additional compliance inspections to once every 5 years, provided that the Permittee inspects at least 20% of the facilities in Tier 2 each year.

Level of Inspection: Each Permittee shall confirm that each operator:

- has a current Waste Discharge Identification (WDID) number for facilities discharging stormwater associated with industrial activity, and that a Storm Water Pollution Prevention Plan is available on-site, and is effectively implementing BMPs in compliance with County and municipal ordinances, Regional Board Resolution 98-08, and the SQMP.

Based on this mandatory language to perform the inspections of phase I facilities as specified, the Commission finds that part 4C2b of the permit is a state-mandate.

Inspecting construction sites (part 4E): Part 4E of the permit contains the following requirements:

- Implement a program to control runoff from construction activity at all construction sites within each permittees jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

  For construction sites one acre or greater, each permittee shall:

- Require the preparation and submittal of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a.)
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. (Permit, 4E2b.)
- Review the Local SWPPP for compliance with local codes, ordinances, and permits. (Permit, 4E2b.)
- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
  - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).
  - If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
  - If non-compliance continues the Regional Board shall be notified for further joint enforcement actions. (Permit, 4E2b.)

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except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more." [40 CFR §122.26 (b)(14), Emphasis added.]

- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP (Permit, 4E2c.)
- For sites five acres and greater:
    - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
    - Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
    - Use an effective system to track grading permits issued by each permittee. (Permit, 4E3.)
- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements. (Permit, 4E4b.)
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees. (Permit, 4E5.)

The applicable federal regulation (40 CFR § 122.26 (d)(2)(iv)(D)) on the issue of whether the inspection of construction sites is a federal mandate is as follows:

(d) Application requirements for large[116] and medium[117] municipal separate storm sewer discharges. The operator[118] of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. … Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include; [¶]…[¶]

(2) Part 2 of the application shall consist of: [¶]…[¶]

(iv) Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed

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[116] "(4) 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 as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix F of this part); or (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 paragraph (b)(4)(i) or (ii) of this section 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 under paragraph (b)(4)(i) or (ii) of this section. …" (40 CFR § 122.26 (b)(4).)

[117] "(7) Medium municipal separate storm sewer system means all municipal separate storm sewers that are either: (i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census (Appendix G of this part); or (ii) Located in the counties listed in appendix I, 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 paragraph (b)(7)(i) or (ii) of this section 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 under paragraph (b)(7)(i) or (ii) of this section. …" (40 CFR § 122.26 (b)(7).)

[118] "*Owner or operator* means the owner or operator of any 'facility or activity' subject to regulation under the NPDES program." (40 CFR § 122.2.)

> management programs shall describe priorities for implementing controls. Such programs shall be based on: [¶]…[¶]
>
> (D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include: [¶]…[¶]
>
> (3) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and … [Emphasis added.]

The language of the federal regulation indicates a duty to inspect construction sites and enforce control measures as specified in part 4E of the permit. The *Rancho Cucamonga* case cited by the State Board also states that federal law requires NPDES permittees to inspect construction sites.[119]

The issue, however, is whether the federal requirements to inspect construction sites and enforce control measures amounts to a federal mandate on the local agencies. The Commission finds that it does not. First, the federal regulations quoted above do not specify the frequency or other specifics of the inspection program as the permit does. These are activities, as in the *Long Beach Unified School Dist.* case discussed above,[120] that are specified actions going beyond the federal requirement for inspections "to prevent illicit discharges to the municipal separate storm sewer system." (40 C.F.R. § 122.26, subd. (d)(2)(iv)(B)(1).) As such, it is not a federal mandate for the local agency permittees to inspect construction sites.

Moreover, it is the state that mandates the inspections of construction sites and related activities in that the state freely chooses to impose the inspection and enforcement requirements on the local agency permittees.[121] The federal regulations do not require: (1) a municipality to have a separate permit for construction activity or enforcement; or (2) that the inspections and related activities in part 4E of the permit be conducted by the owner or operator of the discharge. Rather, these activities may be conducted by the state under a state-wide, state-enforced, general permit, as stated in the federal stormwater regulation (40 CFR § 122.26 (c)), which states in part:

> (c) Application requirements for stormwater discharges associated with industrial activity [includes construction activity of five or more acres] and stormwater discharges associated with small construction activity[122] [construction activity from one to less than five acres]--

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[119] *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region, supra,* 135 Cal.App.4th 1377, 1390.

[120] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155.

[121] *Hayes v. Commission on State Mandates, supra,* 11 Cal. App. 4th 1564, 1593-1594.

[122] According to 40 CFR § 122.26, (b)(15): "Storm water discharge associated with small construction activity means the discharge of storm water from: (i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater

> (1) Individual application. Dischargers of stormwater associated with industrial activity and with small construction activity are required to apply for an individual permit <u>or seek coverage under a promulgated stormwater general permit.</u> [Emphasis added.]

The state has issued a statewide general construction permit, as described on page 11 of the permit as quoted above, which is enforced through the regional boards.[123] In fact, the State Board collects fees for the regional board for performing inspections under the GCASP (see Wat. Code, § 13260, subd. (d)(2)(B)(ii)).

There is nothing in the federal statutes or regulations that would prevent the state (rather than local agencies) from performing the inspection of construction sites and related activities (in part 4E of the permit) under the state-enforced general permit. Nor does federal law require the owner or operator of the discharge to perform these activities in part 4E of the permit. Therefore, the Commission finds that the requirement for local-agency permittees to inspect construction sites in section 4E of the permit is not a federal mandate.

The Commission finds that, based on the permit's mandatory language, the following activities in part 4E are state mandates on the permittees within the meaning of article XIII B, section 6:

- Implement a program to control runoff from construction activity at all construction sites within each permittee's jurisdiction, and ensure the specified minimum requirements are effectively implemented at all construction sites. (Permit, 4E1.)

  For construction sites one acre or greater:

- Require the preparation of a Local SWPPP [Storm Water Pollution Prevention Plan], with specified contents, for approval prior to issuing a grading permit for construction projects. (Permit, 4E2a.)
- Inspect all construction sites for stormwater quality requirements during routine inspections a minimum of once during the wet seasons. (Permit, 4E2b.)
- Review the Local SWPPP for compliance with local codes, ordinances, and permits. (Permit, 4E2b.)

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than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where: …"

[123] For example, page 2 of the Fact Sheet for the General Construction Activity Storm Water Permit states: "This General Permit shall be implemented and enforced by the nine California Regional Water Quality Control Boards (RWQCBs)."

- For inspected sites that have not adequately implemented their Local SWPPP, conduct a follow-up inspection to ensure compliance will take place within 2 weeks.
    - If compliance has not been attained, take additional actions to achieve compliance (as specified in municipal codes).
    - If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, enforce the local ordinance requirements, and
    - If non-compliance continues, notify the Regional Board for further joint enforcement actions. (Permit, 4E2b.)
- Require by March 10, 2003, before issuing a grading permit for all projects less than five acres requiring coverage under a statewide general construction stormwater permit, proof of a Waste Discharger Identification Number for filing a Notice of Intent for permit coverage and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs [Best Management Practices] as the State SWPPP. (Permit, 4E2c.)
- For sites five acres and greater:
    - Require, prior to issuing a grading permit for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) number for filing a Notice of Intent (NOI) for coverage under the GCASP [General Construction Activity Storm Water Permit] and a certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP.
    - Require proof of an Notice of Intent (NOI) and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.
    - Use an effective system to track grading permits issued by each permittee. (Permit, 4E3.)
- For projects subject to the GCASP [General Construction Activity Storm Water Permit], permittees shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) to the Regional Board, within 15 days of making a determination. In making such referrals, permittees shall include, at a minimum, the following documentation: Project location; Developer; Estimated project size; and Records of communication with the developer regarding filing requirements. (Permit, 4E4b.)
- Train employees in targeted positions (whose jobs or activities are engaged in construction activities including construction inspection staff) regarding the requirements of the stormwater management program no later than August 1, 2002, and annually thereafter. For permittees with a population of 250,000 or

> more (2000 US Census), initial training shall be completed no later than February 3, 2003. Each permittee shall maintain a list of trained employees. (Permit, 4E5.)

