

California Regional Water Quality Control Board, San Diego Region

Regional MS4 Permit Focused Meeting

Meeting Notes

Date	Location	Agenda Topics
10/24/2012 Start time: 9:30 AM End time: 2:40 PM	City of Vista Community Room 200 Civic Center Drive Vista, CA 92084	• Introductions • Announcements / Acknowledgements • Meeting Recap / Feedback / Ground Rules • Public Draft Process • Discharge Prohibitions and Limitations • Development Standards / Existing Development • TMDL Implementation • Monitoring • Other Topics and Questions • Closing

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 allowed): Todd Snyder (County of San Diego), Elaine Lukey (City of Carlsbad), Mikhail Ogawa (City of Del Mar), Heather Stroud (City of San Diego), Jon Van Rhyn (County of San Diego), Sumer Hasenin* (City of San Diego), Julie Procopio* (City of Santee), Christine Sloan* (County of San Diego), Billy Walker* (City of Oceanside), Allison Witheridge* (City of Oceanside), Jo Ann Weber* (County of San Diego), Karen Holman* (Port of San Diego), Paul Hartman* (City of Vista), Andre Sonksen* (City of San Diego) **Indicates representatives rotated during the meeting.*

Orange County Copermittees (5 allowed): Grant Sharp (Orange County Flood Control District), Richard Boon (County of Orange), Ziad Mazboudi (City of San Juan Capistrano), Brad Fowler (City of Dana Point)

Riverside County Copermittees (3 allowed): Claudio Padres (Riverside County Flood Control District), Aldo Licitra (City of Temecula), Mike Shetler (County of Riverside, Board of Supervisors)

Environmental Community (3 allowed): Sara Rogers (San Diego Coastkeeper), Roger Butow (Clean Water Now! Coalition), Mike Beanan (South Laguna Civic Association and

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Laguna Bluebelt), Nick Doenges* (San Diego Coastkeeper), David Vincent* (San Diego Coastkeeper) **Indicates representatives rotated during the meeting.*

Development/Business Community (3 allowed): Dennis Bowling (American Public Works Association (APWA)), Bryn Evans (Industrial Environmental Association(IEA)), Mike McSweeney (Building Industry Association (BIA)), Tory Walker* (BIA/Vista Chamber of Commerce), Wayne Rosenbaum* (BIA), Mark Grey* (BIA-Southern California / Construction Industry Coalition on Water Quality (CICWQ)) **Indicates representatives rotated during the meeting.*

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

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

II. Announcements / Acknowledgements

The City of Vista was thanked for providing the room and snacks for the meeting. Mike McSweeney was thanked for providing the sound system and microphones.

Mike McSweeney (BIA) noted that it has been beneficial for all stakeholders to work together and learn together, which has been accomplished at the six focused meetings that have been held. RWQCB Staff has now essentially rewritten the entire permit and is only allowing for one focused meeting to interact directly with multiple stakeholders at one time. Mike appreciated that RWQCB Staff has been and is continuing to be open to meeting with stakeholders individually; however, it is more beneficial to everyone to have these group meetings. Mike submitted a letter to RWQCB Staff requesting push back of the draft permit release date and scheduling of another focused meeting prior to release of the draft permit. He expressed his disappointment that RWQCB Staff could not find a way to push back the release date and hold another focused meeting.

Richard Boon (County of Orange) shared that the final paper from the Hydromodification Workshop, authored by the expert panel, is now available. The paper was sent to the County of Orange, County of Riverside, County of San Diego, City of San Diego, and RWQCB Staff. The request was made for the paper to be added to the RWQCB website for the MS4 permit reissuance.

III. Meeting Recap / Feedback / Ground Rules

Lewis Michaelson (Facilitator) recognized the time and effort that all interested parties have put into the previous focused meetings. He also recognized there have been several other meetings held among stakeholders, by Copermitees, across counties, within counties, and with the San Diego Regional Water Quality Control Board (RWQCB) Staff.

Lewis Michaelson (Facilitator) reviewed the collaborative dialogue principles to be used during the focused meeting: everyone's perspective is valued; listen to understand, not to

debate; be hard on the issues but soft on the people; avoid right and wrong paradigms; ensure equal participation; and, what's past is past, focus on the future.

Lewis Michaelson (Facilitator) explained the purpose of the focused meeting is not to go line by line through the large permit. This is an opportunity for RWQCB Staff to explain the thinking behind what was or was not changed and help interested parties prepare for the upcoming formal workshop and public commenting process that will take place. RWQCB management decided that because of the many changes made to the first draft of the administrative permit, that stakeholders needed an opportunity with RWQCB Staff to understand the changes.

IV. Public Draft Process

David Barker (RWQCB) stated the purpose of the focused meeting today is to provide a forum to discuss the most recent version of the administrative draft permit, which was released by the RWQCB on October 12, 2012. This version of the administrative draft permit essentially contains all of the changes made by RWQCB Staff as a result of comments received at the various focused meetings and workshops held in the June through September time period, as well as the 31 comment letters received. All the comments were reviewed, closely considered, and resulted in significant changes to the administrative draft permit. The RWQCB released the October 12 version of the administrative draft permit in tracked changes format to facilitate review to easily see where change were and were not made. RWQCB Staff is here to give an overview of the changes made and to respond to any questions or comments on changes made.

Today's focused meeting will conclude the focused meetings on the administrative draft version of the permit. After today's meeting, RWQCB Staff will continue to make minor revisions to the administrative draft permit and will produce a fact sheet for the permit. The finalized draft permit will be referred to as the Tentative Order. The Tentative Order will be released for public review on October 31, 2012. This will begin the public comment period on the Tentative Order as required by the Code of Federal Regulations (CFR) and the State Water Code. The public notice of release of the Tentative Order for public review and comment will establish a deadline for submission of comments on the Tentative Order, the date for the public hearing, and procedures that the RWQCB will follow at the public hearing to consider adoption. The deadline for submission of comments is expected to be mid-January 2013. The public hearing to consider adoption of the Tentative Order will be in the March to April 2013 time period.

In addition to the required public review process and public hearing, a public workshop is planned for November 13, 2012 to provide the San Diego RWQCB Board Members with information about the Tentative Order and to facilitate discussion between the Board Members, RWQCB Staff, and interested persons on the Tentative Order. At this workshop, RWQCB Staff will explain the development process of the Tentative Order and summarize significant elements of the Tentative Order. Interested persons will also have the opportunity to provide comments to Board Members on any issue. Notice for this workshop

has already been posted and circulated. David Barker (RWQCB) indicated that this forum would be a good opportunity for Mike McSweeney (BIA) to present his request to the Board Members for additional focused meetings to be held; RWQCB Staff will not be scheduling any additional focused meetings prior to the November 13 workshop.

Richard Boon (County of Orange) asked if blocks of time would be allocated to the municipal programs at the November 13 workshop. David Barker (RWQCB) explained that some details of that were provided in the notice for the workshop. The workshop is being held at a regularly scheduled RWQCB Board Meeting, and the Board Members will have to carefully meter out the time to ensure everyone gets a chance to speak. Eric Becker (RWQCB) requested that if any stakeholders have a request for allotted time at the November 13 workshop, they should notify RWQCB Staff of their request with an estimated amount of time they would require. The RWQCB may or may not be able to accommodate requested estimated times; however, it would assist in planning for the workshop.

V. Discharge Prohibitions and Limitations

Laurie Walsh (RWQCB) recognized that this portion of the permit is a significant topic and that all stakeholders probably wanted more changes than were done. RWQCB Staff did make small changes in this section of the permit to try to address issues raised in the previous focused meetings and the written comments, including compliance issues. Laurie indicated that the San Diego RWQCB Staff is involved in the statewide effort regarding this section of the permit. RWQCB Executive Management has directed the permit writing team to be very involved in the State Water Resources Control Board (SWRCB) process by participating in the process and providing comments to the SWRCB. Should language be passed down from the SWRCB, RWQCB Staff did add reopener language in Provision H specific to the receiving water language in Provision A so that Provision A can be modified once direction is provided from the SWRCB.

Claudio Padres (County of Riverside) expressed appreciation for the update and asked if RWQCB Staff could provide an indication of where they stand on the issue at this time or any comments they expect to make to the SWRCB on the issue. David Barker (RWQCB) stated that RWQCB Staff is still formulating their comments and their position on the issue. He encouraged stakeholders to read the issue paper posted on the SWRCB website, which frames the issue and provides various alternatives to the receiving water limitations language. RWQCB Staff is reviewing that issue paper and evaluating the presented alternatives. San Diego RWQCB staff is also working with staff from other RWQCBs (Regions 2, 4, and 5) to form an RWQCB position on the issue.

