



Los Angeles Regional Water Quality Control Board

January 21, 2014



VIA EMAIL ONLY

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
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IN RE PETITIONS CHALLENGING 2012 LOS ANGELES MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (ORDER NO. R4-2012-0175): LOS ANGELES WATER BOARD COMMENTS ON PROPOSED ORDER SWRCB/OCC Files A-2236(a) through (kk)

Dear Ms. Townsend:

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board or Board) appreciates the opportunity to provide written comments on the proposed order in this matter. The Board concurs with and supports the findings and conclusions reached in the proposed order, which generally upholds Los Angeles Water Board Order No. R4-2012-0175, *Waste Discharge Requirements for MS4 Discharges within the Coastal Watersheds of Los Angeles County, Except Those Discharges Originating from the City of Long Beach MS4* (Los Angeles MS4 Order). The proposed order reflects the State Water Resources Control Board's (State Water Board) thorough work in addressing numerous petitions that raise a variety of legal and policy contentions.

The written comments that we are providing focus on the proposed order and are intended to supplement our oral comments and responses to State Water Board questions at the December 16, 2014 workshop on this matter. The Los Angeles Water Board's objectives in requesting some minor changes to the proposed order are to ensure that the Board and the Los Angeles County MS4 Permittees can effectively implement the Los Angeles MS4 Order as modified by the State Water Board's proposed order and to clarify the legal and factual record. For ease of reference, the Board is providing its requested language changes to the proposed order in a matrix, which is attached to this letter. Where the Los Angeles Water Board has not herein provided specific comments on a proposed modification to the Los Angeles MS4 Order, the Board supports the modification without any further changes.

In addition to our comments on the proposed order, the Los Angeles Water Board wishes to provide additional written explanation to the State Water Board to clarify how the Board intends to implement the Enhanced Watershed Management Program (EWMP) provisions in response to questions raised by the State Water Board members and counsel during the December 16,

2014 workshop on the proposed order. The State Water Board inquired about what would occur under the Los Angeles MS4 Order if Permittees achieved the 85th percentile, 24-hour stormwater volume retention standard through implementation of regional multi-benefit stormwater retention projects and yet monitoring data indicated that Receiving Water Limitations were still not achieved. In a related question, the State Water Board counsel requested clarification as to how compliance with *final* Water Quality-based Effluent Limitations and *final* Receiving Water Limitations will be determined in areas that achieve the stormwater retention standard and, specifically, whether compliance will be determined through monitoring data.

The Los Angeles Water Board's intent in crafting the EWMP provisions and related compliance provisions was to ensure that, over time, MS4 discharges and the pollutants in those discharges would be sufficiently controlled such that the MS4 discharges would not cause or contribute to exceedances of Receiving Water Limitations. Part VI.C.1.g of the Los Angeles MS4 Order supplements the general provisions related to Watershed Management Programs with provisions specific to EWMPs and states that, "An EWMP shall ... *provide for meeting water quality standards ...*" (emphasis added).

In addition to the regional multi-benefit stormwater and non-stormwater runoff retention projects, an EWMP must include a number of other implementation elements as set forth in Part VI.C.1.g.i-ix. These include a suite of watershed control measures: structural and/or non-structural controls (including operational source control, pollutant minimization programs and pollution prevention); retrofitting existing development with regional or sub-regional controls such as green streets; stream and/or habitat rehabilitation or restoration projects; non-storm water discharge control measures; and the six stormwater management categories referred to as minimum control measures. Additional required elements of EWMPs include: (1) integrated watershed monitoring and assessment to assess progress toward achieving the Water Quality-based Effluent Limitations and Receiving Water Limitations, and (2) adaptive management to adjust the EWMP to become more effective based on progress toward achieving applicable final Water Quality-based Effluent Limitations and Receiving Water Limitations in Part VI.E and progress toward achieving other Receiving Water Limitations based on an evaluation of outfall-based monitoring data and receiving water monitoring data. (See attached matrix for more details.)