One of the requirements in part 4E3c of the permit is to: "Use an effective system to track grading permits issued by each permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required." The Commission finds that, based on the plain language of this provision, using an effective system to track grading permits is a state mandate, although use of a database or GIS system is not.

Overall, the Commission finds that the permit provisions (parts 4C2a, 4C2b, 4E & 4F5c3) are subject to article XIII B, section 6, of the California Constitution.

Issue 2: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E, and 4F5c3) impose a new program or higher level of service?

The next issue is whether the permit provisions at issue, i.e., found above to be state-mandated, are a program, and whether they are a new program or higher level of service.

First, courts have defined a "program" for purposes of article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[124]

The State Water Board, in its April 2008 comments, argues that the NPDES program is not a program because "the NPDES permit program, and the stormwater requirements specifically, are not peculiar to local government. Industrial and construction facilities must also obtain NPDES stormwater permits."

In comments submitted June 25, 2008, the cities call the State Board's argument inapposite, and cite the *Carmel Valley Fire Protection District* case[125] regarding whether the permit constitutes a "program." According to claimant, "[t]he test is not whether the general program applies to both governmental and non-governmental entities. The test is whether the specific executive orders at issue apply to both government and non-governmental entities."

The Commission finds that the permit activities constitute a program within the meaning of article XIII B, section 6. The permit activities are limited to local governmental entities. The permit defines the "permittees" as the County of Los Angeles and 84 incorporated cities within the Los Angeles County Flood Control District (Permit, p. 1 & attachment A). The permit lists no private entities as "permittees." Moreover, the permit provides a service to the public by preventing or abating pollution in waterways and beaches in Los Angeles County. (Or as stated on page 13 of the permit: "The objective of this Order is to protect the beneficial uses of receiving waters in Los Angeles County.") Therefore, the Commission finds that the permit is a program within the meaning of article XIII B, section 6.

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[124] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California, supra,* 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[125] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

In its comments on the draft staff analysis submitted June 5, 2009, the State Board disagrees with this conclusion because NPDES permits may also apply to private entities.

The State Board made this same argument in *County of Los Angeles v. Commission on State Mandates*, which the court addressed by stating: "[T]he applicability of permits to public and private dischargers does not inform us about whether a particular permit or an obligation thereunder imposed on local governments constitutes a state mandate necessitating subvention under article XIII B, section 6."[126]

In other words, the issue is not whether NPDES permits generally constitute a "program" within the meaning of article XIII B, section 6. The only issue before the Commission is whether the permit in this test claim (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001) constitutes a program because this permit is the only one over which the Commission has jurisdiction. Because they apply exclusively to local agencies, the Commission finds that the activities (parts 4C2a, 4C2b, 4E & 4F5c3) in this permit (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001) constitute a program within the meaning of article XIII B, section 6.

The next step to determine whether the permit is a new program or higher level of service, the permit is compared to the legal requirements in effect immediately before its adoption.[127]

The Commission finds that local agencies were not required by state or federal law to place and maintain trash receptacles at transit stops before the permit was adopted. Whether or not most cities or counties do so, as argued by the State Water Board in its April 2008 comments, is not relevant to finding a state-mandated new program or higher level of service because even if they do, Government Code section 17565 states: "If a local agency … at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency … for those costs incurred after the operative date of the mandate."

Because the transit trash receptacle requirement is newly mandated by the permit, and based on the plain language of part 4F5c3 of the permit, the Commission finds that it is a new program or higher level of service to place trash receptacles at transit stops and maintain them as specified in the permit.

For the same reason, the Commission finds that the inspections and enforcement activities at industrial and commercial facilities, including restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, and phase I facilities (in parts 4C2a & 4C2b of the permit) as well as inspection and enforcement at construction sites (in part 4E of the permit) are a new program or higher level of service. These were not required activities of the permittees prior to the permit's adoption.

In sum, the Commission finds that all the permit provisions at issue in this test claim impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

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[126] *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 919.

[127] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

Issue 3: Do the transit trash receptacle and inspection permit provisions (Parts 4C2a, 4C2b, 4E & 4F5c3) impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether the permit provisions impose costs mandated by the state,[128] and whether any statutory exceptions listed in Government Code section 17556 apply to the test claims. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17564 requires reimbursement claims to exceed $1000 to be eligible for reimbursement.

In test claims 03-TC-20 and 03-TC-21, the cities' claimant representative declares (p. 24) that the cities will incur costs estimated to exceed $1000 to implement the permit conditions.

In test claim 03-TC-04, the County of Los Angeles states (p. 18) that the costs in providing the services claimed "far exceed the minimum reimbursement amount of $1000 per annum." In the attached declaration for *Transit Trash Receptacles*, the County declares (pp. 22-23) the following itemization of costs from December 13, 2001 to October 31, 2002:

> (1) Identify all transit stops in the jurisdiction: $19,989.17;
>
> (2) Select proper trash receptacle design, evaluate proper placement, specification and drawing preparation: $38,461.87;
>
> (3) Preliminary engineering works (construction contract preparation, specification reviewing process, bid advertising and awarding): $19,662.02;
>
> (4) Construct and install trash receptacle units: $230,755.58, construction management $34,628.31;
>
> (5) Trash collection and receptacle maintenance in FY 2002-03, $3,513.94, maintenance contractor costs for maintaining and collecting trash in FY 2002-03, $93,982.50;
>
> (6) Projected costs for on-going maintenance in FY 2003-04, $375,570.00.

Similarly, attached to claim 03-TC-19 (pp. 20-21) are declarations that itemize the County of Los Angeles' costs for *Inspection of Industrial/Commercial Facilities* program, from December 13, 2001 to September 15, 2003, as follows:

> (1) inspect 1744 restaurants: $234,931.83;
>
> (2) inspect 1110 automotive service facilities: $149,526.36;
>
> (3) inspect 249 retail gasoline outlets and automotive dealerships: $33,542.45;

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[128] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

(4) Identify and inspect all Phase I (387 Tier 1 and 543 Tier 2) facilities within the jurisdiction: $125,155.31;

(5) Total $543,155.95.

These declarations illustrate that the costs associated with the permit activities exceed $1,000. The Commission, however, cannot find "costs mandated by the state" within the meaning of Government Code section 17514 if any exceptions in Government Code section 17556 apply, which is discussed below.

A. Did the claimants request the activities in the permit within the meaning of Government Code section 17556, subdivision (a)?

The first issue is whether the claimants requested the activities in the permit. The Department of Finance and the State Water Board both asserted that they did. As discussed above, the claimants were required to submit a Report of Waste Discharge and Stormwater Quality Management Plan before the permit was issued.

Government Code section 17556, subdivision (a), provides that the Commission shall not find costs mandated by the state if:

> (a) The claim is submitted by a local agency … that requested legislative authority for that local agency … to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency … that requests authorization for that local agency … to implement a given program shall constitute a request within the meaning of this subdivision.

Based on the language of the statute, section 17556, subdivision (a), does not apply because the permit is not a statute, the claimants did not request "legislative authority" to implement the permit, and the record lacks any resolutions adopted by the claimants. Therefore, the Commission finds that the claimants did not request the activities in the permit within the meaning of Government Code section 17556, subdivision (a).

B. Do the claimants have fee authority for the permit activities within the meaning of Government Code section 17556, subdivision (d)?

Government Code section 17556, subdivision (d), states:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency … if, after a hearing, the commission finds any one of the following: [¶]…[¶] (d) The local agency … has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The constitutionality of Government Code section 17556, subdivision (d), was upheld by the California Supreme Court in *County of Fresno v. State of California*,[129] in which the court held

[129] *County of Fresno v. State of California , supra,* 53 Cal.3d 482.

that the term "costs" in article XIII B, section 6, excludes expenses recoverable from sources other than taxes. The court stated:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra,* 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*
>
> In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.[130]

In *Connell v. Superior Court,*[131] the dispute was whether local agencies had sufficient fee authority for a mandate involving increased purity of reclaimed wastewater used for certain types of irrigation. The court cited statutory fee authority for the reclaimed wastewater, and noted that the water districts did not dispute their fee authority. Rather, the water districts argued that they lacked "sufficient" fee authority in that it was not economically feasible to levy fees sufficient to pay the mandated costs. In finding the fee authority issue is a question of law, the court stated that Government Code section 17556, subdivision (d), is clear and unambiguous, in that its plain language precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." The court rejected the districts' argument that "authority" as used in the statute should be construed as a "practical ability in light of surrounding economic circumstances" because that construction cannot be reconciled with the plain language of section 17556, and would create a vague

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[130] *County of Fresno v. State of California, supra,* 53 Cal.3d 482, 487.