Heather Stroud (City of San Diego) thanked the RWQCB for addressing this issue; however, the San Diego County Copermittees were disappointed to see the lack of changes made in Provision A. She stated that it is important to the San Diego County Copermittees to know what the compliance points are, and that the current administrative draft permit is disjointed. One part of the administrative draft permit has a robust, expensive, and resource intensive Water Quality Improvement Plan process, yet it is not connected to Copermittee

compliance. The San Diego County Copermittees believe this was a lost opportunity to get in front of the receiving water limitations issue and make this a comprehensive, cohesive permit. Heather also indicated that the San Diego County Copermittees will also be involved in the statewide process regarding this issue and look forward to working with the RWQCB.

Mikhail Ogawa (City of Del Mar) explained that many jurisdictions and their elected officials may struggle with the permit as it is written. The receiving waters limitation language is a significant issue. He reinforced Heather Stroud's indication that the San Diego County Copermittees will be involved in the statewide process on this issue. Mikhail urged RWQCB Staff to be open to making changes and, through further meetings with Copermittees, perhaps even supporting the Copermittees' point of view on this issue.

Wayne Chiu (RWQCB) stated that RWQCB Staff understands the concerns and issues that are involved with the Provision A language. RWQCB Staff has made some changes to try to provide a closer linkage between what the RWQCB would consider as compliance with those requirements. With the revisions, RWQCB Staff tried to include linkages in Provision A.4 as well as where the permit discusses iterative/adaptive management for the Water Quality Improvement Plans. RWQCB Staff, however, has been directed to hold off on making any significant changes to the other portions of Provision A because of the statewide effort on that language. For now, the language will remain as-is. If new language is provided by the SWRCB in the future, then changes to the permit may be made at that time. It is for that reason the reopener was included in Provision H of the administrative draft permit.

Wayne Chiu (RWQCB) continued that if Copermittees would like the RWQCB to support the Copermittees' position on the language, then the November 13 workshop is the appropriate time to make the case to the Board Members and that may inform how RWQCB Staff may approach the SWRCB with their position.

Claudio Padres (County of Riverside) noted that the recommendation from Wayne was to present opinions to influence Board Members at the November 13 workshop; however, November 13 is the cutoff for public comments for the SWRCB November 20 workshop on this issue. Claudio questioned if the RWQCBs had the same cutoff date to provide input. David Barker (RWQCB) responded that he is fairly certain the November 13 deadline for comments for the November 20 workshop is not being applied to input from the RWQCBs. David reminded the stakeholders that the November 20 workshop is just the start of the process to address this issue; there has not been a schedule posted or announced for a decision on the issue.

Heather Stroud (City of San Diego) expressed concern about potentially pasting language from the SWRCB into the permit when that language is provided and that it may result in something that does not make sense with the rest of the permit. As this permit is trying the new watershed-based approach, this may be an opportunity to support different language for revisions to the receiving water limitations language. The San Diego County Copermittees would be happy to work with the RWQCB as this continues.

Cindy Lin (Environmental Protection Agency (EPA)) explained that the EPA has been conferring with the SWRCB on these issues and four RWQCBs have been working with the SWRCB as well. As a result, there is definitely a recommendation that a singular version of

the language will not work for all permits. They are currently working on what would make sense for different RWQCBs. Regarding pasting in of SWRCB language, Cindy does not see that being the method for implementation of the SWRCB language. There is recognition at all levels that there will have to be an effort to figure out what will work for different areas. Cindy acknowledged that it is challenging at this point because the process is moving forward at different levels and all levels are trying to work within the law and interpret the law. Cindy recommended focusing at this time on other sections and including the reopener.

Richard Boon (County of Orange) stated that the discussion at this time is obviously based on the Ninth Circuit Court decision. He raised the issue that there is a piece of the decision that is not being addressed, and that issue is being heard by the United States Supreme Court on December 4. The U.S. Supreme Court will be hearing arguments on whether, in the Los Angeles River, the passage of water from modified segments to natural segments back to modified segments constitutes a discharge under the Clean Water Act (CWA). Richard questioned if the SWRCB and RWQCBs are tuned in to that decision, which is potentially profound for the stormwater mandate. He asked if there is a contingency if the whole framework disintegrates.

David Barker (RWQCB) agreed that the discussion has been centering in on the receiving water limitations language and has not included the issue raised by Richard. David is familiar with the part that was appealed to the U.S. Supreme Court, but that has not been brought up in conversations with other RWQCBs. David will find out more about that issue and communicate his findings to the interested parties.

Wayne Chiu (RWQCB) also mentioned RWQCB Staff is currently working on the Fact Sheet to go along with the Tentative Order. The Fact Sheet will have a fairly lengthy discussion about Provision A requirements and also include at least how the RWQCB might interpret compliance with the requirements of Provision A through the development and implementation of the Water Quality Improvement Plans. The Fact Sheet will include explanation from the RWQCB's perspective as to how the RWQCB would enforce the requirements of Provision A. The Fact Sheet is one area where the RWQCB can provide more clarity as to how they might interpret some of the requirements. Inclusion of this information in the Fact Sheet does not protect Copermittees from third party liability, but it does at least provide clarity as to how the RWQCB is viewing the requirements.

Todd Snyder (County of San Diego) summarized that the discussion has been about what is required by law versus what is included by policy decisions. His understanding is that some of the causing and contributing language was put into the permit at the discretion of the RWQCB. The Ninth Circuit Court has interpreted that language literally. Todd questioned if there is anything in the law that requires those provisions to be included in Provision A.

Wayne Chiu (RWQCB) responded that the State Water Code does include the cause and contribute language.

Cindy Lin (EPA) added that the language is reflected in the CWA. She supposed that Todd was referring to the SWRCB 99-05 guidance which includes an interpretation of the receiving water limits. The EPA supports that language very strongly as a correct interpretation of the CWA.

Heather Stroud (City of San Diego) clarified that the RWQCB and SWRCB does have discretion to require strict compliance with the receiving water limitations or not. It is a policy issue, not a legal issue. The SWRCB may decide that is what they want, but they need to understand the legal implication of that decision is that the Copermittees are in immediate noncompliance with regard to receiving water limitations.

Wayne Chiu (RWQCB) agreed with Heather's statement. The Copermittees are in immediate noncompliance; however, it is at the discretion of the RWQCB not to enforce that requirement at this time. He suggested the RWQCB may be able to provide some language that would allow the RWQCB to make the determination that Copermittees are implementing programs or actions to try to achieve compliance.

Cindy Lin (EPA) explained that EPA's position is that the goal is to ensure protection of water quality in the waterbody. There is room for interpretation of where that waterbody is. The EPA's interpretation is that the waterbody is the receiving water. Another interpretation is it could be at the outfall. This interpretation has significant impacts to stormwater permits. Cindy encouraged stakeholders to recognize the efforts at the State and Federal level that are attempting to move forward on this issue. Until the EPA or SWRCB develops a policy decision on the issue, it is difficult to move forward.

Ziad Mazboudi (City of San Juan Capistrano) requested clarification as this permit defines the MS4 outfall as the point of compliance, as well as the receiving water body.

Cindy Lin (EPA) responded in agreement, with the MS4 outfall being a point of compliance with regard to WQBELs and the receiving water body subject to receiving water limitations.

Lewis Michaelson (Facilitator) summarized there has been a lot of discussion on what constitutes compliance. The point of this new permit is not to make everyone in compliance by definition; the point is to provide a means to come into compliance with implementation. It seems there needs to be discussions at the State and EPA level before the RWQCB can make changes; therefore, it sounds like there are policymakers, not RWQCB Staff, who need to be approached and influenced.

Richard Boon (County of Orange) appreciated the efforts from the RWQCB. He recommended holding up the Water Quality Improvement Plans as the model for bringing the rigors of the iterative process as the compliance measure. He expects the RWQCB Board Members will hear encouragement from the Orange County Copermittees at the November 13 Workshop to have the iterative process as the compliance point.

Richard Boon (County of Orange) shared that the U.S. EPA did issue the Washington, D.C. permit without receiving water limitations language; therefore, it is a policy issue and not a legal requirement from the CWA.

