

Response to Comments
Section H: California Water Code Section 13241 and Unfunded State Mandates

Sub-section #	Comments Category
H.1	General
H.2	Attachment F, Part XIII.A – California Water Code Section 13241 (CWC § 13241) Past, Present, and Probable Future Beneficial Uses of Water
H.3	Attachment F, Part XIII.B – CWC § 13241 – Environmental Characteristics of the Hydrographic Unit Under Consideration, Including the Quality of Water Available Thereto
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H.8	Attachment F, Part XIV – Unfunded State Mandates

The below table includes all significant comments on the tentative permit sections described above and the corresponding Fact Sheet sections.

#	Commenter(s)	Comment	Response
H.1.1	VCSQMP	<p>Consideration of California Water Code Section 13241</p> <p>The Ventura County Permittees appreciate that the Draft Fact Sheet includes a section devoted exclusively to Water Code section 13241. Even though the Los Angeles Water Board does not concede that many provisions in the Draft Regional Permit are in fact more stringent than federal law, nonetheless, effort was placed into considering Water Code section 13241, at least in part. However, the Program would</p>	<p>No change. The Los Angeles Water Board does not agree that any provision in the Regional Permit (Order) is more stringent than federal law requiring consideration of the factors under Water Code section 13241. To the extent Water Code section 13241 does apply, the Order adequately considers the enumerated factors. (See, <i>City of Duarte v. State Wat. Res. Control Bd.</i> (2021) 274 Cal.Rptr.3d 471, as modified on denial of rehearing (Feb. 19, 2021), review den. (Apr. 28, 2021) (<i>City of Duarte</i>))</p>

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		<p>be remiss for not pointing out portions of this section that incorrectly portray application and consideration of Water Code section 13241 factors.</p>	<p>(Assuming <u>without</u> deciding that, if the numeric effluent limitations (NELs) in the 2012 Los Angeles County MS4 Permit were more stringent than federal law, the Los Angeles Water Board complied with its obligations to consider the Water Code section 13241 factors, including the permittees' compliance costs, as a matter of law.)</p>
H.1.2.a	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	<p>The NEL-Related Provisions (including the Monitoring Requirements) Cannot Be Adopted In Accordance with the Requirements of California Water Code §§ 13000, 13263, 13241, 13267 and/or 13225.</p> <p>Since the imposition of the NEL-Related Provisions is pursuant to the Regional Board's discretion, it must comply with State law prior to adopting those terms. This is a burden the Regional Board cannot meet here. Prior to imposing any discretionary permit terms, pursuant to its authority under both federal and state law, the Regional Board must consider the factors outlined in CWC section 13241, including the dischargers' cost of compliance, and whether the permit terms are "reasonably achievable." Justification for such findings appears absent from the existing record.</p>	<p>No change. The inclusion of NELs in the Order, including associated monitoring requirements, is appropriate and necessary to achieve compliance with the TMDL wasteload allocations as required by federal law. NELs are authorized by the Clean Water Act (CWA), its implementing regulations, and United States Environmental Protection Agency (U.S. EPA) guidance; and the Board has found that NELs are necessary under the facts of this permit. As such, the terms of the Order are not more stringent than federal law. (See, <i>Building Industry Assn. of San Diego County v. State Wat. Res. Control Bd.</i> (2004) 124 Cal.App.4th 866, 882-887.) The Los Angeles Water Board's reasoning is set forth below.</p> <p>Under CWA Section 402(p)(3)(B)(iii), MS4 permits "shall require controls to reduce the discharge of pollutants to the maximum</p>

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			<p>extent practicable (MEP)”; and include “such other provisions as the [permitting authority] determines appropriate for the control of such pollutants.” (33 U.S.C. § 1342(p)(3)(B)(iii).) These other appropriate provisions to control pollutants include WQBELs as explained below.</p> <p>The MEP standard is equivalent to a technology based effluent limitation (also known as a TBEL) in that its reference point is the MS4 discharge rather than the waterway. Neither Congress nor U.S. EPA has provided a precise definition of MEP. As the first step in pollutant control and establishing effluent limitations in MS4 permits, MEP functions as the regulatory floor. However, where MEP is not sufficient to meet water quality standards, other provisions, in the form of WQBELs, may also be required.</p> <p>Therefore, the second step in establishing effluent limitations for MS4 NPDES permits is to determine whether there are any other provisions appropriate for the control of pollutants discharged from MS4s. Federal law authorizes MS4 NPDES permits to require compliance with water quality standards (WQS) when appropriate. (33 USC 1311(d)(1)(A), (C); 40 CFR 130.2) In the Preamble to its Phase I Stormwater</p>

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			<p>Regulations, U.S. EPA elaborated on these requirements, stating that “permits for discharges from [MS4s] must require controls to reduce the discharge of pollutants to the maximum extent practicable, and <i>where necessary</i> water quality-based controls.” (55 Fed. Reg. 47990, 47994 (Nov. 16, 1990), emphasis added.) Furthermore, the State Water Board has determined that MS4 permits must require compliance with WQS in two precedential orders. First, in 99-05 (requiring inclusion of receiving water limits in MS4 permits) and again in 2015-0075 (affirming that MS4 permits shall require compliance with WQS).¹</p> <p>Many waterbodies in the Los Angeles Region do not meet applicable WQS, indicating that MEP alone has not been sufficient, and therefore other provisions are indeed appropriate. (U.S. EPA 2014 Guidance, page 4.) Indeed, pollution from MS4 discharges is a leading cause of water</p>

¹ On April 21, 2021, the Los Angeles County Superior Court issued a final judgment in the case of Natural Resources Defense Council, Inc. and Los Angeles Waterkeeper v. State Water Resources Control Board and California Regional Water Quality Control Board, Los Angeles Region (Super. Ct. Los Angeles County, No. BS156962 (NRDC)). In furtherance of the judgment, the court will issue a writ ordering the State Water Board to set aside Order WQ 2015-0075. To date, the State Water Board has taken no action to set aside Order WQ 2015-0075. Even if Order WQ 2015-0075 is ultimately set aside, the trial court’s ruling was based solely on the antidegradation analysis for high quality waters and did not call into question the propriety of the State Water Board’s other holdings on the 2012 Los Angeles County MS4 Permit. Because these holdings have not been disturbed by the NRDC case, and because these holdings address matters relevant to the Regional MS4 Order, this response comment continues to cite and discuss Order WQ 2015-0075, as appropriate, for matters other than antidegradation concerning high quality waters.

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			<p>quality impairment in the Los Angeles Region (see Fact Sheet, Part II.E.). The pollution from MS4 discharges required the Los Angeles Water Board, or in some cases U.S. EPA, to establish 45 TMDLs for the Los Angeles Region. These TMDLs have WLAs specifically assigned to MS4 discharges, which are expressed in the Order as water quality based effluent limitations, or WQBELs. (See, Attachments J-S, Order; and pp. F-123 to F-169, Order.) Where a TMDL has been established, water quality-based effluent limitations in NPDES permits must be consistent with the assumptions and requirements of any TMDL WLA for the discharge prepared by the state and approved by U.S. EPA. (40 CFR § 122.44(d)(1)(vii)(B); Wat. Code § 13377; <i>Comm. for a Better Env't v. State Wat. Res. Control Bd.</i> (2005) 132 Cal.App.4th 1313, 1322.)</p> <p>While federal law requires the Los Angeles Water Board to include TMDL-based WQBELs in the Order, it does not specify how those WQBELs are to be expressed in MS4 permits. Rather, federal law requires the permitting authority to make that determination as appropriate and necessary for the control of the discharge. In MS4 permits, WQBELs may be expressed either in narrative form (e.g., as requirements to</p>

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			<p>implement specified BMPs) or in numeric form (i.e., as numeric effluent limitations). In the latter, the choice of how to achieve the numeric effluent limitations is left to the permittee. (CWA § 402(p)(3)(B)(iii); 40 CFR § 122.44(k); U.S. EPA. Memorandum, Revisions to the November 22, 2002 Memorandum “<i>Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,</i>” (Nov. 26, 2014), p. 6. (noting that WQBELs “could take the form of a numeric limit, or of a measurable, objective BMP-based limit that is projected to achieve the WLA”) (“2014 U.S. EPA Memo”); see also, <i>Defenders of Wildlife v. Browner</i> (9th Cir. 1999) 191 F.3d 1159, 1166 (noting that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards, and that these requirements may include numeric effluent limitations). Additionally, WQBELs may be expressed as a combination of NELs and BMPs to be used to achieve TMDLs. This last approach has been allowed specifically by both U.S. EPA and the State Water Board. (See, 2014 U.S. EPA Memo; State Board Order No. WQ 2015-0075; April 28, 2021 U.S. EPA Region IX letter Re: “Draft Regional MS4</p>

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			<p>Permit and Fact Sheet for Phase I MS4s in the Los Angeles Region”.)</p> <p>Turning first to the incorporation of WQBELs as narrative effluent limitations expressed as BMPs, federal regulations indicate that BMPs can be used in MS4 permits, and also where it is infeasible to develop numeric effluent limitations. (40 C.F.R. § 122.44(k).) With respect to numeric WQBELs, federal regulations (40 C.F.R. § 122.44(k)(3)) and U.S. EPA guidance indicate that numeric WQBELs should be used when they are feasible to calculate, and when the facts show that they are appropriate and/or necessary to achieve WQS. (2014 EPA Memo.) Contrary to the comment, there is no requirement that the Los Angeles Water Board find that NELs are “reasonably achievable.”</p> <p>In all cases, no matter how they are incorporated, the WQBELs must be consistent with the assumptions and requirements of the TMDL WLAs assigned to MS4 discharges. And, as the California Supreme Court has made clear, it is the factual circumstances surrounding each permit that determine what legal requirements have to be imposed. (See <i>Department of Finance, supra</i>, 1 Cal.5th at p. 768, fn. 15 [“Of course, this finding would</p>

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			<p>be case specific, based among other things on local factual circumstances.”].)</p> <p>Here, the facts and circumstances show that the most appropriate and effective way to achieve WQS in the Los Angeles Region is to impose a combination of NELs and BMPs to be used to achieve the TMDL WLAs assigned to the MS4 permittees. First, a BMP-only approach, which was largely employed in the region’s early generation MS4 permits, has not been effective in addressing water quality impairments due to MS4 discharges. This is evidenced by the continued impairment of waterbodies in both Los Angeles and Ventura Counties. These impairments are discussed in the MS4 Monitoring Data Report released in July 2020 (Part I, i.e., Section 3) and November 2020 (Part II, i.e., Sections 8-11) as well as in Section II.E of the Order’s fact sheet. To address these impairments, the Los Angeles Water Board and U.S. EPA have established 45 TMDLs that assign WLAs to MS4 discharges. The failure of BMPs in these early generation permits was discussed by a Stormwater Blue Ribbon Panel in a 2006 report, which acknowledged that there was a lack of incentives and accountability regarding the need to implement BMPs that would achieve specific water quality results. Given the</p>

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			<p>inadequacy of BMP-based requirements in early permits, the continued water quality impairments, and the assignment of MS4-specific WLAs in TMDLs, numeric WQBELs are needed to ensure that BMPs are selected, designed and maintained to achieve specific water quality outcomes. The inclusion of numeric WQBELs is also consistent with the evolution of the permitting approach for stormwater discharges described by U.S. EPA in its 1996 policy, which acknowledges that effluent limitations should provide for the attainment of water quality standards, and subsequent memos in 2002, 2010, and 2014. (See, 61 Fed.Reg. 43761 (Aug. 26, 1996) and accompanying Q&As for Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits (U.S. EPA 833-D-96-001, Sept. 1996); U.S. EPA Memorandum, Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs (Nov. 22, 2002); U.S. EPA Memorandum, Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs” (Nov. 12, 2010); and U.S.</p>

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			<p>EPA Memorandum, Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs” (Nov. 26, 2014). For example, the Los Angeles Water Board has examined certain U.S. EPA issued permits, and concluded that they contain equivalent and/or substantially similar provisions for TMDL WLAs, expressed therein as numeric WQBELs. (See, e.g., Guam MS4 Permit. NPDES Permit No. GUS040001: Guam Department of Public Works Municipal Separate Storm Sewer System (MS4).)</p> <p>Second, adequate information and analysis exists through the TMDL development process to calculate numeric WQBELs – in other words, they are feasible. TMDL development entails a source analysis, a linkage analysis between the applicable water quality standard and the pollutant allocations (typically using predictive water quality models, or empirical relationships), and accounting for seasonal variations and critical conditions. This analysis supports the expression of WQBELs numerically. Expressing WLAs as numeric WQBELs given these circumstances is also consistent</p>

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			<p>with U.S. EPA's 1996 policy and 2014 memo.</p> <p>Numeric WQBELs are included in the Order, but so are BMP-based WQBEL requirements in the Watershed Management Program requirements. Through these permit provisions, permittees have the flexibility to select, design and implement a tailored suite of BMPs. These BMPs must be supported by a reasonable assurance analysis that demonstrates that the BMPs are projected to achieve the WLAs, and Permittees must commit to milestones to track BMP progress. These provisions allow permittees to collaborate and cost share on a watershed basis, and they provide Permittees with greater compliance certainty during implementation. Numeric WQBELs are a backstop if BMPs are not implemented. And they serve as insurance that final water quality outcomes will be achieved.</p> <p>The monitoring and reporting requirements do not exceed federal requirements, and are expressly authorized under the Clean Water Act and its implementing regulations, which require monitoring and reporting as a major component of all NPDES permits, not just MS4 permits. As a condition of receiving a NPDES permit, a permittee agrees to</p>

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			<p>monitor its discharges to ensure compliance with the permit's terms. Section 308(a) of the Clean Water Act and sections 122.41 (h), (j)-(l), 122.44(i), and 122.48 of Title 40 of the Code of Federal Regulations establish substantive monitoring and reporting requirements for all NPDES permits. Federal regulations applicable to large and medium MS4s also specify additional monitoring and reporting requirements. See, e.g., 40 C.F.R. §§ 122.26, subds. (d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c). Federal regulations require monitoring programs “for <i>representative data collection</i> for the term of the permit that describes the location of outfalls or field screening points to be sampled (<i>or the location of instream stations</i>)” and explain “why the [chosen] location is <i>representative...</i>” 40 C.F.R. § 122.26(d)(2)(iii)(D) (emphases added).” (<i>Natural Resources Defense Council, Inc. v. County of Los Angeles</i> (9th Cir. 2013) 725 F.3d 1194, 1209) Notably, too, California Water Code also requires monitoring in NPDES permits. (California Water Code section 13383.) See also response to comment H.1.2.c</p> <p>As the California Supreme Court has made clear, and as the Ninth Circuit implied in the <i>NRDC</i> case, <i>supra</i>, it is the factual</p>

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			<p>circumstances surrounding each permit that determine what legal requirements have to be imposed. (See <i>Department of Finance, supra</i>, 1 Cal.5th at p. 768, fn. 15 [“Of course, this finding would be case specific, based among other things on local factual circumstances.”]; see also <i>City of Burbank v. State Wat. Res. Control Bd.</i> (2005) 35 Cal.4th 613, 627 (<i>City of Burbank</i>.) The need for the monitoring and reporting program in the Regional MS4 Permit as well as the evidence that supports it is discussed in Parts III.E-F, VIII.C, and XII of the Fact Sheet. As explained therein, the monitoring and reporting requirements will yield data that will be representative of the monitored activity, and they allow the Los Angeles Water Board to determine compliance with the terms of the Order.</p>
H.1.2.b	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	Nor does the Fact Sheet demonstrate that the Tentative Permit’s inclusion of the NEL-Related Provisions conforms to policy considerations listed in CWC § 13000, which require the Board to regulate water quality to attain the 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.”	No change. The Los Angeles Water Board is not required to consider the Legislature’s policy goals outlined in Water Code section 13000 before adopting the Order. This statute contains a general statement of intent and imposes no affirmative substantive obligations on the Los Angeles Water Board. As the commenter is aware, this is settled law. (<i>City of Arcadia v. State Wat. Res. Control Bd.</i> (2010) 191 Cal.App.4th 156, 176 (<i>Arcadia II</i> .)

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H.1.2.c	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	Likewise, in the case of monitoring requirements, the Regional Board must also comply with CWC section 13267 and 13225. (See Fact Sheet, Section XIII [failing to include any cost-benefit analysis to justify the imposition of discretionary monitoring provisions].) The Regional Board must not only consider these factors, but also find that the permit's terms are appropriate in light of those analyses.	<p>Change made. This argument is without merit. The monitoring and reporting program requirements are included in the permit pursuant to the Board's authority under the Clean Water Act and its regulations, as well as California Water Code section 13383. Section 308(a) of the federal Clean Water Act and sections 122.41(h), (j)-(l), 122.44(i), and 122.48 of Title 40 of the Code of Regulations require that all NPDES permits specify monitoring and reporting requirements. Federal regulations applicable to large and medium MS4s also require monitoring and reporting. (See 40 C.F.R. §§ 122.26(d)(2)(i)(F) & (d)(2)(iii)(D), 122.42(c).) Thus, federal law mandates that the Los Angeles Water Board require a monitoring and reporting program, and the federal authority does not suggest nor require an additional cost/benefit analysis in imposing the monitoring and reporting program.</p> <p>The California Porter-Cologne Water Quality Control Act contains a special chapter, Chapter 5.5, which addresses Clean Water Act permits. As part of this Chapter, Water Code section 13383 governs monitoring and reporting requirements. Section 13383, like the federal Clean Water Act, does not mention, suggest or require a cost/benefit</p>

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			<p>analysis to justify the inclusion of monitoring and reporting provisions in a permit.</p> <p>Water Code sections 13225 and 13267 do not apply to the monitoring and reporting requirements in this permit. Instead, Water Code section 13383 governs the permitting process here. The general authority to require monitoring and reporting afforded by Water Code sections 13225 and 13267 does not trump the more specific authority the Board has in the context of issuing NPDES permits. Because the monitoring and reporting program requirements are required by federal law, any conflicting state law is preempted. (See <i>Silkwood v. Kerr-McGee Corp.</i> (1984) 464 U.S. 238, 248 [“state law is still preempted ... where the state law stands as an obstacle of the full purposes and objectives of Congress.”]; see also Wat. Code, §§ 13370, 13377.) Therefore, the Los Angeles Water Board need not determine that the burden, including the costs of the reports, bear a reasonable relationship to the need for the report and the benefits to be obtained.</p> <p>Moreover, the State Water Board affirmed that the monitoring and reporting provisions in NPDES permits, generally, and MS4 permits, specifically, are only subject to Water Code section 13383. (Order WQ</p>

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			<p>2021-0005, pp. 12-13 n. 31; Order WQ 2015-0075, p. 64.) The finding in Order WQ 2015-0075 is consistent with prior litigation on the 2001 Los Angeles County MS4 permit in which several permittees raised this exact same argument. In fact, the Los Angeles County Superior Court specifically considered and rejected these arguments, and upheld the Board's authority to require monitoring and reporting without a cost/benefit analysis. (In re Los Angeles County Municipal Storm Water Permit Litigation (Sup. Ct. Los Angeles County, March 24, 2005, Case No. BS 080548), Statement of Decision from Phase II Trial on Petitions for Writ of Mandate, pp. 19-20.) See also response to comment H.1.2.d.</p> <p>References to Water Code section 13267 that were included in error have been deleted from Attachments D and E, with the exception of references related to inspection and entry as Water Code section 13383 cross-references Water Code section 13267, which sets forth the procedure for inspecting facilities.</p>
H.1.2.d	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	As the Regional Board knows from the existing litigation, consideration and ultimate adoption of an MS4 permit is subject to judicial review under Code of Civil Procedure § 1094.5. Under that standard,	No change. The Board disagrees that section 1094.5 of the Code of Civil Procedure requires it to make findings demonstrating compliance with Water Code sections 13000, 13225, 13263, 13267, or

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		<p>an administrative decision to approve the Tentative Permit would constitute an abuse of discretion, unless the following conditions are met: (1) the Regional Board must make findings demonstrating compliance with State law, including the California Water Code (and sections 13000, 13263, 13241, 13267 and 13225); (2) those findings must contain an analysis demonstrating that the permit terms are supported by an analysis of those factors, and (3) those findings themselves (and the analysis therein) must be supported by the weight of the evidence in the record. (See CWC § 13330 [requiring judicial review under CCP § 1094.5, and making the Regional Board’s judgment subject to the less deferential standard of review – the independent judgment standard—which permits a court to overturn the Board’s decision if a preponderance of the evidence does not support the Board’s decision]; <i>Topanga Assn. For A Scenic Community v. L.A. County</i> (1974) 11 Cal.3d 506, 515, 516-517.)</p> <p>Based on a review of the Tentative Permit, it is clear that the Regional Board’s proposal to include the NEL-Related Provisions would constitute an abuse of discretion under CCP § 1094.5.</p>	<p>13241 because most of these sections of the Water Code are wholly irrelevant to the adoption of an NPDES permit. Section 13000 is merely prefatory language and creates no substantive obligations on the Los Angeles Water Board. (See response to comment # H.1.2.b.) Water Code sections 13225 and 13267 do not govern the adoption of NPDES permits (discussed in response to comment # H.1.2.c). Water Code sections 13263 and 13241 are relevant to an NPDES Permit adoption <i>only</i> when the NPDES permit also includes requirements that exceed federal law (e.g. the permit regulates a discharge to groundwater). For the reasons discussed in response to comment #H.1.2.a, the requirements of the Regional MS4 Permit do not exceed federal law. As such, this permit is adopted in accordance with the requirements of Water Code section 13377, which requires compliance with the federal Clean Water Act as well as any more stringent effluent standards or limitations necessary to implement the Basin Plan, protect applicable beneficial uses, or prevent nuisance. (Wat. Code, § 13377.) To the extent that the commenters are arguing that section 13383 does not apply to any monitoring that is not required by the CWA, but is instead required solely under state law, the State Water Board recently rejected</p>

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		<p>First, the necessary findings are missing. There appear to be no findings that show that the policy considerations set forth under CWC section 13000 have been met, that the “reasonableness” considerations under section 13263 have been considered, nor that the analysis set forth under section 13241 has been properly conducted, specifically in connection to the NEL-Related Provisions. In short, there has been no legitimate consideration of whether such Proposed Permit terms “could reasonably be achieved,” in light of the “environmental characteristics” of the various water bodies in issue, their “economic” impacts on the dischargers, the impacts on “housing within the region,” or the “past, present, and probable future uses of the water” (e.g., such as the bacteria TMDL objective of limiting bacteria from entering steep, concrete-lined flood control channels that are often fenced and posted, so as, to allow for swimming and other human recreation in there flood-control channels). Likewise, there are no findings showing that the monitoring requirements are appropriate in light of the factors listed in CWC section 13267 and 13225.</p>	<p>this argument in Order WQ 2021-0005, In the Matter of the Petitions of The City of Oceanside, Fallbrook Public Utilities District, and the Southern California Alliance of Publicly Owned Treatment Works, For Review of WDR Order Nos. R9-2019-0166 [NPDES No. CA0107433] and R9-2019-0169 [NPDES No. CA0108031] (“Fallbrook”). The State Water Board explained that this “argument is not consistent with the provisions of section 13383... which authorize the establishment of monitoring and reporting requirements for any person discharging to navigable waters. The argument also assumes a level of specificity of monitoring and reporting requirements under the federal Clean Water Act that does not exist.” (Fallbrook, at pp. 12-13 n. 31.) The plain language of section 13383 alone provides the Board the authority to establish monitoring and reporting requirements for MS4 discharges. Nonetheless, in Fallbrook, the State Water Board expressed a general concern that monitoring costs in NPDES permits be reasonable, noting “Regardless of the lack of an explicit legal requirement in Water Code section 13383 to consider the cost and need for monitoring and reporting, we are concerned about the reasonableness of costs incurred by all regulated entities who are subject to monitoring and reporting</p>