[131] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.

standard not capable of reasonable adjudication. The court also said that nothing in the fee authority statute (Wat. Code, § 35470) limited the authority of the Districts to levy fees "sufficient" to cover their costs. Thus, the court concluded that the plain language of section 17556 made the fee authority issue solely a question of law, and that the water districts could not be reimbursed due to that fee authority.[132]

In its April 18, 2008 comments (p. 19), the State Board asserted that the claimants have fee authority to pay for the trash receptacle and inspection programs in the permit. Likewise, the Department of Finance, in its March 2008 comments, states that "some local agencies have set fees to be used toward funding the claimed permit activities" that should be considered offsetting revenues.

Los Angeles County, in its comments submitted in June 2008, states (p. 2) that it is "without sufficient fee authority to recover its costs." The County points out that the state or regional board has fee authority in Water Code section 13260, subdivision (d)(2)(B)(iii) for inspections of industrial and commercial facilities, but those fees are not shared with the County or the cities.[133] The County also states that the inspections are to determine compliance with the general industrial permit that is enforced by the regional boards.[134]

In their comments received June 25, 2008, the city claimants assert that they do not have fee authority. The cities first note that, for facilities that hold state-issued general industrial or general construction stormwater permits, the state already imposes an annual fee and therefore has occupied the field (Wat. Code, § 13260, subd. (d)(2)(B)(iii)). The cities also relate the difficulty of imposing a fee for inspecting restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships because, although the cities could enact a general businesses license on all businesses, "the cities could not charge other businesses for the cost of inspecting this subgroup without again running the risk of charging fees on the other businesses for services not related to regulation of them." The cities also dispute the State Water Board's

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[132] *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 398-402.

[133] Water Code section 13260, subdivision (d)(2)(B)(i) - (iii) states:

> (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund. (ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

[134] Page 3 of the General Industrial Permit states in part: "Following adoption of this General Permit, the Regional Water Boards shall enforce its provisions."

assertion that transit users could be charged a fee for the transit trash receptacles because the County and cities do not operate the transit system.

In comments on the draft staff analysis submitted in June 2009, the League of California Cities and California State Association of Counties (CSAC) question whether the decisions in *Connell* (1997), and *County of Fresno* (1991), can any longer be cited as good authority for the constitutionality of Government Code section 17556, subdivision (d), given the voter-approval requirement of Proposition 218 (discussed below) added to the state Constitution in 1996. Proposition 218 requires, among other things, that new or increased property-related fees be approved by a majority of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the affected property owners, except for property-related fees for sewer, water, or refuse collection services (Cal. Const., art. XIII D, § 6, subd. (c)).

The League and CSAC also urge the Commission, to the extent there may be legal doubt whether a local agency has the authority to impose a fee, to not find that the fee authority exception to reimbursement in Government Code section 17556, subdivision (d), applies.

The Commission disagrees with the League and CSAC. The Commission cannot ignore the precedents of *Connell* or *County of Fresno*, or find that they conflict with article XIII D of the California Constitution (Proposition 218), until the issue is decided by a court of law. With regards to Government Code section 17556, subdivision (d), article III, section 3.5 of the California Constitution forbids the Commission or any state agency from declaring a statute unenforceable or refusing to enforce it on the basis of its unconstitutionality unless an appellate court declares that it is unconstitutional. Since no appellate court has so declared, the Commission is bound to uphold and analyze the application of Government Code section 17556, subdivision (d), to this test claim.

The issue of local fee authority for the municipal stormwater permit activities, however, is one of first impression for the Commission. Although there are no authorities directly on point, some legal principles emerge that guide the analysis, as discussed below.

1. Local fee authority to inspect commercial and industrial and construction sites (parts 4C2a, 4C2b & 4E)

Fee authority to inspect under the police power: The law on local government fee authority begins with article XI, section 7, of the California Constitution, which states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

The Third District Court of Appeal has stated that article XI, section 7, includes the authority to impose fees. In *Mills v. Trinity County*,[135] a taxpayer challenged a county ordinance that imposed new and increased fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors. In upholding the fees, the court stated:

> [S]o long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees does not depend on legislatively authorized taxing

[135] *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656.

> power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution.[136]

In addition to the *Mills* case, courts have held that water pollution prevention is a valid exercise of government police power.[137] And municipal inspections in furtherance of sanitary regulations have been upheld as "an exercise of that branch of the police power which pertains to the public health."[138]

In *Sinclair Paint v. State Board of Equalization*, [139] the California Supreme Court upheld a fee imposed on manufacturers of paint that funded a child lead-poisoning program, ruling it was a regulatory fee and not a special tax requiring a two-thirds vote under article XIII A, section 4, of the California Constitution (Proposition 13). The court recognized that determining under Proposition 13 whether impositions were fees or taxes is a question of law. In holding that the fee on paint manufacturers was "regulatory" and not a special tax, the court stated:

> From the viewpoint of general police power authority, we see no reason why statutes <u>or ordinances</u> calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate.
>
> Viewed as a mitigating effects measure, [the fee] is comparable in character to several police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.[140] [Emphasis added.]

The *Sinclair Paint* court also recognized that regulatory fees help to prevent pollution when it stated: "imposition of 'mitigating effects' fees in a substantial amount ... also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products."[141]

Although the court's holding in *Sinclair Paint* applied to a state-wide fee, the language it used (putting "ordinances" in the same category as "statutes") recognizes that local agencies also have the police power to impose regulatory fees. Moreover, the court relied on local government police power cases in its analysis.[142]

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[136] *Mills v. County of Trinity, supra,* 108 Cal.App.3d 656, 662.

[137] *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408.

[138] *Sullivan v. City of Los Angeles Dept. of Bldg. & Safety* (1953) 116 Cal.App.2d 807, 811.

[139] *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866.

[140] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 877.

[141] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 877.

[142] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th 866, 873. The Court stated: "Because of the close, 'interlocking' relationship between the various sections of article XIII A (Citation omitted) we believe these "special tax" cases [under article XIII A, § 3, state taxes] may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, section 4, [local government taxes] may apply equally to section 3 cases."

A regulatory fee is an imposition that funds a regulatory program[143] and is "enacted for purposes broader than the privilege to use a service or to obtain a permit. …the regulatory program is for the protection of the health and safety of the public."[144] Courts will uphold regulatory fees if they comply with the following principles:

> Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A section 4 analysis if the "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." [Citations omitted] "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." [Citations omitted] "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." [Citations omitted] Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. [Citations omitted] Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee."[145] [Emphasis added.]

Local fees for inspections of commercial and industrial facilities, and construction sites, would be preventative and could be imposed to comply with the criteria the courts have used to uphold regulatory fees, articulated above. And the regulatory fees fall within the local police power to prevent, clean up, or mitigate pollution.

Therefore, pursuant to article XI, section 7, the Commission finds that the claimants have fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to carry out the mandated activities in parts 4C2a, 4C2b and 4E of the permit. Therefore, the Commission finds that there are no "costs mandated by the state" within the meaning of Government Code section 17514 and 17556 to perform the activities in those parts of the permit (commercial, phase I, and construction site inspections and related activities).

In fact, in June 2005, claimant Covina adopted stormwater inspection fees on restaurants, retail gasoline outlets, automotive service facilities, etc., as part of its business license fee, expressly for the purpose of complying with the permit at issue in this test claim.[146]

Statutory fee authority to operate and maintain storm drains: Health and Safety Code section 5471 expressly authorizes cities and counties to charge fees for storm drainage maintenance and operation services:

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[143] *California Assn. of Prof. Scientists v. Dept. of Fish and Game* (2000) 79 Cal.App.4th 935, 950.