VI. Development Standards / Existing Development

Wayne Chiu (RWQCB) explained that these sections are where there were fairly significant changes made. The changes were made as a result of what was heard during the focused meetings as well as meetings with individual groups, including the BIA, the San Diego County Copermittees' Land Development Workgroup, the County of Orange, and

others. There were different ideas presented during the meetings and provided in the written comments. The ideas did not line up exactly; therefore, the RWQCB attempted to find the middle ground to include a little bit of everyone's input. The RWQCB strived to take into consideration all the comments and express through the new requirements what they heard.

Wayne Chiu (RWQCB) continued that with development planning requirements, there were significant changes made in terms of how the structural BMP control requirements were shaped. The basic performance requirements are still there; they were not changed. As stated several time before, the issue is not changing the performance requirements; it is changing how those requirements are used and how they are implemented by projects. RWQCB Staff removed the entire concept of technical infeasibility, making the permit language based on what achieves the most water quality benefit through project implementation. As requested by many stakeholders, RWQCB Staff did include tiers and expanded alternative compliance options. RWQCB Staff also provided some exemptions from Priority Development Projects (PDPs), especially for Single Family Residences (SFRs), and included language to promote the concept of Green Streets. RWQCB Staff was not able to fully incorporate everyone's comments, but did incorporate most of the significant items that were suggested.

Wayne Chiu (RWQCB) continued that the existing development section was re-shaped. RWQCB Staff separated out residential areas and requirements and also changed the terms of how inspections might be done. While inspections are still required within the permit term for everything in a Copermittee's inventory, there are now options provided for completing those inspections. RWQCB Staff also included ways for the environmental community to become involved with helping Copermittees and performing some inspections. Overall, RWQCB Staff made significant changes that addressed most of the feedback and comments received.

Wayne Chiu (RWQCB) explained that the revised administrative draft permit also provides links between requirements of the Water Quality Improvement Plans and the program elements required for the jurisdictional programs. While there may still be questions about how things may be shaped between the Water Quality Improvement Plans and Jurisdictional Runoff Management Plans (JRMPS), the revised administrative draft permit provides more clear guidance and expectations. Wayne explained that, in general, RWQCB Staff expects in the Water Quality Improvement Plans the Copermittees would lay out the suite or menu of strategies they might implement within their jurisdiction that would not necessarily specify what each Copermittee must do, but may specify what strategies would be implemented under specific conditions. The Copermittees then would describe in the JRMPS the details of how and under what conditions they would implement those strategies. The Water Quality Improvement Plans are meant to be planning documents; the JRMPS are the implementation documents. Wayne Chiu (RWQCB) stated the Fact Sheet will include a better description about what the expectations are and how they would be incorporated within a Water Quality Improvement Plan versus the JRMPS and provide rationale for how the requirements are in the permit.

Wayne Chiu (RWQCB) noted that the concept of retrofitting and stream rehabilitation are now embedded within the jurisdictional program requirements, under alternative compliance options, and are strategies required under existing development requirements.

Claudio Padres (County of Riverside) asked for an example scenario or clarification of how the Water Quality Improvement Plans and the strategies within it would interplay with the elements of the permit required in the JRMPs. Specifically, how to handle the case where the Water Quality Improvement Plans do not include an element that is required in the JRMPs per the permit.

Wayne Chiu (RWQCB) responded that the Water Quality Improvement Plans have two sets of strategies required for inclusion: one is spelled out in the permit (the jurisdictional requirements); the other is for additional strategies outside the minimum jurisdictional requirements. For example, if Copermittees want to implement a program that is not within the jurisdictional requirements but several Copermittees could implement the program, then the program would be laid out in the Water Quality Improvement Plan and the JRMPs would speak to that additional strategy as a strategy that might be implemented in addition to the minimum requirements. The additional strategy can still be included in the JRMP, but it would be its own discrete description.

Claudio Padres (County of Riverside) requested further clarification that the strategies in the Water Quality Improvement Plans are above the minimum requirements in the JRMP sections of the permit. He proposed an example scenario where to address priorities for a watershed there was no need to do stream rehabilitations. In that scenario, he questioned if stream rehabilitation as described in the permit would have to be included in the Water Quality Improvement Plan for that watershed even if it is not needed to address priority issues.

Wayne Chiu (RWQCB) responded that there are always going to be opportunities for doing stream rehabilitation projects or identifying where stream rehabilitation could be implemented. Whether or not stream rehabilitation is immediately implemented is determined in the Water Quality Improvement Plans. The language in the permit regarding stream rehabilitation states that Copermittees must identify areas where rehabilitation could take place and then determine, through the strategies in the Water Quality Improvement Plans, at what point the rehabilitation will occur. Wayne explained that a majority of the way RWQCB Staff laid out this section was inspired by the HMP Workshop. A primary take-away from the HMP Workshop was that everything that goes into the watershed has an impact on the watershed, and everything that goes into the watershed can have beneficial outcomes as a result of those projects. It is just a matter of finding where and at what point those opportunities can be implemented.

Christina Arias (RWQCB) explained that the section of the administrative draft permit covering land development has a range of options to reach the desired endpoint. The Copermittees are in the driver's seat. If it is easier or more effective to run a program where structural BMPs are required to be implemented on each and every PDP, following the strict letter of the law with design standards, then Copermittees can do that. The RWQCB, in

response to input from the building community and the Copermittees that site-by-site structural BMPs is not the best method, is trying to provide a range of options to reach the end goal.

Wayne Chiu (RWQCB) provided another possible scenario describing the link between the Water Quality Improvement Plans and the JRMPs. For example, nutrients may be a priority in a watershed. In the Water Quality Improvement Plan, pollutant generating activities (PGAs) that generate nutrients and discharge within the watershed would be identified. The menu or suite of options for addressing these PGAs may include the Illicit Connection / Illegal Discharge (IC/ID) program targeting these PGAs, a public education component targeting the audience linked to these PGAs, development planning including requirements for certain types of integrated pest management (IPM) to be implemented at certain types of facilities that conduct these PGAs, etc. Within the JRMPs, the jurisdictions would select activities from the menu or suite of options in the Water Quality Improvement Plan. They would be brought to the jurisdictional level by perhaps stating that more inspections would be conducted for certain PGAs, or increased public outreach would be focused on identified sources or audiences within the jurisdiction.

Lewis Michaelson (Facilitator) summarized that his understanding is the priorities in the Water Quality Improvement Plans do not release the Copermittees from the minimum JRMP requirements, but the administrative draft permit does give flexibility in application of resources. In the efficient application of resources, there are three levers that can be adjusted: timing, level of effort, and location. There seems to be room in the administrative draft permit for a strategic approach to the use of resources in achieving the permit objectives.

Sumer Hasenin (City of San Diego) noted that one area that has changed significantly from the previous draft is the hydromodification management BMP performance requirements exemptions. In the previous draft, there was an exemption for projects discharging directly to concrete-lined channels. That exemption was deleted in this latest draft. Per a phone discussion with Wayne Chiu (RWQCB), Wayne mentioned that the purpose of this is to support the holistic approach of evaluating and assessing the watershed, which would encourage stream restoration. Sumer stated that another take-away from the HMP Workshop was that site-by-site evaluation would never supply an adequate basis for hydromodification impacts; the watershed needs to be evaluated as a whole, looking at opportunities and constraints on a watershed basis. The administrative draft permit as written now, however, will require site-by-site evaluation by applying to every single project. Sumer understands that stream rehabilitation and channel restoration is encouraged, both under the alternative compliance and existing development sections of the permit, but site-by-site hydromodification management BMP requirements will not help.

Dennis Bowling (APWA) agreed with Sumer's comment. He served as chairman of the Hydromodification Plan (HMP) Technical Advisory Committee (TAC). The permit as currently written would throw out some of the exemptions provided in the current HMP. The HMP TAC worked very diligently on the HMP to determine where those HMP exemptions should

be. The Copermittees have not had an opportunity to implement the plan and should be given the opportunity to use that plan. Dennis would like to see language in the permit that includes exemptions developed as part of Hydromodification Plans.

Mark Grey (BIA) also agreed with Sumer's comment. More explanation is needed on how the link was made from hydromodification exemption to the Leadership in Energy and Environmental Design (LEED) program. Mark expressed concern with tying compliance requirements to certification programs that are more fluid and could have significant changes during the permit term. Mark does not support limiting compliance to one certification program.