The Los Angeles MS4 Order does not exclude EWMPs or areas within an EWMP where the stormwater retention standard is achieved from the integrated watershed monitoring, assessment and adaptive management processes. Neither does the Los Angeles MS4 Order specify or contemplate an end to the monitoring, assessment and adaptive management processes in the case of a Watershed Management Program (WMP) or EWMP. These required elements, including receiving water and outfall monitoring, evaluation of these monitoring data, and modification of the EWMP to improve its effectiveness, will be continually conducted throughout the Watershed Management Area addressed by the EWMP.

Therefore, as stated in the Los Angeles Water Board's oral comments during the December 16, 2014 workshop, the Los Angeles Water Board anticipates that the regional multi-benefit stormwater retention approach in combination with the implementation of the other required elements of an EWMP will lead to achieving final Water Quality-based Effluent Limitations and Receiving Water Limitations over time. The Los Angeles Water Board understood that these regional multi-benefit projects would take time to implement and that Permittees needed to be afforded this time in the Los Angeles MS4 Order. The Los Angeles Water Board will continually evaluate progress during the implementation period. If, as full implementation nears, some Receiving Water Limitations are still not achieved, the Los Angeles Water Board and State

Water Board have a variety of tools that can be used at a regional or statewide level including reconsideration of TMDLs, Basin Planning actions, policy development and permitting, among others. The State Water Board's proposed modification to Part VI.E.2.e.i. of the Los Angeles MS4 Order addresses a possible situation where these tools could be necessary and requires a plan to address such a situation.

Lastly, in regards to contentions raised by some of the petitioners and interested persons at the workshop, the Los Angeles Water Board relies on its prior submissions dated August 15, 2013 (Los Angeles Water Board Comments on Receiving Water Limitations Questions) and October 15, 2013 (Los Angeles Water Board Response to Petitions) to respond to those contentions. Additionally, the Los Angeles Water Board does not support any other recommendations for modifications to the proposed order or the Los Angeles MS4 Order made by petitioners and interested persons. The Board's years of work (including countless meetings and among them, ten facilitated meetings between key stakeholders; release of five staff working proposals; nine workshops; three days of hearing; etc.) led us to a permit that significantly advances water quality protections and provides opportunities for regional multi-benefit solutions that will greatly assist with water reliability in the region. During this undertaking, the Board worked diligently to cultivate a constructive, collaborative approach amongst Permittees, the Los Angeles Water Board, and other stakeholders. Over the past two years, we have observed that this approach is enhancing opportunities to implement stormwater solutions within watersheds throughout Los Angeles County.

We appreciate the State Water Board's consideration of these comments and our requests for minor language changes. If you have any questions, please contact me at Samuel.Unger@waterboards.ca.gov or Renee Purdy at Renee.Purdy@waterboards.ca.gov.

Sincerely,



Samuel Unger, P.E.
Executive Officer

Attachment

**Los Angeles Water Board Comments on
State Water Board Proposed Order
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Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except
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SWRCB/OCC Files A-2236(a)-(kk)**

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1	21-22	The Los Angeles Water Board supports the proposed modifications to Finding II.N and Attachment F, Fact Sheet, Part III.D.4 of the Los Angeles MS4 Order regarding anti-backsliding. While the Los Angeles Water Board does not believe that any additional changes are necessary, the State Water Board could supplement its proposed modifications to the Fact Sheet with several examples to follow the sentence that starts on page 21 and ends of page 22 of the proposed order that reads "Although the non-applicability...(See, e.g., 44 Fed.Reg. 32854, 32854, 32864 (Jun. 7, 1979))."	The additional sentence could be added to page 22 as follows: "... (See, e.g., 44 Fed.Reg. 32854, 32854, 32864 (Jun. 7, 1979)). <u>In this context, the maximum extent practicable (MEP) standard is the comparable technology standard for municipal stormwater discharges; the record clearly supports that permit conditions have evolved since the issuance of the 2001 permit to become more stringent (e.g., trash controls: see Part VI.D.9.h.vii [Additional Trash Management Practices] compared to Part 4.F.5.c of Order No. 01-182; Planning and Land Development: see Part VI.D.7.c as compared to Part 4.D.3 of Order No. 01-182; Development Construction Program: see Part VI.D.8.d as compared to Part 4.E of Order No. 01-182).</u> It is unnecessary, however, to resolve..."
2	24-26	The Los Angeles Water Board supports the proposed modifications to Finding II.M and Attachment F, Fact Sheet, Part III.D.3 of the Los Angeles MS4 Order that detail the Order's compliance with the state and federal antidegradation policies. These findings connect the evidence in the administrative record with the conclusion	The Los Angeles Water Board requests two instances of language changes to the proposed order. 1) Delete the last two sentences in footnote 76 on page 24 as follows:

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		<p>that the Order complies with the policies, and makes explicit the Los Angeles Water Board's finding that any degradation of a limited nature allowed by the Los Angeles MS4 Order is necessary to accommodate important economic and social development and is consistent with the maximum benefit to the people of the state. As such, the Los Angeles Water Board does not seek any alteration to the proposed modifications to the Los Angeles MS4 Order.</p> <p>The Los Angeles Water Board, however, does request minor changes to the language of the State Water Board's proposed order to clarify the legal standard and factual record. Page 25 of the proposed order states that the appropriate baseline for purposes of an antidegradation analysis is the quality of water as it existed in 1968. But as is recognized elsewhere in the proposed order, there are insufficient data in the evidentiary record to determine the date that each waterbody affected by the Los Angeles MS4 Order achieved its highest quality. (See e.g., page 26 of the proposed order that states "there is simply insufficient data available...to make such findings [for each waterbody-pollutant combination]"). Long-term water quality trends are dependent on a variety of factors and are often pollutant and waterbody specific. It is impossible to generalize that for all pollutants and all waterbodies covered by the Los Angeles MS4 Order, the best water</p>	<p>"We reviewed the Administrative Record, including the 1998 Clean Water Act section 303(d) List (May 12, 1999) (Administrative Record, section 10.VI.E., RB-AR35684-35733), the 2010 Clean Water Act section 303(d) List (Oct. 11, 2011) (Administrative Record, section 10.VI.E., RB-R35734- 35785), Santa Monica Bay Restoration Project, An Assessment of Inputs of Fecal Indication Organisms and Human Enteric Viruses from Two Santa Monica Bay Storm Drains (1990) (Administrative Record, section 10.VI.E, RBAR43363-43413), Toxic Substances Monitoring Program, 10 Year Summary Report 1978-1987 (Administrative Record, Order No. 01-182, R0044602-0045053) and comments submitted by interested persons to the Los Angeles Water Board (Administrative Record RB-AR1006-1038, RB-AR1100-1128, RBAR1768-2119, RB-AR2653-2847, RB-AR5642-17888). We found no evidence presented to the Los Angeles Water Board of high quality waters in the region. We recognize, however, that the</p>

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		<p>quality was that achieved in 1968. With respect to some waterbodies and some pollutants, the waters may have been of higher quality in 1968. In other instances, the waters may be of higher quality today than at any time since 1968.</p> <p>For example, lead was historically a key pollutant of concern in stormwater discharges. However, the Clean Air Act Amendments of 1990 mandated the elimination of lead from all U.S. motor fuel by January 1, 1996. While little data are available regarding levels of lead in receiving waters in 1968, the State Water Board's California Mussel Watch Program has generally observed significant decreases in concentrations of lead in receiving waters in the Los Angeles Region since 1996. With the regulation and prohibition on leaded motor fuel, the quality of many waterbodies with respect to lead is likely better today than in 1968. Similar findings can be made for DDT, PCBs and chlordane, which were banned in 1972, 1979, and 1988, respectively. However, for some other pollutants such as copper, silver, and aluminum, data from the State Water Board's California Mussel Watch Program show an upward trend in some waterbodies. The Los Angeles Water Board has therefore requested clarifying changes to reflect that 1968 may not necessarily be the appropriate baseline for all pollutants and all waterbodies.</p>	<p>determination of whether a water is high quality is made on a constituent-by-constituent, as well as water body-by-water body, basis, and that any generalized conclusions are therefore problematic."</p> <p>2) Add language to page 25 as follows:</p> <p>"We are not persuaded, however, that the level of control achieved under the 2001 Los Angeles MS4 Order represents the baseline for <u>every pollutant and waterbody for purposes of an antidegradation analysis</u>. The 2001 Los Angeles MS4 Order had only minimal findings regarding antidegradation and it is not apparent that any degradation that may have continued under the conditions of the 2001 Los Angeles MS4 Order was anticipated by the Los Angeles Water Board and supported with appropriate analysis regarding economic and social benefits and best practicable treatment or control. We therefore find that the appropriate baseline remains 1968, <u>or the highest quality of receiving waters since that time.</u>"</p>