[144] *Ibid.*

[145] *California Assn. of Prof. Scientists v. Dept. of Fish and Game, supra,* 79 Cal.App.4th 935, 945.

[146] City of Covina, Resolution No. 05-6455.

> [A]any entity[147] shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system. … Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities ….

The statute makes no mention of "inspecting" commercial or industrial facilities or construction sites. Rather, the fee revenues are used for "maintenance and operation" of storm drainage facilities. Thus, for the types of businesses regulated by the permit (restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites) the Commission cannot find that pursuant to Health and Safety Code section 5471, the claimants have fee authority "sufficient" to pay for the mandated inspection program within the meaning of Government Code section 17556. The statute's "operation and maintenance" of storm drainage facilities does not encompass the state-mandated inspections of the facilities or construction sites specified in the permit.

2. Local fee authority under the police power and the Public Resources Code to place and maintain trash receptacles at transit stops (Permit, 4F5c3)

As discussed above, part 4F5c3 of the permit requires the County and cities to place and maintain trash receptacles at transit stops in their jurisdictions. Public Resources Code section 40059, subdivision (a), suggests that the County and cities have fee authority to perform this activity as follows:

> (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following: (1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

The statute gives local governments the authority over the "nature, location and extent of providing solid waste handling services" and is broad enough to encompass "placing and maintaining" receptacles at transit stops. The statute also provides local governments with broad authority over the "level of services, charges and fees."

The draft staff analysis determined that the claimants had fee authority under Public Resources Code section 40059 and the police power (Cal. Const. art. XI, § 7) to install and maintain trash receptacles at transit stops and recommended that the Commission deny the test claim with respect to part 4F5c3 of the permit.

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[147] Entity is defined to include "counties, cities and counties, cities, sanitary districts, county sanitation districts, sewer maintenance districts, and other public corporations and districts authorized to acquire, construct, maintain and operate sanitary sewers and sewerage systems." Health and Safety Code section 5470, subdivision (e).

The city claimants, in June 2009 comments on the draft staff analysis, argue that section 40059, subdivision (a), does not apply here because it was adopted as a "savings provision" in legislation establishing the Integrated Waste Management Board (IWMB) in order to ensure that local trash collection agreements would not be affected by the IWMB legislation. The cities also cite *Waste Resources Technologies v. Department of Public Health* (1994) 23 Cal.app.4th 299, which held that the statute reflected the Legislature's intent to allow for local regulation of waste collection. According to the cities, the statute "was not intended as an *imprimatur* for local agencies to assess fees on their residents or on businesses to pay for the costs of trash generated by transit users when that requirement was established not as a matter of local choice but rather state mandate." (Comments, p. 7.)

The cities also argue that a valid fee must have a causal connection or nexus between the person or entity paying the fee, and the benefit or burden being addressed. Claimants assert that there is no group on which the claimants can assess a fee that has a relationship with the trash receptacles because the burden is created by the transit riders but benefits the public at large. City claimants also argue that they cannot assess fees on transit agencies or increase transit fares to recoup the cost of installing and maintaining trash receptacles because they have no authority to do so. As an example, the claimants cite the Metropolitan Transit Authority's (the largest public transit operator in Los Angeles County) authority to set fares (Pub. Util. Code, § 30638) that rests exclusively with the MTA's board.

As to the police power, City claimants argue that they cannot use it to assess fees on property owners or businesses for the cost of transit trash receptacles because doing so would collect more than the actual cost of the collection and thereby create a special tax that would require a two-thirds vote (Cal. Const. art. XIII A, § 4). And according to the claimants, they do not have statutory fee authority to assess property owners for the cost of installing and maintaining trash receptacles. Finally, claimants assert that a fee on property owners for transit stop trash receptacles, even if it were not a special tax, would require a vote under Proposition 218 (Cal. Const., art. XIII D).

The County of Los Angeles, in its June 2009 comments on the draft staff analysis, argues that local agencies do not have fee authority over bus operators, and for support cites *Biber Electric Co. v. City of San Carlos* (1960) 181 Cal.App.2d 342, which held that a local fee would conflict with a general state Vehicle Code provision. The County also asserts that no fee could be imposed on bus riders because the pollution prevention would benefit all county residents, not only those riding buses, and that such a fee would require a vote under Proposition 218 because the fee's purpose would be excluding trash from storm drains rather than routine collection.

The League of California Cities and CSAC, in their June 2009 comments on the draft staff analysis, criticize the conclusion that fee authority exists for transit trash receptacles because the analysis does not discuss upon whom the fee would be imposed. They also dispute the application of the *Connell* case because the issue is not whether the fee is economically feasible, but whether it is legally feasible. The League and CSAC point out that local agencies have no authority to impose the fee on transit agencies or their ridership, and that Proposition 218 imposes procedural and substantive requirements on adjacent business owners and residences, so that the local agency could not impose the fee or assessment on them without their consent. Thus, the League and CSAC argue that the local agencies do not have fee authority pursuant to

Government Code section 17556, subdivision (d): "sufficient to pay for the mandated program or increased level of service."

After considering these arguments, the Commission agrees that Government Code section 17556, subdivision (d), does not apply to the placement and maintenance of transit trash receptacles as specified in the permit because the claimants do not have the authority to impose fees.

Because the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks)[148] or transit district property (for bus or metro or subway stations), there are no entities on which the claimants would have authority to impose the fees. The plain language of Public Resources Code section 40059 provides no fee authority over transit districts or transit riders, and the Metropolitan Transit Authority's fee statutes grant fee authority exclusively to its board (Pub. Util. Code, §§ 30638 & 130051.12).

Additionally, the claimants do not have fee authority under the police power because they do not provide the "services necessary to the activity for which the fee is charged."[149]

Thus, the Commission finds that part 4F5c3 of the permit imposes costs mandated by the state within the meaning of Government Code section 17514 and 17556.

The remainder of this analysis addresses the arguments raised by the claimants that their local fee authority for inspections would be preempted by a statute granting the state fee authority, and that a local fee would be a special tax. The application of Proposition 218 on the fee authority for inspection is also discussed.

3. Local fee authority to inspect industrial or construction sites (parts 4C2a, 4C2b & 4E) performed under the statewide general permits would not be preempted by state fee authority in Water Code section 13260, subdivision (b)(2)(B)

In their comments submitted in June 2008 (p. 14), the city claimants argue that the permittees cannot impose fees for inspections of industrial or commercial or construction sites as follows:

> [W]ith respect to facilities that hold state-issued general industrial or general construction stormwater permits, the state had occupied the field. …[T]he state already imposes an annual fee on general industrial and general construction stormwater permittees. That fee is explicitly designated, in part, to cover inspections of these facilities and regulatory compliance. Water Code § 13260(d)(2)(B).
>
> This state fee thus preempts any fee that the Cities or County could charge for inspection of these facilities.

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[148] "The general rule views the sidewalk as part of the street; it … holds the city liable for pedestrian injuries caused by the dangerous condition of the sidewalk." *Low v. City of Sacramento* (1970) 7 Cal.App.3d 826, 832.

[149] *California Assn. of Prof. Scientists v. Dept of Fish and Game, supra*, 79 Cal.App.4th, 935, 945.

The cities also assert that in 2001, the regional board initiated negotiation of a contract with the County whereby the regional board would pay the County to perform inspections of facilities that held general industrial stormwater permits (the 'Phase I facilities') on the regional board's behalf. Immediately after the permit was issued, the regional board terminated those negotiations.

In comments submitted in June 2009 on the draft staff analysis, city claimants clarify that their comments "are not directed towards the claimants' ability to assess fees for inspections of the other commercial establishments, i.e., restaurants and automotive service facilities, retail gasoline outlets and automobile dealerships, or Phase I facilities or construction sites that are not required to hold a state-issued general industrial or general construction stormwater permit."

