

# **California Regional Water Quality Control Board, San Diego Region**

## **Regional MS4 Permit Focused Meeting**

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### ***Meeting Notes***

| Date  | Location   | Agenda Topics   |
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| 7/11/2012<br>Start time: 9:30 AM<br>End time: 3:10 PM | City of Escondido<br>201 North Broadway<br>Escondido, CA 92025<br>Mitchell Conference Room | <ul style="list-style-type: none"><li>• Meeting Recap &amp; Feedback</li><li>• Focused Meeting Intent</li><li>• Water Quality Improvement Plan Priority Setting &amp; Approval Process</li><li>• JRMP Relationship with Water Quality Improvement Plan</li><li>• Adaptive Management Areas of Permit</li><li>• Other Topics</li><li>• Audience Comments</li></ul> |

#### **I. Introductions**

Table participants introduced themselves. Lewis Michaelson (Facilitator) ensured the appropriate representatives were at the table, per the June 20, 2012, San Diego Regional Water Quality Control Board (SD RWQCB) Notice.

San Diego County Copermittees (5): Drew Kleis (City of San Diego), Jon Van Rhyn (County of San Diego), Mikhail Ogawa (City of Del Mar), Todd Snyder (County of San Diego), Elaine Lukey (City of Carlsbad)

Orange County Copermittees (5): Ziad Mazboudi (City of San Juan Capistrano), Joe Ames (City of Mission Viejo), Grant Sharp (Orange County Flood Control District), Ryan Baron (County of Orange), Chris Crompton (County of Orange), Nancy Palmer\* (City of Laguna Niguel) \**Indicates representatives rotated during the meeting.*

Environmental Community (3): Colin Kelly (Orange County Coastkeeper), Jill Witkowski (San Diego Coastkeeper), Roger Butow (Clean Water Now! Coalition), Thom Spanos\* (San Diego Coastkeeper) \**Indicates representatives rotated during the meeting.*

Development/Business Community (3): Thom Fuller (San Diego Business Industry Association), Dennis Bowling (American Public Works Association), Bryn Evans (Industrial Environmental Association), Wayne Rosenbaum\* (BIA), Mike McSweeney\* (BIA) \**Indicates representatives rotated during the meeting.*

U.S. Environmental Protection Agency (US EPA) (1): Cindy Lin

San Diego Water Board Permit Team: David Barker, Wayne Chiu, Laurie Walsh, Eric Becker

It was noted that Riverside County MS4 Copermittees were invited to the focused meeting but were unable to attend.

## **II. Meeting Recap & Feedback**

Lewis Michaelson (Facilitator) reflected on the effectiveness of the June 27 Focused Meeting. It seemed that much of the meeting consisted of stakeholders asking questions of the Regional Water Quality Control Board (RWQCB). Today's meeting should consist more of the opposite; questions from the RWQCB and input from the stakeholders.

As requested at the June 27 meeting, a number of stakeholders provided suggestions on topics for today's meeting. Those suggestions were incorporated into the agenda. Lewis reviewed the agenda for today's meeting.

## **III. Focused Meeting Intent**

David Barker (RWQCB) provided information on the intent of the focused meetings. He is the San Diego Water Board Chief of the Surface Water Basins Branch, which encompasses the NPDES wastewater and stormwater programs, including municipal, construction, and industrial stormwater programs. The team that developed the MS4 administrative draft permit is within his Branch. David is here to observe the meetings and assist staff in framing issues for discussion. He is also here as a representative of executive management, including Executive Officer David Gibson, and will do his best to respond to broad policy issues and the Board's process of bringing the permit to adoption.

Although the specific causes of water quality impairments within the San Diego Region are not all known, it is known that most water quality impairments occur downstream of, or within, urbanized settings, and are therefore directly affected by dry weather flows and urban runoff. Thus, there is a continuing need for comprehensive, innovative, and effective stormwater regulation. Creative and non-traditional approaches are needed to address these challenges.

With these challenges in mind, the RWQCB has put considerable thought and effort into proposing the administrative draft permit, which provides an adaptive management pathway for Copermittees to address water quality issues in an iterative process. Under this process, water quality improvement objectives will be regularly prioritized and assessed.

Unlike current prescriptive permits, this administrative draft permit puts the Copermittees in the driver's seat, allowing deployment of resources to achieve goals that will have the greatest water quality improvements.

The RWQCB would really like to hear thoughts from the stakeholders about what should be in the draft permit. The administrative draft permit was released April 9, 2012. By the time written comments are due in September, it will have been available for public review and comment for more than five months. To communicate detailed ideas on specific permit language, the RWQCB would appreciate that detailed language be submitted as written comments. The RWQCB values the stakeholders' thoughts and insights on permit language and will closely consider all submissions.

During this extended review and comment period on the administrative draft permit, the RWQCB has allocated four days for focused meetings to meet with interested stakeholders and listen to ideas on how to improve the administrative draft permit. The schedule for the focused meetings was selected in order to maintain momentum for finalizing the final draft of the permit later this fall. The RWQCB does not anticipate scheduling additional focused meetings prior to release of the final draft permit, other than perhaps a special session on the hydromodification requirements as suggested at the June 27 focused meeting. With recognition that four focused meetings is not enough time for exhaustive, detailed review of the full administrative draft permit, the focused meetings are structured to discuss key issues at a conceptual level. Stakeholders can be most influential on shaping the next iteration of this permit by providing quality input and feedback on the key issues at the conceptual level. The focused meetings are a golden opportunity to have productive discussions in a fair and impartial setting.

David reminded the stakeholders that while these focused meetings may not allow for detailed discussions on all issues of concern, all stakeholders will have an opportunity to review and provide detailed comments on any aspect of the draft permit again later this fall.

Several stakeholders (Roger Butow, Clean Water Now! Coalition; Todd Snyder, San Diego Copermittees; Ziad Mazboudi, City of San Juan Capistrano) strongly support a stand alone hydromodification meeting prior to the written comment deadline. Ziad Mazboudi (City of San Juan Capistrano) is working with Tory Walker and others to hold a symposium with field experts and would want the hydromodification meeting to be held after the symposium. The RWQCB will have a game plan for a hydromodification meeting ready to roll out by the next focused meeting.

Roger Butow (Clean Water Now! Coalition) asked if the legal issues over the legitimacy of the consolidated permit have been addressed by RWQCB counsel. David Barker (RWQCB) stated the RWQCB's official position is that they do have the legal authority to issue this regional general permit; RWQCB counsel is expected to confirm that authority. David mentioned there is a parallel legal track of meetings underway where RWQCB counsel is working with attorneys of the Copermittees. Any legal opinion issued will be open for public review and scrutiny.

#### **IV. Water Quality Improvement Plan Priority Setting & Approval Process**

Laurie Walsh (RWQCB) explained that in pre-drafts of the permit the Water Quality Improvement Plan was originally called a Water Quality Management Plan. The title of the plan was changed to "Improvement" instead of "Management" because the goal of the plan is water quality improvement.