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			<p>requirements, including NPDES dischargers. We seek to ensure that the costs incurred to comply with monitoring and reporting requirements result in appropriate data needed to evaluate water quality and other impacts of the discharges and ensure that beneficial uses are protected.” (<i>Id.</i> at p. 13.) To that end, the State Water Board encouraged regional water boards to regularly assess the need for monitoring and reporting.</p> <p>The need for the monitoring reporting program in the Regional MS4 Permit as well as the evidence that supports it is discussed in Parts III.E-F, VIII.C, and XII of the Fact Sheet.</p> <p>The Los Angeles Water Board has extensively and carefully considered the basis of these costs despite no legal obligation to do so. (See response to comment H.5.28.) In addition, the Board revised the analysis of projected annual Stormwater Management Program costs, which include monitoring costs, to average costs from FY16/17 to FY18/19 to project as future costs in order to more fully account for IMP/CIMP monitoring costs in Los Angeles County, as many IMP/CIMPs were not implemented until FY16/17. (See also response to comment H.5.28.)</p>

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			<p>Finally, the costs associated with the monitoring and reporting program have already been found to be reasonable. In 2015, the State Water Board upheld a nearly identical monitoring program in the 2012 Los Angeles County MS4 Permit. (WQ Order 2015-0075, pp. 64-65.) The substantive updates to the MRP in the Regional MS4 Permit are minimal and primarily relate to additional monitoring sites for new/revised TMDLs, aquatic toxicity test species sensitivity screening for non-ocean waters, and reporting requirements pursuant to the State Water Board’s Trash Policy, the Trash TMDLs, the State Auditor’s March 2018 Report 2017-18, and the State Water Board’s August 2020 “Guidance for Obtaining Phase I Municipal Separate Storm Sewer System (MS4) Permit Compliance Costs.” While there may be some additional costs associated with these requirements, these costs are partially offset by other changes to the MRP that are expected to reduce monitoring costs (e.g., optional instead of required regional and special studies, aquatic toxicity monitoring frequency reduction, and removal of aquatic toxicity testing for ocean waters.)</p> <p>The Board acknowledges that the MRP requires Ventura County Permittees to</p>

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			<p>develop either an Integrated Monitoring Program (IMP) individually or a Coordinated Integrated Monitoring Program (CIMP) with a group for the first time. However, both these new monitoring programs offer significantly more customization than the monitoring programs allowed under the 2010 Ventura County MS4 Permit, which established much more prescriptive and rigid monitoring requirements. As such, the Los Angeles Water Board expects that the new IMP/CIMP requirements will ultimately provide Ventura County Permittees added flexibility and efficiencies as monitoring can be designed, prioritized and implemented on a watershed basis.</p> <p>Notwithstanding these costs, the monitoring requirements are necessary for myriad reasons, including but not limited to evaluating compliance with the permit terms, tracking progress on BMP implementation, and assessing water quality impacts associated with MS4 discharges in the receiving water. (See, discussion at Fact Sheet Part XII; Attachment E at Part I.A.) The requirements are also necessary to ensure the health of Southern California's local economy and the health of its population, as water quality can impact both of these things. (See, discussion at Fact Sheet Part XIII.D.4.) As such, the monitoring</p>

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			<p>and reporting requirements are expected to result in the appropriate data needed to evaluate water quality and other impacts of MS4 discharges and ensure that beneficial uses are protected.</p> <p>To the extent the commenter, suggests the section 13241 analysis in the Order constitutes an abuse of discretion under CCP § 1094.5, the Los Angeles Water Board disagrees for the following reasons:</p> <p>Water Code section 13263 requires a consideration of the factors in Water Code section 13241 when adopting permit requirements issued pursuant to state law authority. While the Board disagrees that a consideration of the Water Code section 13241 factors is required here, given the inherent controversy surrounding this permit, the Los Angeles Water Board has done an extensive analysis of all of the factors listed in Water Code section 13241. (See Fact Sheet Section XXIII.)</p> <p>The fact that the commenter disagrees with the Los Angeles Water Board's analysis or how it has considered the factors does not render the analysis or the Board's consideration illegitimate or absent.</p>

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			<p>Furthermore, the commenter implies that no analysis under Water Code section 13241 may ever be properly conducted unless “Proposed Permit terms ‘could reasonably be achieved,’ in light of the ‘environmental characteristics’ of the various water bodies in issue, <i>their ‘economic’ impacts on the dischargers</i>, the impacts on ‘housing within the region,’ or the ‘past, present, and probable future uses of the water’” (emphasis added).</p> <p>The commenter’s attempt to re-write the statute is wrong. To the extent it applies, Water Code section 13241 merely charges the water boards with considering certain technological and policy factors when establishing water quality objectives, but does not require any specific actions upon that consideration. Water Code section 13263, in turn, charges the water boards with considering these factors in the context of permitting. (<i>City of Burbank, supra</i>, 35 Cal.4th at p. 618.) “The manner in which the Water Control Boards consider and comply with Water Code section 13241 is within their discretion.” (<i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at p. 480 citing to <i>City of Arcadia v. State Wat. Res. Control Bd.</i> (2006) 135 Cal.App.4th 1392, 1415 (<i>Arcadia I</i>) and <i>Arcadia II, supra</i>, 191 Cal.App.4th at p. 177.) Neither Water Code</p>

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			<p>section 13241 nor Water Code section 13263 require the waters boards to reconcile the factors listed in section 13241. Nor can any of the factors listed in section 13241, including economic considerations, be used to justify the issuance of permits that do not meet water quality standards. (<i>City of Burbank, supra</i>, 35 Cal.4th at pp. 626-27.) It would be inconsistent with the Clean Water Act and Porter-Cologne to use a Permittee’s compliance costs as justification for issuing a permit that cannot meet water quality standards. (<i>Id.</i>)</p>
H.1.2.e	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	<p>Additionally, as explained below, the Tentative Permit’s Fact Sheet does not include any findings that address the actual cost of complying with the NEL-Related Provisions. Instead, they simply consider the cost of implementing the WMPs and EWMPs (referred to as “Method 2” in the Fact Sheet), without taking into account the fact that those programs must be constantly amended when a permittee cannot meet the NELs in the Tentative Permit. Accordingly, the findings and Fact Sheet themselves are deficient, and must be revised to address the cost of complying with the entire Permit, including the NELs themselves. Otherwise, the Regional Board’s adoption of the NEL-Related Provisions would constitute an abuse of discretion.</p>	<p>No change. As discussed in response to comment H.1.2.d, courts construing Water Code section 13241 have all found that “[t]he manner in which the Water Control Boards consider and comply with Water Code section 13241 is within their discretion.” (<i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at p. 480 citing to <i>Arcadia I, supra</i>, 135 Cal.App.4th at p. 1415 and <i>Arcadia II, supra</i>, 191 Cal.App.4th at p. 177.) The statute does not specify how the water boards must comply, or what findings must be made.</p> <p>Nevertheless, the commenter continues to argue that the 13241 findings are deficient because they fail to “address the actual cost of complying with NEL-Related Provisions.”</p>

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			<p>The level of specificity demanded by the commenter is not only unsupported by the plain language of the statute or prior case law, it has already been summarily rejected in litigation specifically on the 2012 LA County MS4 permit. “[T]he Water Control Boards are charged with taking into account economic considerations, not merely costs of compliance with a permit. ... [E]conomic considerations also include, among other things, the costs of not addressing the problems of contaminated water.” (<i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at p. 482.) “Indeed, there is ‘no authority for the proposition that a consideration of economic factors under Water Code section 13241 must include an analysis of every conceivable compliance method or combinations thereof or the fiscal impacts on permittees.’” (<i>Ibid.</i> quoting <i>Arcadia I, supra</i>, 135 Cal.App.4th at p. 1417.)</p> <p>The commenter’s argument continues to have no merit. See also response to comment H.1.2.h.</p>
H.1.2.f	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	Second, the Tentative Permit’s findings lack the requisite analyses. Under State law, findings must “bridge the analytic gap” between the raw evidence and the agency’s decision to adopt a particular requirement. (<i>Topanga Assn. For A Scenic Community v.</i>	<p>No change. The findings in the Order fail to satisfy <i>Topanga</i> or Code of Civil Procedure section 1094.5.</p> <p>Under Code of Civil Procedure section 1094.5, administrative agencies are only</p>

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		<p><i>L.A. County</i> (1974) 11 Cal.3d 506, 515, 516-517; emph. added.) The “findings” in this instance fail on all accounts, as they offer little more than a cursory nod to the requirements of the CWC, without explaining how the permit terms are actually appropriate in light of those requirements. [footnote] 1 Further, there are no findings that show that the Regional Board has considered the requirements under CWC sections 13225 and 13267, or that the Regional Board has conducted the cost-benefit analyses required to justify the imposition of the NEL-related monitoring requirements. (See Fact Sheet, Section XIII [failing to include any cost-benefit analysis to justify the imposition of discretionary monitoring provisions].)</p> <p>[footnote 1]: Based on pleadings filed by the Water Boards in the <i>Duarte Case</i> we suspect that legal counsel for the Regional Board will cite to traditional mandamus cases (under CCP § 1085) to support their contention that the Regional Board is not required to meet the substantive requirements of <i>Topanga</i>. However, those cases are inapposite to this situation, where the Regional Board’s adoption of an MS4 Permit is subject to review via administrative mandamus, and therefore, its findings must meet the rigorous standards of <i>Topanga</i>. (CWC § 13330(e).)</p>	<p>required to make findings necessary to establish how their actions satisfy legislative requirements. (<i>Topanga Assn. for a Scenic Comm. v. County of Los Angeles</i> (1974) 11 Cal.3d 506, 512.) Findings do not need to be extensive or detailed. (<i>Envntl. Protection Information Center</i> (2008) 44 Cal.4th 459, 516-517.) “Findings are required to state only ultimate rather than evidentiary facts.” (<i>Topanga Assn. for a Scenic Comm. v. County of Los Angeles</i> (1989) 214 Cal.App.3d 1348, 1362.) The Fact Sheet lays out the legal authority and rationale for every provision in the Order, and includes extensive factual citations, analysis and findings to support the Order. (Fact Sheet, Part XIII; see, also, response to comments H.1.2.g, h.) Despite the commenter’s assertions to the contrary, the Los Angeles Water Board is not obligated to “explain in its findings how those terms are appropriate and reasonable, and how the permittees can actually hope to meet those standards.”</p> <p>Additionally, the Board disagrees that it is inappropriate for the Board to cite “to traditional mandamus cases (under CCP § 1085).” These “traditional mandamus” cases are not only relevant, but, as a matter of law, establish the level of specificity required in the certain findings related to section 13241. (See generally, the Court’s</p>

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		<p>The existing Tentative Permit's and its Fact Sheet's list of conclusory statements are devoid of any real analysis and/or explanation, and legally insufficient. The Regional Board must do the work prior to adoption of this Permit. If the Regional Board believes that the NEL-Related Provisions are appropriate in light of the factors it must consider under State law, then the Regional Board needs to explain in its findings how those terms are appropriate and reasonable, and how the permittees can actually hope to meet those standards. Currently, the Tentative Permit omits such an analysis, and instead simply acknowledges the numerous problems associated with the Tentative Permit's terms (cost, impossible to comply with, etc.), and then simply states that it is still imposing those terms. This fails to comport with Code of Civil Procedure section 1094.5 and the California Water Code. Instead, the Regional Board must adopt a permit that includes terms that are reasonable and financially and technically feasible, and must be able to explain how it has reached those conclusions— an analysis that is entirely missing from the Tentative Permit and its Attachments.</p>	<p>discussion in <i>City of Duarte, supra</i> 274 Cal.Rptr.3d at 480 citing to <i>Arcadia I, supra</i>, 135 Cal.App.4th at p. 1415 and <i>Arcadia II, supra</i>, 191 Cal.App.4th at p. 177.) <i>Topanga</i> does not supersede relevant case law or somehow create heightened finding requirements for this action.</p> <p>For additional discussion on the applicability of sections 13267, 13225, and 13241 of the Water Code, see responses to comments H.1.2.c and H.1.2.d.</p>
H.1.2.g	Rutan & Tucker, LLP on behalf of	Last, what facts do appear in the record do not support adoption of the Tentative	No change. As noted above, the Los Angeles Water Board is not required to

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	City of Duarte 2 nd Letter	Permit. For example, regardless of the cost estimate used (and the Fact Sheet's current cost estimate is likely very low), the simple truth is that the permittees cannot even afford the \$21-31 Billion included in the Tentative Permit's Fact Sheet. Indeed, the Fact Sheet itself acknowledges that the permittees lack sufficient funding, even when it assumes that Measures H, A and M funds are available. In short, the costs to fully implement and comply with the Permit are greater than the funding available.	consider costs as a matter of law in adopting this permit, because the permit's provisions are not more stringent than federal law. <i>Department of Finance v. Commission on State Mandates</i> (2016) 1 Cal.4th 749, 768-769; <i>City of Rancho Cucamonga v. Regional Water Quality Control Board – Santa Ana Region</i> (2006) 135 Cal.App.4th 1377, 1380, 1388-89; <i>Building Industry Assn. of San Diego County v. State Wat. Res. Control Bd., supra</i> , 124 Cal.App.4th at p. 880; Fact Sheet, Part XIII (finding that each of the requirements in the Order are not more stringent than what federal law requires for the control of MS4 discharges of pollutants in the Los Angeles Region.) Regardless of whether it was legally required to do so, the Los Angeles Water Board has performed an extensive cost analysis and there is substantial evidence here to support the adoption of the Order generally, and the Board's Water Code Section 13241(d) findings specifically. (<i>Barclay Hollander Corp. v. California Regional Wat. Quality Control Bd.</i> (2019) 38 Cal.App.5th 479, 497-498 (regional board abuses its discretion only if the court determines, in light of the whole record, that the board's findings are not supported by substantial evidence); State Water Board Order WQ 2020-0038, at p. 30 (finding that the Los Angeles Water Board's

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			<p>consideration of costs of compliance for the 2012 Los Angeles County MS4 Permit went “well beyond what is required of them by law to assess the costs associated with their permits and assist municipalities in creating a manageable pathway to address water quality concerns.”); and Fact Sheet Part XIII and evidence cited therein (13241(d) analysis). The recent case, <i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at p. 482, confirms that the analysis done in the 2012 Los Angeles County MS4 Permit was sufficient, and this one is sufficient as well and indeed, even more extensive.</p> <p>Finally, to the extent that this comment implies that because the costs to fully implement and comply with the Permit are greater than the funding available, Permittees should not have to comply, this is not accurate. As an initial matter, a regional board cannot use compliance costs to justify the failure to impose pollutant restrictions that it otherwise has found necessary and appropriate to restrict pollution, thereby evading federal Clean Water Act requirements. (<i>City of Burbank, supra</i>, 35 Cal.4th at pp. 626-27.) That said, the Los Angeles Water Board has been, and continues to be very mindful of costs of compliance with the Order. While funding issues are not sufficient to create</p>

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			<p>contingencies in WMPs or EWMPs, or in compliance matters generally, “funding concerns may be sufficient for the Los Angeles Water Board’s Executive Officer to approve extensions and modifications of deadlines as long as such extensions and modifications do not extend any underlying TMDL’s final compliance deadlines.” (State Water Board Order WQ 2020-0038, p. 32) The Order allows for the use of TSOs in this manner, and the recently adopted TMDL extensions also address the same concerns. (Los Angeles Water Board Resolution R21-001) Furthermore, the Order encourages and analyzes the use of all funding programs available to Permittees, including but not limited to Measure W, Measure CW, and the benefit assessment in Ventura County. (See, response to comments H.5.2, H.5.3, F.12, and F.22.)</p>
H.1.2.h	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	Moreover, these cost figures for compliance with the various WMP/EWMP programs are not costs for assuring compliance with the NEL-Related Provisions themselves, as evidenced by the State Boards’ recent adoption of its Order in “ <i>Matter of Review of Approval Watershed Management Programs and an Enhanced Watershed Management Program Submitted Pursuant to Los Angeles Regional Water Quality Control Board Order R4-2012-0175</i> ”	Change made. With respect to the contention that cost figures for compliance with the various WMPs are not costs for ensuring compliance with the NEL-related provisions themselves, this argument betrays a fundamental misunderstanding of the WMPs and the origin of the NELs. All NELs in the Order are derived from TMDLs, and the costs for those TMDLs were expressly considered by the Los Angeles Water Board in Method 1 of its economic

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		<p>(SWRCB/OCC Files A-2386, A-2477 & A-2508) (Exhibit D – the “State Board Order”)) [footnote] 2, concerning a number of WMP approvals challenged by the NRDC and others. With the State Board Order, the NRDC et. al. challenged the Regional Board’s approval of nine WMPs and one EWMP, claiming that the programs did not meet the requirements of the 2012 MS4 Permit. Per the State Board Order, the State Board appears to agree, and has ordered the Regional Board and permittees to review all of the previously approved WMPs and EWMPs, and require amendments where necessary to ensure compliance with the State Board Order, which made clear the need to show compliance with the various NEL-related terms in the 2012 MS4 Permit through the implementation of a WMP/EWMP. Thus, in addition to the 10 WMPs/EWMPs that are the subject of the Proposed Order, many, of the remaining approved programs may be deficient under the State Board’s analysis under its Order.</p> <p>[footnote 2]: On November 17, 2020, the State Board approved the order, with minor alterations, which alterations are not included in this exhibit.</p> <p>Indeed, as confirmed by the State Board Order, in both the 2012 MS4 Permit, and the</p>	<p>considerations. (Fact Sheet, Parts VI.C, VI.D, & XIII.D.1.c; Table F-24; Table F-28.) Permittees who choose to participate in a WMP and thereby comply with the NELs must either conduct a reasonable assurance analysis (RAA) or retain all conditionally exempt, non-stormwater and the 85th percentile, 24-hour stormwater runoff volume for the drainage area. (Order, Parts IX.A.4.k; IX.B.7.g; & X.B.2.b.) The RAA guidelines incorporated by reference into the Order are transparent, rigorous and require Permittees to utilize existing, reliable information and data to demonstrate that applicable NELs <u>will</u> be achieved, and they have been updated in accordance with State Water Board Order WQ 2020-0038; Order, Parts IX.B.7.g & IX.A.4.k; and <i>Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program, Including an Enhanced Watershed Management Program</i>. In so far as whether the RAA (or WMP compliance methods) may have to be adjusted at the end of the compliance period to meet NELs such that the cost would increase, that is a speculative cost at this point. But, if the RAA is done correctly in the beginning, and the projects are implemented as planned and designed, then it is much less likely that any adjustments will have to be made at the end of the</p>

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		<p>Tentative Permit, the approved programs must lead to actual compliance with the interim and final NEL compliance dates. As such, if/when an approved program does not lead to actual compliance with a final NEL, the programs must be continually augmented (i.e. made more expensive) to bring the permittees into compliance with the NEL terms. Accordingly, the actual costs of complying with the NELs and NEL-Related Provisions will likely far exceed the prior cost estimates to implement the previously approved WMPs/EWMPs, including the \$21-31 billion price tag above. Furthermore, it bears noting that the costs associated with implementation of WMPs/EWMPs does not constitute the cost of complying with the new Tentative Permit, as those programs were adopted as a requirement of the 2012 MS4 Permit.</p>	<p>compliance deadlines. There are several ways in which Permittees can demonstrate compliance with final NELs in the Order (Part X.B.2); and if more time is needed to comply, the Order allows Permittees an avenue by which to address the need (Part X.E). Compliance costs – including those associated with TSOs or additional time – were fully addressed in the Part XIII.D of the Fact Sheet.</p>
H.1.2.i	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	<p>Furthermore, the currently available cost data regarding cost of complying with the NELs, shows that the costs of complying with the NEL-Related Provisions in the Tentative Permit for the Los Angeles permittees (which are virtually identical to the 2012 LA MS4 Permit, only broader) are enormously high, and thus, patently unreasonable. For instance, the County of Los Angeles has opined that full attainment of the water quality standards in the 2012 LA MS4 Permit, which are more limited than</p>	<p>Change made. Costs of compliance are not patently unreasonable. While the Los Angeles Water Board recognizes that the costs of compliance are significant and that Permittees have limited resources to implement actions immediately to address their MS4 discharges, the Board has structured the permit as flexibly as possible to give Permittees the opportunity to implement the least expensive measures that are effective in meeting the requirements of the Order. (Fact Sheet,</p>

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		<p>those in the Tentative Permit terms would be as high as \$120 billion. (<u>Ex. 10</u> to Exhibit A [“Jan. 7, 2020 Letter”], County of Los Angeles Presentation at October 4-5, 2012 Hearing [estimating that compliance could range between to as high as \$120 billion for 100% attainment].) Likewise, in a study prepared back in 2002, by the University of Southern California Study, entitled “<i>An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County</i>,” concluded that the cost of treating urban runoff in Los Angeles County could reach as high as \$283.9 billion over 20 years. (<u>Ex. 5</u> to Jan. 7, 2020 Letter; see also <u>Ex. 6</u> to Jan. 7, 2020 Letter, “<i>Financial and Economic Impacts of Storm Water Treatment Los Angeles County NPDES Permit Area</i>” presented to California Department of Transportation Environmental Program, Report I.D. #CTSWRT-98-72, November, 1998, by Stanley R. Hoffman Associates; <u>Ex. 7</u> to Jan. 7, 2020 Letter, “Cost of Storm Water Treatment for the Los Angeles NPDES Permit Area,” June 1998, by Brown & Caldwell, prepared for the California Department of Transportation [giving “<i>conservatively low</i>” estimates of the costs of treating Los Angeles Area Storm Water of \$33-73 billion in capital costs, depending upon the level of treatment, with an</p>	<p>Part XIII.D.) The Order also allows Permittees sufficient time to comply with TMDL based NELs (in many cases decades from the time the TMDL was established); the ability to collaborate and pool resources among Permittees and other entities to implement programs and projects to achieve compliance and to also collaborate and pool their resources to monitor their compliance; and the ability to engage in alternative funding mechanisms such as public-private partnerships. (Fact Sheet Parts XIII.D;XIII.D.3; and XIII.D.3.a; see also, State Water Board Order WQ 2020-0038 at p. 31 (“One effect of the significant flexibility afforded to permittees on how to comply with the Order’s requirements is an inherent impossibility for the Board to predict the cost that would result to each of the 86 permittees. The Order’s WMPs and [the Los Angeles County Permittees’] EWMPs, however, are structured specifically to allow Permittees to develop plans to address pollutants in their jurisdiction based, in part, on the costs of implementation.”) Finally, it should be noted that the State Water Board has determined already that the Los Angeles Water Board adequately considered the costs of compliance with respect to the 2012 Los Angeles County MS4 Permit. State Board Order WQ 2020-0038, at p. 30 (finding that the Los Angeles</p>