According to the city claimants, fees for inspecting the phase I industrial facilities and construction sites under the statewide permits (the GIASP and GCASP) would be preempted by state fee authority in Water Code section 13260, under which the State Board collects fees for inspecting those sites. The city claimants state the fact that the specific destination of the funds from the fees in Water Code section 13260, subdivision (d)(2)(iii) is spelled out is evidence of intent that the Legislature fully occupied the field for inspections of GIASP and GCASP permit holders.

Because the fee authority to inspect commercial facilities (identified in the permit as restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships) is not contested by the city claimants, the discussion below is limited to industrial and construction site inspections performed under the statewide permits concurrently with the permit at issue in this claim.

The California Supreme Court has outlined the following rules as to when a statute preempts a local ordinance by fully occupying the field:

> A local ordinance *enters a field fully occupied* by state law in either of two situations-when the Legislature "expressly manifest[s]" its intent to occupy the legal area or when the Legislature "impliedly" occupies the field. (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534; see also 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p. 551["[W]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field ... municipal power [to regulate in that area] is lost."].)
>
> When the Legislature has not expressly stated its intent to occupy an area of law, we look to whether it has *impliedly* done so. This occurs in three situations: when " '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to

> the' locality." (*Sherwin-Williams, supra,* 4 Cal.4th at p. 898, 16 Cal.Rptr.2d 215, 844 P.2d 534.)[150]

The state statute at issue, the stormwater fee statute, in subdivision (d) of section 13260 of the Water Code, reads in pertinent part:

> (d)(1)(A) Each person who is subject to subdivision (a) [who discharges waste that affects the quality of waters of the state] or (c) shall submit an annual fee according to a fee schedule established by the state board.
>
> (B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.
>
> (C) Recoverable costs include, but are not limited to, costs incurred in reviewing waste discharge reports, prescribing terms of waste discharge requirements and monitoring requirements, enforcing and evaluating compliance with waste discharge requirements and waiver requirements, conducting surface water and groundwater monitoring and modeling, analyzing laboratory samples, and reviewing documents prepared for the purpose of regulating the discharge of waste, and administrative costs incurred in connection with carrying out those actions. [¶]…[¶]
>
> (2) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.
>
> (B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a <u>general industrial or construction stormwater permit</u> under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.
>
> (ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in that region. (iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on <u>stormwater inspection</u> and regulatory compliance issues associated with industrial and construction stormwater programs. (Wat. Code, § 13260, subds. (d)(1) & (d)(2).) [Emphasis added.]

The State Water Board has adopted regulations to implement the stormwater fee that include fee schedules based on the threat to water quality and a complexity rating.[151]

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[150] *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068. Emphasis in original.

The issue is whether Water Code section 13260, subdivision (d)(1) and (d)(2), preempts local fee authority. In resolving this, we look for express or implied preemption or intent to occupy the field.[152]

First, there is no express intent on the face of the Water Code statute to preempt any local fee ordinance because the statute is silent on local fees. As to implied intent to occupy the field of law, the Supreme Court has stated that it may be found if:

> (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.[153]

The city claimants, in their comments on the draft staff analysis submitted in June 2009, argue as follows with regard to Water Code section 13260:

> Here, the Legislature adopted a statute that specifically established a mechanism for fees to be assessed on GIASP and GCASP holders, for those funds to be segregated and sent to the regional boards, and for a specified amount of those funds ("not less than 50 percent of the money") to be used by the regional boards "solely" on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs. Water Code section 13260(d)(2)(iii). Such a specific determination as to the destination of the funds for the purposes of inspection and compliance evidences the intent of the Legislature that the issue of funding for GIASP and GCASP inspections be "fully occupied."

The Commission disagrees. Specific determination of funds is not a factor the courts use to determine whether a state statute fully occupies the field. Applying the Supreme Court's factors from the *O'Connell v. City of Stockton* case, the subject matter of stormwater fees has not been "so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern."[154] The Water Code's single fee statute for state permit holders does not rise to that level. Second, the Commission cannot find that "the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action."[155] No clear

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[151] Fees for NPDES permits for municipal separate stormwater sewer systems are in subdivision (b) of section 2200 of title 23 of the California Code of Regulations.

[152] *O'Connell v. City of Stockton, supra,* 41 Cal.4th 1061, 1068.

[153] *O'Connell v. City of Stockton, supra,* 41 Cal.4th 1061, 1068.

[154] *O'Connell v. City of Stockton, supra,* 41 Cal.4th 1061, 1068.

[155] *Ibid.*

indication of a paramount state concern can be found on the face of the Water Code fee statute. And the third instance does not apply because the subject is not "of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality."

The legislative history of the Water Code provision does not indicate any intent to occupy the field. The legislative history of the amendment to require 50 percent of the fees to be used for stormwater inspection and regulatory compliance issues indicated as follows:

> …California's 1994 Water Quality Inventory Report states that storm waters and urban run-off are the leading sources of pollution in California estuaries and ocean waters. Proponents argue that non-compliance is rampant, with approximately 10,000 industries in the Los Angeles area alone who are required but have failed to obtain storm water permits. Further, proponents point out that the Los Angeles Regional Water Quality Control Board has only two staff to contact, educate, and control each site and question whether adequate revenues are returned to the regional boards for this program.[156]

The Legislature acknowledged that the state inspections at the time the statute was enacted were inadequate to prevent the pollution that the statewide permits were intended to prevent.

And the regional board, via the permit, acknowledges the role of both local regulation and state regulation under the general permits. Page 11 of the permit states:

> The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in stormwater discharges to the MS4. The Regional Board is the enforcement authority in the Los Angeles Region for the two statewide general permits regulating discharges from industrial facilities and construction sites, and all NPDES stormwater and non-stormwater permits issued by the Regional Board. These industrial and construction sites and discharges are also regulated under local laws and regulations.

As to inspection of construction sites, section 4E of the permit states:

> If compliance has not been achieved, and the site is also covered under a statewide general construction stormwater permit, each Permittee shall enforce their local ordinance requirements, and if non-compliance continues the Regional Board shall be notified for further joint enforcement actions.

Moreover, the Water Code statute provides broader fee authority than a local inspection fee. The statute requires the regional board to "spend not less than 50 percent of that money solely on stormwater inspection <u>and regulatory compliance issues</u> associated with industrial and construction stormwater programs." (Wat. Code, § 13260, subd. (d)(2)(iii). Emphasis added.) Because the fees for GIASP and GCASP permit holders may also be spent on "regulatory compliance issues" in addition to the inspections, the Commission cannot find that a local fee

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[156] Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of Assem. Bill No. 1186 (1997-1998 Reg. Sess.) as amended August 6, 1997.

ordinance would duplicate or be "coextensive" with state fee authority, and therefore cannot find that the state fee statute occupies the field. A local fee would merely partially overlap with the state fee.

As for the phase I facilities[157] subject to inspection, the inspections do not occupy the field because the permit specifies that these need not be inspected if the regional board has inspected them within the past 24 months.

According to the State Board's April 2008 comments, the overlapping fees were envisioned by U.S./EPA.

> In addition to the requirements for permits issued to municipalities, the Water Boards are also mandated to issue permits to entities that discharge stormwater "associated with industrial activity." (fn. CWA § 402(p)(2)(B)). As part of its responsibilities for its in lieu program, the State Boards must administer and enforce all of its permits. (fn. CWA § 402(p).) The State Water Board has issued permits for industrial and construction discharges of stormwater, and the Los Angeles Water Board administers those permits within its jurisdiction. Therefore, the Los Angeles Water Board does conduct inspections at businesses in Los Angeles County to ensure compliance with the state permits. In addition, the MS4 Permit requires the permittees also to conduct inspections. This approach, which may result in two different entities inspecting the same businesses to review stormwater practices, was specifically envisioned and required by U.S. EPA in adopting its stormwater regulations.