Ziad Mazboudi (City of San Juan Capistrano) agreed with Mark regarding limiting compliance to one certification program. Ziad is a LEED professional but recognizes there are other certification programs available, and the language should be revised to provide for wider certification options.

Tory Walker (BIA/Vista Chamber of Commerce) noted that, related to this discussion, we, as a society, are moving toward integrated water resources management. There are several obstacles to this within the administrative draft permit with respect to stream rehabilitation and structural BMPs that are hydromodification facilities as opposed to water quality BMPs. In addition, there is a prohibition against structural BMPs within waters of the U.S. or waters of the State which does not make any distinction between a hydromodification facility or a water quality facility. Tory understands where this prohibition may be applied for water quality; however, hydromodification is relatively new to the permit. Tory believes there have been many opportunities lost to implement stream rehabilitation as a BMP in itself. When the permit states that structural BMPs must not be constructed within waters of the U.S. or waters of the State, there is a lost opportunity moving towards integrated water resources management. There needs to be some clarification.

Wayne Chiu (RWQCB) stated that RWQCB Staff did not expect everyone to be satisfied with all of the changes made to the administrative draft permit. He agreed with Sumer that things should not be done on a site-by-site basis to get the best result for the watershed. He learned from the HMP Workshop that things need to be viewed at a holistic level, on a watershed level. He also learned that everybody is responsible for taking care of something, whether they are at the top or the bottom of the watershed. Wayne continued that the changes have been made so that hydromodification requirements would apply to every project. This is based on the lessons learned from the HMP Workshop, where it was stated that every site should be responsible for mitigating for their hydromodification impacts. Those concrete-lined channels, however, will remain concrete-lined in perpetuity if discharges are continued to be allowed without mitigating for hydromodification. Hydromodification will have to be accounted for going forward on all projects; however, the administrative draft permit does provide an exemption for redevelopment projects that receive a LEED certification for credits under the sustainable sites category for surface water management. Including the LEED certification was inspired by a meeting with the San Diego Chapter of the U.S. Green Building Council (USGBC), made possible by a connection through

San Diego Coastkeeper. Through this meeting, RWQCB Staff was convinced that LEED certification assists in reaching the end goal and provides additional environmental benefits. With these revisions, RWQCB Staff was trying to provide incentives without fully removing the benefits that are achieved through performance requirements.

Wayne Chiu (RWQCB) responded to Dennis Bowling's comments regarding exemptions from the hydromodification management BMP performance requirements. Wayne understands that the San Diego HMP includes exemptions, but those have not been extended to Orange County. If data is provided in the future that would support those exemptions, then RWQCB Staff can include those as exemptions.

Julie Procopio (City of Santee) rebutted that the San Diego County Copermittees spend one million dollars to prepare their HMP. The HMP has been cited by the SWRCB, which was impressed with the work that was done. There was very rigorous scientific justification for each of the exemptions, including modeling and a great deal of calculations. Those exemptions were fully vetted in front of the RWQCB and the RWQCB chose to support the urban infill exemption. In exchange for that, the San Diego County Copermittees agreed to do additional monitoring. The San Diego County Copermittees are in the process of monitoring for those exemptions. To say that there is no data to support those exemptions does not reflect what the San Diego County Copermittees have done.

Sumer Hasenin (City of San Diego) explained that it is a 5-year monitoring plan with 10 locations that are being monitored for the infill exemption. The San Diego County Copermittees would like the opportunity to implement the HMP criteria that was adopted less than two years ago. They have an extensive and expensive monitoring plan from which they hope to learn when it concludes in 2016. At this point it would be more effective to continue down the existing path, including the HMP exemptions, until additional monitoring data is available and interpreted in 2016. The consequence of not including these exemptions is that hydromodification requirements would apply to every single PDP. This would impact the small projects and be an unfair application to make projects comply with the requirements when they are not making an impact.

Christine Sloan (County of San Diego) supported Sumer by stating that the San Diego County Copermittees have a one million dollar HMP and are now embarking on a 1.5 million dollar HMP Monitoring Plan, per the 2010 resolution. Development of the HMP included experts on the HMP TAC; therefore, the San Diego HMP is scientifically sound. With the new permit language, Christine questions how that affects the 2010 resolution and the monitoring currently being done.

Tory Walker (San Diego BIA) also served on the HMP TAC, along with expert Dr. Luis Parra, and he attended the HMP Workshop. At the HMP Workshop, he heard policy statements coming from the expert panel, but did not hear any consistency in the messages.

Ziad Mazboudi (City of San Juan Capistrano) revisited the concrete-line channel issue. If discharges go into a concrete-lined channel or pipe that discharges straight to the ocean, then there is no benefit to implementing hydromodification controls. By adding that additional cost of implementing hydromodification controls, it does not have a benefit or

impact downstream. It does not make sense. The City has no problem implementing controls that make sense, but this one does not.

Brad Fowler (City of Dana Point) supported Ziad's comment and added that it is difficult to explain to developers or homeowners how they are required to implement hydromodification BMPs when they do not have an impact. Hydromodification is an expensive endeavor for developers. Brad does not disagree with the concept that there are holistic reasons to contribute for improvements; however, there is a lack of nexus between whether a government agency may do a stream rehabilitation in the future and requiring a developer or homeowner to pay for it upfront. Projects will already retain water onsite through Low Impact Development (LID) practices; hydromodification will only increase that requirement. As the majority of projects at this point are expected to be infill projects, Brad expects that instead of getting the most reward for the amount of effort and funds required, all that will be achieved is a lot of upset project applicants.

Laurie Walsh (RWQCB) commented that at the HMP Workshop, which was presented to help RWQCB Staff understand hydromodification better through an expert panel discussion, RWQCB Staff understood clearly that even if discharges are at the bottom of the watershed and discharge to a concrete channel, there are benefits to be had elsewhere in the watershed. This was a big lesson learned from the HMP Workshop.

Sumer Hasenin (City of San Diego) appreciated the flexibility now included in the revised administrative draft permit for doing offsite mitigation and having options for alternative compliance. At the same time, however, the application of the hydromodification requirements should be looked at it in terms of reasonability. The San Diego County Copermittees support the overall idea of a watershed-based strategy but recommend re-evaluation of the hydromodification requirements. The purpose of the permit is the reduction of pollution and erosion. If projects are not causing an increase of erosion by discharging to a concrete channel, then they should not be required to implement hydromodification BMPs.

Grant Sharp (Orange County Flood Control District (OCFCD)) explained that, as he understands it, hydromodification is such an evolving science that each permit that gets adopted as evolving requirements with regard to hydromodification. At the HMP Workshop, the panel included experts from across the State, and everyone in attendance took slightly different messages away from that workshop. Some of the same panelists at that workshop, including Dr. Eric Stein, Chris Bowles, and Derik Booth, were also authors on a technical report on hydromodification assessment and management. That report was released last week and an SWRCB workshop is schedule for November 28 for the authors to present their findings and have discussion on how those findings could be used throughout the State. This seems to put the permit process in the same predicament as it has with Provision A language for receiving waters limitation. There is movement happening at the State level and there may be a recommendation coming out of the November 28 workshop. At this time, the Copermittees should not be locked into what is currently in the administrative draft permit. Grant hopes that the door will be left open to include recommendations that come from the State level.

Richard Boon (County of Orange) requested clarification on the PDP exemptions. It seems that certain categories of projects (retrofitting streets/roads, SFRs) are exempt so long as they comply with the basic performance standards being set for land development. This would mean that they are exempt only if they are complying with the requirements they are seeking to be exempt from.

Wayne Chiu (RWQCB) responded that those projects would be exempt from being a PDP, as long as they meet the performance requirements of a PDP. Other projects, even if they meet the basic performance standards of a PDP, would still be considered PDPs.

Sumer Hasenin (City of San Diego) supported Wayne's response. Per a phone conversation with Wayne, these potentially exempt projects are allowed to comply with the PDP performance requirements using other types of BMPs. The BMPs are a suite of BMPs that San Diego Copermittees suggested to the RWQCB. This provides relief for the SFRs as they can implement a suite of BMPs to meet the requirements to get equivalent pollutant removal. This also provides relief for the jurisdictions because they do not have to include those exempt projects in the PDP inventory.

Ziad Mazboudi (City of San Juan Capistrano) questioned if the BMPs being implemented by the SFRs to claim the exemption would require maintenance. He voiced concern that there needs to be a way to ensure maintenance is being done on the SFRs even if they are exempt from being PDPs. The point of inventorying, inspecting, and tracking is to ensure BMPs are maintained and remain effective. The point of not including SFRs in the inventory is because there is not much impact from an SFR itself.