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		<p>additional \$68-\$199 million per year in operating and maintenance costs]; <u>Ex. 8</u> to Jan. 7, 2020 Letter, “<i>Cost of Storm Water Treatment for California Urbanized Areas</i>,” October, 1998, prepared for California Department of Transportation, by Brown & Caldwell [concluding that “<i>Statewide stormwater collection and treatment costs range from \$70.5 billion for Level 1 to \$113.7 billion for Level 3. Annual operations and maintenance costs range from \$145.2 million/year for Level 1 to \$423.9 million/year for Level 3.</i>”]; and <u>Ex. 9</u> to Jan. 7, 2020 Letter, a copy of a Report entitled “NPDES Stormwater Costs Survey” by Brian K. Currier, Joseph M. Jones and Glen L. Moelle, California University, Sacramento dated January 2005, along with Appendix H included therewith entitled “<i>Alternative Approaches to Stormwater Control</i>” prepared by the Center for Sustainable Cities University of Southern California.)</p> <p>Additionally, in 2014, a Stormwater Funding Report was developed to specifically analyze the costs of attempting to comply with NELs, and the authors estimated the cost from as high as \$283.9 billion (including land acquisition), and concluded that the compliance costs would be “<i>in the billions – if not tens of billions – of dollars</i></p>	<p>Water Board’s consideration of costs of compliance for the 2012 Los Angeles County MS4 Permit went “well beyond what is required of them by law to assess the costs associated with their permits and assist municipalities in creating a manageable pathway to address water quality concerns.”) And, the recent decision in the <i>City of Duarte</i> case similarly found that the Los Angeles Water Board sufficiently complied in 2012 with its obligations to consider the 13241 factors as a matter of law, and that it “developed an economic analysis of the Permit’s requirements consistent with Water Code section 13241.” (<i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at pp. 482-483.)</p> <p>Regarding the reference to the 2014 Stormwater Funding Report, the \$283.9 billion cost estimate was not the authors’ estimate; it represents the upper-end of an estimate developed by USC researchers in 2002 prior to the TMDL-specific cost estimates prepared by the Board during TMDL development, and prior to the cost estimates developed by Los Angeles County MS4 Permittees in 2015-2016 based on their RAAs. The 2002 USC Study was based on one potential but costly method of compliance (advanced treatment of all stormwater), which is not required by the</p>

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		<p>over the next 20 years.” (Ex. 11 to Jan. 7, 2020 Letter.)</p>	<p>permit. The TMDL and RAA-based cost estimates are much more tailored and recent than the analysis in the 2002 study or the other studies from the late 1990s cited by the commenter.</p>
H.1.2.j	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	<p>The Tentative Permit makes no mention[] of these compliance costs, and instead primarily focuses on the potential costs of implementing a WMP/EWMP, without actually tying that analysis to complying with the NELs themselves. Furthermore, if the Regional Board were to consider these costs, it is clear that this evidence would not support the adoption of the NEL-Related Provisions, meaning it would be an abuse of discretion to do so. Alternatively, if the Regional Board believes that the Tentative Permit does consider the cost of actually complying with the NEL-Related Provisions, the Regional Board needs to specifically state as such, and explain its reasoning</p>	<p>No change. There is no requirement that the Los Angeles Water Board consider or even “mention” every cost, or even the costs identified in the reports to which Commenter cites. (<i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at p. 480 [“the manner in which the Water Control Boards consider and comply with Water Code section 13241 is within their discretion.”]; (<i>Arcadia II, supra</i>, 191 Cal.App.4th at p. 177 [“Section 13241 does not specify how a water board must go about considering the specified factors. Nor does it require the board to make specific findings on the factors”].) This is especially true since, as noted above, the data and estimates in these reports are old and the Board considered, among other things, estimates of the cost of fully implementing the WMPs and EWMPs developed since 2012 to comply with MS4 Permit requirements, including NEL-related provisions, and annual expenditure and budget data that are self-reported by the Permittees in their annual reports. This data is much more accurate and recent than those upon which Commenter relies, and it</p>

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			is used expressly in considering the cost of compliance as explained in the Fact Sheet. See also, response to comment H.1.2.h.
H.1.2.k	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	<p>We further note that the Regional Board’s purported “Method 1” is entirely deficient. (See F-288-291.) First, the Regional Board must include the evidence that is using to reach the various numbers discussed in the “2020 Regional MS4 TMDL Compliance Costs” memorandum, which is entirely absent from the record provided to the permittees to date. Without this information, permittees have no way to determine how the conclusions reached in the aforementioned memorandum are correct and/or appropriate. For instance, permittees cannot determine if these numbers take into account modern pricing and/or land acquisition costs, viability, etc., or whether the TMDLs themselves would actually lead to compliance with the NEL-Related Provisions.</p> <p>Second, Method 1 does not seem to address the enormous cost of complying with all of the TMDLs, or implementing the alleged annual O&M cost of \$ 419.2 million, or complying with the NELs as placed in the Tentative Permit. Instead, the cost estimate focuses only on those TMDLs that staff concludes should overlap with other TMDLs,</p>	<p>No change to Tentative Order. Fact Sheet Supplemented. Method 1 is not deficient. As set forth above, compliance with the Tentative Order’s NELs necessarily includes the costs of complying with the TMDLs themselves, since the NELs are derived from the TMDL WLAs, and Method 1 analyzes these costs fully. Costs were derived from TMDL Staff Reports, which are publicly available cost analyses conducted by staff. Additionally, annual expenditure and budget data that are self-reported by Permittees in their annual reports are used to calculate Stormwater Management Program costs and added to both Methods 1 and 2. (Fact Sheet, Part XIII.D.1.f) This is current cost of compliance data, and these data reflect the best estimates of costs to comply with the Order. In fact, while the Los Angeles Water Board knows that Permittees have already “incurred costs associated with implementation of their programs such that the remaining cost for achieving final compliance under the Order is some fraction (less than 100%) of the original cost estimate,” Method 1 “conservatively assume[s] that no costs have already been incurred by Permittees.” (Fact Sheet, Part</p>

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		<p>but fails to recognize the costs of the otherwise omitted TMDLs, which is inappropriate because compliance will be assessed on an NEL by NEL basis. Likewise, implementation of the BMPs discussed in the TMDLs themselves does not guarantee compliance with the NELs, which is why consideration of the cost of the BMPs discussed in the TMDLs themselves is an insufficient metric.</p> <p>Third, reliance on these estimates does not explain how the costs discussed therein are actually relevant to discussing the actual cost of complying with the terms incorporated into this new Tentative Permit. In short, Method 1 is improper, does not accurately depict the dischargers' cost of compliance, and fails to meet the requirements of State law.</p> <p>Put simply, in assessing the propriety of the NEL-Related Provisions, the Regional Board must look to the costs associated with fully complying with the new Tentative Permit, i.e. compliance with the NEL-Related Provisions, which the Tentative Permit and its Fact Sheet fail to do.</p> <p>[footnote] 3 [footnote 3]: We also note that no method used in the Tentative Permit addresses the zero limit non-stormwater NEL. Accordingly,</p>	<p>XIII.D.1.b) Furthermore, the cost estimates for full implementation of (E)WMPs were set forth, analyzed and considered in 2019 dollars. So were the O&M costs. (Part XIII.D.1.d) Finally, compliance with NELs is not a new requirement. Compliance with receiving water limitations has been required since 1999 for the City of Long Beach, 2000 for Ventura County Permittees, and 2001 for all other Los Angeles County Permittees. NELs establish the allowable pollutant contribution from MS4 discharges such that the MS4 discharges will not cause or contribute to exceedances of these receiving water limitations. Further, 32 of the 35 TMDLs that Los Angeles County Permittees must comply with were included in prior permits (2012 Los Angeles County MS4 Permit & 2014 City of Long Beach MS4 Permit). Provisions to comply with TMDL WLAs have been included in the Ventura County MS4 Permit since 2009. Therefore, the costs of complying with the NELs are not new except in the few instances where a new TMDL has been added to the Order. However, even in these cases, permits have prohibited MS4 discharges that cause or contribute to exceedances of receiving water limitations. The NELs are the discharge limitations derived to achieve this requirement that has been in MS4 permits since 1999 (for Long</p>

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		<p>because the Regional Board cannot meet the requirements of CWC § 13241/13263, the Tentative Permit must be revised to recognize that federal law only requires that municipal permittees to “effectively prohibit” non-stormwater discharges into its MS4, not “completely prohibit.” (See 33 U.S.C. § 1342(p)(3)(B)(ii) [“Permits for discharges from municipal storm sewers shall include a requirement to <i>effectively prohibit</i> non-stormwater discharges into the storm sewers.”; <i>emph. added.</i>])</p>	<p>Beach), 2000 (for Ventura County Permittees), and 2001 (for Los Angeles County Permittees). Accordingly, based on the foregoing and the analysis in the Fact Sheet, the analysis in Method 1 is sufficient and the costs analyzed include compliance costs for the terms of the Order. Claims to the contrary are specious.</p> <p>With respect to the contention that “no method” of economic analysis addresses the “zero limit non-stormwater NEL,” this contention is wrong and is based on an incorrect reading of the Order. (See discussion in response to comment C.1.2.) To the extent that the commenter is characterizing the federal requirement in CWA section 402(p)(B)(3)(ii) to effectively prohibit non-stormwater discharges, this has been a long-standing requirement in MS4 permits over multiple permit terms. Therefore, the cost of compliance with this requirement is reflected in budget and expenditure data reported by permittees in their annual reports. To the extent that the commenter is suggesting otherwise, the costs of compliance with NELs are included in both Method 1 and Method 2 as discussed in response to comments H.2.1.j, k. As an initial matter, there is no “zero limit non-stormwater NEL” in the Order, because the permit does not completely prohibit non-</p>

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			<p>stormwater discharges. Rather, the permit implements the “requirement to effectively prohibit non-stormwater discharges into the storm sewers,” in three ways. (33 USC § 1342(p)(3)(B)(i)) First, the Order <u>authorizes</u> certain non-stormwater discharges. are separately permitted (see, e.g., Part III.A.2 of the Order.) Second, the Order provides <u>conditional exemptions</u> to the general prohibition on non-stormwater discharges, whereby certain categories of non-stormwater discharges are exempt from the non-stormwater discharge prohibition if certain conditions are met (e.g., Part III.A.3 of the Order.) Third, as noted above, the <u>NELs here are derived from the TMDLs.</u> Non-stormwater discharges are dry weather discharges, and no dry weather TMDL WLAs are set at zero. Commenter ignores this set of requirements, preferring instead to focus only on Part III.A.1 of the Order (formerly Part III.B.I), which prohibits non-stormwater discharges through the MS4 to receiving waters. But Part III.A.1 of the Order must be read in conjunction with all of Part III.A of the Order. (See State Water Board Order No. 2015-0075 at fn. 133 and pp. 61-64 (explaining the way in which the illicit discharge and non-stormwater discharge prohibitions work together (“federal regulations confirm the distinction between the treatment of storm water and</p>

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			<p>non-storm water by establishing requirements to prevent illicit discharges from entering the MS4”).) Together with the illicit connection and illicit discharge elimination program (Part VIII.I of the Order), which is another “means to implement the non-storm water prohibition,” (2015-0075 at p. 63), Part III.B effectively prohibits non-stormwater discharges in compliance with federal law. No revisions are necessary, particularly in light of the fact that, aside from some reorganization, the non-stormwater discharge prohibitions is the same as the 2012 LA MS4 Permit’s discharge prohibitions sections and programs, which the State Water Board affirmed in Order WQ 2015-0075. (2015-0075 at p. 63-64.)</p>
H.1.2.I	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	<p>Aside from the lack of sufficient funding in light of the exorbitant cost, the Tentative Permit is also technically impossible to comply with. No matter what the permittees do, they cannot stop the rain, and they cannot (and should not) exercise complete control over every aspect of their citizens’ lives. As such, there is simply no way that Duarte, or any other permittee for that matter, can guarantee strict compliance with all of the NEL-Related Provisions of the Tentative Permit.</p>	<p>No change. The commenter argues that the Order imposes upon Permittees “unattainable goals” because it is “technically impossible to comply with.” The science here shows that this is not true. By way of example, the RAA that each Permittee performs demonstrates that the BMPs they choose to implement in WMPs will in fact achieve compliance with the NELs.</p> <p>The Order has been structured to afford Permittees as much flexibility as possible to</p>

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			<p>give Permittees the opportunity to implement the measures they determine will be effective in meeting the requirements of the Order in their particular municipality.</p> <p>Further, the Order does not require Permittees to “exercise complete control” over their citizens. As owners and operators of their MS4s, federal law places responsibility on them to control discharges from their MS4 to receiving waters. Permittees can implement control measures that do not require citizen compliance. However, having citizens understand stormwater and urban runoff pollution and encouraging public involvement in controlling stormwater and urban runoff pollution is a fundamental tenant of MS4 permitting. (See, Fact Sheet Part IX.D.)</p>
H.1.2.m	Rutan & Tucker, LLP on behalf of City of Duarte 2 nd Letter	<p>Accordingly, the facts simply do not support the Regional Board’s inclusion of the NEL-Related Provisions, and would therefore constitute an abuse of discretion under CCP § 1094.5.</p> <p>Imposing unattainable goals that force permittees to spend limited resources litigating to avoid liability for citizen suits and/or minimum penalties serves no one, and funnels valuable public funds from projects that could be developed if</p>	No change. See response to comments H.1.2.a – H.1.2.k

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		<p>permittees were not continuously pressed into a defensive position. We should be cleaning the water, not clogging the courts. Adopting the nearly identical flawed NEL-Related Provisions, and exposing the permittees to significant liability and mandatory minimum penalties, has no more legal support this time than it had the last time. Instead, Duarte urges the Regional Board to work with permittees to come up with a suite of BMPs that the permittees can agree to adopt and implement over the years, in lieu of imposing deadlines that the permittees cannot hope to reach.</p>	
H.2.1	---	No comments received.	---
H.3.1	---	No comments received.	---
H.4.1.a	VCSQMP	<p>Draft Fact Sheet, p. F-278 – The Draft Fact Sheet greatly overstates considerations that may or may not have occurred at the time of adoption of water quality objectives. Specifically, the Draft Fact Sheet claims that water quality objectives “were deemed reasonable and achievable when they were promulgated in order to protect beneficial uses.” (Draft Fact Sheet, p. F-278.) While such considerations were supposed to occur, the history surrounding the Water Quality Control Plan for the Los Angeles Region (as well as others throughout California) reveal that narrative water quality objectives and numeric objectives were often adopted without much thought with</p>	<p>No change. The commenter asserts that the Fact Sheet “greatly overstates” the analysis of the factor in 13241, subsection (c) that was conducted when the water quality objectives were established. However, the Fact Sheet does not attempt to summarize or characterize the specific considerations made by the Board when it adopted the water quality objectives that are now being implemented in this Order. It merely acknowledges that the water quality objectives were deemed reasonable and achievable at the time the water quality objectives were established.</p>

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		<p>respect to the reasonableness of achieving such objectives. More often than not, objectives were adopted with very little analysis as to what it would take to actually achieve such objectives. For narrative objectives, this especially true since such objectives are continually interpreted with lower and lower numeric criteria without regarding reasonableness.</p>	<p>The commenter also asserts, without evidence, that the water quality objectives were adopted “without much thought with respect to the reasonableness of achieving such objectives”. To the extent this comment is intended as a collateral attack on the water quality objectives themselves, this attack is untimely. Many of the water quality objectives in the Basin Plan were first adopted in the 1970s—meaning they have been applicable to waterbodies in the Los Angeles Region for over 40 years. (Basin Plan, Chapter 1, pages 1-7 to 1-8.) The statute of limitations for a legal challenge to a basin plan amendment is generally three years from the time of enactment in a permit. (Code Civ. Proc., § 338(a); <i>California Assn. of Sanitation Agencies v. State Wat. Res. Control Bd.</i> (2012) 208 Cal.App.4th 1438, 1454.). Water quality objectives expressed as receiving water limitations have been implemented in MS4 permits in Ventura County since 2000. The commenter’s belated attacks on applicable water quality objectives under the guise of this Permit’s Water Code section 13241 discussion lack merit.</p>
H.4.1.b	VCSQMP	<p>Moreover, this section of the Draft Fact Sheet is also problematic in that appears to gloss over any consideration of MS4s actually meeting numeric WQBELs that have been included in the permit. There are</p>	<p>No change. As discussed in response to comment H.1.2.e, the manner in which the Los Angeles Water Board considers and complies with Water Code section 13241 is wholly within its discretion. While there is no</p>

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		<p>also conclusory statements that essentially defer to the requirements as being reasonable to achieve over time with no consideration as to what “over time” means. False reliance on the process for when the water quality objective was adopted combined with generic references to meeting the requirements “over time” does not sufficiently consider this factor under Water Code section 13241 as is required by Water Code section 13263.</p>	<p>formal guidance on how the Board should consider the factor listed in subsection (c) to section 13241, in <i>City of Duarte</i>, the court concluded that the Los Angeles Water Board had acted within its discretion when "the record showed that the Water Control Boards explained their reasoning(.)" (<i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at p. 482.) The record for the Permit establishes that the Los Angeles Water Board has explained its reasoning for its section 13241 considerations. As discussed in the Fact Sheet, in analyzing this factor, the Los Angeles Water Board considered whether the water quality objectives were reasonably achievable from a scientific and technical standpoint (Fact Sheet, Part XIII.C). For stormwater discharges, there are numerous stormwater management measures that can and have been implemented to make progress on achieving water quality objectives. (see e.g. the WMPs and EWMPs submitted under the 2012 Los Angeles County Permit and the 2014 City of Long Beach Permit documenting the structural and non-structural treatment controls that can be implemented to achieve water quality objectives as well as the resources cited in Part XIII.C of the Fact Sheet.) The Los Angeles Water Board recognizes that permittees disagree about the timescale on which water quality objectives are</p>

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			<p>achievable, however, this does not change the fact that water quality conditions are reasonably achievable from a technical and scientific standpoint.</p> <p>Moreover, the Los Angeles Water Board has crafted the Permit in recognition of the MS4s permittees unique challenges in complying with water quality objectives. The alternative compliance pathway and the WMP framework afford MS4 permittees additional flexibility and time in coming into compliance. In developing this permit, the Los Angeles Water Board reviewed and approved 23 watershed management programs and enhanced watershed management programs prepared by permittees in Los Angeles County as well as the seven TMDL implementation plans, including multiple revisions, prepared by permittees in Ventura County. These plans establish concrete implementation measures that could and should be used to meet water quality objectives.</p> <p>The amount of the time that is ultimately given to MS4 Permittees to come into compliance with water quality objectives is necessarily constrained by federal and state law. The NPDES regulations require the applicable compliance schedules be as short as possible. (40 C.F.R. §</p>

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			<p>122.47(a)(1.) Additionally, these regulations require that WQBELs are consistent with the assumptions and requirements of any available TMDL—which also includes the TMDL implementation schedules (40 CFR § 122.44(d)(1)(vii)(B)). Likewise, section 13377 of the Water Code requires NPDES permits to be consistent with the Basin Plan. The permitting process cannot be used to extend these schedules indefinitely as doing so would render the TMDL illusory and undermine the efficacy of the Los Angeles Water Board’s other permitting programs.</p> <p>In light of the above, the State Water Board has expressly rejected using MS4 permits to extend final TMDL deadlines. In Order WQ 2015-0075, the State Water Board found that “[a]lthough we recognize that it may not always be feasible for municipal storm water dischargers to meet final TMDL deadlines, short of amending the Basin Plan to modify the deadlines, we find it appropriate for the dischargers to request time schedule orders rather than be granted an extension within the provisions of the Los Angeles MS4 Order.” (Order WQ 2015-0075, p. 37 fn. 110 (citations omitted).)</p>
H.4.2	SGVCOG 2 nd Letter and ULAR Group	Att.F. Part XIII; Page F-283. What is considered "appropriate"?	No change. The sentence in the Tentative Order’s Attachment F (Fact Sheet) Page 283 reads “The Order contains

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			<p>requirements based on water quality objectives and TMDLs, which, where appropriate, incorporate information regarding local conditions and flexibility such that they can reasonably be achieved by Permittees.” This sentence means that the TMDLs, as they were developed, incorporated local information where it was available and useful for a particular element of the TMDL. For example, several trash TMDLs included required reductions as a percentage of current, local, loadings. However, each trash TMDL required, ultimately, zero trash, to ensure water quality objectives were attained.</p>
H.5.1	Rutan & Tucker, LLP on behalf of City of Duarte	<p>The Fact Sheet’s Comparison of Costs is Fundamentally Flawed, and Does not Comply with Water Code sections 13000, 13241 and 13263. Second, the cost analysis found in the Fact Sheet is fundamentally flawed. Notably, the Fact Sheet addresses the cost of complying with the NELs of the Draft Permit, and compares those to a scenario where there is no permit in place, which is simply a false narrative. (See Draft Permit, F-322 [comparing cost of compliance with “Environmental and Societal Costs of not Controlling MS4 Discharges”].) Neither Duarte, nor any other permittee it is aware of, is advocating for no regulations or no permit. Instead, the proper analysis requires a comparison of costs and</p>	<p>No change. Regarding analyzing costs of complying via a numeric effluent limit-based approach relative to a narrative or BMP-based approach, these approaches lead to the same final outcomes; therefore, the costs of compliance for either approach would be the same. (See, Fact Sheet Part V.B.2.)</p> <p>As for the commenter’s point that assessing the costs of not regulating discharges is “inappropriate” and “an abuse of discretion,” the purpose of the Regional MS4 Permit is to protect human health and the environment. It will have wide-ranging impacts on the regional economy, which includes Permittees as well as the general</p>

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		<p>impacts of the challenged NEL terms versus the costs and impacts of a BMP-based approach, which has been advocated by Duarte, the Ventura County permittees, and other permittees.</p> <p>Furthermore, the costs associated with not regulating discharges is irrelevant in determining whether or not the Regional Board has complied with Water Code § 13241(d), which requires a consideration of the “discharger’s cost of compliance.” (<i>City of Burbank v. State Water Resources Control Bd.</i> (2005) 35 Cal.4th 613, 618.) The fact that there may be other benefits from regulating discharges is irrelevant to the determination of whether or not specific permit terms are appropriate under California law. Thus, the Regional Board’s attempt to “balance” these costs is inappropriate, and would constitute an abuse of discretion. (See Draft Permit, F-331-332.)</p>	<p>public. It is therefore appropriate and within the Board’s broad discretion to consider economic effects on all parties to the extent possible. As noted in the Fact Sheet, while the California Supreme Court assumed “economic considerations” includes costs of compliance, it did indicate that this factor is broader. (<i>City of Burbank, supra</i>, 35 Cal.4th at p. 618 [“California law allows the board to take into account economic factors, <i>including</i> the wastewater discharger’s cost of compliance.” (emphasis added).]) Additionally, the Court of Appeal stated in <i>City of Duarte</i> that, “...the Water Control Boards are charged with taking into account economic considerations, not merely costs of compliance with a permit ... economic considerations also include, among other things, the costs of not addressing the problems of contaminated water.” (<i>City of Duarte, supra</i>, 274 Cal.Rptr.3d at p. 482.)</p>
H.5.2	Greater Conejo Valley Chamber of Commerce	<p>This letter seeks to express our disappointment that this MS4 permitting is being considered in the middle of a pandemic that has already driven many businesses, who would be ratepayers for local water out of business.</p> <p>Because our membership includes many businesses in Ventura County, we do not</p>	<p>Change made. Each of the three existing MS4 permits has expired and is overdue for renewal. In the case of the 2010 Ventura County MS4 Permit, the renewal is six years overdue. The process to renew the three MS4 permit through the development of a Regional MS4 Permit began over 3 years ago, well before the COVID-19 pandemic. Further, the current Ventura County MS4</p>

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		<p>have the financial support of LA-based water measures like Measure A or Measure W to help alleviate the cost of compliance with the Regional Phase I MS4 permit.</p> <p>The only inevitable solution would be additional revenue in the form of taxes or ratepayer fees to finance compliance with the requirements of the permit.</p> <p>At the Chamber of Commerce, we believe that now is not the time to be creating new financial burdens – ones that we all will be paying for upwards of 30 years or more in order to comply.</p> <p>Please reconsider the implementation of the MS4 permit. Perhaps with more time, additional funds will become available to allow for compliance, or new more cost effective solutions will present themselves.</p>	<p>Permit includes many of the same provisions as the Tentative Permit, including requirements to comply with water quality objectives, which have been in the Ventura County MS4 Permit since 2000, and with TMDLs, which have been in the permit since 2009.</p> <p>The Board acknowledges concerns about the cost of compliance with the permit. As discussed in revised Part XIII.D.3.f. of the Fact Sheet, in addition to Ventura County's benefit assessment, there are H</p> <p>Furthermore, the Board encourages Permittees to explore public-private partnerships in order to implement projects more cost-effectively and swiftly. As discussed in Part XIII.D.2.a. of the Fact Sheet, in cost estimates presented by Permittees in E/WMPs, it was assumed that Permittees would need to incur land acquisition costs for projects on private land. Where cost functions were presented, assumed land costs ranged from about \$5-\$6 million per acre. Permittees can incur substantial cost savings by reaching agreements with private landowners rather than acquiring land. In addition, new financing models, such as pay-for-performance, which is growing in popularity among municipalities in the U.S., can</p>

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			<p>incentivize competition among contractors and spur projects to become more cost-effective. As detailed in Part XIII.D.2.d. of the Fact Sheet, municipalities are not involved in the specific design and management of the BMPs. Municipalities pay private contractors for outcomes, such as when BMPs promised to capture a certain amount of stormwater are successfully completed.</p> <p>Moreover, while compliance costs can be significant, the general public and the environment would incur costs if the Regional MS4 Permit were not complied with. These include, in part, healthcare costs for those who interact with polluted waterbodies and costs of impaired ecosystems, as well as foregone benefits of increased local employment opportunities, tourism, recreational opportunities, neighborhood aesthetics, and property values that implementation of the MS4 Permit could bring.</p>
H.5.3	Los Angeles Area Chamber of Commerce	From Attachment F-Fact Sheet it is clear that the estimated range of costs of the proposed Order far exceed the currently available funding in the region, including from the recently passed Measure W in Los Angeles County.	Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3 of the Fact Sheet regarding other sources of funding besides Measure W and Part XIII.D.2.d of the Fact Sheet regarding public-private partnerships as a means of implementing projects more cost-effectively.