The Water Quality Improvement Plan is in the beginning of the permit because of its high importance to the permit. The Water Quality Improvement Plan sets the road map through which the Copermittees will achieve improved water quality. It gives the Copermittees complete control to set priorities with rationale, set schedules, set targets, etc. From meeting with stakeholders, the RWQCB understands that there are not enough

resources to do everything all at once; the Water Quality Improvement Plans are the Copermittees' opportunity to set priorities.

The approval process for the Water Quality Improvement Plans is outlined in the administrative draft permit. The RWQCB is looking for input on any impediments to developing and implementing the Water Quality Improvement Plans, specifically within the timeframe identified in the administrative draft permit.

San Diego Coastkeeper would be open to a staggered submittal of Water Quality Improvement Plans for the nine watersheds so that public review is not all within the same 30-day period.

Jill Witkowski (San Diego Coastkeeper) suggested a phased review period for the Water Quality Improvement Plans where the first phase is review of the priorities and the second phase is review of the full Water Quality Improvement Plan. This may assist in keeping prioritization consistent across watershed management areas. Ziad Mazboudi (City of San Juan Capistrano) expressed concern that a separate review of the priorities is leaning toward micro-managing. Jon Van Rhyn (County of San Diego) said it is an interesting concept; however, the more the process is extended, the more the Copermittees would have to confront the realities of the time needed to budget, which could affect how fast programs move forward. Jon admitted there may need to be a multi-year planning process upfront where the priorities are laid out at the highest level and made open to feedback before proceeding with details of the Water Quality Improvement Plan. Drew Kleis (City of San Diego) agreed with the concept of getting iterative feedback in the process of developing the Water Quality Improvement Plans to ensure development of the plan stays on track.

Jill Witkowski (San Diego Coastkeeper) pointed out there is good direction in the permit on how to assess receiving water conditions, but there is not good guidance on where the bar should be set; it is not clear if the Copermittees will be aiming low or aiming high in their plans. Ziad Mazboudi (City of San Juan Capistrano) explained that the bar could be set high, but the reality of reaching that level may be driven by available resources. Drew Kleis (City of San Diego) acknowledged that Total Maximum Daily Loads (TMDLs) and other regulations will be major factors in determining priorities. There also may not be high priorities in every watershed; there may be tradeoffs that a certain watershed is not as high as another because of TMDLs or other regulations. By allowing that prioritization, the net benefit of a jurisdiction's efforts can be maximized. The frank reality is that prioritization will be driven by regulations and there will be issues that are medium or low priorities. Eric Becker (RWQCB) explained that the permit was purposefully set up so there could be differences across watersheds. Todd Snyder (County of San Diego) concurred that the intent is there will be different prioritizations across different watersheds.

Jill Witkowski (SD Coastkeeper) raised the concern that in watersheds with TMDLs, the only priority might be the TMDL although there are other issues within the watershed. Eric Becker (RWQCB) clarified that the TMDL might be the top priority and efforts to satisfy the TMDL may not allow for other priorities at that time. Other priorities are still on the list, but resources may not be allocated to them until the TMDL is satisfied. Jill Witkowski (SD

Coastkeeper) is concerned that areas on the cusp of becoming TMDLs and ASBSs may not receive attention needed to prevent them from becoming TMDLs and ASBSs.

Mikhail Ogawa (City of Del Mar) explained that aiming high and capturing as many pollutants as possible is an iterative process within the plan development. For example, bacteria may be the highest priority pollutant because of a bacteria TMDL in the watershed; however, as the plan is developed it may be found that additional pollutants can be targeted at the same time using the same methods as those for bacteria. At that point, the priorities may be adjusted to reflect those findings. Therefore, having a phased approach to approving the priorities and then the Water Quality Improvement Plans may not be efficient. Jill Witkowski (SD Coastkeeper) conceded Mikhail's point about priorities changing during plan development and reiterated that it is still important to the environmental community to have sufficient information about how and why priorities are set.

Elaine Lukey (City of Carlsbad) explained that the Copermittees are not starting from scratch in creating watershed priorities. The Copermittees have many years of experience looking at 303(d) listings, impairments, etc., and already have good programs in place to address watershed priorities. The San Diego Copermittees have had Watershed Urban Runoff Management Plans (WURMPs) for 10 years, and there are priorities in those existing WURMPs. The priorities may change based on a TMDL or other regulations; however, looking at the WURMPs is a good place to start to understand the current watershed priorities.

Wayne Chiu (RWQCB) asked stakeholders to provide suggestions as to how to put priority setting guidelines in the permit without limiting the Copermittees' ability to have flexibility in setting priorities and prevent Copermittees from setting the bar too low. Jill Witkowski (SD Coastkeeper) suggested having a tiered approach to priority setting: the baseline tier would be TMDLs, the next tier might be mid-range priorities, and the next tier might be long-range priorities. Jon Van Rhyn (County of San Diego) responded that there are two program elements defined in the permit that are implemented concurrently: the Water Quality Improvement Plans and the Jurisdictional Urban Runoff Management Plans (JRMPs). The Water Quality Improvement Plans are about establishing priorities and following an adaptive management strategy. The JRMPs have baseline requirements and are about establishing an extensive set of activities. The Water Quality Improvement Plans are not entirely independent of the rest of the permit, including the JRMPs.

Drew Kleis (City of San Diego) referred the group to slide 2 of a handout the San Diego Copermittees prepared for this meeting. The San Diego Copermittees would like to have a reference to permit section A.4 in sections A.1, A.2, and A.3 so that compliance with discharge prohibitions, receiving water limitations, and effluent limitations is clearly defined as implementation of the iterative process. They believe explicit language is needed in light of the 9th Circuit Court's finding of the separate enforceability of these provisions. Drew asked Cindy Lin (US EPA) if there is a possibility of revising Provision A to define compliance through the iterative process. Cindy replied that this is still an NPDES permit and there needs to be clarity regarding compliance points. There is, however, a lot of creative

language in other permits within California, so it is not out of the toolbox to have creative language in this permit.

Drew Kleis (City of San Diego) explained that the Copermittees are not looking to walk away from responsibility, but it is easier to budget for a plan if the plan is the compliance pathway. Jill Witkowski (SD Coastkeeper) asked how linking section A.4 to sections A.1-A.3 accomplishes that. Drew explained that at some point a City Manager or politician will question why certain actions or plans are being done. By linking the iterative process clearly to compliance, Copermittees' staff will be able to defend those questions.

Elaine Lukey (City of Carlsbad) referred the group to slide 3 of the San Diego Copermittees' handout. This slide contains suggestions of what would work for the Copermittees regarding permit language for determining compliance:

1. Insert language clarifying identification of individual jurisdictional commitments in the Water Quality Improvement Plans, and insert language clarifying RWQCB approval of individual jurisdictional commitments.
2. Add language to include RWQCB approval timeline for JRMP updates in year 1.
3. Add language in II.F. stating there is a specific (e.g., 90-day) RWQCB approval timeline for annual updates in years 2, 3, 4, 5.
4. Add language to permit, not fact sheet, about non-enforceability of Numeric Targets.