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		<p>In addition, the footnote 76 on page 24 states that the State Water Board “found no evidence presented to the Los Angeles Water Board of high quality waters in the region.” This statement is overbroad (presumably, unintentionally so). It is not the case that all waters in the region fail to meet water quality objectives with respect to all pollutants. Second, the footnote states that “the determination of whether a water is high quality is made on a constituent-by-constituent, as well as water body-by-water body, basis, and that any generalized conclusions are therefore problematic.” Yet, the proposed order later states on page 26 that the State Water Board’s findings are “necessarily made at a generalized level. Even if the directive of APU 90-004 to carry out a complete anti-degradation analysis for each water body-pollutant combination is applicable here, there is simply insufficient data available (to us or the Los Angeles Water Board) to make such findings.” The Los Angeles Water Board therefore requests deleting the last two sentences of the footnote, which do not reflect the necessity and propriety of generalized findings in the context of stormwater discharges for a large region, with multiple pollutants and multiple waterbodies, particularly in the absence of sufficient historical data necessary for more specific findings.</p>	
3	30, 31, 36	There are a few instances in the proposed order that state the Los Angeles MS4 Order “requires” a Permittee to	The Los Angeles Water Board requests four instances of language changes to the

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		<p>request a time schedule order. As clarification, the Los Angeles MS4 Order does not <i>require</i> a Permittee to request a time schedule order, but <i>allows</i> them to request time schedule order. Thus, requesting a time schedule order is not mandatory on a Permittee, but is permissive. This clarification is consistent with the existing language of the Los Angeles MS4 Order, as well as other portions of the proposed order.</p>	<p>proposed order, as follows.</p> <p>1) Page 30</p> <p>“The Los Angeles MS4 Order already requires <u>allows</u> Permittees who are out of compliance with final WQBELs and other TMDL-specific limitations to request a time schedule order.”</p> <p>2) Page 31</p> <p>“We have already noted that the Los Angeles MS4 Order requires <u>allows</u> a Permittee to request a time schedule order where a final compliance deadline for a state-adopted TMDL has passed and the Permittee believes that additional time to comply with the requirement is necessary.”</p> <p>3) Page 31</p> <p>“We will also require <u>allow</u> a Permittee to request a time schedule order if the Permittee fails to meet a final compliance deadline for a receiving water limitation set in the Permittee's WMP/EWMP.”</p>

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			<p>4) Page 36</p> <p>“The Los Angeles Water Board Executive Officer, in turn, may, after allowing for public review and comment, choose to (1) extend the deadline, (2) decline the extension and instead require <u>allow</u> the Permittee to obtain <u>request</u> a time schedule order, or (3) decline the extension and not approve a time schedule order, with the result that the Permittee will be out of compliance with the provision of the WMP/EWMP and therefore the receiving water limitations of Part V.A.”</p>
4	31-32	<p>The Los Angeles Water Board does not object to the proposed modification adding a new Part VI.C.6.b to and revising Part VI.E.4.b of the Los Angeles MS4 Order, which allows a permittee to request a time schedule order to provide additional time to comply with receiving water limitations where the final deadline to comply has passed. However, we suggest a change to the proposed timeframes within which a permittee must submit a request. The 45-day timeframe will be inadequate to issue a time schedule order prior to the final compliance deadline for the receiving water limitation. Once a time</p>	<p>Revise the proposed modifications on pages 31-32 as follows:</p> <p>“Part VI.C.6</p> <p>b. Where a Permittee believes that additional time to comply with a final receiving water limitation compliance deadline set within a WMP/EWMP is necessary, and the Permittee fails to timely request or is not granted an</p>