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		<p>With costs greater than available funding, two strategies appear to be offered to avoid “unreasonable” economic hardship on regulated entities, and indirectly on small businesses and disadvantaged communities, particularly as the full economic impacts of the Covid-19 pandemic remain unknown. They are:</p> <ol style="list-style-type: none"> 1. Regulated entities are encouraged to comply with multi-benefit and nature based strategies, but given various opportunities to adopt approaches best suited to local conditions. 2. Permittees are afforded the opportunity to request time extensions to comply, and to adopt new fees, charges, assessments or special taxes to pay for the cost of compliance. <p>Cities in the region have many pressing demands on them to pay for a wide variety of obligations and aspirational goals. While the Fact Sheet acknowledges the strain from the pandemic, it does not begin to recognize these other demands on their limited financial resources. Nor does it attempt to rationalize where the Tentative Order should fall in the long list of “priorities” that municipalities are being asked to address. It is simply asserted at great length that they have a legal mandate, and will</p>	<p>Regarding the commenter’s objection to the citation of public willingness-to-pay estimates, these monetized values of improvements in water quality are relevant. As water quality is a non-market good, translating its value to a monetary value assists policymakers in weighing pros and cons of proposed regulations. The 1999 U.S. EPA rule referred to in Footnote 347 utilized a widely cited peer-reviewed study by Carson and Mitchell (1993) to estimate monetary benefits of water quality. There has since been a substantial body of literature using data from survey responses and human behavior that show that, while specific values of water quality vary across studies, there is certainly a positive dollar amount that the public is willing to pay for water quality. This may or may not indicate that municipalities would be able to assess new taxes and fees, but it certainly indicates that the public wants some action to be taken to improve water quality.</p> <p>Furthermore, the Permit’s flexibility and encouragement to pursue multiple objectives are what will allow Permittees to implement projects more cost-effectively. Permittees often have better information than the Board on how and where to appropriately implement projects cost-</p>

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		<p>need to figure out how to meet it. The gratuitous footnote 347 on F-314 suggesting the public would be willing to pay new fees, assessments, and special taxes does not rise to the level of a Finding of Fact and is not helpful.</p> <p>The more immediate structural problem with the Tentative Order is that the built-in flexibility, encouragement to pursue multiple objectives, and, most importantly, lack of clear direction to use the most cost effective methods to achieve measurable outcomes, will work at cross purposes and result in failure to achieve the Board's statutory water quality protection obligation at a cost that can be reasonably estimated and justified.</p> <p>Businesses have a direct and compelling interest in this Order. As noted in the Fact Sheet, the obligation to pay for the cost of compliance for municipalities, if existing funding sources are insufficient, could fall heavily on businesses through new municipal fees, charges, assessments and special taxes (Fact Sheet pp. F 314, F-341 to F-343).</p> <p><u>Recommendation</u> We urge that the Order be amended to direct regulated entities (permittees), within</p>	<p>effectively. We also reiterate our encouragement of multi-benefit projects not only because it is more cost-effective to incorporate stormwater elements into projects that help municipalities in other ways, such as providing park space, housing, or transportation, but also because this can help provide more opportunities for funding from sources that are not explicitly devoted to stormwater, as discussed in revised Part XIII.D.3.f of the Fact Sheet.</p> <p>See response to comment H.1.2.g. for discussion of funding issues and TMDL final deadlines.</p> <p>See response to comment H.5.4. for discussion of schedules and the economic impacts of COVID-19.</p>

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		<p>the Board's legal discretion, and with due consideration for the uncertain and extensive economic impacts of the COVID-19 pandemic, to as soon as practicable, meet feasible science based TMDLs, by the most cost effective means available while prioritizing Measure W funds to this purpose, as expressly authorized in the LA County approved Program Elements.</p>	
H.5.4	City of Calabasas Mayor	<p>The focus of my comments and concerns relate to the financial feasibility of implementing the required MS4 measures in light of the current COVID-19 pandemic. On November 23, 2020, the daily case rate in Los Angeles County reached an all-time high of 5,048, and today, a new Los Angeles County Health Department Safer at Home Order becomes effective, instituting more stringent requirements for residents and local businesses through December 20, 2020. At the City, we have already seen a decline of approximately 25 percent in our general fund revenues and are contemplating difficult cuts to many of our important programs, including those for environmental services.</p> <p>We appreciate the inclusion of a section for "economic considerations" in Attachment F – Fact Sheet of the tentative Permit, which estimates the 20-year cost of implementing the Permit to range from \$21 .3 to \$31.4</p>	<p>Change made to Fact Sheet. See response to comment H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding. See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p> <p>In response to concerns from Permittees regarding near-term TMDL deadlines and the impact of the COVID-19 pandemic, through a separate basin planning action, the Board has extended these TMDL deadlines by 3-5 years [Los Angeles Water Board Resolution R21-001]. As discussed in revised Part XIII.D.3 of the Fact Sheet, the economic outlook has improved with recent</p>

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		<p>billion. When you annualize the estimated costs, and even if they were to be spread over a longer 30-year time horizon possible through bond financing, the total investment need is \$1.0 to \$1.6 billion per year.</p> <p>It is noteworthy that these costs exceed the cited figures for existing stable funding sources of approximately \$312.5 million per year, a majority of which comes from the recently passed Measure W, by a factor of 3.5 to 5.0 times. This is a very large funding gap during a time when new sources of state and federal grant funding for stormwater improvements remain uncertain.</p> <p>Importantly, the Fact Sheet stops short of evaluating the financial feasibility for permittees to fund the proposed MS4 requirements, particularly when considering the significant financial impacts of COVID-19. Instead, anecdotal information is provided to indicate that "<i>municipalities have been successful in securing alternative funding for storm water services through fees, assessments or special taxes, as well as through developer fees, and gas taxes</i>" (p. F-314). Further, a footnote on the same page contends that there is generally a willingness to pay for improvements in water quality. These statements fail to recognize both the significant magnitude of funding</p>	<p>developments, such as the ramping up of COVID-19 vaccinations and the state's budget windfall of \$26 billion. Congress passed the \$1.9 trillion American Rescue Plan in March, which includes \$350 billion to state and local governments, individual stimulus checks, and extended unemployment benefits. While the specific magnitude of the effect on municipal revenues is unclear at this moment, we can expect that there will be continued or increased funding of state and federal grants that can be used towards stormwater projects, and there will be increased spending by the general public after increased vaccinations, receipt of state and federal aid, and reopening of the economy, which would increase local tax revenues. President Biden has also proposed a \$2 trillion infrastructure package, which would further boost the economy if passed. Spending on stormwater projects would funnel federal money toward creating local jobs that would help support local economies, among other benefits. Many of these jobs do not require a college degree and could help those in the region who need help most, as low-income residents have been the most likely to experience long-term unemployment during the pandemic (https://www.nytimes.com/interactive/2021/02/08/opinion/stimulus-checks-</p>

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		required and the associated timing with respect to the on-going financial impacts of COVID-19. Municipalities like the City of Calabasas are struggling to maintain essential services and soften the impact of COVID-19 on our residents and businesses. It is not the time to propose new fees, assessments or special taxes.	economy.html). The economic challenges brought about by the pandemic have also brought opportunities for municipalities to participate in building back local economies in a more sustainable and equitable manner than before.
H.5.5	City of Calabasas Mayor	Evaluate the ability of the region's residents and businesses to pay for the estimated costs in light of the significant economic impacts of COVID-19.	Change made to Fact Sheet. See response to comments H.5.2 and H.5.4.
H.5.6	City of Calabasas Mayor	Emphasize the importance and priority for cost-effective solutions to be sure limited funds are stretched the furthest.	Change made to Fact Sheet. See response to comment H.5.3.
H.5.7	SGVCOG 2 nd Letter	<p>Fiscal Resources: In general, the economic considerations included in the Tentative Permit are lacking in detail. This is an extremely important aspect to consider when assessing the Permittees ability to satisfy regulatory requirements. The Permittees will have the most success improving water quality conditions if we are able to focus the available resources on regulations with achievable goals, which requires a realistic discussion regarding the cost of compliance versus available funding.</p> <p>Attachment F, the Fact Sheet in the Tentative Permit, includes economic considerations that estimate the 20-year</p>	Change made to Fact Sheet. Costs of implementing Minimum Control Measures and monitoring costs were accounted for in the estimation of Stormwater Management Program costs. All TMDL Staff Reports presented enough information to estimate costs. TMDL Staff Reports were written from 2002-2017. The annual expenditure data self-reported by Permittees to estimate Stormwater Management Program costs have limitations but are reliable and current. While this expenditure information has not been reported consistently across Permittees, staff has revised the analysis of Stormwater Management Program costs in response to other commenters to only include data from FY16/17-FY18/19 for

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		<p>cost of compliance at \$21.3 to \$31.4 Billion. The first method used to calculate this cost was based on TMDL Staff Reports that are now outdated and did not include the cost of implementing minimum control measures, monitoring costs, costs to address TMDLs if the Staff Report did not have a cost estimate, and only included the cost of addressing trash if there was a specific TMDL, not the overarching requirements of the statewide trash amendment. While the second method used the more recent cost estimates to fully implement the WMPs and EWMPs in the region, both methods still rely on the cost of stormwater management programs based on annual expenditures and budget data self-reported, which has not been consistent across the Permittees. Further, many of the cost estimates in the WMPs and EWMPs did not include additional costs such as acquiring property necessary for some structural BMPs, the full cost associated with operation and maintenance of BMPs, or the costs associated with implementation of the adaptive management program. Other cost estimates of compliance estimated in the past have been significantly higher. For example, the County of Los Angeles has recognized that the cost of complying could be as high as \$120 Billion. Likewise, a recent study on Stormwater Funding</p>	<p>Permittees in Los Angeles County, when the cost reporting format of Annual Reports was more consistent across Permittees than in earlier years. As for cost estimates from E/WMPs in Method 2, staff noted in the Economic Considerations where it was not possible to ascertain capital and O&M costs over 20 years due to insufficient information in the E/WMPs. While estimates from other parties have been higher, costs as presented in Method 2 are reported by the Permittees and are more recent than other studies, and therefore represent better estimates. As discussed in revised Part XIII.D.2.a in the Fact Sheet, Permittees need not incur land acquisition costs as assumed in EWMPs, which range from about \$5-\$6 million per acre, if they engage in public-private partnerships when implementing BMPs on private land. In addition, these partnerships could also lead to more cost-effective implementation of BMPs, as discussed in Part XIII.D.2.d. Costs of implementing the adaptive management program were accounted for in the analysis of Permittees' Annual Reports for Stormwater Management Program costs.</p> <p>See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating</p>

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		<p>Options recognizes that the cost of complying could be as high as in the tens of Billions over the next 20 years.</p> <p>The Fact Sheet also potentially overstates the available funding sources, with reference to Measures H, A, and M, that are not dedicated stormwater funds and Permittees have minimal or no access to use to address the requirements of the MS4 Permit. Other available funding sources are generally referenced, as well as a brief discussion on the potential impacts from COVID-19; however, a sufficient analysis to demonstrate that the cost of compliance is feasible based on available funding has not been completed. Even prior to completing a sufficient financial analysis, it is clear the cost estimates to fully implement the Permit are greater than the funding available. The SGVCOG recommends that the Permit include a provision that allows Permittees to conduct a financial capability assessment that would be used to help determine an effective and feasible implementation schedule and associated compliance deadlines.</p> <p>In addition, it should be noted that the primary dedicated source of funding that most cities currently have for Permit compliance is through their upcoming Local</p>	<p>stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>Regarding the cost of the statewide trash amendments, the 2012 Los Angeles County MS4 Permit already included a requirement for additional trash management practices in areas not subject to a trash TMDL, which largely mirrors the statewide trash amendments by requiring that Permittees install trash excluders, or equivalent devices, on or in catch basins or outfalls to prevent the discharge of trash to the MS4 or receiving water no later than December 28, 2016 in areas defined as Priority A, i.e., catch basins that are designated as consistently generating the highest volumes of trash and/or debris. (See, Order No. R4-2012-0175, Part VI.D.9.h.vii.) Additionally, as noted in Part XIII.D.1.a of the Fact Sheet, the sources of data on the costs of implementing the Order included the cost estimates developed by the State Water Board when adopted the Statewide Trash Amendments.</p> <p>While the Los Angeles Water Board is not obligated to use the Financial Capability Assessment developed by U.S. EPA, and using it would assume that costs as currently estimated would not decrease in</p>

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		<p>Return through the Safe, Clean Water (SCW) Program. The SGVCOG member agencies do not anticipate any available funding beyond the SCW Program funds. In addition, the regional allocations to each watershed will be awarded competitively. The SGVCOG is concerned that the regional allocations coupled with the Local Return will not provide enough funding to complete all the projects required to comply with the Permit requirements, especially within the current designated timeframes.</p> <p>Given that Measure W is the only dedicated stormwater funding source, we recommend that the Permit have more explicit integration with the SCW Program, as discussed further in the comments below.</p>	<p>the future as technologies and policies improve, it is a useful tool for assessing and communicating a community's financial capability to carry out Clean Water Act requirements. The Los Angeles Water Board notes that the final 2021 FCA Guidance explains that U.S. EPA's expectation is that communities will develop plans and schedules to achieve compliance with the Clean Water Act as soon as practicable, and that financial capability is only one of the factors considered when developing these schedules. For further discussion of use of economic considerations in TMDL or permit schedules see response to comment H.4.1.b. In this regard, it should be noted that a regional board cannot use compliance costs to justify the failure to impose pollutant restrictions that it otherwise has found necessary and appropriate to restrict pollution, thereby evading federal Clean Water Act requirements. (<i>City of Burbank, supra</i>, 35 Cal.4th at pp. 626-27.) However, Permittees can request more time to comply with certain deadlines based in part on economic feasibility. (Cal. Water Code § 13385((j)(3)(C)(i); Order, Part X.E.)</p>
H.5.8	SGVCOG 2 nd Letter	<i>Integration of the Safe, Clean Water Program:</i>	Change made in Fact Sheet. See response to comment H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet

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		<p>The SCW Program and passage of Measure W was a major success for the Los Angeles Region and should be further leveraged knowing the available funds that can be used towards meaningful implementation and compliance. The SCW Program is the primary source of dedicated funding for the LA County Permittees. The municipal and regional programs are expected to significantly support implementation of Permittees' WMPs and implementation of these infrastructure projects will be the primary factor in achieving TMDL compliance. The SCW Program establishes multiple goals, including in addition to water quality benefits also water supply, cost efficiency, nature-based solutions, and community investment benefits. Therefore, the funds will not be exclusively spent on compliance, though this will be a significant portion, and additional time is required to ensure optimization across these benefits. To improve the certainty that actions taken will ultimately result in attainment of beneficial uses, the Permit should provide flexibility such as alternative compliance pathways and extended time to implement appropriate actions utilizing scientific advancements and best available information/data. Given the success securing this funding measure, which helps enable the commitment towards</p>	<p>regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding. See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>While providing credit to municipalities for contributing funds to projects outside their jurisdictions may assist watershed groups in completing projects at the watershed level, a crediting program may also exacerbate inequities at the municipal level. Municipalities with fewer resources would be likelier to contribute funds to municipalities with more resources, who are likelier to secure funding and implement projects faster. This would subject residents in municipalities with fewer resources to longer periods of time with diminished water quality and fewer multi-benefit projects. As discussed in Part XIII.D.3.f in the Fact Sheet, there are a number funding sources that give preference to disadvantaged communities. In addition, although it is still early in the Biden administration, the President issued executive order 14008 on January 27, 2021, creating the Justice40 Initiative to deliver 40% of climate investment benefits to disadvantaged</p>

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		<p>implementation of approved WMPs, we recommend that the Permit integrate the fundamental aspects of the program to help align regulatory compliance with realistic and achievable implementation.</p> <p>Initial recommendations to integrate the program include the following:</p> <ul style="list-style-type: none"> • Allow WMPs to incorporate schedule adjustments to projects based on the Local Return and regional program support identified in the Stormwater Investment Plans (SIPs) through the adaptive management process. • Coordinate with the Los Angeles County Flood Control District and the Watershed Area Steering Committee to evaluate anticipated SCW Program funding in relation to planned and proposed infrastructure projects and TMDL deadlines. • Provide credit to cities and agencies contributing funds through the regional program to projects outside their jurisdiction through extensions on their milestones. This recognizes the competitive aspect of the regional program, which should prioritize projects with the greatest watershed benefit but could result in certain jurisdictional projects being pushed to later fiscal years. This would not necessarily impact the number of 	<p>communities. See, also, response to comment G.33.</p>

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		<p>projects to be implemented but provided flexibility to the schedule.</p> <ul style="list-style-type: none"> • Allow for extensions to compliance deadlines based on the available funding, with sufficient justification that the updated deadline can be met with the known funding. • Tie permit compliance requirements to the availability of funding, and the Permittee's agreement that such requirements are appropriate. • Align SCW Program reporting requirements in terms of format and schedule to satisfy the Permit required reporting. <p>If these recommendations are incorporated in the Permit, this will also help facilitate the selection of projects under the SCW Program that are best aligned with Permit compliance.</p>	
H.5.9	City of Santa Paula	The Tentative Order is a very lengthy and complex document. Many of the requirements and provisions of this permit represent a significant increase (especially the inclusion of TMDL provisions, effluent limitations and deadlines) in terms of cost and effort as compared with the stormwater permit adopted by the Los Angeles Water Board in 2010. Furthermore, the Tentative Order requirements involve tremendous implementation costs for a local government	Change made to Fact Sheet. See response to comment H.5.2 [re. inclusion of TMDL provisions, including water quality based effluent limitations and TMDL deadlines, in Ventura County MS4 Permit since 2009], and comments F.12 and F.22 and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding. See Part

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		<p>entity such as the City, as well as for the residents and businesses within Ventura County.</p> <p>The enduring COVID crisis is affecting everyone from the average citizen to commercial and industrial businesses within the City. The Tentative Order assumes that all parts of the Permit can be implemented without the need for additional City staff or costs. This is unrealistic. It is doubtful that meaningful additional general funds will become available during the five--year term of this Tentative Order or that a ballot measure to provide specific stormwater funding in Ventura County will be placed before the voters in the next two to three years. Even if a successful ballot measure were to be proposed and the Ventura County electorate were to adopt it, public works projects generally require five to ten years from conception to approval to completion.</p> <p>Given the difficult economic climate locally and nationwide with local governments struggling to provide basic health and safety services, supporting the issuance of a Tentative Order that will require the expenditure of millions of dollars is a difficult, if not impossible, proposition. As local governments in Ventura County face</p>	<p>XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook.</p>

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		lay-offs, furloughs, hiring freezes, and cuts to popular programs, it is imperative that all regulatory agencies including the Los Angeles Water Board take into account the potential economic impacts of their regulations and permit actions.	
H.5.10	City of San Fernando, City of Agoura Hills, City of La Puente, City of La Cañada Flintridge, and City of Hidden Hills	Furthermore, the City[ies] would like to take this opportunity to express its concern in maintaining compliance with the Tentative MS4 Permit, should it be adopted, with the Total Maximum Daily Load (TMDL) interim and final compliance deadlines. This concern is due to the cost of compliance versus available funding.	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding. See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See, also, response to comments G.32-34, F.47, H.5.7, and H.5.16 regarding the potential for extensions of certain deadlines.</p>
H.5.11	City of San Fernando	The City is a member of the Upper Los Angeles River (ULAR) Enhanced Watershed Management Program (EWMP) Group. The total cost of compliance identified in the ULAR EWMP is \$6B, of which the City is responsible for \$74.7M. The ULAR EWMP Group's first compliance deadline was set on December 2017, just 20 months after the EWMP was approved, with subsequent compliance deadlines in 2024, 2028, and 2037. As described in the	<p>Change made to Fact Sheet. See response to comment H.5.2, F.12, F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>

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		<p>EWMP, the cost of regional projects, green streets, LID, O&M, and corresponding compliance deadlines do not coincide with available municipal funds.</p> <p>The inclusion of a section for "economic considerations" in Attachment F - Fact Sheet of the Tentative MS4 Permit estimates the 20-year cost of implementing the Permit to range from \$21.3 to \$31.4 billion. When you annualize the estimated costs, even after spreading over a longer 30-year time horizon possible through bond financing, the total investment need is \$1.0 to \$1.6 billion per year.</p> <p>The Fact Sheet stops short of evaluating the financial feasibility for permittees to fund the proposed MS4 requirements, particularly when considering the significant financial impacts of COVID-19. Instead, anecdotal information is provided to indicate that "municipalities have been successful in securing alternative funding for storm water services through fees, assessments or special taxes, as well as through developer fees, and gas taxes" (p. F-314). Further, a footnote on the same page contends that there is generally a willingness to pay for improvements in water quality. These statements fail to recognize both the significant magnitude of funding required</p>	

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		<p>and the associated timing with respect to the on-going financial impacts of COVID-19. Municipalities like the City of San Fernando are struggling to maintain essential services and soften the impact of COVID-19 on our residents and businesses. It is not the time to propose new fees, assessments, or special taxes.</p> <p>The passage of the Safe Clean Water Program (Measure W) is a much-needed source of revenue for the ULAR EWMP Group as it helps fund water quality improvements associated with TMDLs, however it does not guarantee full funding of projects or completion of projects by the EWMP TMDL compliance milestones. With Measure W funds distributed starting in 2020, the revenue through the year 2037 (final compliance deadline) for the City is \$4.7M. We respectfully request the Regional Board recognize the disparity between the cost of compliance and available funding. We ask that language be added to the Tentative MS4 Permit that recognizes the good faith and efforts of permittees, and reopen TMDLs to extend deadlines that match available funding provided by Measure W.</p>	
H.5.12	City of Agoura Hills	The City is a member of the Malibu Creek Watershed (MCW) Enhanced Watershed Management Program (EWMP) Group. The	Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet

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		<p>total cost of compliance identified in the MCW EWMP is \$198M, of which the City is responsible for \$85M. The MCW EWMP Group's first compliance deadline was set on December 28, 2017, just 20 months after the EWMP was approved, with a \$23.5M list of projects that needed to be completed without a revenue source. The MCW EWMP Group has subsequent compliance deadlines in 2021 and 2032. As described in the EWMP, the cost of regional projects, green streets, LID, O&M, and corresponding compliance deadlines do not coincide with available municipal funds.</p> <p>The inclusion of a section for "economic considerations" in Attachment F - Fact Sheet of the Tentative MS4 Permit estimates the 20-year cost of implementing the Permit to range from \$21.3 to \$31.4 billion. When you annualize the estimated costs, even after spreading over a longer 30-year time horizon possible through bond financing, the total investment need is \$1.0 to \$1.6 billion per year.</p> <p>The Fact Sheet stops short of evaluating the financial feasibility for permittees to fund the proposed MS4 requirements, particularly when considering the significant financial impacts of COVID-19. Instead, anecdotal information is provided to indicate that</p>	<p>regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding. See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook, and the recent basin planning action to extend certain near-term final TMDL deadlines, including those in the Malibu Creek Watershed.</p>

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		<p data-bbox="604 235 1234 889">"municipalities have been successful in securing alternative funding for storm water services through fees, assessments or special taxes, as well as through developer fees, and gas taxes" (p. F-314). Further, a footnote on the same page contends that there is generally a willingness to pay for improvements in water quality. These statements fail to recognize both the significant magnitude of funding required and the associated timing with respect to the on-going financial impacts of COVID-19. Municipalities like the City of Agoura Hills are struggling to maintain essential services and soften the impact of COVID-19 on our residents and businesses. It is not the time to propose new fees, assessments, or special taxes.</p> <p data-bbox="604 930 1241 1399">The passage of the Safe Clean Water Program (Measure W) is a much-needed source of revenue for the MCW EWMP Group as it helps fund water quality improvements associated with TMDLs, however it does not guarantee full funding of projects or completion of projects by the EWMP TMDL compliance milestones. With Measure W funds distributed starting in 2020, the revenue through the year 2032 for the entire North Santa Monica Bay Watershed, that includes the MCW, is \$46.2M. We respectfully request the</p>	

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		<p>Regional Board recognize the disparity between the cost of compliance and available funding. We ask that language be added to the Tentative MS4 Permit that recognizes the good faith and efforts of permittees, and reopen TMDLs to extend deadlines that match available funding provided by Measure W.</p>	
H.5.13	City of La Cañada Flintridge	<p>The City is a member of the Upper Los Angeles River (ULAR) Enhanced Watershed Management Program (EWMP) Group. The total cost of compliance identified in the ULAR EWMP is \$6B, of which the City is responsible for \$74.7M. The ULAR EWMP Group's first compliance deadline was set on December 2017, just 20 months after the EWMP was approved, with subsequent compliance deadlines in 2024, 2028, and 2037. As described in the EWMP, the cost of regional projects, green streets, LID, O&M, and corresponding compliance deadlines do not coincide with available municipal funds.</p> <p>The inclusion of a section for "economic considerations" in Attachment F - Fact Sheet of the Tentative MS4 Permit estimates the 20-year cost of implementing the Permit to range from \$21.3 to \$31.4 billion. When you annualize the estimated costs, even after spreading over a longer 30-year time horizon possible through bond</p>	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook.</p>

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		<p>financing, the total investment need is \$1.0 to \$1.6 billion per year.</p> <p>The Fact Sheet stops short of evaluating the financial feasibility for permittees to fund the proposed MS4 requirements, particularly when considering the significant financial impacts of COVID-19. Instead, anecdotal information is provided to indicate that <i>"municipalities have been successful in securing alternative funding for storm water services through fees, assessments or special taxes, as well as through developer fees, and gas taxes"</i> (p. F-314). Further, a footnote on the same page contends that there is generally a willingness to pay for improvements in water quality. These statements fail to recognize both the significant magnitude of funding required and the associated timing with respect to the on-going financial impacts of COVID-19. Municipalities like the City of La Canada Flintridge are struggling to maintain essential services and soften the impact of COVID-19 on our residents and businesses. It is not the time to propose new fees, assessments, or special taxes.</p> <p>The passage of the Safe Clean Water Program (Measure W) is a much-needed source of revenue for the City as it helps fund water quality improvements associated</p>	

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		<p>with TMDLs, however it does not guarantee full funding of projects or completion of projects by the EWMP TMDL compliance milestones. With Measure W funds distributed starting in 2020, the revenue through the year 2037 (final compliance deadline) for the City is \$6.4M. We respectfully request the Regional Board recognize the disparity between the cost of compliance and available funding. We ask that language be added to the Tentative MS4 Permit that recognizes the good faith and efforts of permittees, and reopen TMDLs to extend deadlines that match available funding provided by Measure W.</p>	
H.5.14	City of Hidden Hills	<p>The City is a member of the Malibu Creek Watershed (MCW) and Upper Los Angeles River (ULAR) Enhanced Watershed Management Program (EWMP) Groups. The City's total cost of compliance identified in both EWMPs is \$11.9M, with the first compliance deadline set on December 28, 2017, just 20 months after the EWMPs were approved. This first milestone committed the City to spending \$3.7M without a revenue source. The City has subsequent compliance deadlines in 2021, 2024, and 2028. As described in the EWMPs, the cost of regional projects, green streets, LID, O&M, and corresponding compliance deadlines do not coincide with available municipal funds.</p>	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook, and</p>

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		<p>The inclusion of a section for "economic considerations" in Attachment F - Fact Sheet of the Tentative MS4 Permit estimates the 20-year cost of implementing the Permit to range from \$21.3 to \$31.4 billion. When you annualize the estimated costs, even after spreading over a longer 30-year time horizon possible through bond financing, the total investment need is \$1.0 to \$1.6 billion per year.</p> <p>The Fact Sheet stops short of evaluating the financial feasibility for permittees to fund the proposed MS4 requirements, particularly when considering the significant financial impacts of COVID-19. Instead, anecdotal information is provided to indicate that <i>"municipalities have been successful in securing alternative funding for storm water services through fees, assessments or special taxes, as well as through developer fees, and gas taxes"</i> (p. F-314). Further, a footnote on the same page contends that there is generally a willingness to pay for improvements in water quality. These statements fail to recognize both the significant magnitude of funding required and the associated timing with respect to the on-going financial impacts of COVID-19. Municipalities like the City of Hidden Hills are struggling to maintain essential services</p>	<p>the recent basin planning action to extend certain near-term final TMDL deadlines, including those in the Malibu Creek Watershed.</p>

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		<p>and soften the impact of COVID-19 on our community. It is not the time to propose new fees, assessments, or special truces.</p> <p>The passage of the Safe Clean Water Program (Measure W) is a much-needed source of revenue for the City as it helps fund water quality improvements associated with TMDLs, however it does not guarantee full funding of projects or completion of projects by the EWMP TMDL compliance milestones. With Measure W funds distributed starting in 2020, the revenue through the year 2028 for the City is \$640,000. We respectfully request the Regional Board recognize the disparity between the cost of compliance and available funding. We ask that language be added to the Tentative MS4 Permit that recognizes the good faith and efforts of permittees, and reopen TMDLs to extend deadlines that match available funding provided by Measure W.</p>	
H.5.15	City of La Puente	<p>The City is a member of the Upper San Gabriel River (USGR) Enhanced Watershed Management Program (EWMP) Group. The total cost of compliance identified in the USGR EWMP is \$1.92 billion, of which the City is responsible for \$123.7 million. Please note that the City's annual general fund budget is a mere 15.2 million. The USGR EWMP Group's first compliance deadline</p>	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p>

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		<p>was set on December 2017 with subsequent compliance deadlines in 2020, 2023, 2026, and 2036. As described in the WMP, the cost of regional projects, green streets, LID, O&M, and corresponding compliance deadlines do not coincide with available local municipal funding.</p> <p>The inclusion of a section for "economic considerations" in Attachment F - Fact Sheet of the Tentative MS4 Permit estimates the 20-year cost of implementing the Permit to range from \$21.3 to \$31.4 billion. When you annualize the estimated costs, even after spreading over a longer 30-year time horizon possible through bond financing, the total investment need is \$1.0 to \$1.6 billion per year.</p> <p>The Fact Sheet stops short of evaluating the financial feasibility for permittees to fund the proposed MS4 requirements, particularly when considering the significant financial impacts of COVID-19. Instead, anecdotal information is provided to indicate that <i>"municipalities have been successful in securing alternative funding for storm water services through fees, assessments or special taxes, as well as through developer fees, and gas taxes"</i> (p. F-314). Further, a footnote on the same page contends that there is generally a willingness to pay for</p>	<p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook.</p>

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		<p>improvements in water quality. These statements fail to recognize both the significant magnitude of funding required and the associated timing with respect to the on-going financial impacts of COVID-19. Municipalities like the City of La Puente are struggling to maintain essential services and soften the impact of COVID-19 on our residents and businesses. It is not the time to propose new fees, assessments, or special taxes.</p> <p>The passage of the Safe Clean Water Program (Measure W) is a much-needed source of revenue for the City as it somewhat helps to fund water quality improvements associated with TMDLs; however, it does not guarantee full funding of projects or completion of projects by the EWMP TMDL compliance milestones. With Measure W funds distributed starting in 2020, the revenue through the year 2036 (final compliance deadline) for the City is just \$5.4 million falling some \$118 million short. The City respectfully requests the Regional Board recognize the disparity between the cost of compliance and available funding. We ask that language be added to the Tentative MS4 Permit that recognizes the good faith efforts of permittees, and reopen TMDLs to extend</p>	

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		deadlines that match available funding provided by Measure W.	
H.5.16	Aleshire & Wynder, LLP on behalf of the cities of Bell, Carson, Flintridge, Glendora, Irwindale, La Cañada, and Rancho Palos Verdes	<p>Initially, Cities would like to take this opportunity to express their concern about the economic feasibility of compliance with the Tentative MS4 Permit, should it be adopted, particularly with the Total Maximum Daily Load (TMDL) interim and final compliance deadlines. This concern is due to the cost of compliance versus available funding.</p> <p>By way of example, the City of Bell is a member of the Los Angeles River Upper Reach 2 (LAR-UR2) Watershed Management Program (WMP) Group. The total cost of compliance identified in the LAR-UR2 WMP is \$209M, of which Bell is responsible for \$24.6M. The LAR-UR2 WMP Group's first compliance deadline was set on December 2017 with subsequent compliance deadlines in 2028, 2030 and 2037. As described in the WMP, the cost of regional projects, green streets, LID, O&M, and corresponding compliance deadlines do not coincide with available municipal funds.</p> <p>The passage of the Safe Clean Water Program (Measure W) is a much-needed source of revenue for Cities as it helps fund water quality improvements associated with TMDLs, however it does not guarantee full</p>	<p>Change made in Fact Sheet. Staff acknowledges that disadvantaged communities have fewer resources to achieve compliance, but it is these communities that also have a greater and more urgent need for their municipalities to improve water quality in order to provide health and recreation benefits, as well as local jobs from infrastructure spending.</p> <p>See response to comment H.5.8 and revised Part XIII.D.3.f in the Fact Sheet regarding funding to disadvantaged communities.</p> <p>See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p>

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		<p>funding of projects or completion of projects by the WMP TMDL compliance milestones. With Measure W funds distributed starting in 2020, the revenue through the year 2037 for Bell is \$5.4M. We use this city as one example, but the economic burden is heavy for all of the cities in the region, many of which are disadvantaged communities.</p> <p>We respectfully request the Regional Board recognize the disparity between the cost of compliance and available funding. We ask that language be added to the Tentative MS4 Permit that recognizes the good faith and efforts of permittees, and extend deadlines that match available funding provided by Measure W.</p>	<p>The Order provides additional flexibility to Permittees who may not have the funding necessary to comply with interim or final deadlines, regardless of whether they are participating in a WMP. Specifically, where a Permittee needs additional time to comply with either interim or final WQBELs, it can request a TSO pursuant to California Water Code sections 13300 and/or 13385(j)(3) for the Los Angeles Water Board's consideration. (Order, Part X.E.1-5.) A Permittee seeking an extension of a compliance deadline, other than a final TMDL deadline, in an approved Watershed Management Program does not need a TSO and may request the extension in accordance with the modification provisions in Part IX.C of the Order. (See, Order, Part X.E.1-5.) See, also, responses to comments G.32-34 and F.47.</p>
H.5.17	City of Thousand Oaks	<p>Take into consideration the current and projected General Fund budget shortfalls that most cities and agencies are or will be facing due to the COVID-19 pandemic. The budget shortfalls are the result of less tax revenues being generated due to businesses partially or fully closing because of the Stay at Home Orders. Ventura County cities, as with the City of Thousand Oaks, rely greatly on General Fund budgets to fund their stormwater quality programs.</p>	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>

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			See response to comment H.5.4 regarding COVID-19 and the economic outlook.
H.5.18	VCSQMP	Draft Fact Sheet, p. F-322 – With respect to consider costs of compliance, the Draft Fact Sheet fails to take into consideration the significant number of disadvantaged communities that may be impacted due to increased costs for meeting the permit requirements. Notably, MS4 dischargers are municipalities and thus it is the ratepayers of those communities that ultimately bear the costs of compliance. Although the Program respects that economic considerations does not equate to a cost benefit analysis, some level of consideration needs to be given to ratepayer impacts and affordability of such requirements in disadvantaged communities.	<p>Change made to Fact Sheet. See response to comment H.5.16 regarding disadvantaged communities.</p> <p>See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook.</p>
H.5.19	City of Camarillo	Budget Constraints - As stated in the Countywide Program letter, the comprehensive nature of the Tentative Order sets a high bar for our municipal stormwater program and it will significantly increase the City's cost to implement the elements of the Permit to achieve regulatory compliance. Those costs will then be borne by the taxpaying residents of Camarillo. It has been estimated that the City's cost for	Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.

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		<p>permit implementation including the development and implementation of a WMP may range from approximately \$22M to \$166M for capital costs, and \$1 M to \$9.8M for annual operation and maintenance costs. [footnote] 1 These estimates do not include the cost to purchase land nor current operations and maintenance costs, such as those needed for compliance with the trash requirements.</p> <p>[footnote 1]: " Preliminary Ventura County MS4 Permit Structural BMP Implementation Cost Estimate," by LWA dated June 1, 2017</p> <p>The City currently receives annual revenue of approximately \$155,000 from a property benefit assessment that was set up in 1996, \$115,000 from Landscape Maintenance District Assessments and approximately \$21,000 in user fees collected under the City's stormwater inspection program. This revenue is applied towards the City's current stormwater program budget of \$1.1 M, and the remaining funds to implement the program are drawn from our General Fund. The City's General Fund revenue sources are primarily: sales tax, property tax, and hotel occupancy tax which are used to maintain transportation infrastructure, police, fire, street lighting, landscape, and stormwater program services. The funding sources for the City's Stormwater Program</p>	<p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>

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		<p>budget are summarized below and do it should be noted that capital expenses are not included.</p> <table border="1" data-bbox="611 375 1251 751"> <thead> <tr> <th data-bbox="611 375 1052 488">Funding Sources for Camarillo Stormwater Program</th> <th data-bbox="1052 375 1251 412">Est. Annual</th> </tr> </thead> <tbody> <tr> <td data-bbox="611 488 1052 526">Property Benefit Assessment</td> <td data-bbox="1052 488 1251 526">\$ 155,000</td> </tr> <tr> <td data-bbox="611 526 1052 602">Landscape Maintenance District Assessments</td> <td data-bbox="1052 526 1251 602">\$ 115,000</td> </tr> <tr> <td data-bbox="611 602 1052 678">User Fees Collected for Stormwater Inspections</td> <td data-bbox="1052 602 1251 678">\$ 21,000</td> </tr> <tr> <td data-bbox="611 678 1052 716">General Fund</td> <td data-bbox="1052 678 1251 716">\$ 809,000</td> </tr> <tr> <td data-bbox="611 716 1052 751" style="text-align: center;">Total</td> <td data-bbox="1052 716 1251 751" style="text-align: center;">\$1,100,000</td> </tr> </tbody> </table>	Funding Sources for Camarillo Stormwater Program	Est. Annual	Property Benefit Assessment	\$ 155,000	Landscape Maintenance District Assessments	\$ 115,000	User Fees Collected for Stormwater Inspections	\$ 21,000	General Fund	\$ 809,000	Total	\$1,100,000	
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H.5.20	City of Camarillo	<p>Funding Availability - SB-231 was signed by the Governor in October 2017 which adds stormwater to the definition of "sewer" thereby exempting stormwater from voter approval requirements and requiring only a governing body action to establish a funding source via stormwater fees. However, the authors of Proposition 218 (Howard Jarvis Taxpayer Association) have formally stated that this new law is unconstitutional and they intend to sue any agency that moves forward without voter approval [footnote] 2. A lawsuit of this type would no doubt take away from the limited funding Camarillo has for the stormwater program. Until funding</p>	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>												

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		<p>becomes available, Camarillo may not be able to institute a successful WMP without taking funding from critical services in the City.</p> <p>[footnote 2]: CASQA https://www.casqa.org/resources/funding-resources/overview-and-background</p>	
H.5.21	City of Camarillo	<p>COVID-19 Impacts - Further, the timing of the Tentative Order should be carefully considered as many municipalities have been fiscally impacted by the COVID-19 pandemic, including the City of Camarillo. During Fiscal Year 2019-20, the City's stormwater program budget was \$1.3M, which has been reduced to \$1.1 M for Fiscal Year 2020-21 due to a loss in General Fund revenue resulting from the effects of the pandemic. The City's General Fund makes up approximately 73 percent of the overall stormwater budget, and the estimated increased costs associated with the Tentative Order may not allow for successful implementation of a Watershed Management Program.</p>	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook.</p>
H.5.22	City of Malibu	<p>The cumulative effect of circumstances including several disasters has negatively impacted productivity and caused delays.</p> <p>The City experienced the devastating Woolsey Fire in 2018, followed by the Coronavirus (COVID-19) pandemic in 2020. These two State of Emergency events</p>	<p>Change made to Fact Sheet. The Board has recently granted a five-year extension to the Malibu Creek Bacteria TMDL. Among the factors considered in this decision were impacts of the Woolsey Fire and the COVID-19 pandemic. See response to comment H.5.4 for further discussion</p>

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		<p>required significant shifts in City resources to protect our community health and safety. Due to the ongoing pandemic, the City's current and future budget was adversely affected, even resulting in the elimination of staff positions.</p> <p>Additionally, Malibu and other cities have not yet had the opportunity to leverage Measure W resources to assist with water quality goals. In November 2018, voters passed Measure W thereby creating the Safe Clean Water Program funded by a 2.5 cents per square foot of impermeable areas within the County. This Program provides municipalities dedicated funding for projects designed to increase local water supply, improve water quality, and protect public health.</p>	<p>regarding COVID-19 and the economic outlook.</p> <p>See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>
H.5.23	City of Beverly Hills	<p>Considering the economic impacts of Covid-19, Beverly Hills and most of the Permittees will have critical revenue shortfall that directly affect our abilities to fund our stormwater compliance obligations. Therefore, Permittees will be solely relying on Measure W Municipal Program to fund to meet our obligations. For most Permittees, the Municipal Program revenues are expected to be less than \$1M annually and would be insufficient to cover the cost for compliance.</p>	<p>Change made to Fact Sheet. The Board has recently granted a five-year extension to final TMDL deadlines in the Ballona Creek Watershed. Among the factors considered in this decision were impacts of the COVID-19 pandemic.</p> <p>See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to</p>

#	Commenter(s)	Comment	Response
		<p>Therefore, the City is requesting that the Regional Board heavily considers these financial conditions and adopt a Permit that would consider Permittees to be in compliance as it continuous to significantly progress in their Watershed Management Programs (WMPs).</p>	<p>increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook.</p>
H.5.24	BizFed	<p>We remain deeply committed to cost effective use of those funds to achieve compliance. It is our members and their homeowning employees who are footing the bill for the stormwater compliance efforts taking place in the County and we want to be able to assure them that the funds are being spent in a cost-effective manner to achieve maximum pollution reduction.</p> <p>We appreciate the tentative orders explanation of the need and legal justification for the proposed changes to the Tentative Order, but it is a lengthy and complex document which requires much more time to review and analyze than we have been granted. As a consequence, our comments are not comprehensive but focus on the broad concerns and the need to bring</p>	<p>Change made to Fact Sheet. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality.</p>

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		<p>objectives of the Permit in line with the funding sources provided by state and local agencies. Clearly the costs outlined in your fact sheet far exceed any funding available in the region even taking into account the \$300 million provided annually by LA County Measure W.</p> <p>Having recognized the funding gap, the permit offers two strategies to avoid “unreasonable” economic hardship on regulated entities and on small businesses and disadvantaged communities. Those options include the use of multi-benefit and nature-based strategies with approaches best suited to local conditions; OR, request time extensions to comply while trying to adopt new fees, charges assessments or special taxes to cover the cost of compliance.</p> <p>Neither of those options is very helpful without an emphasis on the cost-effectiveness of the proposed solution.</p>	
H.5.25	BizFed	<p>The Board should strike from Appendix F any reference to polling and the prospect of raising taxes and fees. While cities certainly have such authority, it is pure speculation that voters would approve new taxes and fees, and the business community is already on record of being in opposition of any further fees for compliance. It makes the</p>	<p>No Change. New taxes or fees remain one of multiple options to raise funds and, therefore, discussion of these options is appropriately included in the Fact Sheet.</p>

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		cost-effective use of Measure W funds all the more critical to make the most dollars possible available for compliance.	
H.5.26	BizFed	Finally, we believe that the financial impacts of the Covid 19 pandemic on local government finances will significantly reduce funding for all public services for the foreseeable future. Notwithstanding the potential for fines for non-compliance with the MS4 Permit, local agencies will be struggling to fund basic levels of public safety, meet pension obligations and provide needed social services. Without flexibility and an emphasis on cost-effectiveness, MS4 compliance is likely to be low on the priority list.	<p>No Change. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding. See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.3 regarding willingness-to-pay for water quality. See response to comment H.5.4 regarding COVID-19 and the economic outlook.</p>
H.5.27	PVP Group	The Tentative Regional MS4 Permit Fact Sheet, Attachment F, includes an economic analysis conducted by Regional Board staff of the cost of compliance with TMDLs. Regional Board staff estimated the 20-year implementation cost of complying with TMDLs using two methods: (1) the first based on Regional Board staff reports prepared during the development of the TMDLs, and (2) the second based on costs outlined in approved EWMPs and other sources of information. Method 1 costs were	<p>Change made to Fact Sheet. Regarding Method 1, TMDL Staff Reports were written from 2002-2017. Staff acknowledges that some reports are older, but they are the only publicly available TMDL cost analyses conducted by staff and all costs have been updated to current dollars. As for Method 2, cost estimates from E/WMPs are more recent, but they have limitations as well. As discussed in revised Part XIII.D.2.a of the Fact Sheet, some EWMPs assumed that land acquisition costs from \$5-\$6 million per</p>

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		<p>compiled from Regional Board staff reports prepared in support of some thirty-two (32) TMDLs developed over a period of nearly two decades beginning in 2001. The state of practice of stormwater management has advanced significantly since the first decade of TMDL development, and the technological and cost assumptions on which they were based are, in some instances, no longer valid. Method 2 costs were based on costs reported in EWMPs that were developed during the 2015-2016 timeframe. Although both sets of costs were normalized to 2019 dollars, the Method 1 costs estimated for structural BMPs (\$13.4 billion) were significantly lower, some 24% lower, than more recent Method 2 costs (\$17.6 billion). Given that Method 2 estimations are based on much more current cost and implementation information, only the Method 2 costs should be retained in the Fact Sheet.</p>	<p>acre would need to be incurred for the installation of BMPs on private property. Land costs do not need to be incurred for BMPs to be installed on private property if Permittees engage in public-private partnerships. Options for public-private partnerships have not yet been fully explored and have the potential to significantly decrease costs. See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness. Method 1 and Method 2 present costs derived from Board staff data and costs derived from Permittee data, which is more explicatory than presenting results from only one method.</p>
H.5.28	PVP Group	<p>The Regional Board's financial analysis of the costs to comply with the Tentative Regional MS4 Permit did not properly estimate Permittee's costs for ongoing monitoring nor did it analyze the effect of the Tentative Regional MS4 Permit on these costs. Regional Board staff's estimate of Permittee's annual stormwater program implementation costs averaged the expenditures reported in LA County</p>	<p>Change made. Regarding the analysis of Stormwater Program costs for LA County Permittees, the analysis has been revised per the commenter's suggestion to fully account for CIMP costs and to only include FY16/17 to FY18/19 to project future costs. However, sufficient data from local laboratories are not available to augment the analysis as further suggested. In addition, since public noticing of the</p>