Todd Snyder (County of San Diego) followed that this ties back into the issue of Section A and why it is important that the permit clearly outline the points of compliance for the Water Quality Improvement Plans that Wayne Chiu (RWQCB) lined out at the June 27 MS4 Focused Meeting (1. Submit Water Quality Improvement Plan; 2. Include all required elements in the plan; 3. Implement the plan; and, 4. Assess the plan). Implementation of the Board-approved Water Quality Improvement Plan should constitute compliance. The approval process is critical to that.

Wayne Chiu (RWQCB) responded that the permit writing team does understand the over-arching concern and tried as much as possible to incorporate that concept into the permit language. The RWQCB will consider any recommendation put forth for revised permit language.

Joe Ames (City of Mission Viejo) asked for clarification about whether a goal under a certain priority could be a research project. Laurie Walsh (RWQCB) clarified that the goals are the water quality standards; numeric targets are interim goals to reach the water quality standards; a research project can be a strategy to reach the numeric targets and water quality goals. Cindy Lin (US EPA) concurred that under the Water Quality Improvement Plans there are priorities, under those priorities there are goals (i.e., water quality standards, waste allocations, etc.), under those goals are monitoring plans or targets to use to achieve the water quality objectives or criteria, and then there are the actions or controls implemented to reach those targets. Mikhail Ogawa (City of Del Mar) followed up that as adaptive management is a learning process, there is inherently an expectation that some of

the actions or controls implemented may not work as effectively or efficiently as planned. However, a failed strategy, action, or control does not imply that the Copermittees are not attempting to reach their priorities; it is part of the adaptive management process.

Chris Crompton (County of Orange) is uncomfortable with the idea of this permit trying to replace TMDLs, as the RWQCB has stated before that CLRPs could be modified slightly and become the Water Quality Improvement Plans. This permit is a municipal stormwater permit. It does not incorporate all the stakeholders that a TMDL process does. In addition to bringing in parties besides municipalities, the TMDL process also allows for longer timeframes than under this permit. This MS4 permit aims to fix issues that can be controlled by the jurisdictions; there are significant issues and sources that the jurisdictions cannot control. Eric Becker (RWQCB) asked for suggestions on changing language in the permit to cover TMDLs. Todd Snyder (County of San Diego) referenced slide 4 of the San Diego Copermittees' handout. The concept is that the WQBELs used to interpret TMDLs in the draft permit are expressed as either (a) achievement of receiving water limitations or (b) achievement of a receiving water limitation applied at the MS4 outfall and applied as a concentration instead of a load. The San Diego Copermittees would like to add other means of demonstrating compliance with WQBELs. For example, load-based compliance with Waste Load Allocations, implementation of EO-approved TMDL compliance plan, compliance with exceedance limitations expressed as "days" or "frequency," and/or other means of compliance identified in future TMDL language. These other means of demonstrating compliance with WQBELs acknowledge that MS4s are part of the TMDL solution but not the entire picture.

Cindy Lin (US EPA) provided an example from a Los Angeles TMDL (Dominguez Channel Greater Los Angeles Long Beach Harbor TMDL) where they are trying to reduce the distance between TMDLs and permit language. The TMDL offers four different ways of demonstrating compliance, thereby providing clarity in the expectations. Sometimes it does not make sense to try to meet the water quality standard level.

Wayne Chiu (RWQCB) asked Cindy Lin (US EPA) if that meant that language can be placed within this permit that states the Copermittees would be in compliance with discharge limits and receiving water limits if they have a numeric set of criteria that are met as part of the iterative process. Cindy responded that the compliance point must always be defined. It is the details of how the water quality standard is met. Different numeric metrics can be provided as long as they show that the water quality standard is met.

Wayne Chiu (RWQCB) acknowledged that everyone is highly concerned about the 9th Circuit Court Decision and the RWQCB has been struggling with how to make the language provide some level of assurance that there would be no requirement of enforcement or threat of third party lawsuits if the first two requirements are not met as long as they are implementing a Water Quality Improvement Plan with the full intent of meeting those requirements in the future. The 9th Circuit Court Decision, however, says those provisions are separate and enforceable. Wayne asked for the EPA's position on this. Is the EPA saying that there is some alternative language that could be placed in the permit that the EPA

would accept as being in compliance with discharge prohibitions and receiving water limitations but not necessarily through actual receiving water quality data?

Cindy Lin (US EPA) responded that the 9th Circuit Court Decision is a legal issue on which she has been directed not to comment. Regarding alternative language, Cindy explained that EPA Region IX has been strong and consistent that Copermittees either meet compliance through WQBELs or through quantitative measures. "Quantitative measures" are purposely not defined to provide some interpretation in how to meet compliance.

Wayne Rosenbaum (SD BIA) recommended looking at other, recent permits regarding compliance language and, also, building into Provision A some enforcement structure.

The Environmental and Development Communities (Colin, Wayne R) believe the solution will not be a safe harbor solution, nor will it be something where Copermittees should put up walls to protect themselves from potential litigation. They would prefer not to spend money on litigation unless critically important; they would prefer to help Copermittees implement or assess effective programs and be more involved in the creation of those programs. The permit will not provide complete security from litigation; however, dealing responsibly with the Environmental and Development Communities will reduce liability.

Ryan Baron (County of Orange) acknowledged the RWQCB's multiple requests for stakeholders to submit language, but questioned if there is a statewide effort going on to suggest model language to the State Water Resources Control Board (SWRCB) and asked how difficult it is to change language provided by the EPA for the permit. Wayne Chiu (RWQCB) explained that the EPA has the final say on the permit language. Cindy Lin (US EPA) concurred, explaining that when the permit is presented to the EPA, they can approve it, reject it with recommendations for re-submittal, or decide to issue their own NPDES permit.

Chris Crompton (County of Orange) suggested that the CASQA conversations with the SWRCB may be the solution to this effort as they are working on language for section A and alternate ways of dealing with the 9th Circuit Court Decision.