Sumer Hasenin (City of San Diego) responded that they may require maintenance, but the Copermittees would not be required to track them. The applicants would be treated like standard projects are now, where they have to implement site design and minimum BMPs, but they would not be required to complete Water Quality Management Plans.

Wayne Chiu (RWQCB) recommended the existing development residential inspection program would cover ensuring maintenance of BMPs on SFRs. He also clarified that the SFRs would still have to deal with hydromodification.

Wayne (RWQCB) reminded the stakeholders that RWQCB Staff is explaining today how they developed the middle ground based on feedback received from all parties. The revised administrative draft permit provides a little bit of everyone's comments. If stakeholders would like additional revisions, then there is a public review comment process starting on October 31 through which additional comments can be made.

Christina Arias (RWQCB) stated that it would be helpful to review the technical report mentioned previously by Richard Boon, regarding hydromodification assessment and management. The framework is about approaching this on a watershed level. What is written in the revised administrative draft permit is an attempt to get at that approach. Christina looks forward to the comments from stakeholders on this issue during the public review comment process.

Jon Van Rhyn (County of San Diego) appreciated the revised language with regard to inspection options but raised a concern with the third option (E.5.c.(1)(a)(iii) "Onsite inspections by volunteer monitoring or patrol programs trained by the Copermittee").

Having onsite inspections by volunteers or patrol programs may be an issue. Jon suggested opening up the types of inspections to be done by volunteers or patrol programs to include drive-bys and not specify onsite inspections.

Bryn Evans (Industrial Environmental Association (IEA)) agreed with Jon's comment regarding onsite inspections being done by volunteer monitors or pollution patrol programs. There is some trepidation in allowing volunteers onsite to inspect facilities. He understands where the language came from but is concerned that it needs to be practical from an implementation perspective. The wording in this section of the permit needs clarification.

Representatives from San Diego Coastkeeper agreed. Their involvement would be limited and would prefer to include visual inspections, not detailed onsite inspections.

Wayne Chiu (RWQCB) clarified that there is nothing in the permit that would allow someone not authorized or trained by the Copermittees to complete an inspection, onsite or otherwise. It is up to the Copermittees to provide the training for volunteers or pollution patrol programs and specify where they can do inspections, how to fill out forms, make observations, etc. The intent behind that language was to give Copermittees a way to utilize volunteers or other pollution patrols.

Jon Van Rhyn (County of San Diego) responded that the language as currently written appears to try to open up an avenue to potentially have volunteers conducting onsite inspections, which is not a realistic option. He noted that specifically using the word "onsite" may be counterproductive to the intent of the language.

Claudio Padres (County of Riverside) requested clarification on section E.3.c.(3)(b) which covers priority project exemptions for retrofit of existing paved alleys, streets, or roads that meet certain criteria.

Wayne Chiu (RWQCB) provided a walkthrough of the criteria. The retrofit must be done on a road that is two lanes or less and has to be a retrofitting project associated with some other development or redevelopment project that is utilizing the retrofit as an alternative compliance option. For example, if a PDP could not meet the structural BMP performance criteria onsite, they may participate, contribute toward, or implement a retrofit project on a road that is two lanes or less. The retrofit project must meet Green Street requirements and would not be considered a PDP and, therefore, would not be required to implement structural BMP performance criteria on the road retrofit.

Wayne Rosenbaum (BIA) compliments the RWQCB on providing creative off ramps for project applicants; however, it seems that to reach the alternative compliance options, the Water Quality Improvement Plans must be completed first. Wayne asked what happens for projects between permit adoption and RWQCB approval of Water Quality Improvement Plans.

Wayne Chiu (RWQCB) responded that until Water Quality Improvement Plans are approved by the RWQCB, Copermittees are to continue their current programs and processes. Per the current version of the administrative draft permit, the Water Quality Improvement Plans, JRMPs, and BMP Manuals are all supposed to be done at the same time; therefore, at that point, the new requirements would come into effect.

Julie Procopio (City of Santee) asked for explanation of removing the comingled flows language, which is in the current active San Diego permit. This is in reference to the description of the Priority Development Project Categories. The current active San Diego permit (Provision D.1.d.(2)(g)) defines “Discharging directly to” (an ESA) as outflow from a drainage conveyance system that is composed entirely of flows from the subject development or redevelopment site, and not comingled with flows from adjacent lands. In the revised administrative draft permit (Provision E.3.b.(2)(e)), there is a small change in the definition of projects that drain to Environmentally Sensitive Areas (ESAs). The revised administrative draft permit language says “Discharging directly to” (an ESA) means outflow from a drainage conveyance system that collects runoff from the subject development or redevelopment site and terminates at or in receiving waters within the ESA. The comingling language was removed. By removing the comingling language, any project that adds 10% impervious area and drains to an ESA, whether through comingled channels or not, would be a PDP.

Wayne Chiu (RWQCB) explained that RWQCB Staff is trying to make sure that if there are PDPs that discharge directly to or are adjacent to an ESA that they implement the structural control BMP requirements. There may be situations where a project discharges to a pipe that then directly discharges to an ESA with or without additional contributions (comingled flows). That situation would be a direct discharge to an ESA and would make the project a PDP. If, however, a project discharges to a pipe that then discharges to another pipe prior to discharging to an ESA, that project would not be a PDP.

Eric Becker (RWQCB) indicated this language is consistent with language from the Orange County and Riverside County permits. The intent is for it to be very specific and not overly used. RWQCB Staff will review the language to ensure the language matches the intent.

VII. TMDL Implementation

Wayne Chiu (RWQCB) introduced the topic, indicating that this subject was not discussed in detail during the focused meetings; however, there were significant comments received with regard to making changes to these requirements. RWQCB Staff did not make a significant amount of changes to the Total Maximum Daily Load (TMDL) requirements other than minor wording and the addition of a Compliance Determination section, as recommended by the Copermittees. RWQCB Staff based the language in the Compliance Determination section partially on the way the Los Angeles County permit crafted compliance determination for TMDLs. No significant changes were made to the TMDL requirements because it is basically required that the RWQCB implement the TMDLs through this permit; therefore, the language included in the revised administrative draft permit is simply implementing the requirements of the TMDLs.

Todd Snyder (County of San Diego) expressed that he thought he liked some of the language added under the Compliance Determination section for the interim targets, but upon further review discovered that it does not go as far as he would prefer. There is some

language that states if the Copermittees are implementing an RWQCB-approved Water Quality Improvement Plan then the Copermittees would be in compliance with the interim targets up until the date when those targets would take effect. Todd would like clarification from RWQCB Staff that once the interim target dates hit, it is the numbers that matter. He also stated that in terms of what RWQCB Staff has discretion to do, they do have discretion not to incorporate effluent limitations as numerics. Todd would like the RWQCB to use its discretion to incorporate the effluent limitations not as numerics, but as BMP or action based.

Wayne Chiu (RWQCB) responded that in terms of RWQCB discretion as to how the RWQCB might require implementation or achieving the interim compliance requirements, RWQCB Staff believes that it is necessary to include the effluent limitations as numerics at this point. They have been included in the TMDL in numeric form; however, that is not to say that RWQCB Staff would not be open to considering putting BMP-based requirements in the permit so long as they provide reasonable assurance that the interim targets are being met.

Heather Stroud (City of San Diego) thanked the RWQCB for some of the changes made to compliance determination; however, she explained that this is one area where the disjointedness of the permit is highly apparent. There is compliance language in Attachment E that recognizes implementation of Water Quality Improvement Plans as compliance, but then there is still the Provision A language stating thou shalt not cause or contribute to the violation of water quality in any receiving waters. The Provision A language could be read separately to override the compliance language in Attachment E. There is a paragraph in Provision A that was stricken that would seem to address this disjointedness. The San Diego County Copermittees would like that paragraph put back into the permit.

Wayne Chiu (RWQCB) responded that when talking about Provision A requirements as they apply to Attachment E, Heather's interpretation is correct. The receiving waters language is still in there that Copermittees must not cause or contribute to the violation of water quality in any receiving waters. Wayne noted that the language in Provision A has been more clearly defined to indicate that where there are TMDLs with associate WQBELs that those WQBELs need to be complied with in accordance with the TMDL schedule. That does not remove the legal requirements for discharges from the MS4 to not cause or contribute to the violation of water quality in any receiving waters. Wayne admitted there is a disconnect between Provision A, the Water Quality Improvement Plans, and the TMDL requirements. There is overlap here with what the SWRCB has within their position or issue paper where they specifically call out some of the TMDL issues. Given current circumstances, this is the best that RWQCB Staff can work with right now.