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		<p>Permittees' annual reports from reporting years 2012-13 through 2017-18. Since many LA County watershed management groups' coordinated monitoring programs were not approved until Fiscal Year 2015-16 and not fully implemented until Fiscal Year 2016-17, four of the six reporting years included in this average did not include the full cost of Permittee's monitoring programs. Additionally, no projection was made to determine the increase in monitoring costs that would be incurred under the Tentative Regional MS4 Permit by requiring the use of more sensitive analytical methods to achieve lower reporting limits for many constituents or the additional cost associated with monitoring current use pesticides. We request modifying the analysis of stormwater program implementation costs to include only reporting years 2016-17, 2017-18 and 2018-19 to properly represent the current costs of implementation, including monitoring and reporting. Furthermore, Regional Board staff should augment the information gathered from local laboratories on the availability of more sensitive analytical methods and monitoring for current use pesticides with information on the cost of these analyses to project the increased costs for Permittees associated with these increased monitoring efforts.</p>	<p>Tentative Order, the analysis has been revised to omit structural BMP costs in order to avoid potential double counting of structural BMP costs from Methods 1 and 2. See also response to comment D.3.38 regarding reporting levels; Permittees must use U.S. EPA-approved sufficiently sensitive methods. See, also, response to comment H.1.2.d regarding monitoring costs generally.</p>

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H.5.29	City of Santa Clarita	<p><u>Economic Analysis in Fact Sheet</u> The Fact Sheet lists the existing financial data that permittees have already invested substantial effort into developing. However, the Fact Sheet goes on to question the costs that were extensively modeled and calibrated in the EWMP and WMP documents. The Fact Sheet implies that, because a handful of projects were re-assessed and found ways to reduce costs, all the costs that were painstakingly developed are over estimated and will be reduced once the errors are found. This is not an accurate assessment of the costs cities experience annually. There have been many projects that are completed or in construction that have been presented to the Regional Board in the past year with costs that are consistent with the EWMP and WMP estimates. Those efforts and costs were not listed nor highlighted as prominently as the few outliers with cost revision were. The City requests the following changes.</p> <ul style="list-style-type: none"> • Costs that were consistent with the EWMP and WMP analysis and presented to the Regional Board be included as prominently as the outlier's projects that had lower projects costs were. • The benefit section of the economic analysis in the Fact Sheet should include 	<p>Change made to Fact Sheet. Regarding project costs, Permittees have presented project costs to the Board where actual costs were both higher and lower than estimated costs. Examples of each are included in the Fact Sheet. The data presented to the Board is a limited subset of all stormwater projects in the Region. A complete or representative list of all projects' estimated and actual costs is not available. Therefore, estimated structural BMP costs as included in Permittees' E/WMPs are presented, with examples of projects with actual costs lower than estimated costs to show that it is possible that initial estimates are sometimes overestimates. However, the Board also acknowledges in the Fact Sheet that, in some cases, site conditions may be less favorable than anticipated, which can result in an initial estimate to be an underestimate and provides an example of this. (See, Fact Sheet Part XIII.D.2.a.)</p> <p>Regarding the benefits analysis, the Board does not have the data and resources to do a complete quantitative benefits assessment, nor is one required as a matter of law. Section 13241 of the Water Code requires only that the regional boards consider economic considerations, not do a cost benefit analysis (see, response to</p>

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		<p>similar summary tables and the quantitative effort that was put into the cost section.</p> <ul style="list-style-type: none"> • The economic benefits of a beach economy should be assigned to specific regions and sub-watersheds that receive direct benefit and not to any county as a whole. The benefits should be broken down by specific beach and inland regions, with equal rigor and tables as the cost's sections. • Water affordability, consistent with the human right to water, should be considered in the economic analysis. Affordability should especially be considered when deciding whether compliance timelines are reasonable or not. • The affordability of water regulations study should be considered in any economic analysis and should consider the many other types of water costs in addition to stormwater (i.e. sewers, water supply and other multiple benefit costs, such as nature-based solutions) that are included in the draft Permit and Fact Sheet. • The US Conference of Mayors, American Water Works Association, and the Water Environment Federation developed the Affordability Assessment Tool for Federal Water Mandates. Also, 	<p>comments H.1.2.d and H.1.1). Examples of quantitative benefits are presented where literature exists to support these estimations. Where quantitative analysis is not possible, a qualitative discussion of benefits is presented.</p> <p>Regarding beach economy benefits, it would not be appropriate to break down the benefits analysis of the beach economy to smaller geographic units. A portion of the benefits comes from the monetized value that the average beach visitor derives just from enjoying a day at the beach. Data are not available that show the locations from where beachgoers visit, and it can be reasonably assumed that some portion visit from outside the beach's municipality or watershed. Furthermore, benefits values derived from the literature are average effects of variables of interest on a particular population and it would not be appropriate to break down effects to as fine a scale the commenter suggests. For example, results from Atiyah et al. (2013) show that on average a beach in Santa Monica Bay that has a storm drain diversion receives 610,324 more annual visits than a beach without a storm drain diversion, holding all other factors constant. Some beaches may receive more or fewer visits resulting from</p>

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		<p>the Environmental Protection Agency recently proposed rulemaking (Docket ID # EPA-HQ-OW-2020-0426) that could provide guidance. The City requests that at least the beginning of such an analysis with a commitment to complete affordability analysis when considering TMDL timelines and other compliance schedules.</p> <ul style="list-style-type: none"> • If street sweeping is not a valuable requirement to water quality, the City recommends that street sweeping be eliminated as a requirement from the draft Permit. If it is a valuable requirement for water quality, then all references to discounting the costs related to street sweeping should be eliminated because there are many cities that would eliminate street sweeping if they could. <p>The economic analysis in the Fact Sheet seems to question specific costs, but does little to provide the same level of rigorous questioning to the benefits of the draft Permit requirements. The City requests equal vigor for costs and benefits in the economic analysis.</p>	<p>having a storm drain diversion, but this amount is unknown.</p> <p>Regarding affordability, see response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>Regarding assessment of affordability, the Board is not obligated to complete such an analysis. While the Board acknowledges that current cost estimates are significant, as discussed elsewhere in this response to comments and detailed in the Fact Sheet, the permit provisions offer significant flexibility to manage costs including 1) the initially long TMDL implementation timeframes, 2) the additional time afforded certain TMDLs via TMDL reconsiderations or via Board-adopted Implementation Plans for U.S. EPA-established TMDLs, 3) the ability for Permittees to propose timeframes for achieving compliance with receiving water limitations (while achieving a timeframe that is as short as possible), 4)</p>

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			<p>the ability for Permittees to request extensions of interim deadlines, 5) the ability for Permittees to request time schedule orders, where justified, 6) the inclusion in the Order of a voluntary watershed management program alternative which can be adapted with new data and information to be more cost effective, and 7) the ability of Permittees to collaborate and pool their resources to implement programs and projects to achieve compliance and to also collaborate and pool their resources to monitor their compliance.</p> <p>Permittees can choose to implement the least expensive measures that are effective in meeting the requirements of the Order. Additionally, there are opportunities for funding and additional ways to make implementation of the Order more cost effective such as 1) Measure W, Measure CW, and the benefit assessment in Ventura County, 2) grant options from state programs, such as Proposition 68, as well as federal programs, such as block grants from the U.S. Department of Housing and Urban Development and Federal Highway Administration and loans at below-market rates from the Clean Water State Revolving Fund and California Infrastructure and Economic Development Bank (I-Bank), 3) the potential for federal funding in response</p>

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			<p>to the COVID-19 pandemic (see response to comment H.5.4) 4) public-private partnerships that could make projects more cost-effective (see response to comment no. H.5.2), and 5) multi-benefit projects to incorporate stormwater elements into projects that help municipalities in other ways, which can help provide more opportunities for funding from sources that are not explicitly devoted to stormwater (see Part XIII.D.3.f of the Fact Sheet).</p> <p>Regarding street sweeping, it is certainly valuable in the protection of water quality, but it provides other benefits as well, such as maintaining public health and safety. It is not possible to break down what portions of street sweeping costs should be attributable to various public goods, and it is likely that municipalities would still perform street sweeping if they did not have water quality requirements. Therefore, the Fact Sheet qualitatively states that only a portion of these costs should be attributable to the MS4 permit. (See, Fact Sheet Part XIII.D.2.b.)</p> <p>Regarding the rigor of the benefits assessment, benefits values are based on published peer-reviewed studies.</p>

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H.5.30	City of Santa Clarita	Page F 297 Table F29. City of Santa Clarita did report costs in the EWMP for the Upper Santa Clara River on page ES-7 and multiple times further into the document. The total costs through 2035 is \$367.5 million.	Change made. Table F-31 (formerly Table F-29) of the Fact Sheet has been corrected.
H.5.31	City of Santa Clarita	Page F 308. There have been many projects presented to the Regional Board that demonstrated that the costs in the EWMP and WMP are consistent with the projects that have been implemented. Curiously, those efforts and costs were not listed and highlighted as prominently as the few outliers of cost revision were. The City requests that costs that were consistent with the EWMP and WMP analysis be included as prominently as the few outliers projects were.	No change. See response to comment H.5.29.
H.5.32	City of Santa Clarita	Page F 309 Section b. If street sweeping is not a valuable requirement to water quality, the City recommends that street sweeping be eliminated from the draft Permit. If it is a valuable requirement for water quality, then all references to discounting the costs related to street sweeping should be eliminated because there are many cities that would eliminate the program if they could.	No change. See response to comment H.5.29.
H.5.33	City of Santa Clarita	Page F 322-330. The benefit section of the economic analysis in the Fact Sheet does not have the summary tables and the quantitative effort put into the cost section.	No change. See response to comment H.5.29.

#	Commenter(s)	Comment	Response
		Benefit costs should be assigned to specific regions and not to any county as a whole, but broken down associated by specific regions, with equal rigor and tables as the costs sections. The City requests that water affordability, consistent with the human right to water, be considered. The US Conference of Mayors, American Water Works Association, and the Water Environment Federation developed the Affordability Assessment Tool for Federal Water Mandates. The City requests that the beginning of such an analysis be started in the economic analysis in the Fact Sheet.	
H.5.34	RWG Law on behalf of various Permittees	<p>The Fact Sheet's Economic Findings, Although Underestimated, Demonstrate that Compliance with the Tentative Permit Is Financially Infeasible.</p> <p>Although finding that compliance with Water Code Section 13241 was not required, the Tentative Permit nevertheless endeavors to estimate the permittees' cost of compliance. [footnote] 16 The Cities appreciate the Regional Board staff's decision to undertake such an analysis despite the ongoing litigation surrounding this issue. The analysis will benefit the Regional Board as it evaluates comments on the Tentative Permit and considers its adoption, as well as benefit the Cities and their city councils and staffs that are currently evaluating their compliance options.</p>	<p>Change made. See response to comments H.1.2.k, H.5.27 and H.5.28.</p> <p>See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding including Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p> <p>See response to comment H.5.4 regarding COVID-19 and the economic outlook and implementing stormwater projects as a way</p>

#	Commenter(s)	Comment	Response
		<p>[footnote 16]: Tentative Permit, Fact Sheet Part XIII, pg. F-275.</p> <p><u>The Economic Analysis Underestimates the Permittees' Compliance Costs.</u> Based on our review of the Fact Sheet's economic analysis, [footnote] 17 the analysis significantly underestimates the total permittees' total compliance costs. Revisions must be made to the analysis in order to make it adequate and useful as an informational document.</p> <p>[footnote 17]: McGowan Consulting LLC, technical consultant to the Beach Cities Watershed Management Group, contributed to this review.</p> <p>The staff analysis of TMDL compliance costs is based on two alternative methods: (1) using cost estimates in Regional Board staff reports prepared during the development of the TMDLs ("Method 1 Costs"); and (2) using cost estimates for structural BMPs in approved watershed management programs ("WMP") and enhanced watershed management programs ("EWMP") and other related sources of information ("Method 2 Costs").</p> <p>[footnote] 18</p> <p>[footnote 18]: Tentative Permit, Fact Sheet Part XIII.D.1.b., pgs. F-287-88.</p>	<p>to aid in the post-pandemic economic recovery.</p> <p>Finally, regarding the period of time over which costs would be spread, see response to comments H.4.1.b and H.5.29.</p>

#	Commenter(s)	Comment	Response
		<p>Method 1 Costs were compiled from Regional Board staff reports prepared in support of the 45 TMDLs covering the entire region and developed over a period of roughly two decades. The current state of stormwater management has advanced significantly since the first decade of TMDL development, and the technological and cost assumptions on which they were based are, in some instances, no longer valid. For that reason, Method 1 Costs are necessarily outdated and not reflective of the current technological and structural means of implementing TMDLs. On the other hand, Method 2 Costs were reported by WMP and EWMP participants that were developed during the 2015-2016 timeframe. Although both sets of costs were adjusted for 2019 dollars, the Method 1 Cost estimate for structural BMPs (\$13.4 billion) is significantly lower (24%) than the more recent Method 2 Cost estimate (\$17.6 billion). [footnote] 19 Given that Method 2 is based on current cost estimates and more accurate (although incomplete) implementation information, the Cities recommend that only Method 2 Costs be used in the Fact Sheet's economic analysis. And, Method 2 should be updated before final adoption of the Permit to ensure it reflects actual costs incurred by permittees</p>	

#	Commenter(s)	Comment	Response
		<p>to design and build many of the structural BMPs in their WMPs and EWMPs. [footnote 19]: Compare Fact Sheet Tables F-26 and F-27.</p> <p>The economic analysis does not estimate the permittees' costs for ongoing monitoring or the Tentative Permit's effect on those costs. The estimate of annual stormwater program implementation costs averaged the expenditures reported in the Los Angeles County permittees' annual reports from fiscal years 2012-2013 through 2017-2018. [footnote] 20 But many watershed management groups' coordinated integrated monitoring programs ("CIMPs") were not approved until fiscal year 2015-2016 and not fully implemented until the next fiscal year. Thus, four of the six reporting years included in this average did not include the full cost of the permittees' CIMPs. Additionally, the analysis does not project the increase in monitoring costs that would be incurred under the Tentative Permit for the use of more sensitive analytical methods to achieve lower reporting limits for many constituents or the additional cost associated with monitoring current use pesticides. [footnote 20]: Tentative Permit, Fact Sheet Part XIII.D.1.f., pgs. F-303-04.</p>	

#	Commenter(s)	Comment	Response
		<p>The Cities recommend adjusting the analysis of annual stormwater program implementation costs to include only fiscal years 2016-2017, 2017-2018, and 2018-2019 in order to properly represent the current costs of implementation, including monitoring and reporting. Furthermore, the analysis should be augmented with information from local laboratories regarding the cost of more sensitive analytical methods and monitoring for current use pesticides in order to project the increased costs associated with these increased monitoring efforts.</p> <p><u>The Available Evidence Demonstrates Compliance Costs are Financially Infeasible.</u> Even if the estimated compliance costs are undervalued, any plain reading of those costs for individual permittees and the counties as a whole demonstrates that they are significant and, in some cases, beyond the permittees' means. Table F-29 estimates the individual permittees' projected costs of fully implementing their WMPs and EWMPs. [footnote] 21 This table identifies the largest share of costs associated with complying with the Permit's numeric pollutant limits. Indeed, the BMPs identified in the WMPs and EWMPs are the only practical tools for permittees to actually achieve compliance with WQBELs and</p>	

#	Commenter(s)	Comment	Response
		<p>receiving water limits. Nevertheless, the WMP/EWMP costs must also be added to the costs incurred by each permittee to implement its baseline stormwater program, including minimum control measures required by the Permit. Those estimated costs are outlined in Table F-35 of the Fact Sheet.</p> <p>[footnote 21]: The Tentative Permit consolidates the existing WMP and EWMP compliance alternatives into a single, consolidated WMP framework. However, permittees that participate in a WMP that captures the equivalent amount of stormwater currently required by an EWMP will continue to be deemed in compliance with applicable final numeric effluent limits and receiving water limits. Tentative Permit, Part X.B.2.b.iii., pg. 95. Therefore, it should be expected that the capital requirements and associated cost demands for the current WMPs and EWMPs will remain similar despite the unified name for these programs.</p> <p>Some specific examples are illustrative of this concern. The estimated cost for the City of Maywood to develop and implement its share of the Los Angeles River Upper Reach 2 (LARUR2) WMP is \$33.5 million. [footnote] 22 The Fact Sheet does not identify the period of time under which this</p>	

#	Commenter(s)	Comment	Response
		<p>amount would be spent or the specific projects that the money will finance. The LARUR2 WMP identifies several regional BMP projects and green streets that must be designed, constructed, and maintained by the participating watershed permittees through 2037. Assuming a conservative 20-year implementation period in which the total cost is evenly spread on an annual basis, Maywood's annual WMP costs would be \$1.65 million. [footnote] 23 This amount is in addition to the City's annual stormwater program expenditure of \$157,991, for a total annual Permit compliance cost of approximately \$1.8 million. Maywood's general fund budget for fiscal year 2020-2021 is \$11.20 million, on revenues of \$10.5 million. [footnote] 24 Maywood's entire public works budget is \$807,000. This means that Permit compliance would consume over 17 percent of its entire budget, and more than double its public works budget.</p> <p>[footnote 22]: Tentative Permit, Fact Sheet Table F-29, pg. F-296.</p> <p>[footnote 23]: These amounts do not reflect inflationary cost increases.</p> <p>[footnote 24]: City of Maywood Budget Fiscal Year 2020-2021, available at: https://www.cityofmaywood.com/media/Finance/City%20of%20Maywood%20-%20BUDGET%20FY%2020-21.pdf.</p>	

#	Commenter(s)	Comment	Response
		<p>The City of Covina will expend approximately \$146.13 million on capital and operation/maintenance costs to implement its EWMP over twenty years (\$7.3 million annually), [footnote] 25 on top of \$1.1 million to implement its baseline stormwater program. This amounts to \$8.4 million on annual compliance costs. Covina’s fiscal year 2020-2021 general fund budget is \$40.15 million, with \$3.5 million of that budget devoted to public works. [footnote] 26 Except for fire and police services, Covina’s Permit compliance costs would exceed every other city department’s total annual budget by more than 100 percent.</p> <p>[footnote 25]: Tentative Permit, Fact Sheet Table F-29, pg. F-295.</p> <p>[footnote 26]: City of Covina Budget Fiscal Year 2020-2021, available at: https://covinaca.gov/sites/default/files/fileattachments/finance/page/254/2020-2021_adopted_budget.pdf.</p> <p>Other permittees face similar financial challenges, which have only been exacerbated by the economic downturn caused by COVID-19. Indeed, the Fact Sheet seeks to account for lost revenue to municipalities due to the COVID-19 pandemic, but these budget estimates and</p>	

#	Commenter(s)	Comment	Response
		<p>employment figures date back to May 2020 when the length and severity of the pandemic were not yet known. [footnote] 27 [footnote 27]: Tentative Permit, Fact Sheet Part XIII.D.3., pgs. F-311-13.</p> <p>In sum, the Fact Sheet estimates that over a twenty year period total Permit compliance costs within Los Angeles County alone will exceed \$26 billion. [footnote] 28 The majority of this total, \$19 billion, is dedicated to achieving compliance with WQBELs and receiving water limits under the permittees' WMPs and EWMPs. These costs so heavily burden permittee resources that they render permit compliance infeasible and, therefore, amount to an abuse of discretion. [footnote] 29 [footnote 28]: Fact Sheet, Table F-37, pg. F-307. [footnote 29]: <i>Bldg. Indus. Ass'n of San Diego Cty. v. State Water Res. Control Bd.</i>, 124 Cal.App.4th 866, 888-89 (2004).</p>	
H.5.35	ULAR Group	<p>Fiscal Resources: <i>In general, the economic considerations included in the Tentative Permit are lacking in detail.</i> This is an important aspect to consider when assessing the ULAR Group's ability to satisfy the regulatory requirements. The Los Angeles region will have the most success improving water quality conditions if we are able to focus available resources on</p>	<p>Change made to Fact Sheet. See response to comment H.5.7 regarding a financial capability assessment and the cost of addressing trash in areas not covered by a trash TMDL, and H.5.29 regarding additional time based on economic factors.</p> <p>See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact</p>

#	Commenter(s)	Comment	Response
		<p>regulations with achievable goals, which requires a realistic discussion regarding the cost of compliance versus available funding.</p> <p>Attachment F, the Fact Sheet in the Tentative Permit, includes economic considerations that estimate the 20-year cost of compliance at \$21.3 - \$31.4 Billion. The first method used to calculate this cost was based on TMDL Staff Reports that are now outdated and did not include the cost of implementing minimum control measures, monitoring costs, costs to address TMDLs if the Staff Report did not have a cost estimate, and only included the cost of addressing trash if there was a specific TMDL—not the overarching requirements of the statewide trash amendment. While the second method used the more recent cost estimates to fully implement the WMPs and EWMPs in the region, both methods still rely on the cost of stormwater management programs based on annual expenditures and budget data self-reported, which has not been consistent across the Permittees. Further, many of the cost estimates in the WMPs and EWMPs did not include additional costs such as acquiring property necessary for some structural BMPs, the full cost associated with operation and maintenance of BMPs, or the costs associated with implementation of the</p>	<p>Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p>

#	Commenter(s)	Comment	Response
		<p>adaptive management program. Other cost estimates of compliance estimated in the past have been significantly higher. For example, the County of Los Angeles has recognized that the cost of complying could be as high as \$120 Billion. Likewise, a recent study on Stormwater Funding Options recognizes that the cost of complying could be as high as in the tens of Billions over the next 20 years. Further, the University of Southern California’s Study of “An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County” have estimated costs as high as \$283.9 Billion over 20 years.</p> <p>The Fact Sheet also potentially overstates the available funding sources, with reference to Measures H, A, and M, that are not dedicated stormwater funds and Permittees have minimal or no access to use to address the requirements of the MS4 Permit. Other available funding sources are generally referenced, as well as a brief discussion on the potential impacts from COVID-19; however, a sufficient analysis to demonstrate that the cost of compliance is feasible based on available funding has not been completed. Even prior to completing a sufficient financial analysis, it is clear the cost estimates to fully implement the Permit are greater than the funding available. The</p>	

#	Commenter(s)	Comment	Response
		<p>ULAR Group recommends that the Permit include a provision that allows Permittees to conduct a financial capability assessment that would be used to help determine an effective and feasible implementation schedule and associated compliance deadlines.</p> <p>It is important to note that the primary dedicated source of funding that most jurisdictions currently have for Permit compliance is through their upcoming Local Return through the Safe, Clean Water (SCW) Program. In addition, the regional allocations to each watershed will be awarded competitively. The ULAR Group is concerned that the regional allocations coupled with the Local Return will not provide enough funding to complete all the projects required to comply with the Permit requirements, especially within the current designated timeframes. Given that Measure W is the only dedicated stormwater funding source, we recommend that the Permit have more explicit integration with the SCW Program...</p>	
H.5.36	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D/ Pg. 285. The E/WMP identified BMP capacities needed to achieve load reductions at the time of the 2012 Permit and the associated cost estimates were for new projects required	Change made. The Board acknowledges that the amount spent so far on projects to implement the E/WMPs is only a portion of how much will ultimately be spent, but estimates are still conservative. Many costs

#	Commenter(s)	Comment	Response
		<p>after the 2012 Permit. Because of the limited available funding prior to the passage of Measure W, the capacity of projects built between the approval of E/WMPs in 2015/2016 and the drafting of the Tentative Order was limited. Therefore, the expenditures incurred to implement TMDLs and E/WMPs to date is also limited and would represent a small fraction of the estimated \$20B needed to fully implement the E/WMPs. Therefore, projected costs should not be identified as conservative estimates. Rather, they should be considered accurate estimates particularly given that Regional Board staff did not require revisions to draft E/WMPs to differentiate between past and expected future expenditures when approving the E/WMPs. Additionally, the Fact Sheet does not provide information which supports the statement that expenditures to date would make the E/WMP costs conservative overestimates. As such, the County and LACFCD request the deletion of the following sentence, which is the last sentence of the second paragraph on F-285: "As a result, projected costs are conservative overestimates."</p>	<p>to be incurred by Permittees are related to continued efforts to meet longstanding requirements including effectively prohibiting non-stormwater discharges and ensuring that MS4 discharges do not cause or contribute to an exceedance of receiving water limitations. In addition, there are only a limited number of new TMDL-related requirements in the Order. Additionally, the Method 1 cost estimate is based on estimates prepared during TMDL development from approximately 2002-2017. Many projects have been implemented to address these TMDLs prior to the 2012 Los Angeles County MS4 Permit as well as prior to the 2010 Ventura County MS4 Permit and the 2014 City of Long Beach Permit. None of these expended project costs were subtracted from the Method 1 cost estimate.</p> <p>In addition, Permittees may be able to reduce costs. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p>

#	Commenter(s)	Comment	Response
			See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.
H.5.37	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D/ Pg. 286 and Attachment F/ Part XIII.D.2.a/ Pg. 309. The discussion of the Rio Hondo/San Gabriel River Water Quality Group EWMP revision is incomplete and somewhat misleading. In terms of the presentation of cost information in Attachment F, the original EWMP cost estimate was \$1.4B and the revised program was estimated to be \$121.8M. However, the City of Azusa, which accounted for \$379M of the original cost estimate, was not a participant in the revised EWMP. As such, the reduced cost estimate should note that \$379M of the savings came from not including Azusa's original cost estimate in the revised EWMP cost estimate. Additionally, the original EWMP incorrectly assumed lead as the limiting pollutant and the cost estimate of \$1.4B was based on that incorrect assumption. The Regional Board does not provide information on the impacts of the correction of the assumption in relation to the change in cost estimates. Without the analysis, it is unclear how much of the reduction of costs is in fact due to simply correcting an error in the original EWMP. Lastly, as noted in the Regional Board's	Change made. The Fact Sheet has been revised considering the commenter's suggestion. (See, Fact Sheet, Part XIII.D, D.2.a.)