#### V. JRMP Relationship with Water Quality Improvement Plan

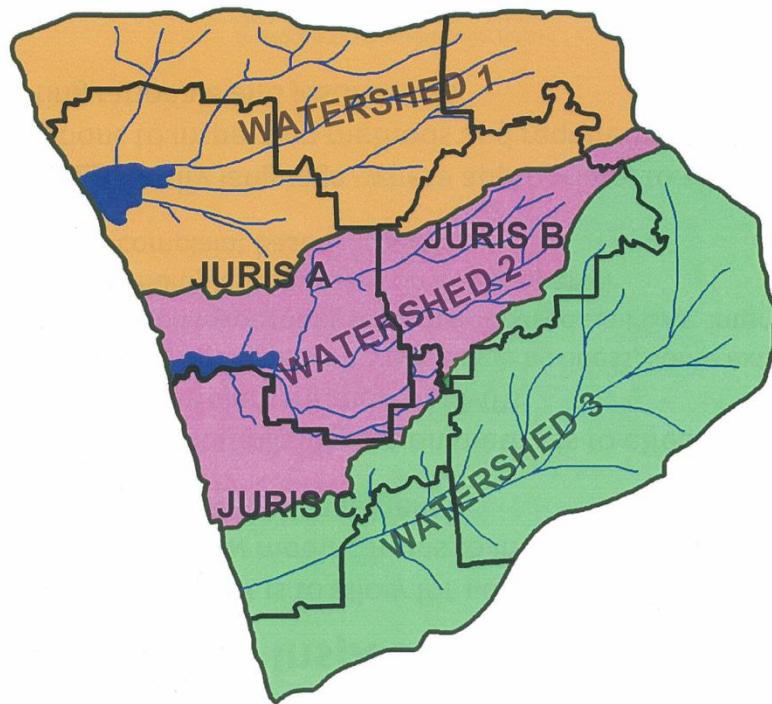
Laurie Walsh (RWQCB) explained that one objective of the RWQCB is to work closer with the Copermittees, as they have tried to do with this permit process. The permit team met with various stakeholders to talk about things to improve in the stormwater program and to get feedback on key issues. The permit team then went back and wrote the administrative draft permit, trying to address all the key issues the stakeholders had identified, including flexibility to put resources where best suited. The RWQCB is now looking for action items similar to the handout provided by the San Diego Copermittees. Laurie led off with topic discussion question #5 from the June 20, 2012, San Diego Regional Water Quality Control Board (SD RWQCB) Notice: "How can the proposed provisions of the administrative draft permit be modified to support a Copermittee's ability to plan and/or procure resources for its jurisdictional runoff management program?"

Jill Witkowski (SD Coastkeeper) said one of the things unclear with how Water Quality Improvement Plans work together with JRMPs is how the priority setting at the watershed level, with numeric targets and strategies, gets implemented at each jurisdiction to achieve the targets. It is unclear who is responsible for making sure goals in the Water Quality Improvement Plans actually happen and everyone participates in the improvement together.

Jon Van Rhyn (County of San Diego) responded that the big issue has been to maintain separation of group versus individual responsibilities. The general understanding is there may be some things committed to in a group setting, but in the end there will still be multiple Copermittees in a watershed that will have their own stand alone plans to follow through and implement.

Ziad Mazboudi (City of San Juan Capistrano) said that every Copermittee will make sure they are working under the umbrella of the Water Quality Improvement Plans; however, there may be a jurisdiction where a particular pollutant is not an issue. In that case, the jurisdiction would document it, present it, and move to the next prioritized pollutant in the plan. The ultimate enforcement will have to be from the RWQCB.

Elaine Lukey (City of Carlsbad) directed everyone to slide 7 of the San Diego Copermittees' handout.. For illustrative purposes, the graphic is provided below.



The colored areas are the watersheds; the black lines are the jurisdictional boundaries. The blue lines are receiving waters.

Elaine Lukey (City of Carlsbad) provided an example where Watershed 2 (pink) has bacteria as the top priority but the portion of Jurisdiction C that is in Watershed 2 doesn't have any identified sources of bacteria at the watershed scale. In that case, Jurisdiction C

could address their priority in Watershed 3 (green), doing more intense work in Watershed 3 (green) than in Watershed 2 (pink).

Mikhail Ogawa (City of Del Mar) provided another example where Watershed 2 may have bacteria as a group priority, but Jurisdiction C may decide with rationale and justification that they will focus on nutrients because receiving water in Watershed 2 in Jurisdiction C is impaired for nutrients. The San Diego Copermittees are hoping the RWQCB will look at these not only as individual watersheds, but also look across watersheds and across jurisdictions to get the entire picture.

Wayne Chiu (RWQCB) acknowledged that a very important aspect of this permit is RWQCB oversight. The RWQCB is ultimately responsible for making sure Copermittees are implementing the plans, but they also have to take into consideration that priorities may force them to focus on one watershed over another one as each Copermittee has different circumstances and different priorities because of watershed areas. This permit requires a lot of involvement by RWQCB staff to understand those intricate details. The streamlined reporting in this permit means the RWQCB staff is looking at fewer plans but with more details.

Nancy Palmer (City of Laguna Niguel) shared that South Orange County has been using some of its Integrated Regional Water Management (IRWM) money to develop regional action projects. To do so, they had to find contracting entities under the IRWM that crossed the boundaries; e.g., the Municipal Water District of Orange County is administering a grant for smart landscaping improvements. All the cities in South Orange County have a piece of that pie, but it is administered through a different agency by a grant opportunity. This is an example of an inter-jurisdictional project that is being managed by an identified entity. There are, however, certain projects that become orphans because they are inter-jurisdictional, highly complex, difficult to move forward, or extremely expensive. In the current administrative draft of the permit, there are requirements that regional BMPs are acceptable so long as the BMP is built during the first phase of the project. That does not typically work. It is, however, common in the community development field that for community parks a certain amount of park in lieu fees are collected during the development process and when a certain percentage of buildout is reached, the park is then built using those fees. Nancy suggests those clauses in the administrative draft permit be re-thought.

Colin Kelly (OC Coastkeeper) countered Nancy's argument stating that there have been severe deficiencies with programs that allow BMPs to be developed toward the end of large projects. Especially with the bad economy, some developments have ended up with no BMPs or orphaned BMPs. Colin acknowledged, however, that there are development differences across the jurisdictions and watersheds; some jurisdictions still have high demand for new development so those developments are completed, while other jurisdictions have several developments that have been halted due to low demand and the economy.

Laurie Walsh (RWQCB) informed the group that this topic will be discussed at a future focused meeting and again encouraged stakeholders to submit permit language suggestions.

Jill Witkowski (SD Coastkeeper) asked for more information on how to review the Water Quality Improvement Plans together with the JRMPs. The public needs adequate time to review the reports altogether to check for orphan priorities. Then there needs to be time and a process to resolve conflicts between jurisdictions. Laurie Walsh (RWQCB) said they are interested in hearing more ideas on timing for the public vetting process. Wayne Chiu (RWQCB) explained that orphaned priorities, conflicts between jurisdictions, and other issues would come to light with the audits of the jurisdictions' programs.

Wayne Chiu (RWQCB) explained that they tried to incorporate into the permit a concept of individual jurisdictional accountability as much as possible. There is the Water Quality Improvement Plan that ties jurisdictions together; however, each jurisdiction will be reviewed based on its own merits and own implementation of its portion of achieving the objectives of the Water Quality Improvement Plan. This will require RWQCB staff to look at programs on an individual and watershed scale.