U.S./EPA, in its "MS4 Program Evaluation Guidance" document, acknowledged regulation at both the local and state levels as follows:[158]

> In addition to regulation of construction site stormwater at the local level, EPA regulations also require construction sites disturbing greater than one acre to obtain an NPDES permit. This permit can be issued by the state permitting authority or EPA, depending on whether the state has been delegated the NPDES authority. This dual regulation of construction sites at both the local and state or federal level can be confusing to permittees and construction operators.[159]

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[157] On page 62 of the permit, U.S. EPA Phase I Facilities are defined as "facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR 122.26(c). These categories include: (i) facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N); (ii) manufacturing facilities; (iii) oil and gas/mining facilities; (iv) hazardous waste treatment, storage, or disposal facilities; (v) landfills, land application sites, and open dumps; (vi) recycling facilities; (vii) steam electric power generating facilities; (viii) transportation facilities; (ix) sewage or wastewater treatment works; (x) light manufacturing facilities.

[158] State Water Resources Control Board, comments submitted April 18, 2008, attachment 33.

[159] *Ibid.*

In fact, as to inspection duties and costs under two permit systems, one court has stated regarding a permit similar to the one in this claim:

> Rancho Cucamonga and the other permittees are responsible for inspection construction and industrial sites and commercial facilities within their jurisdiction for compliance with the enforcement of local municipal ordinance and permits. But the Regional Board continues to be responsible under the 2002 NPDES permit for inspections under the general permits.[160]

The reasoning of the *City of Rancho Cucamonga* case is instructive because a local regulatory fee could be used for local-government inspections, and the state fee is for state or regional inspections under the general statewide permits.

The state permit program and local inspection program under the regional board's permit can be viewed as two programs with similar, overlapping goals. Viewed in this way, the fees for two sets of inspections for construction sites (or for phase I facilities not inspected by the regional board within the past two years) would not necessarily exceed the costs of both sets of inspections.

In short, a local regulatory fee ordinance that provided for inspections of the industrial facilities and construction sites specified in the permit (parts 4C2a, 4C2b & 4E) would not be preempted by the state fee authority in Water Code section 13260 or in title 23 of the California Code of Regulations.

4. Local fee authority to inspect industrial or construction sites covered under the state permits would not be a "special tax" under article XIII A, section 4, of the California Constitution

In their June 2008 rebuttal comments, the city claimants assert that they do not have sufficient fee authority under Government Code section 17556, subdivision (d). They focus on facilities that hold state-issued general industrial or construction stormwater permits and pay the state-imposed fees pursuant to Water Code section 13260, arguing that an additional local fee for inspecting these facilities would be considered a special tax. According to the city claimants:

> In order for a fee to be considered a "fee" as opposed to a "special tax," the fee cannot exceed the reasonable cost of providing the services necessary for which the fee is charged. See *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-660. Any fee assessed by the Cities or the County for inspection of these facilities would be a double assessment, and thus run afoul of this rule.

The city claimants, in their June 2009 comments on the draft staff analysis, again assert that forcing claimants to recover their costs for inspecting the state-permitted GIASP and GCASP facilities and sites, the regional board is creating a special tax on holders of those state permits.

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[160] *City of Rancho Cucamonga v. Regional Water Quality Control Board, supra,* 135 Cal.App.4th 1377. The test claim record is silent as to the number of facilities within the permit area that are subject to the General Industrial Activity Storm Water Permit, or how many construction sites within the permit area are subject to the General Construction Activity Storm Water Permit.

Special taxes are governed by article XIII A, section 4, of the California Constitution:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Government Code section 50076 states that a fee is not a special tax under article XIII A, section 4, if the fees are: (1) "charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged," and (2) "are not levied for unrelated revenue purposes." The California Supreme Court has reaffirmed this rule.[161]

The Commission finds that a local regulatory stormwater fee, if appropriately calculated and charged, would not be a special tax within the meaning of article XIII A, section 4. There is no evidence in the record that a local regulatory fee charged for the stormwater inspections would exceed the reasonable cost of providing the inspections and related services or would otherwise violate the criteria in section 50076.

As the court stated in the *Connell v. Superior Court* case discussed above:

> The [Water] Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.[162]

Similarly, in this claim no one is suggesting that the local agencies levy regulatory fees that exceed their costs. Therefore, the Commission finds that a local regulatory fee for stormwater would not be a "special tax" under article XIII A, section 4, of the California Constitution for the activities at issue in the permit.

5. The local fee to inspect industrial and construction sites would not be subject to voter approval under article XIII D (Proposition 218) of the California Constitution

Some local government fees are subject to voter approval under article XIII D of the California Constitution, as added by Proposition 218 (1996). Article XIII D defines a property-related fee or charge as any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency on a parcel or a person as an incident of property ownership, including a user fee or charge for a property-related service. Among other things, new or increased property-related fees require a majority-vote of the affected property owners, or two-thirds registered voter approval, or weighted ballot approval by the affected property owners (article XIII D, § 6, subd.

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[161] *Sinclair Paint v. State Board of Equalization, supra,* 15 Cal.4th at p. 876: "[T]he term "special taxes" in article XIII A, section 4, does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes."

[162] *Connell v. Superior Court, supra,* 59 Cal.App.4th 382, 402.

(c)). Exempt from voter approval, however, are property-related fees for sewer, water, or refuse collection services (*Ibid*).

In 2002, an appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, found that a city's charges on developed parcels to fund stormwater management were property-related fees, and were not covered by Proposition 218's exemption for "sewer" or "water" services. This means that an election would be required to impose storm water fees if they are imposed "as an incident of property ownership."

The Commission finds that local fees for inspections of phase I facilities, restaurants, retail gasoline outlets, automotive dealerships, etc., would not be subject to the vote requirement of Proposition 218. In a case involving inspections of apartments in the City of Los Angeles in which a fee was charged to landlords, the California Supreme Court ruled that the regulatory fee for inspecting apartments was not a "levy ... upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service" [163] within the meaning of Proposition 218. The court interpreted the phrase "incident of property ownership" as follows:

> The foregoing language means that a levy may not be imposed on a property owner as such-i.e., in its capacity as property owner-unless it meets constitutional prerequisites. In this case, however, the fee is imposed on landlords not in their capacity as landowners, but in their capacity as business owners. The exaction at issue here is more in the nature of a fee for a business license than a charge against property. It is imposed only on those landowners who choose to engage in the residential rental business, and only while they are operating the business.[164]
>
> [¶]…[¶] In other words, taxes, assessments, fees, and charges are subject to the constitutional strictures when they burden landowners *as landowners.* The [City of Los Angeles'] ordinance does not do so: it imposes a fee on its subjects by virtue of their ownership of a business-i.e., because they are landlords.[165]

Following the reasoning of the *Apartment Assoc.* case, the inspection fees on restaurants, retail gasoline outlets, automotive dealerships, phase I facilities, etc., like the fee in *Apartment Assoc.*, would not be imposed on landowners as landowners, nor as an incident of property ownership, but by virtue of business ownership. Thus, the inspection fee would fall outside the voter requirement of Proposition 218.

As to the fees for inspecting construction sites, the Commission finds that they too would not be subject to Proposition 218's voter requirement. Article XIII D of the California Constitution states that it shall not be construed to "affect existing laws relating to the imposition of fees or charges as a condition of property development."[166]

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[163] That is the definition of "fee" or "charge" in article XIII D, section 2, subdivision (e).

[164] *Apartment Assoc. of Los Angeles County v.City of Los Angeles* (2001) 24 Cal.4th 830, 839-840.

[165] *Id.* at 842 [Emphasis in original.]

[166] Article XIII D, section 1, subdivision (b).

Moreover, the California Supreme Court, in determining whether water connection fees are within the purview of Proposition 218, reasoned that "water service" fees were within the meaning of "property-related services" but "water connection" fees were not.