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		<p>schedule order request is received, the Los Angeles Water Board must review the time schedule order request, solicit additional information or clarification from the permittee(s), if necessary, draft the time schedule order, provide at least 30 days for public notice and an opportunity to comment, respond to comments, and finalize the time schedule order for issuance by either the Los Angeles Water Board or its Executive Officer. Based on experience, this process takes at least five to six months. The Los Angeles Water Board therefore requests a change in the timeframe.</p> <p>Please note that the 45-day period in Part VI.E.4.b of the Los Angeles MS4 Order pertained only to State adopted TMDLs where final compliance deadlines for water quality-based effluent limitations had already passed <i>prior to the issuance of the Los Angeles MS4 Order</i>. In these cases, we chose 45 days after issuance of the permit to achieve a reasonable balance between allowing Permittees adequate time to develop and submit their request(s) and ensuring that the time schedule order request was received and under review by the Los Angeles Water Board prior to the effective date of the Los Angeles MS4 Order (50 days after issuance).</p>	<p>extension by the Executive Officer, a Permittee may within 45 days of <u>180 days prior</u> to the final compliance deadline request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration.</p> <p>Part VI.E.4</p> <p>b. Where a Permittee believes that additional time to comply with the final water quality-based effluent limitations and/or receiving water limitations is necessary, a Permittee may within 45 days of Order adoption, or within 45 days of <u>180 days prior</u> to the final compliance deadline if after adoption of the Order, request a time schedule order pursuant to California Water Code section 13300 for the Regional Water Board's consideration."</p>
5	36	The Los Angeles Water Board agrees with the proposed modifications to Part VI.C.6.a of the Los Angeles MS4 Order that would allow a permittee to request an extension	Revise the proposed modification on page 36 as follows to correct the internal reference:

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		<p>of final compliance deadlines in addition to interim milestones, with the exception of those final compliance deadlines established in a TMDL. This is consistent with the adaptive management process in Part VI.C.8 of the Los Angeles MS4 Order and is reasonable given the long timeframes and extensive actions needed to comply with some receiving water limitations, particularly during wet weather conditions. Progress toward achieving these longer term deadlines will be continually assessed through the adaptive management process and, based on inter-annual and inter-decadal variability in watershed conditions, it may be necessary to adjust final compliance deadlines on the basis of these adaptive management assessments.</p> <p>The State Water Board also correctly identified a typographical error to an internal reference in Part VI.C.6.a of the Los Angeles MS4 Order. In correcting that internal reference, however, the State Water Board inadvertently deleted a portion of the correct internal reference. The correct internal reference should be changed to "Part VI.C.5.c.iii.(3)."</p>	<p>"a. Permittees may request an extension of deadlines for achievement of interim milestones and final compliance deadlines established pursuant to Part VI.C.5.c.iii.<u>(3)</u>, with the exception of those final compliance deadlines established in a TMDL..."</p>
6	38	The Los Angeles Water Board agrees with the proposed addition of subsection b. to Part VI.C.8 of the Los Angeles MS4 Order, requiring resubmittal of the WMP/EWMP, including an updated Reasonable Assurance Analysis, at an interval to be determined by the Los Angeles Water	<p>Revise the proposed modification on page 38 as follows:</p> <p>"i. In addition to adapting the Watershed Management Program or EWMP every two</p>