Drew Kleis (City of San Diego) said the Copermittees are very focused on having individual measurability and responsibility. The numeric targets may be set for each Copermittee and that becomes their piece of the pie in addressing implementation of the Water Quality Improvement Plans. Subchapters in and attachments to the Water Quality Improvement Plans will clearly state what each jurisdiction's commitments are. It will be critical to look across watersheds to understand jurisdictional commitments.

Grant Sharp (County of Orange), as someone who helps put together a JRMP for a Copermittee subject to multiple MS4 permits, is highly interested in how the JRMP relates to the Water Quality Improvement Plan. Grant shared that the County of Orange is subject to two separate Phase I MS4 Permits, but the County does not prepare a separate JRMP for each permit. The County prepares one JRMP that covers both permits. The JRMP should document everything being done within the jurisdictional boundaries; it should be a clearinghouse for data; it should be a document that states who, what, and how things are going to be done from the priorities within the Water Quality Improvement Plans. The priorities of the Water Quality Improvement Plans do not need to be reiterated in the JRMPs, just referenced so that the JRMP does not have to be revised every time the WQIP is revised.

Wayne Chiu (RWQCB) explained that the JRMPs establish the programs and lay out who is responsible for doing what within the jurisdiction or each component within the permit. This administrative draft permit has removed some specifics of how often, what frequency of inspections are required to allow discretion by the Copermittee in terms of inspections and enforcement. All actions must still work towards meeting the three basic requirements/objectives of the permit. The RWQCB wants to see outcomes from the Copermittees' actions, whether they are successes or failures. If they are failure, then Copermittees are expected to figure out why their actions failed and revise their plans.

Todd Snyder (County of San Diego) agreed that it is important to see the JRMP to understand how things are being prioritized for jurisdictions in multiple watersheds. This is especially significant to the discussion of phasing plan submittal. To understand commitments in Water Quality Improvement Plans, one needs to understand commitments

at jurisdictional levels (JRMPs). It is unclear how a phased plan submittal process for public review would accommodate this issue.

Chris Crompton (County of Orange) questioned why Section B and Section F are separated in the administrative draft permit. The draft permit seems to have conflicting language about whether the plans are expected to be revised annually or only once every three years. He recommended aligning the JRMP and Water Quality Improvement Plan sections, keeping Sections B, F, and E (TMDLs) closer together either as sequential sections or a combined section.

Jon Van Rhyn (County of San Diego) believes that structurally one of the hardest issues to address in this permit is the annual reporting. Copermittees have to document watershed and jurisdictional commitments, then generate annual reports. Jon does not believe the administrative draft permit fully anticipates all the issues implied in getting through these multiple plans and reports. The San Diego Copermittees, Orange County Copermittees, and SD Coastkeeper volunteered to develop suggested language to address these issues.

Jon Van Rhyn (County of San Diego) appreciated that the RWQCB has taken steps toward streamlined reporting; however, when reporting is too streamlined, it makes it difficult to maintain transparency. In addition, in the administrative draft permit, it appears that JRMP annual reports continue until watershed reports start (Attachment D), but it is unclear as to what happens with JRMP reports after that.

Wayne Chiu (RWQCB) acknowledged Jon's comments and said perhaps having reporting components in one section would be more helpful. With regard to streamlined reporting, the administrative draft permit does focus more on reports on the watershed level than the jurisdictional level. The RWQCB plans to review the jurisdictional level more through audits and working closer with Copermittees. The RWQCB understands that the transparency allowed through streamlined reporting is not fully fleshed out. Wayne continued that the concept behind the regional clearinghouse was to provide documentation and thus transparency to the public. The regional clearinghouse at this time is primarily focused on monitoring data, not inspection or activity data, but that is an area where the RWQCB is open to suggestions. Jon Van Rhyn (County of San Diego) suggested working with the environmental and development communities to develop ways to include things in the clearinghouse that show transparency and robust programs.

Jill Witkowski (SD Coastkeeper) admitted the two-page jurisdictional annual report is a bit terrifying because very little information is provided compared to previous reports. The two-page format does not reflect the work being done. Jill would prefer to see a dashboard-type setup that shows progress bars toward achieving goals; something that is a meaningful summary that still touts the work being done.

Chris Crompton (County of Orange) is also concerned with such a short report as Copermittees ultimately have to defend their programs through audits. Having a thicker report with more information greatly assists with collecting adequate data for such audits.

Wayne Chiu (RWQCB) and Eric Becker (RWQCB) acknowledged the stakeholders' concerns. They explained the Copermittees would still need to maintain the data to support their reports. The RWQCB is open to making the jurisdictional reports a two-page minimum,

allowing the Copermittees to provide additional pages for sufficient information to annually describe their programs and efforts.

## VI. Adaptive Management Areas of Permit

Laurie Walsh (RWQCB) stated the administrative draft permit includes some areas for adaptive management. The RWQCB would like to see if those sections are well-received by the stakeholders or if there are other areas to add adaptive management within the permit.

Thom Spanos (SD Coastkeeper) voiced Coastkeeper's support for adaptive management. He specifically highlighted the adaptive management in the JRMP Section of the administrative draft permit where it states that Copermittees are to look at all available data. Thom asked of the Copermittees what SD Coastkeeper and other NGOs could do to make their data useful to the Copermittees.

Drew Kleis (City of San Diego) replied that the Water Quality Improvement Plans and JRMPs first need to be developed so that the Copermittees understand the questions or issues they are to address with the monitoring data. For the data to be useful, they will need to answer a question or issue identified in the Water Quality improvement Plans or JRMPs. Jon Van Rhyn (County of San Diego) noted that the San Diego Copermittees have used SD Coastkeeper's and other NGO's monitoring data in the past. Elaine Lukey (City of Carlsbad) noted that the data need to be strategic, fit into the Water Quality Improvement Plan, be collected in a manner that follows standard protocol, and analyzed in a certified laboratory. Elaine also noted that the Copermittees' stormwater hotlines are always open to receiving notice from NGOs and the public of any observed pollutant generating activities (PGAs).

Regarding the adaptive management areas of the permit, Mikhail Ogawa (City of Del Mar) referred to slide 5 of the San Diego Copermittees' handout. For the San Diego Copermittees, it is unclear in the administrative draft permit what is or is not up for adaptive management. The San Diego Copermittees provided examples of adaptive management based on their understanding of the administrative draft permit, including geographic adjustments, level of effort adjustments within a permit component, method adjustments within a permit component, and level of effort adjustments across permit components. San Diego Copermittees suggested inserting language in Section II.B.5 to clarify what sections of the permit "shall be considered, as appropriate," by each Copermittee for adaptation.