Heather Stroud (City of San Diego) asked for the reasoning for deleting Provision A.2.c, which states "Discharges from MS4s must not cause or contribute to the violation of any receiving water limitations expressed as water quality based effluent limitations (WQBELs) required to meet the WLAs established for the TMDLs in Attachment E to this Order, pursuant to the applicable TMDL compliance schedule."

Wayne Chiu (RWQCB) responded that RWQCB Staff essentially consolidated all the TMDL WQBELs. The WQBELs within the TMDL requirements in Attachment E are expressed in a combination of three ways: effluent limitations, receiving water limitations, and BMP requirements. This format was set up so that future TMDLs can include one or more of those requirements. Those WQBELs as expressed now within Provision A fully capture that concept.

Heather Stroud (City of San Diego) expressed that having the language previously included as Provision A.2.c provided a linkage between Provision A and Attachment E. She suggested perhaps the language should be included but re-worded to allow for other compliance pathways.

Richard Boon (County of Orange) noted that there are some things in the Los Angeles County permit, scheduled for adoption this year, that are attractive in terms of TMDL compliance, including recognition of BMP-based compliance and a reopener provision prior to the final Waste Load Allocations (WLAs) being achieved. Going forward, the Orange County Copermittees will be recommending those options to the RWQCB.

Elaine Lukey (City of Carlsbad) is pleased that RWQCB Staff has tried something different in this permit reissuance and appreciated the opportunity for discussion provided over these past six months. Elaine commented that the bacteria beaches and creeks TMDL is based on support for the REC-1 standard, yet there are three watersheds in Table 6 in Attachment E that are listed based on the SHELL beneficial use (Penasquitos, San Dieguito, and Carlsbad Watershed Management Areas). The San Diego County Copermittees would like those three watersheds removed because they are based on the SHELL beneficial use while the TMDL was developed for the REC-1 beneficial use standard.

Mikhail Ogawa (City of Del Mar) requested explicit reopener language be included for TMDLs. There is concern that if the Basin Plan is amended for the bacteria TMDL, then there could be inconsistencies between the permit and the Basin Plan. Without having a reopener explicitly included in the permit, it makes it more difficult for Copermittees to get funding to perform special studies necessary to re-evaluate the TMDL itself.

Eric Becker (RWQCB) responded that changing the TMDL is a different process; therefore, there is no need for an explicit reopener clause in the permit. If there are changes in the TMDL, then the RWQCB does have the authority to make changes to the permit. It does not make sense to have inclusions in the permit to reopen the TMDL.

Wayne Chiu (RWQCB) explained that part of the reason special studies were included within the monitoring and assessment portion of the revised administrative draft permit was to leave it to the Copermittees' discretion on how to use the special studies. Ideally, the special studies would be used to further the effectiveness of programs to address the TMDLs; however, if Copermittees would rather use the special studies to develop data to modify the TMDLs, then that is permissible. If Mikhail's request was to provide requirements to reopen the TMDL once certain special studies are completed, that language does not belong in this permit. Wayne reminded the stakeholders that the permit contains requirements for the Copermittees, not requirements for the RWQCB.

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Mikhail Ogawa (City of Del Mar) noted that if the Basin Plan changes and the MS4 Permit cannot be reopened, there may be compliance issues.

Wayne Chiu (RWQCB) guaranteed that if there is a change in the Basin Plan and a change to a TMDL, the RWQCB will make changes to the TMDL requirements in this permit in a very timely manner. He further explained that it is up to the Copermittees to provide data to the RWQCB as evidence and information necessary to reopen TMDLs. That process will take quite a while.

Mikhail Ogawa (City of Del Mar) appreciated Wayne's commitment, but noted that sometimes management may not view it in the same manner. The challenge is trying to meet compliance points and build programs to be more effective. The issue is being able to present materials to RWQCB Staff and have enough commitment that the materials will be evaluated and considered for reopening TMDLs. Mikhail concluded by echoing Elaine's comments, showing appreciation for the tremendous amount of work that has been put in by RWQCB Staff in a compressed amount of time.

Eric Becker (RWQCB) explained that changing the TMDL is a difficult process; changing the permit is easier. To revise the permit, it is simply a matter of getting in front of the Board and requesting the change.

Cindy Lin (EPA) clarified that a reopener of a TMDL can be requested at any time with the RWQCB. It has happened before in Los Angeles County with a simple request made to the Board with data to support it.

Todd Snyder (County of San Diego) raised the discussion of the Rainbow Creek TMDL. When this TMDL was adopted back in 2005/2006, there were no WLAs assigned to any Copermittees, only Load Allocations. The only party to receive WLAs was the California Department of Transportation (Caltrans). Todd does not see any legal justification for including a TMDL that does not have WLAs for any Copermittee included in the permit. The use of the MS4 permit was never contemplated for the Rainbow Creek TMDL.

Wayne Chiu (RWQCB) agreed that federal regulations and the CWA only speak to WLAs being included in NPDES permits; however, that does not mean that RWQCBs do not have the ability to include requirements in the permit to address a TMDL if it is known that there is a source associated with the MS4. Within the Rainbow Creek TMDL, it identified several land uses that are associated with the MS4. While the Basin Plan Amendment itself did not specifically focus on using the MS4 permit, the Staff Report did discuss the role of the MS4 permit and how it would be used to implement the requirements. The section is not very specific, but it does reference the discharge prohibitions and receiving water limitations language as being the mechanism for the MS4 permit to implement the requirements of the TMDL.

Todd Snyder (County of San Diego) stated that the San Diego County Copermittees disagree with the decision to include the Rainbow Creek TMDL in this permit; however, if it must be included, the San Diego County Copermittees would like it recognized that agriculture is a major part of the loading for Rainbow Creek and this should be addressed in the agriculture waiver.

Wayne Chiu (RWQCB) agreed that if he were working on the agriculture waiver, he would put the load allocations for agricultural uses in that waiver. He strongly recommended that when the agriculture waiver process begins or calls for comments, the County of San Diego should specifically discuss this issue. Wayne agreed that agricultural sources are one of the more significant contributors to the Rainbow Creek TMDL.

Todd Snyder (County of San Diego) suggested that by including the Rainbow Creek TMDL in the permit, it puts the entirety of TMDL compliance on the Copermittees; it does not allow sharing the responsibility with the agricultural sources or other parties. Todd explained that a TMDL allocates the load to different parties that go beyond just the MS4; however, the way the Rainbow TMDL reads, it is concentration-based compliance in the receiving water. The concentration-based compliance could potentially not be achieved, but at no fault of the MS4. When it is brought into the MS4 permit, then potentially the MS4 dischargers are wholly responsible for it.

David Barker (RWQCB) stated that, assuming the agricultural contributions are listed as load allocations in the Rainbow Creek TMDL, in order to require those load allocations be complied with, the RWQCB has to have a regulatory vehicle to implement them. The agriculture waiver is one process that could be used for that. David noted that the Rainbow Creek TMDL was one of the first TMDLs completed by the RWQCB, so there may be items in it that are vague. The RWQCB has not moved aggressively with implementing that TMDL, but there is the agriculture waiver coming up and that would be an opportunity to follow through on this issue.

Wayne Chiu (RWQCB) explained the intent of the way the RWQCB was trying to include the requirements of this TMDL was to limit it to what the MS4 is responsible for. The receiving water may be exceeding the limitations, but it is up to the Copermittees to demonstrate that the Copermittees are not contributing or causing the receiving water limitation exceedance. There may be another compliance option that is BMP-based but still demonstrates that the MS4 is meeting the numeric effluent limitations or achieving a receiving water limitation somehow. The RWQCB can consider putting that into the compliance options. What the RWQCB needs is some assurance that the receiving water limitations will be met or that the discharge(s) from the MS4 are not causing or contributing to the exceedances.