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		<p>Board but not to exceed every six years.</p> <p>The Los Angeles Water Board, however, suggests a change to the 120-day timeframe for approval/disapproval of the updated WMP or EWMP. The WMPs and EWMPs and the associated Reasonable Assurance Analyses are voluminous and highly technical documents. Additionally, we have found that time is needed for the Los Angeles Water Board to comment on the draft documents and then for permittees to revise the draft documents based on our comments and as well their consideration of public comments. Where this entails re-running the model used for the Reasonable Assurance Analysis, this revision process can be time consuming. We therefore recommend that an 8-month period is provided for review and approval/disapproval of the updated WMP or EWMP (i.e., 3 months for Los Angeles Water Board review, including the 2-month public review; 3 months for permittees to revise their resubmittal based on comments; and 2 months for final Los Angeles Water Board review and approval/disapproval).</p>	<p>years as described in Part VI.C.8.a, Permittees must submit an updated Watershed Management Program or EWMP with an updated Reasonable Assurance Analysis at an interval to be determined by the Regional <u>Water Board</u> but not to exceed every six years for review and approval by the Regional Water Board Executive Officer. The updated Reasonable Assurance Analysis must incorporate both water quality data and control measure performance data gathered in the prior years and, as appropriate, any new numeric analyses or other methods for the reasonable assurance analysis. The updated Watershed Management Program or EWMP must comply with all provisions in Part VI.C. The Regional Water Board Executive Officer will allow a 60-day public review and comment period with an option to request a hearing. The Regional Water Board Executive Officer must approve or disapprove the updated Watershed Management Program or EWMP within <u>120 days eight months</u> of submittal."</p>
7	44	As the State Water Board acknowledges, the Los Angeles	Revise proposed modification to Part

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		<p>MS4 Order provides that Permittees will be deemed in compliance with the final water quality-based effluent limitations and final receiving water limitations for pollutants associated with a TMDL if "in drainage areas where Permittees are implementing an EWMP, (i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85th percentile, 24 hour event is retained for the drainage area tributary to the applicable receiving water." In its proposed order, the State Water Board expresses two principal concerns regarding this provision. First, the State Water Board has concerns regarding whether the stormwater retention approach will achieve final water quality-based effluent limitations and receiving water limitations. Second, the State Water Board has concerns that the Los Angeles MS4 Order "does not incorporate clear requirements that would provide for such verification [that final water quality-based effluent limitations and receiving water limitations are achieved] in the process of implementation" (proposed order, p. 40).</p> <p>The Los Angeles Water Board would like to emphasize two points in response to the State Water Board's concerns regarding this provision.</p> <p>First, as reflected in the proposed order, an enhanced Watershed Management Program (EWMP) is a type of</p>	<p>VI.E.2.e.i.(4) on page 44 as follows:</p> <p>"...Where water quality monitoring under VI.C.7 shows that final water quality-based effluent limitations and final receiving water limitations are not in fact being achieved, the Permittee remains in compliance with the final water quality based effluent limitations and final receiving water limitations only if the Permittee proposes a plan for additional control measures for achievement of these final limitations and submits the plan to the Executive Officer for approval within 30 days of the final deadline or, alternatively, resubmits its EWMP plan per Part VI.C.8 with modifications to include additional control measures for achievement of the final limitations. This provision (4) shall not apply to final trash WQBELs."</p>

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		<p>Watershed Management Program. Part VI.C.1 of the Los Angeles MS4 Order sets forth the general provisions related to Watershed Management Programs, including EWMPs. These provisions include: (a) executing “an integrated monitoring program and assessment program <i>to determine progress toward achieving applicable [water quality-based effluent and receiving water] limitations...</i>” (Part VI.C.1.f.iii) and (b) “modifying strategies, control measures, and BMPs as necessary based on analysis of monitoring data ... <i>to ensure that applicable water quality-based effluent limitations and receiving water limitations ... are achieved</i>” (Part VI.C.1.f.iv). Further, Part VI.C.1.g supplements these general provisions with provisions specific to EWMPs. It states, among other criteria, that “An EWMP shall ... <i>provide for meeting water quality standards ...</i>” (subpart g.iii). (emphases added)</p> <p>Second, an EWMP must include a number of implementation elements as set forth in Part VI.C.1.g.i-ix of the Los Angeles MS4 Order. While the centerpieces of these EWMPs are the multi-benefit regional stormwater and non-stormwater runoff retention projects, there are other required elements of an EWMP, which include:</p> <ol style="list-style-type: none"> 1. <i>Identification of water quality priorities.</i> Water quality priorities must include controlling pollutants addressed by TMDLs as well as those pollutants 	