#	Commenter(s)	Comment	Response
		<p>April 2019 conditional approval letter, the Group must re-evaluate the critical condition and validation used in the RAA to be consistent with the averaging periods and definition of wet days identified in the applicable Metals TMDLs. The re-evaluation for consistency could result in yet another cost estimate. The County and LACFCD request the discussion related to the revised EWMP be removed from the Fact Sheet as there is incomplete information to understand if the cost reductions were due to correcting an error or if the revised cost estimate will still be accurate after refined modeling to be consistent with the TMDL. Further, to the County and LACFCD's knowledge, no other Group incorrectly selected the limiting pollutant; thus, the reduction of costs due to correcting a previous error is not an option to reduce costs in other E/WMPs. At a minimum, the County and LACFCD request additional information be provided in the description of the change to costs based on the revised EWMP that captures the uncertainty of the reasons for the reduction in costs (particularly given the change in limiting pollutant) and note that 30% of the cost savings was due to the exclusion of the City of Azusa's costs from the revised EWMP.</p>	
H.5.38	Los Angeles County and	Attachment F/ Part XIII.D/ Pg. 286. While the Order does not require <u>all</u> permittees to	No change. There is no Permittee who must comply with all requirements (all

#	Committer(s)	Comment	Response
	LACFCD 2 nd letter	fully implement all requirements within a single permit term, it does require <u>some</u> permittees to implement all requirements within a single permit term. Most permittees within the Santa Monica Bay watershed must implement almost the entirety of their EWMPs in 2021 to meet TMDL deadlines. Until the passage of Measure W, those permittees had limited resources to implement their EWMPs. Even with the permittees' respective allocations of Measure W funds, there are insufficient resources to fully implement their EWMPs within the current permit term. The County and LACFCD request that the last paragraph on page F-286 be revised for clarity and to acknowledge that the Order does require some permittees to fully implement all requirements within the term of the Order, and therefore, the costs to achieve compliance cannot be spread out and incurred incrementally over several permit terms.	<p>TMDLs in every watershed to which they discharge) within a single permit term, considering that permit provisions for most TMDLs have been included in the prior three permits, which were issued in 2009, 2012 and 2014. Additionally, the permit allows Permittees to request additional time through a time schedule order, if warranted.</p> <p>In addition, regarding the Santa Monica Bay Permittees with TMDL deadlines in 2021, the Los Angeles Water Board recently extended final wet-weather compliance deadlines by 3-5 years. [Los Angeles Water Board Resolution R21-001]</p>
H.5.39	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D.1.c/ Pgs. 288 through 291. The cost estimates generated through Method 1 (Projected Costs from TMDL Staff Reports) and discussed in more detail in the "2020 Regional MS4 TMDL Compliance Costs," dated July 17, 2020 (TMDL Staff Report Cost Memo) are outdated and not comparable to the cost estimates developed through the E/WMPs.	No change. Attachment F (Fact Sheet) provides two methods of estimating costs in order to provide high-level estimates of the possible range of projected costs. The methods were calculated separately, so within the calculations for Method 1, based on TMDL Staff Reports, the metals TMDL was more costly than the bacteria TMDL and within the calculations for Method 2,

#	Commenter(s)	Comment	Response
		<p>The TMDL cost estimates were not based on a watershed scale modeling effort that optimized BMP implementation and generated costs based on a robust set of costing assumptions developed using up-to-date cost functions.</p> <p>Several statements are made in the Fact Sheet and detailed in the TMDL Staff Report Cost Memo that addressing certain pollutants will address other pollutants (with metals and bacteria being the primary example cited). For the LA River Watershed, the Regional Board found that the metals and bacteria TMDLs overlapped and the metals TMDL was more costly than the bacteria TMDL. In the case of the Upper Los Angeles River EWMP, an additional \$2.58B is needed to address the bacteria TMDL above the \$3.5B needed to address the metals TMDL. All of the E/WMPs in the watershed found that bacteria implementation was more costly than metals implementation. In fact, in all cases where both metals and bacteria TMDLs exist, E/WMPs found that bacteria implementation was more costly than metals implementation.</p> <p>In the case of the costs for Dominguez Channel, Method 1 does not consider the costs of complying with bacteria water</p>	<p>EWMP implementation costs are considered. The assumptions and limitations of both methods are discussed in Attachment F. See further discussion in response to comment H.5.27.</p> <p>The analysis of Dominguez Channel in Method 1 included costs to meet the Los Angeles Harbor Bacteria TMDL. Additionally, regarding costs to meet water quality standards, the three MS4 permits have included provisions requiring MS4 discharges to meet water quality standards, included as receiving water limitations, since 1999 (Long Beach), 2000 (Ventura County Permittees), and 2001 (Los Angeles County Permittees).</p>

#	Commenter(s)	Comment	Response
		<p>quality standards as there is no bacteria TMDL. However, the Dominguez Channel is impaired for bacteria and addressed in the E/WMPs in the watershed. The Dominguez Channel EWMP estimated total cost for implementation is \$1.25B, which is in part driven by meeting the bacteria water quality objectives. This EWMP cost estimate is four and half times higher than the \$281M estimated by the Regional Board under Method 1, which does not consider bacteria.</p> <p>The TMDL cost estimates used in Method 1 are not as inclusive or as robust as the cost estimates developed through the E/WMPs and are not comparable. The County and LACFCD request that the Regional Board note that Method 1 costs and associated discussion be considered incomplete.</p>	
H.5.40	Los Angeles County and LACFCD 2 nd letter	<p>Attachment F/ Part XIII.D.1.d/ Table F-27/ Pg. 293. Several of the cost estimates presented in Table F-27 appear to be incorrect. As examples:</p> <ul style="list-style-type: none"> • Ballona Creek O&M: Table F-27 \$82.55M / EWMP \$87.2M • Upper San Gabriel River O&M: Table F-27 \$44.31M / EWMP \$56.75M • Upper LA River O&M: Table F-27 \$13.68M / EWMP \$115M (average value from range provided) • Marina del Rey Capital Cost: Table F-27 \$368.12M / EWMP \$370.8M 	<p>Change made to Fact Sheet. Table 9-2 of the Ballona Creek EWMP (revised version submitted on Feb. 1, 2016) shows annual O&M costs at \$77.74M in 2016. Adjusting to 2019 dollars using the GDP implicit price deflator yields \$82.55M.</p> <p>In the revised Upper San Gabriel River EWMP from January 2016, Table 7-2 shows a total O&M cost of \$784,780,000. To estimate annual O&M for the analysis, this value was divided by 19, the number of years presented in the EWMP over which</p>

#	Commenter(s)	Comment	Response
		<p>Additionally, the Rio Hondo/San Gabriel River EWMP Group costs does not include the \$370.8M cost estimate for the City of Azusa, which was not included in the revised EWMP.</p> <p>The County and LACFCD request that the Regional Board review their analysis and address inconsistencies between the results presented in Table F-27 and the costs contained in the E/WMPs. Additionally, the details of the calculations should be provided either directly within the Fact Sheet or in a memorandum.</p>	<p>costs would be incurred, which yielded \$41.30M. Adjusting to 2019 dollars yields \$44.31M.</p> <p>The Fact Sheet has been revised to reflect an average annual O&M cost of \$123.38M for the Upper Los Angeles River EWMP after adjusting to 2019 dollars.</p> <p>In the Marina del Rey revised EWMP submitted on Feb. 26, 2018, Table 9-1 shows the Structural BMP cost as \$343,134,232 in 2015 dollars. Adjusted to 2019 dollars using the GDP implicit price deflator yields \$368.12M.</p> <p>Per response to comment H.5.37, the Fact Sheet has been revised to note that Azusa was not a participant in the revised Rio Hondo/San Gabriel River EWMP.</p>
H.5.41	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D.1.d/ Table F-27/ Pg. 293. The County has been working with the Regional Board in providing the latest financial information regarding EWMP implementation compared to funding from various sources, especially the SCWP. We provided a cost/schedule analysis on the dates below for the various EWMP groups. Attached is a summary in Enclosure B	<p>Change made. See response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>

#	Commenter(s)	Comment	Response
		<ul style="list-style-type: none"> • July 9, 2019 – Ballona Creek and Upper San Gabriel River EWMP Analysis • August 5, 2019 – Rio Hondo WMP Analysis • September 18, 2019 – Marina del Rey EWMP Analysis • December 3, 2019 – Malibu Creek, North Santa Monica Bay, Beach Cities, and Santa Monica Bay Jurisdiction Group 2/3 EWMP Analysis <p>Based on this information, it is clear that there is insufficient time and resources to meet to the identified TMDL schedules. We are grateful towards the Regional Board for extending the near-term TMDL deadlines and request that the extensions be incorporated into the MS4 Permit.</p>	<p>Attachment O has been revised to include the new final wet-weather compliance deadlines, which will become effective upon State Water Board and Office of Administrative Law approvals.</p>
H.5.42	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D.1.d/ Table F-29/ Pgs. 294 through 297. The County and LACFCD request that the Regional Board provide the details of the calculations that were used to populate Table F-29.	No change. Details of the calculations are explained in the Fact Sheet and “2020 Regional MS4 TMDL Compliance Costs” (TMDL Staff Report Cost Memo, dated July 17, 2020) and further clarified in response to comments.
H.5.43	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D.2.a/ Pg. 308. The examples illustrating a reduction in costs are incomplete. Only examples of projects where actual costs were lower than estimates are presented. For example, the following projects where actual costs were	No change. The commenter is mistaken. Part XIII.D.2.a of the Fact Sheet includes examples of projects and programs where actual costs were lower than initial estimates as well as an example of where the project cost increased from the initial estimate. The latter example is the Gates

#	Commenter(s)	Comment	Response
		<p>higher than estimates were not included in the section:</p> <ul style="list-style-type: none"> • Gates Canyon Stormwater Capture Project: EWMP Estimate \$4.1M / Actual Cost \$8.5M (average value from range provided) <p>Additional Projects that were recently completely where actual costs were higher than the estimates include:</p> <ul style="list-style-type: none"> • East Los Angeles Sustainable Median Project: EWMP Estimate \$31M / Actual Cost \$36.8M • Magic Johnson Park Stormwater Capture Project: EWMP Estimate \$50M / Actual Cost \$70.1M <p>The County provided a comparison of EWMP cost and actual project cost on July 18, 2019 (Enclosure D) to show the Regional Board that the EWMP costs were very preliminary and that actual costs could go up or down. The County has presented this information multiple times at various public hearings to the Board Members. The County and LACFCD request that the Regional Board provide a complete picture related to examples of how cost can change by including examples where actual costs were higher than estimates.</p>	<p>Canyon Stormwater Capture Project mentioned by the commenter. See also, response to comment H.5.29.</p>

#	Commenter(s)	Comment	Response
H.5.44	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D.3.a and Tables F-38 and F-39/ Pgs. 314 through 316. As of August 2020, the current projected revenue for the SCWP is \$285 million per year and the Municipal Program is \$112.6 million per year. An updated estimated annual revenues by Permittee through the Municipal Program (August 2020) can be found at: https://safecleanwaterla.org/wp-content/uploads/2020/09/SCW-Local-Return-Funds-by-Municipality-20200809.pdf . An update to the Regional Program (August 2020) can be found at: https://safecleanwaterla.org/wp-content/uploads/2020/09/SCW-Regional-Return-Funds-by-Watershed-Area-20200809.pdf . The County and LACFCD request that the Regional Board update the estimated funds accordingly.	Change made to Fact Sheet. The Fact Sheet has been revised per the updated sources provided.
H.5.45	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Part XIII.D.3.f/ Pg. 321. Part XIII.D.3.f is misleading as it appears to be focused on State Funding sources but includes federal and local funds. For example, Table F-42 includes the City of Los Angeles' Prop O, a one-time local ballot initiative. If only state funds are included in Table F-42 the total state funding prior to 2012 is \$116.6M. Combined with the \$167.5M Permittees received since 2012, Permittees have received a total of \$284.1M in State funds. This total represents approximately 1% of the total funds needed	No change. Table F-44 (formerly Table F-42) clearly states that it includes total public funds (federal, State, local bonds and measures). Part XIII.D.3. of the Fact Sheet also provides information on other sources of funding. In addition, see response to comments H.5.2, F.12, and F.22, and revised Part XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other

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		<p>to implement the Permit. Even if E/WMP costs were half the current estimates, the funding would amount to 2% of the total. The funding was obtained over the course of 15 years, while TMDL deadlines are between 1 and 15 years away. These funds are greatly appreciated by Permittees in the region, but they do not constitute a meaningful source of revenue to comply with the Permit. The County and LACFCD request that the Regional Board clearly state that the funds discussed in Attachment F Part XIII.D.3.f will not contribute significantly to the Permittees ability to comply with the Permit unless increased by at least an order of magnitude.</p>	<p>projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>
H.5.46	Los Angeles County and LACFCD 2 nd letter	<p>Attachment F/ Part XIII.D/ Pgs. F-284 through F-333. Attachment F Part XIII.D should include a comparison of the cost estimates provided in Part XIII.D.1 to the sources of funding estimates in Part XIII.D.3. Such an analysis is important for informed decision-making and for the evaluation and improvement of policies and practices. As an example, County and LACFCD total E/WMP costs identified in Table F-29 are \$2,199.19M which are capital plus partial O&M. Making a conservative assumption that 40% of those costs correspond to 20 years of O&M, the total (conservatively low) capital cost is \$1,320M. Based on the projections of</p>	<p>Change made. There is insufficient data to conduct a comparison of available funding to costs of compliance at the level of detail suggested by the commenter, nor is such a comparison required. Potential funding sources and amounts as discussed in the Fact Sheet are likely to change as economic and political conditions change at the municipal, state, and federal levels. Stormwater projects are also likely to become more cost-effective as technologies, programs and policies change.</p> <p>In addition, see response to comments H.5.2, F.12, and F.22, and revised Part</p>

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		<p>Municipal Program funds and projections of the Regional Program funds (if the County were to receive a share of the Regional Program funds proportional to its impervious area), the County could expect to receive an annual total of approximately \$26M per year. Note that the County is not guaranteed to receive a proportional share of Regional Program funds, the SCWP funds do not adjust for inflation (i.e., the funding level would remain the same as costs increase over time), and Regional Program funds cannot be spent outside of the Watershed Area in which they are generated. As such, the \$26M represents a conservatively high estimate of what the County would expect to receive. Based on the conservatively low estimate of capital costs and the conservatively high estimate of revenue, it would take approximately 50 years of SCWP funds to cover the capital costs. Please note that since both assumptions were conservative, 50 years can be considered the minimum amount of time that it would take. A similar analysis for the 59 Permittees with E/WMP costs identified in Table F-29, yields an average of 50 years as well. However, aside from the fact that 50 years is a conservatively low estimate, this estimate is infeasible because, as projects are built, money needs to shift to O&M</p>	<p>XIII.D.3.f in the Fact Sheet regarding other sources of funding besides Measure W and incorporating stormwater BMPs into other projects to increase cost-effectiveness and opportunities for funding.</p> <p>See Part XIII.D.2.d in the Fact Sheet regarding pursuing public-private partnerships to increase cost-effectiveness.</p>

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		<p>thereby reducing the funds available for capital projects.</p> <p>The Fact Sheet's lack of comparison of available funding to the costs of compliance with the Permit results in an incomplete economic analysis that does not support informed decision-making. The County and LACFCD request that the Regional Board add a new subsection to Attachment F Part XIII.D.3 that presents a detailed analysis that considers all of the costs to comply with the Permit identified in Part XIII.D with the available funding.</p>	
H.5.47	Los Angeles County and LACFCD 2 nd letter	<p>Attachment F/ Part XIII.D.4/ Pgs. F-322 through F-324. The approach to the information provided in Attachment F Part XIII.D is not helpful in understanding the choice faced by the Regional Board, Permittees, and the public. The financial benefits identified in the section are based on current water quality. The Regional Board made multiple findings in the Permit that current water quality is impaired, yet, even with those impairments, 47.3 million visitors to L.A. County spent an all-time high of \$21.9 billion in the region in 2016. The analysis posits that adopting the Permit as it is written is the only way to avoid the environmental and societal costs of not controlling MS4 discharges at all. The more appropriate approach to such an analysis is</p>	<p>No change. The costs of not regulating, or the benefits of regulating, as already presented in the Fact Sheet, are examples of marginal effects from what can be estimated as the status quo to what can happen with implementation of the Permit. For context, a description was often provided of current benefits or costs, which should be interpreted as a characterization of the baseline, not as the benefit of this particular Permit. It is true that even with impaired water, Los Angeles Region beaches still draw a large number of visitors, but the economic analysis shows that even more economic activity could be generated with cleaner beaches. This was presented as monetized marginal benefits for the average beach in the region if it had</p>

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		<p>to evaluate the expected change in the benefits if the requirements of the Permit were fully implemented (i.e., what is the change between current levels of implementation and those required by the Permit) SCWP. The purpose of the economic analysis is to inform decision-making and for the evaluation and improvement of policies and practices. To present the analysis as an all or nothing proposition does not support the purpose. The County and LACFCD request that the Regional Board revise the section to appropriately characterize the potential environmental and societal costs of not controlling MS4 discharges beyond the current level of control.</p>	<p>storm drain diversions installed. Another example of marginal effects is the reduction of gastrointestinal illness and associated health costs. Values for illness rates and health costs among bathers at certain Southern California beaches were presented, and a qualitative statement was made that these values would be reduced with the improvement of coastal water quality. This reduction would be the marginal effect.</p>
H.5.48	Los Angeles County and LACFCD 2 nd letter	<p>Attachment F/ Part XIII.D.4/ Pg. F-324. To make the case regarding the potential impacts of not implementing the Permit, a study of the negative effects of local home values due to beach postings is cited. The use of the paper in the context of a MS4 Permit in southern California is inappropriate. The paper cited focused on beaches on Long Island, NY, which are not comparable to local beaches. Also, the paper states that the impact driving the issue of negative effects on local home values relates to sewage treatment plants</p>	<p>No change. The paper referenced, Kung et al. (2017), estimates impacts of enterococcus levels related to sewage treatment plants as well as beach postings, and finds that beach postings have a stronger and farther-reaching effect on home prices. Residents care more about whether their local beaches are open or closed rather than the specific enterococcus levels. The study area is Westchester County, NY, and the Fact Sheet acknowledges that the study area is not the same as Southern California, which is why</p>

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		<p>discharging untreated or partially treated sewage directly into Long Island Sound. The Permit is focused on controlling MS4 sources, not wastewater sources. The County and LACFCD request that the Regional Board remove the reference as it is misapplying the findings of the study.</p>	<p>the Fact Sheet does not cite the exact estimates of property value impacts. However, the areas are urban and near beaches, which is similar enough to say that there would likely be property value impacts from beach postings. In addition, one finding from Atiyah et al. (2013) was that a high number of closed beach days in previous years can act as a deterrent to beach visitors in Southern California, which provides further evidence that beach postings do affect people's behavior.</p>
H.5.49	City of Los Angeles	<p>Attachment F, Part XIII.D, Pages F-285 through F-334. LASAN appreciates the effort that went into developing the information contained in the Economic Considerations section of Attachment F. To further support the policy decisions that are considered in the adoption of the MS4 Permit, Part VI.D of Attachment F should include an evaluation of the ability of MS4 Permittees to fund the BMPs necessary to attain the TMDLs and, if MS4 Permittees have the ability to fund the BMPs necessary, the implications of funding the BMPs within the timeframe necessary to complete implementation. The suggested additional analysis should include a comparison between the estimated costs to implement TMDLs outlined in Part VI.D.1 and the sources of funding for Permittees</p>	<p>Change made to Fact Sheet. The Los Angeles Water Board is not obligated to use the Financial Capability Assessment by U.S. EPA nor could the Los Angeles Water Board rely on the Financial Capability Assessment to justify the issuance of permits that do not meet water quality objectives. (<i>City of Burbank v, State Water Res. Control Bd.</i> (2005) 35 Cal.4th 613, 626-27. For additional discussion on the Board's obligations to issue permits that comply with water quality standards see Water Code section 13241 in H.1.2.d.) Furthermore, using the Financial Capability Assessment Framework assumes that costs as currently estimated would not decrease in the future as technologies and programs improve. In addition, as discussed in response to comment H.5.2 and Part</p>