VIII. Monitoring

Laurie Walsh (RWQCB) stated that this is an area of the revised administrative draft permit where the RWQCB took a large percentage of what the Copermittees presented and incorporated it directly. It was changed slightly to fit the permit format, but in general the RWQCB was very satisfied with the program and did incorporate almost everything. It does have in it a transitional component which allows the Copermittees some time to continue current monitoring but also participate in the receiving water portion and regional programs that already exist. For the MS4 outfall monitoring, Copermittees will be required to go through some screenings and visual assessments to determine what is considered persistent versus transient flow. The monitoring program does still include special studies and an

assessment section. There are also a few specifics included in the outfall monitoring program to ensure the RWQCB had addressed the environmental community's concerns with regard to potential orphan sites. In the dry weather program, the objective of the RWQCB was to eliminate non-storm water flows; therefore, some specificity was added in that component to address the objectives.

Jo Ann Weber (County of San Diego) acknowledged the productiveness of the process taken over the past six months, including the focused meetings and follow up meetings with RWQCB Staff. The San Diego County Copermittees appreciate how open the RWQCB was to looking at different options for the monitoring program and are impressed by the hard work, diligence, and attention to detail the RWQCB has done in record time. The San Diego County Copermittees look forward to continuing discussions during this next phase of the permit reissuance process.

Jo Ann Weber (County of San Diego) concurred that the revised administrative draft permit language does provide reasonable balance on the receiving water side; however, the San Diego County Copermittees do have additional input and hope to provide some language recommendations in the next round of comments. There are also three main issues the San Diego County Copermittees would like to work on further with RWQCB Staff: MS4 discharge programs, follow up requirements of Provision E, and Assessment Section D.4.

Roger Butow (Clean Water Now! Coalition) expressed appreciation of the monitoring program in the revised administrative draft permit and raised a question with regard to the 13225 for Aliso Creek. The monitoring in the revised administrative draft permit seems to match the monitoring being done under the 13225. He questioned if the 13225 was going to be rescinded with this new monitoring program going into effect.

David Barker (RWQCB) stated that to the extent the permit does cover the same requirements of the 13225, then the RWQCB may consider rescinding the 13225.

Grant Sharp (Orange County Flood Control District) requested more clarification on the elements of the monitoring provision with respect to the transitional dry weather MS4 outfall monitoring program. His understanding is that Copermittees would start by doing an inventory of all MS4 outfalls. Then, each Copermittee would, based on the number of outfalls within their jurisdiction and the permit specifications, conduct visual monitoring and record observations at a specified number of MS4 outfalls. The visual monitoring and observations would follow the requirements of Table D-6. Grant requested more clarification on the language just below Table D-6 where it states the Copermittees must then implement Provisions E.2.d.(2)(c)-(e) based on the field observations. Provision E.2.d.(2)(c)-(e) refers to the IDDE section of the permit. Grant questioned if it is a correct interpretation that as Copermittees are making field observations, if a potential IC/ID is identified, then Copermittees must follow through with the provisions in E.2.d.(2)(c)-(e), which may include grab sampling.

Laurie Walsh (RWQCB) provided clarification. If, during field observations for MS4 outfall monitoring, an IC/ID is discovered, then the Copermittee must attempt to identify the source. If the Copermittee can identify the source, then it should be tracked, captured,

and eliminated at that time. If the source cannot be identified, then it goes back to whether it is a persistent or transient discharge. If it is determined to be a persistent flow, then sampling should be done at that time.

Grant Sharp (Orange County Flood Control District) hypothesized that Copermittees could then go through more than one round of visual observations, complete their prioritization, and begin field screening before following up on IC/ID's whose sources could not immediately be identified.

Wayne Chiu (RWQCB) agreed with Grant's hypothetical situation. The field observation portion includes doing visual inspections during the transitional period. Provisions C through E of the IC/ID requirements are field screening, then investigate, then eliminate. Those are based on visual observations. Where there are obvious IC/ID with sources that can be identified, then they should be immediately addressed and eliminated. This is not any different than what is required now. It is not until the Copermittees reach persistent flow monitoring that any sampling is required.

Mike Beanan (South Laguna Civic Association and Laguna Bluebelt) recommended the creation of plume maps to better communicate the impact that all areas, inland and coastal, are making on the coastal receiving waters. Tables can be confusing to the general public. Plume maps with communities outlined in red, yellow, or green, depending on their contributions to the coastal receiving waters would be advantageous to public outreach and would incentivize inland cities to be more proactive. Mike also recommended for monitoring to use chemical fingerprinting to identify the sources of IC/ID or persistent flows.

Mike Beanan (South Laguna Civic Association and Laguna Bluebelt) continued that the Copermittees are legally responsible for coastal receiving waters and impacts to those waters.

Roger Butow (Clean Water Now! Coalition) advocated for steelhead trout, indicating that all of the creek mouths and river mouths of the steelhead trout runs should be Areas of Special Biological Significance (ASBS).

Laurie Walsh (RWQCB) applauded Roger's passion and information behind this, but indicated that this is not the appropriate forum for ASBS listing discussions. There are ASBS groups statewide that address that issue as well as the Basin Plan process.

David Barker (RWQCB) noted that the ASBS are designated by the SWRCB, not the RWQCBs.

Karen Holman (Port of San Diego) echoed Jo Ann's appreciation to RWQCB Staff. At this time, the San Diego County Copermittees would like to continue working with RWQCB Staff to review the new language and ensure that it is practical, connected, and clear. Karen also expressed the San Diego County Copermittees' desire to make sure that monitoring helps to inform the Water Quality Improvement Plan and the iterative process.

IX. Other Topics and Questions

Ziad Mazboudi (City of San Juan Capistrano) directed attention to Provision E.5.b.(2)(d) – Pesticides, Herbicides, and Fertilizers BMPs for residential areas. He voiced concern with

how the language states that Copermittees must effectively prohibit non-storm water discharges associated with the application, storage, and disposal of pesticides, herbicides, and fertilizers from residential areas in its inventoried existing development. He questioned how the RWQCB anticipated that being accomplished, specifically the storage portion of the requirement.

Wayne Chiu (RWQCB) responded that there are two basic requirements for MS4 permits in the CWA: effectively prohibit non-stormwater discharges to the MS4 and implement controls to reduce pollutants in stormwater discharges to the MEP. Provision E.5.b.(2)(d) states that Copermittees “must encourage and promote the implementation of BMPs.” By doing that, the Copermittees will reach the MEP standard and effectively prohibit the discharges. RWQCB Staff assumes Copermittees will use public education and outreach as well as the IC/ID program to satisfy this requirement. Copermittees may also use persistent flow monitoring if pesticides are a priority in the watershed. The key to this language is that Copermittees must promote and encourage. For industrial, commercial, and municipal developments, the language states Copermittees must implement BMPs or must require implementation of BMPs. For residential areas, the revised administrative draft permit basically suggests using education or other tools, such as data points or complaints.

Mike Beanan (South Laguna Civic Association and Laguna Bluebelt) explained that stakeholders know that what mobilizes these contaminants is flow. If overwatering is not present and application is not done just prior to a storm event, then the contaminants stay on the property. He supports fines and penalties to motivate people to stop dumping. Mike believes that residential development in itself is an industry and should not be relieved of requirements that are applicable to industrial, commercial, and municipal facilities and activities. Any person intentionally putting poison into the environment should be held to the standards and enforcement should be taken.

Mike Beanan (South Laguna Civic Association and Laguna Bluebelt) continued that chemical fingerprinting is a way to determine the nature, type, and location of contaminants. He encouraged Copermittees to put that technology and tactics into play. He also encouraged Copermittees to consider pilot demonstration projects to inspire others and move forward with technology with regard to storm water.

Ruth Kolb (City of San Diego) responded to dealing with pesticides from the City’s perspective. Ruth is the head enforcement officer for the City of San Diego, which does enforce against dumping. She stated that in California, however, the only people that can enforce pesticide application regulations are the U.S. EPA Office of Pesticide Programs and the Department of Pesticide Regulation (DPR). The RWQCB cannot and the cities cannot. Cities have been sued by the State and the cities have lost when they have tried to enforce pesticide regulations in the State of California. Ruth commends the RWQCB with the way it is included in the revised administrative draft permit so that Copermittees can do public outreach and work with the County Department of Agriculture which represents the DPR.