Wayne Chiu (RWQCB) clarified that everything within the Water Quality Improvement Plans is up for adaptation. How the jurisdictional programs are implemented can be adapted through what is discovered in implementing the Water Quality Improvement Plans. For example, the numeric action levels for non-stormwater are based on the water quality objectives. While there is a set of numeric action levels that must be included, that does not mean that all those numeric action levels must be used during implementation of the plan; resources, including monitoring data analysis, can be prioritized on specific pollutants with numeric action levels. Other examples include the LID and hydromodification requirements. The requirements must be in the permit even though meeting those requirements onsite may be a challenge. The performance standards should be used to drive the way the

programs are implemented; such that the programs achieve the goals of those standards through alternate methods (e.g., offsite projects, regional BMP projects, etc.).

Bryn Evans (Industrial Environmental Association) supports the described level of adaptation for the Copermittees. The required monitoring and inspections for industrial sites through other NPDES permits may come into play with adaptive management.

Mike McSweeney (BIA) expressed frustration with the time constraints of the focused meetings and written comment period. The BIA is feeling time-pressured to digest what has been proposed, talk it through with other stakeholders, and provide quality feedback.

David Barker (RWQCB) explained that the focused meetings are a vetting process for the administrative draft permit. There have been four day-long meetings scheduled and dedicated to discussing key issues, along with a five-month schedule for receiving written comments on the administrative draft. After the administrative draft process, there will be another review period for the draft permit, including public hearings and the opportunity for submitting more written comments.

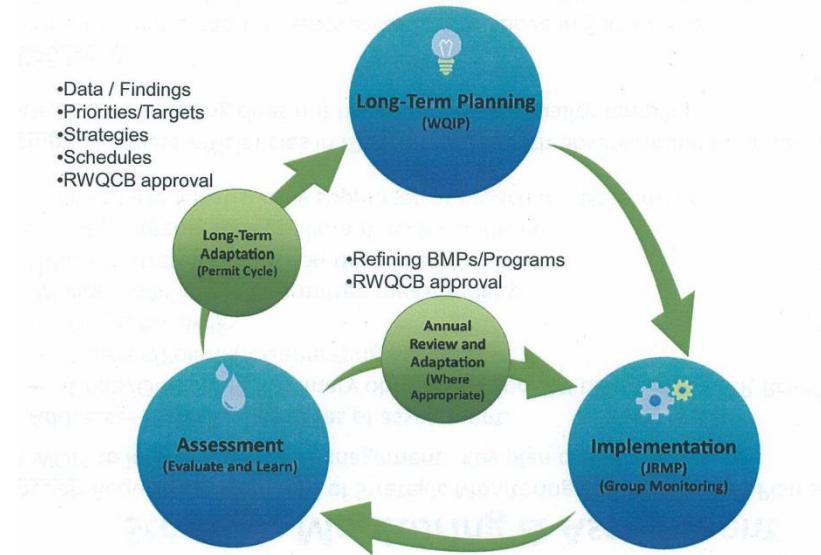
Colin Kelly (OC Coastkeeper) feels there is ample time provided in this permit development process. Jill Witkowski (SD Coastkeeper) concurred with Colin. Elaine Lukey (City of Carlsbad) shared appreciation for the process and the time given in development of this permit.

Jill Witkowski (SD Coastkeeper) referenced Section B.5.a.1.(h) (page 20) of the administrative draft permit where it says public comment will be solicited for the Water Quality Improvement Plans and asked how that will look and at what point public participation will be invited. She also asked how that will dove-tail with the annual reports, as the permit language is vague on the issue. Jill encouraged early, informed public participation for the best results.

Jon Van Rhyn (County of San Diego) admitted it is unknown at this point how the public participation process will work; however, it will be set up during the planning process; therefore, it is critical that the public is part of the development of the plan. Jill Witkowski (SD Coastkeeper) agreed and would appreciate public involvement early in the process.

Elaine Lukey (City of Carlsbad) stated that some areas of the permit dictate that Copermittees must do X, Y, and Z. She suggested adding the language “for the priorities that fit with the watershed” to those required activities.

Chris Crompton (County of Orange) shared in his experience that changes and adaptation are inherently a slow-moving process. Wayne Chiu (RWQCB) explained that the RWQCB is not expecting adaptation every six months or every year. Some issues may not yield significant results even on the 5-year basis. Chris Crompton (County of Orange) agreed that there should be minor course corrections on an annual basis. Todd Snyder (County of San Diego) referred to the San Diego Copermittees’ handout (see graphic below), explaining the mid-course corrections will be the smaller loop and will be minor changes; the overall or big-picture questions and adaptations will be the outer loop on a 5-year or longer term.



Jon Van Rhyn (County of San Diego) described the differences between program modification and adaptive management. Program modification happens every now and then and is unpredictable. Adaptive management is more defined; it is question-driven. Adaptive management uses questions to direct program modifications; therefore, the questions being asked need to be understood at the beginning of the adaptive management process.

Wayne Chiu (RWQCB) asked the stakeholders how they learn best, where they learn best, and how does the RWQCB put that into the permit. Jon Van Rhyn (County of San Diego) explained that looking back to learn works well only if the plan is well thought out in the beginning. Jon emphasized beginning with a truly robust and comprehensive planning process is important.

Todd Snyder (County of San Diego) referenced slide 10 of the San Diego Copermittees' handout, suggesting development of a Strategic Monitoring and Assessment Plan as part of the Water Quality Improvement Plan to inform adaptive management. This is expected to be discussed in more detail at the next focused meeting; however, Todd recommended the RWQCB provide an opportunity for the San Diego Copermittees to walk through the Strategic Monitoring and Assessment Plan to provide an adequate description before opening up the discussion to questions and answers.

Ziad Mazboudi (City of San Juan Capistrano) provided an example of how the City learned to adjust its program with regard to over irrigation. The City worked with water districts, educated the public, and provided rebates for smart timers instead of attempting to write enforcement tickets for each violation of over irrigation. This was a change in tactic that resulted in the same goal being achieved.

## VII. Other Topics

There were some topics raised during the focused meeting that were not within the scope of the meeting but should be discussed at more appropriate times. These included:

- CalGreen / Hydromodification Dedicated Meeting
- Legal Issues
- Aliso Creek / specific areas of geography
- Ninth Circuit Court Decision
- BET and Other Technologies
- Regional BMP Funding and Implementation
- Review time for permit
- Monitoring Presentation by San Diego County Copermittees

**VIII. Audience Comments**

Comment: Cid Tesoro (County of San Diego), in reference to the proposed meeting, workshop, or symposium focused on hydromodification, recommended also including the full Land Development portion of the permit.

Question: Khosro Aminpour (City of Chula Vista) asked how anti-backsliding works in the realm of adaptive management; will the anti-backsliding policy prevent Copermittees from eliminating inefficient program elements?

Response: David Barker (RWQCB) explained that the anti-backsliding provisions are addressed in the NPDES permit regulations and are usually used in the context of preventing backsliding (relaxation) of numeric effluent limitations. David indicated that RWQCB staff are not prepared to conclude during these focused meetings whether any specific permit requirement is, or is not, subject to the anti-backsliding policy. Therefore, all issues should be open for discussion and we should not let anti-backsliding considerations take issues off the table at this point. Legal determinations will be made at a later date. It is a complicated regulation, but it would not prevent programmatic changes. Cindy Lin (US EPA) concurred.