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		<p>for which data indicate impairment or exceedances of receiving water limitations due to MS4 discharges. (Part VI.C.5.a.iv.(1)-(2))</p> <p>2. <i>Selection and implementation of watershed control measures.</i> Two of the objectives of the watershed control measures specifically refer to achieving interim and final water quality-based effluent limitations and receiving water limitations. (Part VI.C.5.b.ii.(2)-(3)) Watershed control measures include: structural and/or non-structural controls (including operational source control and pollution prevention) and operation and maintenance procedures; retrofitting existing development with regional or sub-regional controls or management measures; stream and/or habitat rehabilitation or restoration projects; the six stormwater management categories referred to as minimum control measures (Development Construction Program, Industrial/Commercial Facilities Pollutant Control Program, Illicit Connection and Illicit Discharges Detection and Elimination Program, Public Agency Activities Program, and Public Information and Participation Program); non-storm water discharge measures; and other TMDL control measures.</p>	

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		<p>3. <i>Integrated watershed monitoring and assessment program.</i> The purpose of the integrated monitoring and assessment program is to “assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations.” (Part IV.C.7; Attachment E Part II.E.1.a, p. E-4)</p> <p>4. <i>Adaptive management process.</i> The purpose of the adaptive management process is to adapt the WMP <i>or EWMP</i> to become more effective, based on, but not limited to ... progress toward achieving interim and/or final water quality-based effluent limitations and/or receiving water limitations in Part VI.E ... (Part VI.C.8.a.i.(1)) and progress toward ... achieving receiving water limitations ... based on an evaluation of outfall-based monitoring data and receiving water monitoring data (Part VI.C.8.a.i.(2)) (emphasis added).</p> <p>As stated in the Los Angeles Water Board's comments during the State Water Board's workshop on this matter, the Los Angeles Water Board anticipates that the regional multi-benefit stormwater retention approach in combination with the implementation of the other required elements of an EWMP, including non-structural controls such as operational source control, pollutant minimization programs, and pollution prevention (as defined in</p>	

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		<p>Appendix A of the Los Angeles MS4 Order and California Water Code § 13263.3), will lead to achieving final water quality-based effluent limitations and receiving water limitations over time.</p> <p>The Los Angeles MS4 Order does not specify or contemplate an end to the integrated watershed monitoring and assessment process or the adaptive management process for Permittees implementing a EWMP. These required elements, including but not limited to, receiving water monitoring, evaluation of these monitoring data, and modification of the EWMP to improve its effectiveness, will be continually conducted throughout the Watershed Management Area addressed by the EWMP.</p> <p>Although the Los Angeles Water Board does not believe the proposed additional language to Part VI.E.2.e.i.(4) on page 44 of the proposed order is necessary given the other existing requirements of an EWMP in the Los Angeles MS4 Order, we agree it adds clarity. To be consistent with the existing requirements of the Los Angeles MS4 Order, we request that the State Water Board slightly modify its proposed language to allow permittees to fulfill the requirement to submit a plan through the Los Angeles MS4 Order's adaptive management process, if they so choose.</p>	

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8	45	As concluded by the State Water Board, the Los Angeles Water Board agrees that the Los Angeles MS4 Order's existing provisions related to "Integrated Watershed Monitoring and Assessment" in Part VI.C.7 and Attachment E ensure that achievement of receiving water limitations will be verified through monitoring data. There are no provisions in Part VI.C or Attachment E that exempt Permittees participating in an EWMP from the required receiving water monitoring to determine whether receiving water limitations are being achieved. (See Attachment E, Parts II.E.1.a and IV.B.5.) However, the Los Angeles Water Board does not object to additional clarification to Part VI.C.2.c as proposed. We do, however, request a slight modification to the proposed addition to be consistent with the language of Part V.A.	Revise the proposed modification to Part VI.C.2.c. on page 45 as follows: "c. If a Permittee fails to meet any requirement or date for its achievement in an approved Watershed Management Program or EWMP, the Permittee shall be subject to the provisions of Part V.A. for the waterbody-pollutant combination(s) that were to be addressed by the requirement. For water body-pollutant combinations that are not addressed by a TMDL, final compliance with receiving water limitations is determined by verification through monitoring that the receiving water limitation in Part V.A. has been achieved <u>or that MS4 discharges are not causing or contributing to exceedances of the receiving water limitation.</u> "
9	65-66	The Los Angeles Water Board generally supports the proposed new Part VI.B.2, "Compliance Determination," to the Los Angeles MS4 Order. The Los Angeles Water Board understands the State Water Board's proposed modification in Part VI.B.2.b.i-iv as intending to mirror that of Part VI.E.2.b [TMDL Provisions, Compliance Determination, Commingled Discharges], which supplements other compliance determination provisions in	Revise proposed modification to Part VI.B.2 on page 65 as follows: "2. Compliance Determination <u>for Commingled Discharges</u> " "a. <u>In addition to the provisions of Part VI.E.2.c-e, A</u> a Permittee shall