Ruth Kolb (City of San Diego) raised a question with regard to the bacteria TMDL, referencing page E-26, (2)(a) Interim Dry Weather Receiving Water Limitations. That section states: “The Responsible Copermittee must calculate the “existing” exceedance for

frequencies of the 30-day geometric mean water quality objectives for each of the indicator bacteria by analyzing the monitoring data collected between January 1, 2002 and April 4, 2011.” Ruth stated that the intent of this language in the TMDL was that the data used initially was the baseline; the data collected between January 1, 2002 and April 4, 2011 was not the baseline. By setting the January 1, 2002 to April 4, 2011 data as the baseline, the RWQCB is penalizing those municipalities that have been active participants in finding their sources and eliminating them. Ruth explained that the City of San Diego feels irritated that they have been proactive, have started finding the bacteria sources starting in 2002, and have eliminated their beach postings and closures by 78 percent; however, they feel they are being penalized for those efforts.

Wayne Chiu (RWQCB) responded that the way the language was included in the revised administrative draft permit was based on the language in the TMDL. If that language was misquoted or mis-cited, he welcomed Ruth to provide the correct language and the correction can be made. If it is in the TMDL to use the January 1, 2001 to April 4, 2011 data as the baseline, then the permit language will remain as-is.

Ruth Kolb (City of San Diego) referred RWQCB Staff to page A-55 of the bacteria TMDL where it states the data to be used as a baseline is that collected between 1996 and 2002. She will provide a copy of that to Wayne Chiu (RWQCB) to have the language in the permit revised.

Jennifer Nichols Kearns (City of San Diego) thanked RWQCB Staff for accepting the Copermittees’ comments and feedback. She requested clarification in the public participation section (Provision E.7), which is similarly worded in other sections. The language seems to present rigorous requirements for public participation. The Copermittees are not opposed to having public participation, but would like clarification from the RWQCB on how it is expected to be accomplished. The language is very specific that the Copermittees must incorporate RWQCB feedback but is not specific about feedback from others. If feedback is received from others regarding the Copermittees’ strategies, processes, etc., Jennifer questioned how much of that feedback must be incorporated by the Copermittees, especially if the feedback is determined to be infeasible.

Wayne Chiu (RWQCB) indicated that the public participation portions came from what was heard during the focused meetings and from comments of the environmental community. RWQCB Staff does want those opportunities to be fairly explicit. In terms of what the Copermittees must do with the comments, RWQCB Staff would hope that the Copermittees are informed by those comments when developing the Water Quality Improvement Plans. The redline administrative draft permit does not require the Copermittees to do anything more than consider the comments. RWQCB Staff may read something in the public comments that is valid while the Copermittees may not consider it valid. In that case, RWQCB Staff would strongly recommend or direct incorporation of modifications in response to certain public comments.

Roger Butow (Clean Water Now! Coalition) revisited the LEED topic. He questioned if RWQCB Staff has considered instead of using LEED to use CalGreen, which are State

guidelines. He suggested the permit may be on more solid ground by either using CalGreen or including a more generic phrase.

Wayne Chiu (RWQCB) stated that RWQCB Staff welcomes a comment letter that proposes some language that would promote that kind of alternative. The LEED certification was included because RWQCB Staff was approached by the USGBC who pitched how LEED is working toward what the RWQCB is trying to achieve as well. The RWQCB is not opposed to having other methods incorporated as alternatives. Based on the feedback and comments received, RWQCB Staff incorporated what was appropriate at the time; however, they are not opposed to revising that language.

Rosanna Lacarra (City of Coronado) requested clarification on language that appears in the existing development section, that reads each Copermittee must implement or require the implementation of designated BMPs at industrial, commercial, and municipal areas. She asked for reassurance that “must implement” refers to municipal areas and “require the implementation of” applies to industrial and commercial areas.

Wayne Chiu (RWQCB) agreed with Rosanna’s interpretation. The “or” between “must implement” and “require the implementation of” allows for that interpretation.

Todd Snyder (County of San Diego) addressed the phasing of the deliverables under the revised administrative draft permit. The revised administrative draft permit has broken up the submittals into phases. From the San Diego County Copermittees’ perspective, they would like to continue dialogue with RWQCB Staff on this issue. If the permit is adopted as scheduled in March or April 2013, the first deliverable, at six months after permit adoption, would be due September / October 2013, only three to four months into the new fiscal year. The Copermittees have already budgeted for this fiscal year; they will not be receiving any more funds to develop the first portion of the Water Quality Improvement Plans during this fiscal year. The Copermittees, therefore, would be forced to complete a six-month process in about three months. Todd stated that the Copermittees are still grappling with how much detail is to be included in the Water Quality Improvement Plans and how much detail is to be included in the jurisdictional documents. They also must consider timing for approval and adoption of plans within their municipal requirements. Depending on answers to their questions, the Copermittees may suggest different submittal schedules. The Copermittees would like to continue to work with the RWQCB on this issue.

Vaikko Allen (Contech) raised a question regarding PDPs and LID BMPs. There is a definition of LID BMPs in the revised administrative draft permit that includes retention and bioretention and systems that have flow-through that release some water. The language in the section for compliance, however, seems only to include retention BMPs and exclude other flow-through treatment BMPs. If that is the intent, it would be helpful to clean up that language a bit. Vaikko questioned if it is correct that projects must retain runoff unless they are in the alternative compliance path.

Wayne Chiu (RWQCB) agreed with Vaikko’s interpretation and also stated that alternative compliance does allow for biofiltration onsite.

Vaikko Allen (Contech) recommended cleaning up the language since LID BMPs do include flow-through devices while the revised administrative draft permit is only allowing for LID BMPs that provide retention, unless projects utilize the alternative compliance path.

Vaikko Allen (Contech) referred to language in the revised administrative draft permit that requires treatment control BMPs used to be ranked with high or medium removal efficiency for the PDP's most significant pollutants of concern. He questioned what demonstrates that level of performance, understanding that the Copermittees have been making that determination up to this point. He asked what the RWQCB's view is as far as appropriate level of documentation to support that removal efficiency determination. Vaikko suggested finding a way to evaluate the many programs available that would help the Copermittees make those determinations in a more consistent way.

Wayne Chiu (RWQCB) stated that the RWQCB is relying and will continue to rely on the Copermittees to make that determination. There is not, however, any reason why the Copermittees and RWQCB Staff could not meet after permit adoption to address that issue.

Christine Sloan (County of San Diego) addressed the Alternative Compliance In-Lieu Fee Option included in the revised administrative draft permit. She thanked RWQCB Staff for consideration of the prior to occupancy timeline. Christine also requested the 4-year limit in Provision E.3.c.(3)(c)(ii)[b] be expanded to allow for the attainment of permits and maximized use of alternative compliance.

Wayne Chiu (RWQCB) responded that the RWQCB can consider extending that time limit. He explained the 4-year timeline was borrowed from the Los Angeles County permit. The main concern of the RWQCB is the achievement of those pollutant reduction requirements for the BMPs and mitigation for the hydromodification effects. Wayne is not sure how extending the timeline would affect the developed projects in the meantime as they would not be benefitting from those BMPs. Wayne requested the San Diego County Copermittees submit the recommendation in written comments along with rationale for the timeline extension request.

Mike Beanan (South Laguna Civic Association and Laguna Bluebelt) suggested habitat restoration as the best strategy. If that route is taken, then it could be incentivized with cap and trade. He shared that Aliso Creek has a small urban runoff harvesting project where runoff is collected than put back into the recycled water system, saving money for the water district and reducing the impact to the coastal waters. This was done as a demonstration project; however, Mike believes that monetizing water is the next threshold.

Roger Butow (Clean Water Now! Coalition) referred to the two-page decree or edict issued by former San Diego RWQCB Executive Officer John Robertus around 2001. The issue was diversions of MS4 runoff to wastewater treatment. At that time, Robertus described it as a band-aid, but throughout the revised administrative draft permit, Roger interprets a reference to MS4 runoff diversion to wastewater. Roger questioned when that became acceptable as a priority device for RWQCB Staff and the permits themselves.

Wayne Chiu (RWQCB) replied that he does not believe that there is a thread throughout the revised administrative draft permit that it is acceptable to divert MS4 runoff to waterwater. Wayne would be open to meeting with Roger offline and discussing the issue.

*October 24, 2012**Regional MS4 Permit Focused Meeting Notes*

X. Closing

David Barker (RWQCB), in closing, thanked everyone for the efforts made in attending and participating at the meetings. When the RWQCB started the meetings, they were looking for input to improve the administrative draft permit, and they feel they have achieved that goal. The RWQCB thanks all the stakeholders for their input and looks forward to continuing meetings with stakeholders throughout the adoption process.

XI. Meeting Adjourned