> Rather, we conclude that a water service fee is a fee or charge under article XIII D if, but only if, it is imposed "upon a person as an incident of property ownership." (Art. XIII D, § 2, subd. (e).) A fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property. But a fee for making a new connection to the system is not imposed "as an incident of property ownership" because it results from the owner's voluntary decision to apply for the connection.[167]

The Supreme Court's reasoning applies to local stormwater fees for inspecting construction sites. That is, the fee would not be an incident of property ownership because it results from the owner's voluntary decision to build on or develop the property. Therefore, the Commission finds that local inspection fees for stormwater compliance at construction sites would not be within the purview of the election requirement of Proposition 218. A recent report by the Office of the Legislative Analyst concurs with this conclusion.[168]

In its June 2009 comments, the County disagrees that stormwater pollution fees would not be subject to the voter requirement in Proposition 218, or that fee authority exists. In support, the County points to unadopted legislation pending in the current or in past legislative sessions that would provide fee authority or expressly exempt stormwater fees from the Proposition 218 voting requirement. For example SCA 18 (2009) would add "stormwater and urban runoff management" fees to those expressly exempted from the vote requirement in article XIII D, putting them in the same category as trash and sewer fees. SB 2058 (2002) would have required the regional water boards to share their fees with counties and cities. And SB 210 (2009) would provide cities and counties with stormwater regulatory or user-based fee authority.

The Commission finds that the unadopted legislative proposals cited by the County are unconvincing to show a lack of regulatory fee authority for business inspections as discussed above. First, courts have said that "As evidence of legislative intent, unadopted proposals have been held to have little value."[169] Second, if they were enacted, the legislative proposals would grant broader fee authority than is found in this analysis. For example, SCA 18, by adding a

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[167] *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 427.

[168] "Local governments finance stormwater clean–up services from revenues raised from a variety of fees and, less frequently, through taxes. Property owner fees for stormwater services typically require approval by two–thirds of the voters, or a majority of property owners. Developer fees and fees imposed on businesses that contribute to urban runoff, in contrast, are not restricted by Proposition 218 and may be approved by a vote of the governing body. Taxes for stormwater services require approval by two–thirds of the electorate." Office of the Legislative Analyst. *California's Water: An LAO Primer* (October 22, 2008) page 56.

[169] *County of Sacramento v. State Water Resources Control Board* (2007) 153 Cal.App.4th 1579, 1590.

stormwater exception from the vote requirement in Proposition 218, would authorize *user* fees on residential property for stormwater and urban runoff programs, whereas this analysis addresses the much narrower issue of *regulatory* fees on businesses for inspections. Likewise, SB 2058 would have required the State Board's permit fees to be shared with "counties and cities" for the broad purpose of carrying out stormwater programs rather than for the narrower purpose of inspecting businesses. And SB 210 would likewise provide fee authority that is broader than regulatory fees; as the May 28, 2009 version expressly states in proposed section 16103, subdivision (c), of the Water Code: "The fees authorized under subdivision (a) may be imposed as user-based or regulatory fees consistent with this chapter." In short, the legislative proposals cited by the County do not indicate that fee authority does not exist. Rather, the proposals would, if enacted, provide broader fee authority than now exists.

In comments received June 3, 2009, the Bay Area Stormwater Management Agencies Association (BASMAA) contends that many permit requirements relate to local communities and their residents rather than specific business activities, and require public services that are essentially incident to real property ownership, and/or may only be financed via fees that remain subject to the voting requirements of Proposition 218 or increased property taxes. BASMAA also states that many permit activities would fall on joint power authorities or special districts that have no fee authority, or for which exemptions from Proposition 218 would not be applicable. BASMAA requests that the analysis be revised to revisit the conclusions regarding "funded vs. unfunded" requirements, and to recognize and distinguish the many types of stormwater activities for which regulatory fees would not apply.

The Commission disagrees. BASMAA raises issues that are outside the scope of the portions of the Los Angeles stormwater permit (parts 4C2a, 4C2b, 4E & 4Fc3) that were pled by the test claimants. Because the Commission's jurisdiction is limited by those parts of the permit pled in the test claim, it cannot opine on other issues outside the pleadings, even if it would raise issues closely related to other NPDES permits (or even other parts of this NPDES permit).

In sum, the Commission finds that the inspections and related activities at issue in the Los Angeles stormwater permit are not subject to voter approval in article XIII D of the California Constitution (Proposition 218), so a regulatory fee ordinance for stormwater inspections would not be subject to voter approval.

Given the existence of local regulatory fee authority under the police power (Cal. Const, art. XI, § 7), and lacking any evidence or information to the contrary, the Commission finds that the claimants' authority to adopt a regulatory fee is sufficient (pursuant to Gov. Code, § 17556, subd. (d)) to pay for the inspections of restaurants, automotive service facilities, retail gasoline outlets, automotive dealerships, phase I facilities, as defined, and construction sites, and related activities specified in the permit. Therefore, for the inspections and related activities at issue, the Commission finds that there are no "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

CONCLUSION

For the reasons discussed above, the Commission finds that the following activity in part 4F5c3 of the permit is a reimbursable state mandate within the meaning of Government Code sections 17514 and 17556: For local agencies subject to the permit that are not subject to a trash

TMDL[170] to: "Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary."

The Commission also finds that the remainder of the permit (parts 4C2a, 4C2b & 4E) does not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution because the claimants have fee authority (under Cal. Const. article XI, § 7) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