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		<p>Part VI.E.2 to specifically address requirements for commingled discharges. If this is the case, the Los Angeles Water Board requests clarifying language changes to ensure that this new subpart is appropriately interpreted as also narrowly relating to demonstrating compliance with Part V.A. as it pertains to commingled discharges -- absent a TMDL addressing the Receiving Water Limitations, and that this new subpart supplements other compliance determination provisions in Part VI.C.2 (where those provisions are applicable to a Permittee). It is important that the compliance determination provisions of the Los Angeles MS4 Order are read together; therefore, the Los Angeles Water Board requests these clarifying changes to ensure that the proposed modification provides appropriate linkages to related provisions regarding compliance determination.</p> <p>In addition, a notable difference in the proposed modification as compared to the parallel language in Part VI.E.2.b is the addition of Part VI.B.2.b.iv.(3) on page 66. The addition of Part VI.B.2.b.iv.(3) allows a Permittee to demonstrate that an alternative source of the pollutant caused the exceedance, and that the pollutant is not typically associated with MS4 discharges. The Los Angeles Water Board has some concerns with this language, since a Permittee may assert that a pollutant is not typically associated with its MS4 discharges, but the</p>	<p>demonstrate compliance with the requirements of Part E [<u>Total Maximum Daily Load Provisions</u>] <u>for commingled discharges</u> as specified in Part VI.E.2.b.”</p> <p>“b. <u>In addition to the provisions of Part VI.C.2 (if applicable), A a</u> Permittee shall demonstrate compliance...”</p> <p>Revise proposed modification to Part VI.B.2.b.iv.(3) on page 66 as follows:</p> <p>“(3) Demonstrate that there is an alternative source of the pollutant, <u>which was not discharged from the Permittee's MS4,</u> that caused the exceedance, and that the pollutant is not typically associated with MS4 discharges.”</p>

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		pollutant may nevertheless have been discharged from the Permittee's MS4, such as from an illicit discharge or illicit connection to the Permittee's MS4. Pursuant to Part VI.A.2.a of the Los Angeles MS4 Order, a Permittee must establish and maintain adequate legal authority to control pollutant discharges into and from its MS4 and must implement the necessary programs to do so. Therefore, we also request a modification to this provision to reflect this clarification.	
10	71-72	The Los Angeles Water Board generally agrees with the proposed modification to Part III.D.1.a of Attachment F as providing additional support. We, however, request minor changes so as to not constrain the decision of future Regional Water Boards. While the Los Angeles Water Board decided to issue an individual NPDES MS4 permit to the City of Long Beach for its MS4 discharges at this time, a future board may not continue to do, especially since many Regional Water Boards are opting to issue regional MS4 permits.	Revise proposed modification on page 71-72 as follows: "In making that determination, the Regional Water Board distinguished between the permitting status of those cities and the permitting status of the City of Long Beach <u>at this time.</u> The Regional Water Board will continue to issue an individual permit to the City of Long Beach because the City of Long Beach has been permitted under an individual permit for over a decade and has a proven track record in <u>implementing an individual permit requirements and development of developing</u> a robust monitoring program under that individual permit..."