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		<p>outlined in Part VI.D.3. Additionally, the analysis should provide some evaluation of financial capabilities. In 1997, USEPA issued their initial Financial Capabilities Assessment guidance [footnote] 1 (1997 FCA Guidance). As financial obligations under the Clean Water Act (CWA) have increased, USEPA provided further instruction in its 2014 Financial Capability Assessment Framework [footnote] 2. These guidance documents provide the foundations to evaluate the financial impacts of meeting CWA obligations on the citizens of the community. In 2016, Congress recognized the financial challenges in managing water infrastructure and meeting CWA obligations and that affordability has become an increasingly critical issue, particularly for low-income residents who are far more vulnerable to increased costs. The Senate Appropriations Committee directed USEPA to conduct an independent study to create a definition of, and framework for, community affordability of clean water. In response, USEPA commissioned the National Academy of Public Administration (NAPA) to develop the study, culminating in their October 2017 publication of Developing a New Framework for Community Affordability of Clean Water Services [footnote] 3. The report made several key recommendations, including</p>	<p>XIII.D.3.f of the Fact Sheet, Permittees can secure other sources of funding besides Measure W and implement projects through public-private partnerships, which would bring costs down, as discussed in Part XIII.D.2.d. of the Fact Sheet Disadvantaged communities have an even more urgent need for environmental protection, as they are likely to be in disinvested areas that are more exposed to pollution and have less access to green space, tree canopies, etc. However, municipalities with high proportions of disadvantaged communities are also likely to have fewer financial resources. The various sources of funding detailed in Part XIII.D.3.f of the Fact Sheet recognize this predicament and provide preference to disadvantaged communities.</p> <p>There is very limited data available on municipal budgets from 2020, but the Los Angeles Water Board recognizes that the pandemic has negatively affected local revenues while imposing additional costs to deal with the pandemic in a multitude of ways. The economic outlook is more hopeful this year, however, as the most recent federal COVID-19 relief bill will inject \$1.9 trillion into the economy, with \$350 billion going to state, local, and tribal governments. Los Angeles County will receive \$1.9 billion, Ventura County will</p>

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		<p>that USEPA update its affordability guidance (which promulgated the most recent iteration – the Proposed 2020 Financial Capability Assessment Guidance [footnote] 4). The report further provided, in Recommendation #4, that the USEPA “should consider using the improved Financial Capability Assessment framework, in all of its clean and drinking water regulatory decision processes consistent with current statutory requirements” (emphasis added). Recommendation #10 went on to propose that USEPA “should build on its existing efforts to make informational resources and other support and assistance available that would help both plan proponents and front-line regulators develop, review, and, eventually, agree on the assessments of costs and benefits needed to establish long-term control plans” (emphasis added). Based on this report, it is clear that the intention from Congress is that USEPA develop a consistent framework to guide economic analysis for use by regulators as they develop requirements and plans to comply with them. The Proposed 2020 Financial Capability Assessment Guidance provides a definition and framework for community affordability and offers consistency in the evaluation of two critical considerations:</p>	<p>receive \$164 million, and a number of cities in both counties will receive additional aid, with the City of Los Angeles set to receive \$1.35 billion. President Biden has also proposed a \$1.7 trillion infrastructure package, the American Jobs Plan. In addition, a significant portion of the population in California and the U.S. have been vaccinated, and economists expect fast economic growth when the economy safely reopens, which would positively affect municipal revenues.</p> <p>In addition, see response to comment H.5.47.</p>

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		<ul style="list-style-type: none"> • the user’s ability to pay for clean water services, and • the utility or service provider’s financial capability to deliver those services. <p>[footnote1]: U.S. Environmental Protection Agency, Office of Water, Office of Wastewater Management. “Combined Sewer Overflows–Guidance for Financial Capability Assessment and Schedule Development.” (EPA 832-B-97-004. February 1997.)</p> <p>[footnote 2]: U.S. Environmental Protection Agency, Office of Water, Office of Enforcement and Compliance Assurance. “Financial Capability Assessment Framework for Municipal Clean Water Act Requirements.” (November 2014.)</p> <p>[footnote 3]: National Academy of Public Administration for the Environmental Protection Agency. “Developing a New Framework for Community Affordability of Clean Water Services.” (October 2017.)</p> <p>[footnote 4]: U.S. Environmental Protection Agency, Office of Water, Office of Wastewater Management. “Proposed 2020 Financial Capability Assessment Guidance.” (EPA-HQ-OW-2020-0426. September 2020.)</p> <p>Although the Proposed 2020 Financial Capability Assessment Guidance is not</p>	

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		<p>finalized, it provides sound technical approaches to consider affordability that provide a more robust and accurate picture of economic considerations.</p> <p>Lastly, the potential impacts of COVID-19 should be more fully evaluated. The information presented in Attachment F related to COVID primarily focuses on the impact to the State’s financial resources. The information does not delve into the expected impacts to revenue at the municipal level, which are the primary sources of stormwater program funds.</p> <p>LASAN is not suggesting that the additional analysis be utilized to support an argument against implementation, rather the analysis should be used to inform the rate of implementation so that expenditures to attain TMDLs align with the available resources that Permittees have been able to secure. LASAN is suggesting the additional analysis to fully support the initial statements in the Economic Considerations section of Attachment F:</p> <p>“The Los Angeles Water Board recognizes that economic information, including cost information, is invaluable for informed decision-making and for the evaluation and improvement of policies and practices.</p>	

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		<p>Economic information is also critical for Permittees to manage their assets, implement cost-effective programs, and develop successful funding strategies to achieve overall improvements in water quality within the region.”</p> <p>LASAN requests that the Regional Board conduct additional analyses that 1) compares estimated costs to attain TMDLs to available funding; 2) provides an understanding of financial capabilities (with a focus on disadvantaged communities); and 3) conducts a more thorough analysis of the potential impacts to municipal funding sources due to COVID.</p>	
H.5.50	City of Los Angeles	<p>Attachment F, Part XIII.D, Page F-286. When presenting information related to costs, the Regional Board should ensure that comparative information is appropriate and fully explained. An example of such a case is the presentation of the Rio Hondo/San Gabriel River Water Quality Group EWMP revision on page F-286 to demonstrate potential issues with other EWMP cost estimates. The discussion does not describe in detail how changes to that EWMP are relevant to changes to other EWMPs. A key issue with the previous version of this EWMP was that it made an erroneous determination that Lead (Pb) was</p>	<p>Change made. See response to comment H.5.37.</p>

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		<p>the limiting pollutant. If the Regional Board chooses to use this EWMP as an example of how revisions can lead to a reduction in cost estimates, the Regional Board should detail what changes led to those reductions. In particular, the portions of the cost estimate reductions that came solely due to fixing the original EWMP's error should be stated. The City-led EWMPs appropriately identified the limiting pollutant, the necessary BMP capacities, and associated costs. As such, no reduction in cost estimate can be obtained through simply fixing an error. It should also be noted that the original costs for the City of Azusa of \$379M are not identified as a portion of the cost savings. LASAN requests that additional information linking specific changes in the Rio Hondo/San Gabriel River Water Quality Group EWMP to specific reductions in the cost estimate should be added. If the Regional Board does not have and cannot obtain the necessary information, LASAN requests that any discussion of the revision of this EWMP for the purpose of suggesting that other EWMP cost estimates can be reduced by following a similar approach be removed from Attachment F.</p>	
H.5.51	City of Los Angeles	Attachment F, Part XIII.D.1.c, Pages F-288 through 291. The Method 1 cost estimates generated from TMDL Staff Reports are not	Change made. See response to comment H.5.27.

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		<p>up-to-date and did not fully consider all potential costs associated with BMP implementation. The E/WMP cost estimates were based on the latest water quality models and up-to-date cost information. The findings of the E/WMP limiting pollutant analysis demonstrated that costs to address one pollutant were not the same as all pollutants, as suggested by the selection of one TMDL to reflect multiple TMDLs. For example, the Ballona Creek EWMP found that the cost to address zinc was \$2,317M with an additional \$406M to address bacteria for a total of \$2,723M. The Method 1 estimate assumed that the Ballona Creek Metals and Toxics TMDLs were more costly than the Bacteria TMDL, which was not supported by the more robust EWMP analysis. Similarly, the Upper Los Angeles River (ULAR) EWMP found that to address zinc was \$3,517M with an additional \$2,581M to address bacteria for a total of \$6,098M.</p> <p>Additionally, in both the Ballona Creek and ULAR EWMPs it was determined that there was not enough publicly owned land or right of way to meet the significant volume capture needs identified in the EWMPs to attain the TMDLs. As such, the EWMP cost estimates had to factor in the cost of private land. The Method 1 cost estimates did not</p>	

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		<p>include the cost of private land. In reviewing the Ballona Creek Metals TMDL and the LA River Metals TMDL staff report cost analyses sections, land acquisition costs are not included. This omission results in a significant difference between the EWMP and TMDL cost estimates. Lastly, the Method 1 cost estimate for the Dominguez Channel (DC) Watershed does not consider the costs to address bacteria. Because the DC EWMP comprehensively addresses all water quality priorities (including bacteria) even if there is no TMDL, the cost estimate to implement the DC EWMP is significantly higher than the Method 1 estimate that only considers TMDL costs. While the TMDL cost estimates may have been appropriate for the time they were completed, they are outdated and do not reflect the complete cost of implementation. As such, LASAN requests that the Method 1 cost estimates be removed from Attachment F.</p>	
H.5.52	City of Los Angeles	<p>Attachment F, Part XIII.D.1.d.i, Pages F-292 through F-293. There appear to be several errors in Table F-27 of the Fact Sheet. The operation and maintenance costs for the Ballona Creek EWMP and ULAR EWMP appear to be underestimated. For the Ballona Creek EWMP, the difference appears to be minor (\$82.55M in Table F-27 versus \$87.2M in the EWMP), whereas the difference in the ULAR EWMP operation</p>	<p>Change made. See response to comment H.5.40.</p>

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		<p>and maintenance costs appears to be fairly significant (\$13.68M versus the range in the EWMP of \$17.01M/year at the 2017 milestone, \$55.27M/year at the 2024 milestone, \$176.91M/year at the 2028 milestone, and \$210.84M/year at the 2037 milestone). LASAN requests that the Regional Board reevaluate the calculation methods used to derive the values for Table F-27 and update as appropriate. LASAN can support the Regional Board if there are any questions related to the cost estimates in the EWMP's to which the City is a party.</p>	
H.5.53	City of Los Angeles	<p>Attachment F, Part XIII.D.3.f, Table F-42, Page F-321. Table F-42 includes the City's Proposition O, which providing a significant funding source that resulted in numerous multi-benefit projects across the City that improved water quality. While LASAN appreciates the acknowledgement of Proposition O, it was a one-time local ballot initiative that is not relevant to understanding the funds available for future projects. While Table F-42 presents retrospective information, the text would suggest that the funding identified in the table inform an understanding of potential future funding. LASAN requests that Proposition O funding be identified in a more appropriate location in Attachment F that summarizes previous local initiatives to generate funding and acknowledge</p>	<p>Change made. Part XIII.D.3.f of the Fact Sheet has been updated to explicitly include potential future funding options, with Proposition O listed as a past funding option in Table F-44 (formerly Table F-42).</p>

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		Proposition O as a onetime source of funding that no longer presents funding for future projects.	
H.6.1	---	No comments received.	---
H.7.1	Los Angeles County and LACFCD 2 nd letter	Attachment F/ Pg. F-335. Citation 405 references a “Central LA County” SCWP webpage that is no longer in operation. The County and LACFCD recommend referencing the current main page instead (https://safecleanwaterla.org).	Change made. The footnote has been updated as requested by the commenter.
H.8.1	VCSQMP	<p>State Mandates</p> <p>The State Mandates section of the Draft Fact Sheet needs to be stricken in its entirety. Nothing within section XIV explains or provides actual rationale for permit provisions. Rather, it appears to be a compilation of the Los Angeles Water Board’s arguments that have been, or are being, made before the Commission on State Mandates, Superior Courts, Courts of Appeal and the California Supreme Court. It is inappropriate for the Los Angeles Water Board to use this Draft Fact Sheet to attempt to rewrite existing court decisions, or try to preempt pending court decisions. For example, the Draft Fact Sheet makes statements with respect to fee authority under Proposition 218 as a bar to reimbursement for state mandates. As the Los Angeles Water Board staff is well-aware, this is an issue currently pending in litigation before several appellate courts.</p>	<p>No change. As an initial matter, there is no requirement that the Los Angeles Water Board provide a justification as to why the Order does not create a program, new or otherwise, or higher levels of service, requiring subvention under the California Constitution. Rather, the Fact Sheet need only set forth the principal facts and the significant factual, legal, methodological, and policy and technical rationale that serve as the basis for the requirements of the Order, per 40 C.F.R. §§ 124.8 and 124.56. However, the Fact Sheet here includes one because the Los Angeles Water Board anticipated that claims of subvention (such as claims made here, as evidenced by comments on this topic) would be made by Permittees. The Los Angeles Water Board is therefore entitled to set forth some of the rationale upon which its reasoning that the permit requirements are necessary under federal law, and not subject to subvention or</p>

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		Accordingly, the Program recommends that section XIV be deleted in its entirety.	<p>reimbursement by the State. (Set forth at Fact Sheet Part XIV.) While the Commission may be an expert in state mandates, it has no expertise in the field of water law. The Board's findings are the expert conclusions of the principal state agency charged with implementing the NPDES program in California. (Cal. Wat. Code, §§ 13001, 13370.) The rationale as to particular provisions that might be challenged in the Order will be set forth in full if and when test claims are filed with the Commission on State Mandates.</p> <p>Finally, with respect to the contention that Proposition 218 is a bar to reimbursement for state mandates, that is an invalid contention. In <i>Department of Finance v. Commission on State Mandates</i> (2021) 59 Cal.App.5th 546, 561-62, the Court of Appeal found that local governments have the authority sufficient to pay for inspection requirements for commercial and industrial facilities and construction sites to ensure compliance with various environmental regulations under their police powers for the prevention of water pollution. Simply because voter approval may be required prior to levying fees does not mean that a local agency lacks the authority to levy fees. (See, <i>ibid.</i>; see, also, <i>Paradise Irrigation Dist. v. Commission on State Mandates</i></p>

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			<p>(2019) 33 Cal.App.5th 174, 182, 195 (“Fee authority is a matter governed by statute rather than by factual considerations of practicality”; it is not controlled by whether municipalities have tried and failed to levy fees.) If there is statutory authority to levy fees, then there is no right to subvention. (<i>Id.</i> at p. 195). Furthermore, the procedural requirements under article XXIII D of the California Constitution (Proposition 218) do not apply to fees for sewer services, including fees for collecting, treating, or disposal of stormwater. (Cal. Gov. Code, §§ 53750(k), (n), 53751.)</p>
H.8.2	RWG Law on behalf of various Permittees	<p>The Tentative Permit’s Minimum Control Measures and TMDL Provisions Constitute Unfunded State Mandates. Several of the Tentative Permit’s requirements, including provisions carried over from prior permits, are imposed at the Regional Board’s discretion and are more stringent than the requirements of the Clean Water Act. As a result, they constitute unfunded state mandates and are subject to a subvention of funds to reimburse permittees for compliance costs. [footnote] 45 These provisions include the TMDL compliance requirements and the commercial facilities inspection program.</p>	<p>No change. As explained in the Fact Sheet, none of the Order’s terms are more stringent than the requirements of the Clean Water Act, and none are unfunded state mandates subject to subvention.</p> <p><u>TMDLs:</u> The TMDL-based limitations are necessary to implement federal law, do not constitute a new program or higher level of service, and are not unique to local government.</p> <p><u>Necessary and appropriate to achieve compliance with TMDL WLAs as required by federal law:</u> Section 303(d) of the CWA requires that the Water Boards identify impaired water bodies that do not meet</p>

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		<p>[footnote 45]: <i>Department of Finance v. Commission on State Mandates</i>, 1 Cal.5th 749 (2016).</p> <p>In certain cases, the Tentative Permit ratchets up these requirements. For example, commercial and industrial facilities must be inspected every two years, rather than twice during the five-year permit term. [footnote] 46 And, each commercial facility inspection must be documented by an inspection report that includes a summary of the inspection, conclusion, and photos. [footnote] 47 These provisions constitute higher levels of service, and the Cities reserve their rights to pursue a test claim with the Commission on State Mandates if such provisions are not removed from the new Permit. Furthermore, the Fact Sheet does not explain the basis for increasing the inspection frequency for commercial and industrial facilities. The Cities question the need for increasing the inspection frequency.</p> <p>[footnote 46]: Tentative Permit, Part VIII.E.3.c. & 4.b., pg. 48. [footnote 47]: Tentative Permit, Part VIII.E.3.c. & 4.b., pg. 48.</p>	<p>water quality standards after applying required technology-based effluent limitations. Specifically, the states must identify those waters for which technology-based effluent limitations are not stringent enough to implement any water quality standard applicable to such waters and establish a priority ranking for such waters. (CWA § 303(d)(1)(A).) For those waters identified as not meeting water quality standards, each state must establish the TMDL at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety. (<i>Id.</i>, § 301(d)(1)(C).)</p> <p>A TMDL is defined as the sum of the individual wasteload allocations (WLAs) for point sources of pollution, the load allocations (LAs) for nonpoint sources of pollution, and the contribution of background to the pollution, and represents the maximum amount of a pollutant that a water body may receive and still achieve water quality standards. In the Los Angeles Region, there are TMDLs that were developed by U.S. EPA, and also by the Los Angeles Water Board. A TMDL established by a regional water board must be approved by U.S. EPA before it becomes effective. But once approved by U.S. EPA, every NPDES permit (and not just MS4 permits)</p>

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			<p>must include water quality-based effluent limitations “consistent with the assumptions and requirements of any available wasteload allocations.” (40 CFR § 122.44(d)(1)(vii)(B); see, also, U.S. EPA Memorandum, Revisions to the November 22, 2002 Memorandum “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs” (Nov. 26, 2014), p. 6.) Based on both the CWA and its implementing regulations, which are federal requirements, the Los Angeles Water Board determined it was necessary to include provisions consistent with the assumptions and requirements of the 45 TMDLs that assign WLAs to MS4 dischargers in the Los Angeles Region in the Order. The Los Angeles Water Board made specific factual findings in relation to incorporation of these TMDL WLAs in the Order. (Part IV.A.2; IV.B.1.a and b; IV.B.2.; Fact Sheet Part VI.) These findings are entitled to deference under <i>Department of Finance v. Comm’n on State Mandates</i>, 1 Cal.5th at pp. 768-769.</p> <p>The incorporation of the TMDL WLAs into the Regional Permit – as numeric WQBELs or receiving water limitations – is not more stringent than federal law, either, as explained in Response to Comment H.1.2,</p>

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			<p><i>supra</i>. The TMDL WLAs – here, numeric WQBELs or receiving water limitations – are necessary to achieve water quality objectives in the Los Angeles Region.</p> <p><u>TMDLs are not new programs or higher levels of service</u>: As an initial matter, all permittees have been subject to TMDL programs and requirements in prior permits. Los Angeles County Permittees have been subject to TMDLs since 2001. For example, Order No. 01-182 required that MS4 Permittees amend their Storm Water Quality Management Program (SQMP), at the direction of the Board’s Executive Officer, to comply with TMDL WLAs developed and approved for impaired water bodies; and the Order specified performance measures for storm drain operation and maintenance for watersheds subject to trash TMDLs. (2001 Permit, Part 3.C., p. 26; Part 4.F.5.b, p. 56.) The 2012 Los Angeles County Permit also included provisions for WLAs assigned to MS4 dischargers in 33 TMDLs, and the 2010 Ventura County MS4 Permit included provisions for WLAs assigned to MS4 dischargers in 13 TMDLs with which all permittees subject to the WLAs had to comply. Now, the Regional Permit includes provisions for WLAs assigned to MS4 dischargers in 45 TMDLs with which Permittees have to comply. The purpose of</p>

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			<p>the TMDLs and the accompanying implementation provisions is to address identified impairments for waters not meeting water quality standards. These water quality standards are not new, and as set forth above, they are required under the CWA and its implementing regulations. Finally, the State Water Board has made it clear since 1999 that all MS4 dischargers must comply with receiving water limitations. (State Water Board Order No. 99-05.) To the extent some TMDLs require permittees to meet WLAs in the receiving waters, this requirement is not new, either. See, State Water Board Order No. 99-05.</p> <p><u>Not unique to local government:</u> The requirement to implement TMDL WLAs in NPDES permits does not apply uniquely to local government. The TMDLs themselves assign WLAs for specific pollutants to all point sources identified as causing or contributing to the impairment of the waterbody, such as stormwater, publicly owned treatment works, and other wastewater dischargers. (See, e.g., 2018-0020, NPDES Permit for Sentinel Peak Resources California, LLC Inglewood Oil Field, pp. 13-14, F-38.) As noted above, federal law requires that all NPDES permits, whether they are issued to private or public entities, include water quality-based effluent</p>

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			<p>limitations that are consistent with the assumptions and requirements of all available TMDL WLAs. For example, construction stormwater dischargers, as well as the State of California Department of Transportation (Caltrans), must also comply with TMDL-based WQBELs. (See, State Water Board, Order 2012-0011-DWQ (as amended by Orders WQ 2014-0006-EXEC, WQ 2014-0077-DWQ, and WQ 2015-0036-EXEC), NPDES Statewide Storm Water Permit, Waste Discharge Requirements for State of California, Department of Transportation, pp. 10-12, and Attachment IV; State Water Board, Order No. 2009-0009-DWQ (as amended by 2010-0014-DWQ and 2012-0006-DWQ).)</p> <p><u>Commercial and Industrial Facilities Inspection Program:</u> As an initial matter, the requirement to do an inspection program falls well within federal requirements and is not an unfunded state mandate. Federal regulations at 40 CFR section 122.26(d)(2)(iv)(A) and 40 CFR 122.26(d)(2)(iv)(C) require that MS4 permittees implement a program to monitor and control pollutants in discharges to the MS4 from industrial and commercial facilities that contribute pollutant loads to the MS4. Federal regulations at 40 CFR section 122.26(d)(2)(iv)(D) require a description of a</p>

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			<p>program to implement and maintain structural and non-structural BMPs to reduce pollutants in storm water runoff from construction sites to the MS4. Further, even if this requirement were a state mandate (and it is not), under Government Code section 17556(d), if the state imposes on local governments a new program or higher level of service, the state is not required to provide subvention to the local government if 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. Indeed, the issue of whether the state must reimburse local governments – that is, whether subvention is necessary – for these requirements has been rejected. In the recent case of <i>Department of Finance v. Commission on State Mandates</i> (2021) 59 Cal.App.5th 546, 561-62, the Court of Appeal found that local governments have the authority sufficient to pay for inspection requirements for commercial and industrial facilities and construction sites to ensure compliance with various environmental regulations under their police powers for the prevention of water pollution. (See, also, <i>Freeman v. Contra Costa County Water Dist.</i> (1971) 18 Cal.App.3d 404, 408 (“prevention of water pollution is a legitimate governmental objective, in furtherance of</p>

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			<p>which the police power may be exercised”; Cal. Gov’t. Code § 53751) Finally, this requirement is not a new one, nor does it increase inspections. In the prior MS4 permits, each Permittee was required to inspect all commercial facilities twice during the 5-year term, “provided that the first mandatory compliance inspection occurs no later than 2 years after the effective date,” of that Order, and a “minimum interval of 6 months between the first and second mandatory compliance inspection” was required. (See, e.g., 2012 Los Angeles County MS4 Order, Part VI.D.6.d.i.) These requirements have been carried over unchanged in the Order. The Order requires that each Permittee shall inspect the facilities every two years, ensuring that the first mandatory compliance inspection occurs no later than 2 years after the effective date of this Order. A minimum interval of 6 months between the compliance inspections is required. Since a NPDES permit term is 5 years in duration, this is the same as “twice during the 5-year term” in the prior permits. (Part VIII.E.3.c.i. of the Order.) Likewise, for industrial facilities, the Order requires each Permittee shall inspect the facilities every two years for facilities that have exposure to stormwater and every five years for facilities that do not have exposure to stormwater.</p>

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			<p>(Part VIII.E.4.b.i. of the Order.) This is also the same as the prior permits.</p> <p>Thus, the argument has no merit.</p>

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