**IX. Meeting Adjourned**

# San Diego RWQCB Permit Reissuance Focused Meeting

July 11, 2012

# **WQIP and JRMP Approval Process**

## **Discharge Prohibitions**

- Change “prohibit non-storm water discharges from MS4” to “effectively prohibit ...”

## **Iterative Process**

- Include reference to A.4. in sections A.1, A.2, and A.3 to define compliance through the iterative process. Explicit language is needed in light of 9<sup>th</sup> Circuit Court’s finding of the separate enforceability of these provisions.

# WQIP and JRMP Approval Process

**Concept:** The intent of the Permit is for dischargers to submit WQIP and JRMP updates for approval. Compliance is achieved through the submittal, implementation, and update of approved plans. Jurisdictional accountability comes from review and approval of jurisdictional commitments.

## **Examples:**

- If there are 6 dischargers in one WMA, and 5 dischargers' commitments are approved when the WQIP is submitted, any re-submittals need to focus on individual dischargers, not the entire watershed.
- There appears to be no approval process for the JRMP update in year 1 of the permit.
- There is no timeline for approval of annual updates in years 2, 3, 4, 5.
- From previous workshops, “Numeric Targets” are not enforceable.

## **Action Items:**

1. Insert language clarifying identification of individual jurisdictional commitments in WQIP, and insert language clarifying RWQCB approval of individual jurisdictional commitments.
2. Add language to include RWQCB approval timeline for JRMP updates in year 1.
3. Add language in II.F. stating there is a specific (e.g., 90-day) RWQCB approval timeline for annual updates in years 2, 3, 4, 5.
4. Add language to permit, not fact sheet, about non-enforceability of Numeric Targets

# WQIP and JRMP Approval Process

**Concept:** WQBELs in TMDLs are currently expressed as either:

- a) Achievement of receiving water limitations, or
- b) Achievement of a receiving water limitation applied at the MS4 outfall, and applied as a concentration instead of a load.

**Action Item:** Add other means of demonstrating compliance with WQBELs, for example:

- Load-based compliance with Waste Load Allocations
- Implementation of EO-approved TMDL compliance plan
- Compliance with exceedance limitations expressed as ‘days’ or ‘frequency’ (Bacteria TMDL for Beaches & Creeks)
- Other means of compliance identified in future TMDL language

# Adaptive Management Areas of Permit

**Concept:** The intent of the Permit is to allow for adaptation of Permit programs, strategies, and procedures to enable Copermittees to more effectively and efficiently achieve their goals. Modifications need not be additive. Modifications must be reasonably expected to result in equal or greater overall effectiveness. Modifications can include adjustments to level of effort or methods either geographically, across permit components, or within permit components.

## **Examples:**

- Geographic / Level of Effort Adjustment: Refer to Slides #6 and #7
- Within Permit Component / Level of Effort Adjustment: Modifying IDDE procedures in Section II.E.2.d. (less water quality sampling, more observations)
- Within Permit Component / Method Adjustment: Modifying inspection procedures in Section II.E.5.: Refer to Slide #8
- Across Permit Component / Level of Effort Adjustment: Reducing inspection frequencies in Section II.E.5., and increasing education activities in Section II.E.7.

**Action Item:** To make clear what is eligible for adaptation, insert language in Section II.B.5. (Adaptive Management Process) clarifying what sections of the Permit “shall be considered, as appropriate,” by each Copermittee for adaptation.

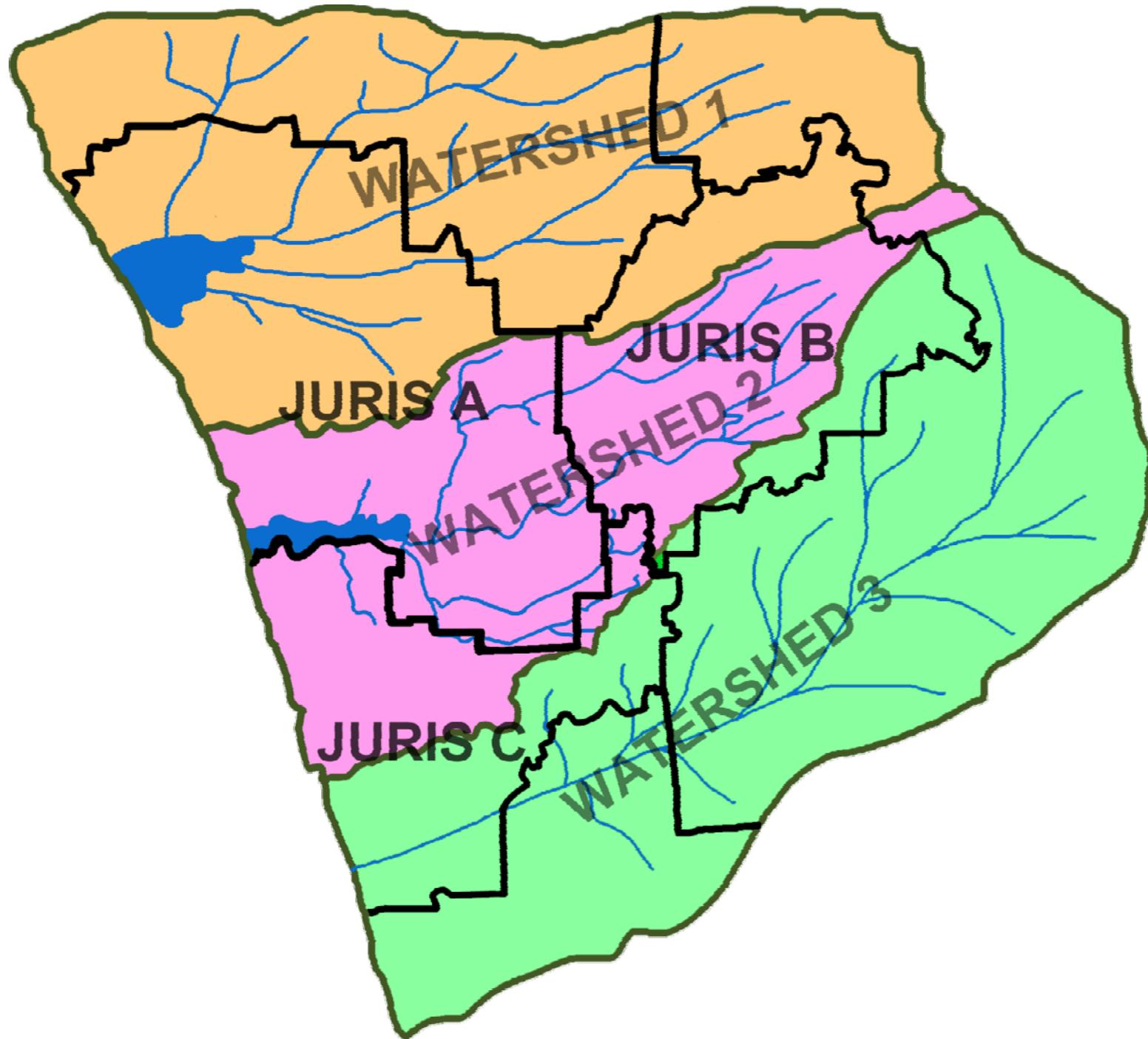
# Adaptive Management Areas of Permit: Residential Example