[170] A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

Abbreviations

BMP - Best management practice

CWA – Clean Water Act

GCASP - General Construction Activity Storm Water Permit

GIASP - General Industrial Activity Storm Water Permit

MS4 - Municipal Separate Storm Sewer Systems

NOI - Notice of Intent for coverage under the GCASP

NPDES - national pollutant discharge elimination system

RGO - Retail Gasoline Outlet

ROWD – Report of Waste Discharge

SQMP - Storm Water Quality Management Program

SWPPP - Storm Water Pollution Prevention Plan

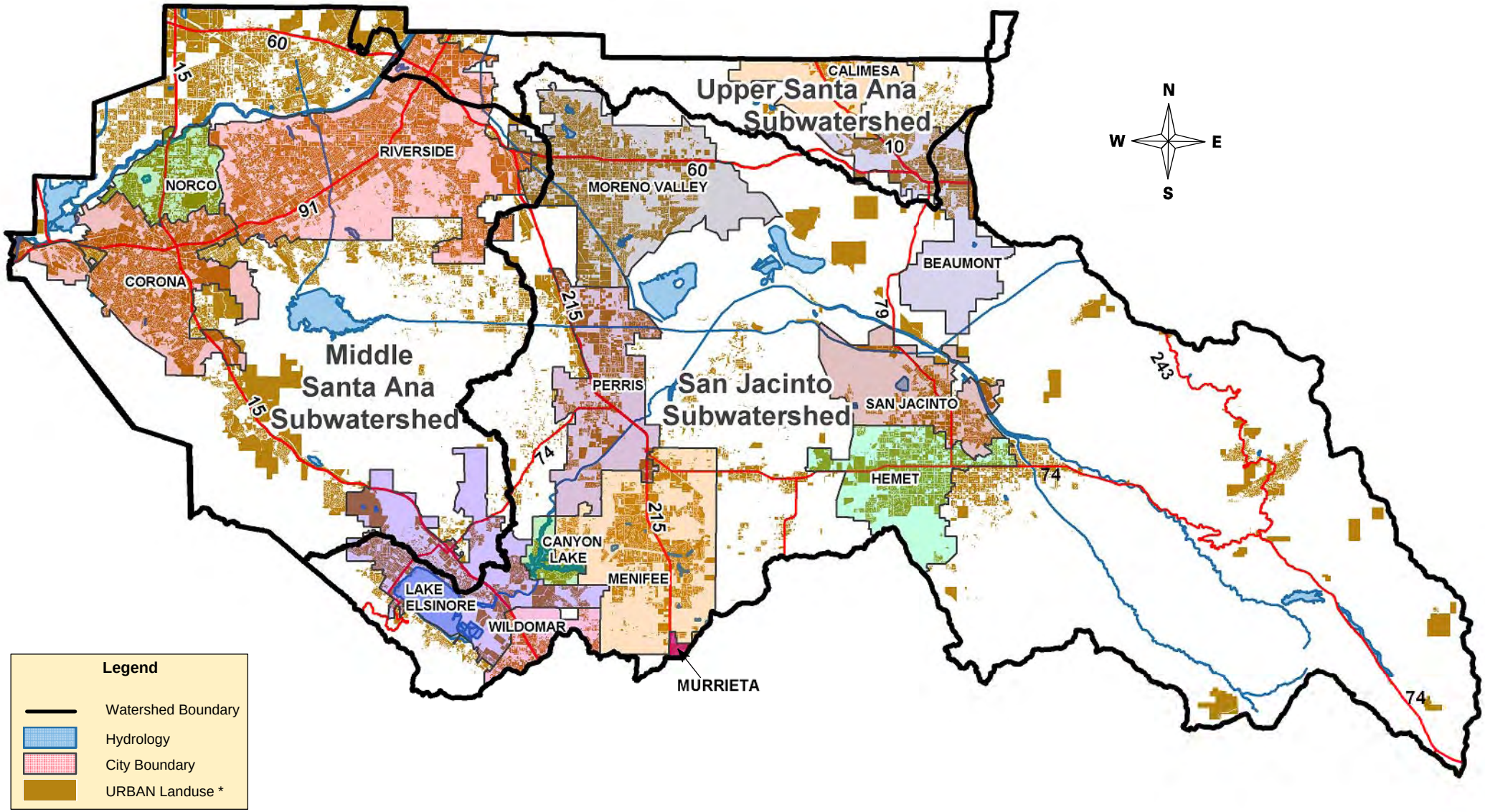
TMDL - Total Maximum Daily Load

U.S. EPA – United States Environmental Protection Agency

WDID - Waste Discharger Identification

ATTACHMENT 12

ORDER NO. R8-2009-0033 (NPDES NO. CAS618003)
RIVERSIDE AREA-WIDE URBAN RUNOFF MANAGEMENT PLAN



* Areas not in URBAN: Agricultural, State, Federal, Tribal, Preserves & Open Space, Rural-Residential, Highways/Freeways

ATTACHMENT 13

Appendix 2

OTHER POTENTIAL DISCHARGERS TO THE MS4s

Government Agencies

Department of the Air Force,
March Air Force Base – Special Districts (regulated under an individual NPDES permit)
State Parks
U.S. Army Corps of Engineers
Caltrans (regulated under a state-wide NPDES permit)
Department of Corrections
U.S. Forest Service
Riverside County Regional Park and Open Space District
U.S. Department of the Interior – Bureau of Land Management
Riverside County Transportation Commission

Hospitals

Corona Community Hospital
Hemet Valley Medical Center
Kaiser Foundation Hospital – Riverside
Loma Linda Hospital (Sun City)
Parkview Memorial Hospital
Riverside Community Hospital
Riverside County Regional Medical Center
Riverside General Hospital

Railroads

AT&SF Railway Company
Burlington Northern Railroad Company
Southern Pacific Railroad Company
Union Pacific Railroad

Special Districts/ Wastewater Agencies

Edgemont Community Services District
Jurupa Community Services District
Santa Ana Watershed Project Authority
Rubidoux Community Services District
Valley Wide Park and Recreation District

School Districts

Alvord Unified School District
Corona – Norco Unified School District
Hemet Unified School District
Lake Elsinore Unified School District
Menifee Union School District
Moreno Valley Unified School District
Nuview Union School District
Perris Elementary School District
Perris Union High School District
Riverside Unified School District
Romoland School District
San Jacinto Unified School District
Val Verde School District

Universities and Colleges

California Baptist University
La Sierra University
Mt. San Jacinto College
Riverside Community College
University of California, Riverside
California School for the Deaf, Riverside

Water Districts

Eastern Municipal Water District
Elsinore Valley Municipal Water District
Lake Hemet Municipal Water District
Lee Lake Water District
Metropolitan Water District
Western Municipal Water District

Tribal Lands

Soboba Band of Luiseno Indians
Morongo Band of Mission Indians

TENTATIVE

TENTATIVE

ATTACHMENT 14

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD – SANTA ANA REGION

NOTICE OF INTENT

TO COMPLY WITH THE TERMS OF THE RIVERSIDE COUNTY MUNICIPAL STORMWATER PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES

ORDER No. R8-2009-0033 (NPDES No. CAS618033)

MARK ONLY ONE ITEM 1. ☐ New Construction 2. ☐ Reconstruction 3. ☐ Change of Information for WDID# _____

I. OWNER

Name	Contact Person		
Mailing Address	Title		
City	State CA	Zip	Phone ( ) – Fax ( ) – Email :

II. CONTRACTOR INFORMATION

Name	Contact Person		
Local Mailing Address	Title		
City	State	Zip	Phone ( ) – Fax ( ) – Email:

III. SITE INFORMATION

A. Project Title	Site Address		
City/Unincorporated Area	State CA	Zip	Contact Person Phone ( ) –
B. Construction commencement date: (Month / Day / Year)	C. Projected construction completion date: (Month / Day / Year)		

D. Type of Work: ☐ Utility ☐ Flood Control ☐ Transportation ☐ Other (Specify) Description of Work: _____	E. Total size of construction site: _____ Acres

IV. RECEIVING WATER INFORMATION

A. Does the storm water runoff from the construction site discharge to (check all that apply):
1. ☐ Indirectly to Waters of the U.S.
2. ☐ MS4 Facility - Enter owner's name: _____
3. ☐ Directly to Waters of U.S. (e.g. , river, lake, creek, stream, etc.)

V. IMPLEMENTATION OF NPDES PERMIT REQUIREMENTS

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (mark one) ☐ A SWPPP has been prepared for this project and is available for review ☐ A SWPPP will be prepared and ready for review by (date): ___/___/___ B. Date WQMP approved by MS4 Permittee: ___/___/___ ☐ Not Applicable.	C. MONITORING PROGRAM (MP) (mark one) ☐ A MP has been prepared for this facility and is available for review ☐ A MP will be prepared and ready for review by (date): ___/___/___

VI. CERTIFICATIONS

"I certify under penalty of law that this document and all attachments were prepared under my direction and 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 or imprisonment. In addition, I certify that the Provisions No. 15-20 of Order No. 96-30, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan, will be complied with."

Printed Name: _____ **Title:** _____

Signature: _____ **Date:** _____

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Deleted: Storm drain system

Deleted: w

Deleted: bay, ocean,

Deleted:

Deleted: facility

Deleted: local agency

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD – SANTA ANA REGION

NOTICE OF TERMINATION

OF COVERAGE UNDER THE RIVERSIDE COUNTY MUNICIPAL STORMWATER PERMIT
FOR STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

ORDER No. R8-2009-0033 (NPDES No. CAS618033)

I. OWNER

Name	Contact Person		
Mailing Address	Title		
City	State	Zip	Phone ( ) – Fax ( ) – Email:

II. SITE INFORMATION

A. Original Project Title & WDID assigned by Regional Board.	Site Address		
City/Unincorporated Area	State CA	Zip	Phone ( ) –
B. Contractor Name	Contact Person		
Local Mailing Address	Title		
City	State	Zip	Phone ( ) – Fax ( ) – Email:

III. BASIS OF TERMINATION

__ 1. The construction project is completed and the following conditions have been met.

- ☐ All elements of the Storm Water Pollution Prevention Plan have been completed.
- ☐ Construction materials and waste have been disposed of properly.
- ☐ The site is in compliance with all local storm water management requirements.
- ☐ A post-construction storm water operation and management plan is in place (Attach a description of the post construction BMPs, the location (Latitude /Longitude), and a map of the locations of the post construction BMPs).
- ☐ Date field verification inspection performed. ___/___/___

__ 2. Construction activities have been suspended; either temporarily ____ or indefinitely ___ and the following conditions have been met.

- ☐ All elements of the Storm Water Pollution Prevention Plan have been completed.
- ☐ Construction materials and waste have been disposed of properly.
- ☐ An effective combination of erosion and sediment control is in place for all denuded areas and other areas of potential erosion.
- ☐ The site is in compliance with all local storm water management requirements.

Date of suspension ____ / ____ / ____ Expected start up date ____ / ____ / ____

IV. CERTIFICATION

I certify under penalty of law that all storm water discharges associated with construction activity from the identified site that are authorized by NPDES General Permit No. CAS000002 have been eliminated or that I am no longer the owner of the site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with construction activity under the General Permit, and that discharging pollutants in storm water associated with construction activity to Waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner of liability for any violation of the General Permit or the Clean Water Act.

Printed Name: _____ **Title:** _____

Signature: _____ **Date:** _____

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