**Concept:** Permit intent is to allow for adaptation of:

- Residential inventory content
- Tools used to address Residential land use as source: O+E, IC/ID complaint response, inspections, street sweeping, MS4 cleaning
- Any other tools needed, providing that residential land use is a source of a WQIP priority

**Example:** If a Copermittee is in Watersheds 1 and 2 in the figure (slide 7), and residential land use is only a priority in Watershed 1, the Copermittee could conduct IC/ID complaint response in Watershed 2, and conduct any combination of other tools in Watershed 1 to address the priority.

**Action Item:** Clarify language, where appropriate, to allow modifications to inventories and control strategies with supporting rationale and justification.



# Adaptive Management Areas of Permit: Inspections

**Concept:** Permit intent is to allow for adaptation of Provision E requirements to allow modifications to inspection methodology as a result of adaptive management

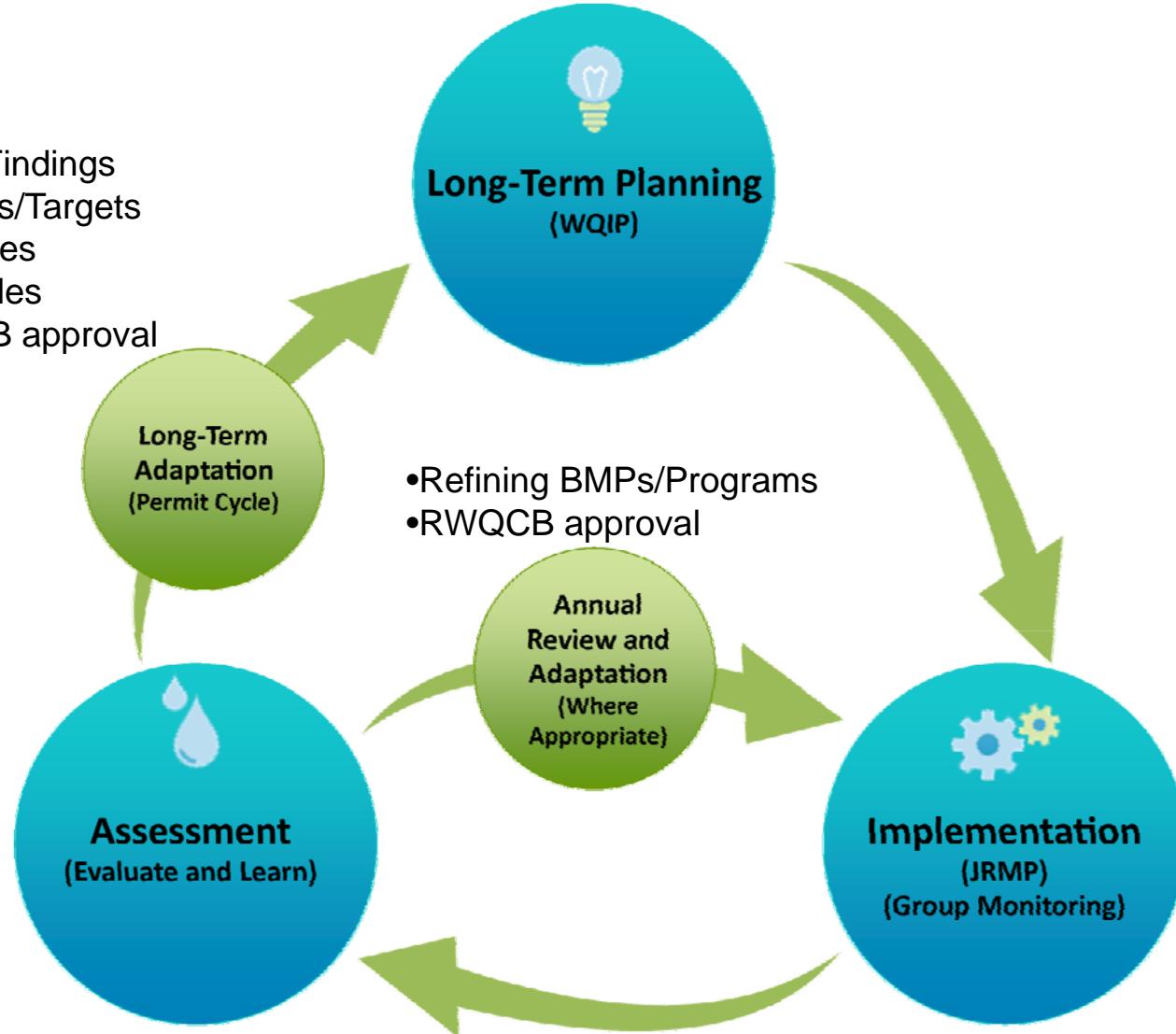
**Example:** Use of multiple inspection methods to effectively and efficiently verify implementation of BMPs

- “Traditional” Inspections (internal, single business, some external)
- Property-Based Inspections (external-focused on PGAs, internal if necessary, multiple-businesses on one property)
- Patrols or complaint based inspections

**Action Item:** Clarify language, where appropriate, to allow modifications to inspection methods and requirements with supporting rationale and justification

# Adaptive Management Areas of Permit: Long-Term vs. Annual Processes

- Data / Findings
- Priorities/Targets
- Strategies
- Schedules
- RWQCB approval



# Adaptive Management Areas of Permit: Strategic Monitoring & Assessment

**Concept:** Require development of Strategic Monitoring and Assessment Plan as part of the WQIP to inform adaptive management. Key plan characteristics:

- Addresses the following areas of assessment:
  - Goals/Outcomes/3 primary objectives (Non-SW discharges, MEP, Rcvg Wtrs)
  - Sources/Pollutant Generating Activities
  - Programs/BMPs
- Provides individual Copermittee measurability
- Utilizes a strategic, question-driven approach
- Prioritizes (geographic, pollutant, water body, etc.)
- Ability to use a statistically supported approach for assessment

**Example:** Increase efficiencies in IDDE Programs with observational methods (or other strategies); monitoring does not have to be water quality sampling

## **Action Items:**

- Structure initial requirements according to above in Section II.D.
- Adjust language in Section II.B. to require a strategic monitoring and assessment plan as a part of the WQIPs.