

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

Response to Comments Report

Tentative Order No. R9-2015-0001

***An Order Amending Order No. R9-2013-0001, NPDES No. CAS010266
National Pollutant Discharge Elimination System (NPDES) Permit
and Waste Discharge Requirements for Discharges From the Municipal
Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within
the San Diego Region***

January 21, 2015

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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San Diego Region**

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Response to Comments on Tentative Order No. R9-2015-0001

January 21, 2015

Introduction

This report contains responses to written comments timely received on Tentative Order No. R9-2015-0001, *An Order Amending Order No. R9-2013-0001, NPDES No. CAS010266, National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region*. The Tentative Order and its attachments were available for public review and comment for 60 days, with the comment period ending on November 19, 2014. Specifically, the San Diego Water Board requested comments on the following three documents:

- Tentative Order No. R9-2015-0001;
- Attachment No. 1 – Revised Order No. R9-2013-0001; and
- Attachment No. 2 – Revised Fact Sheet to Order No. R9-2013-0001.

The phrases “Tentative Order” and “Tentative Order as it amends Order No. R9-2013-0001” in the following response to comments table refers to both Tentative Order No. R9-2015-0001 and the two attachments. Comments and responses are organized by the section of either Attachment 1 or Attachment 2 that is being referenced. Wherever possible, comments are grouped based on content and summarized by the San Diego Water Board. The actual comment letters can be accessed on the San Diego Water Board website at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/stormwater/oc_stormwater.shtml.

List of Commenters:

Comments were submitted by the following organizations, public agencies, or individuals:

1. City of Aliso Viejo
2. City of Del Mar
3. City of Lake Forest
4. City of San Diego
5. Coalition (San Diego Building Industry Association, Building Industry Association of Southern California, Associated General Contractors, Associated Builders and Contractors, San Diego Regional Chamber of Commerce, Business Leadership Alliance, San Diego Association of Realtors, San Diego Apartment Association, National Association of Industrial & Office Properties, Building Office & Management Association, San Diego Chapter of the American Society of Landscape Architects)
6. Coastal Environmental Rights Foundation
7. Construction Industry Coalition on Water Quality (The Associated General Contractors of California, Building Industry Association of Southern California,

Engineering Contractors Association, Southern California Contractors Association, and the United Contractors located in San Ramon in Northern California)

8. County of Orange
9. County of San Diego
10. County of Riverside
11. Industrial Environmental Association
12. San Diego Coastkeeper
13. San Diego Unified Port District
14. Tory R. Walker Engineering, Inc.

Acronyms and Abbreviations

The following acronyms and abbreviations are used in the response to comments table.

ASBS	Area(s) of Special Biological Significance
BMP	Best Management Practice
Basin Plan	Water Quality Control Plan for the San Diego Basin
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CWA	Clean Water Act
CWC	California Water Code
LID	Low Impact Development
MEP	Maximum Extent Practicable
MS4	Municipal Separate Storm Sewer System
NAL	Non-Storm Water Action Level
NPDES	National Pollutant Discharge Elimination System
ROWD	Report of Waste Discharge (application for NPDES reissuance)
SAL	Storm Water Action Level
San Diego Water Board	California Regional Water Quality Control Board, San Diego Region
State Water Board	State Water Resources Control Board
TMDL	Total Maximum Daily Load
USEPA	United States Environmental Protection Agency
WLA	Waste Load Allocation
WQBEL	Water Quality Based Effluent Limitation

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RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

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PR- 1	PREVIOUSLY SUBMITTED COMMENT LETTERS	
	<u>COMMENT:</u> All prior comments, evidence, and objections made during adoption of Order No. R9-2013-0001 are applicable to Tentative Order No. R9-2015-0001 are requested to be incorporated during consideration of Tentative Order No. R9-2015-0001. Because of the uncertainty of the legal impact the anticipated adoption of Tentative Order No. R9-2015-0001 might have upon pending appeals with the State Water Resources Control Board (State Board) of the Order being amended (Order No. R9-2013-0001), the commenters wish to renew all objections to various aspects of the Tentative Order as described in any petition already before the State Board and further wish to incorporate all evidence pertaining to those objections.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District • County of San Diego Concurring Cities: Petitioners in proceeding A-2254 • San Diego Unified Port District • Riverside County Copermittees • City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board understands the concerns expressed by the commenters. The San Diego Water Board reviewed Tentative Order No. R9-2015-0001 and its Attachments and has determined that the March 27, 2013 responses to comments document prepared during the 2013 adoption process of Order No. R9-2013-0001 and the oral responses to comments during the workshop and hearings during that process address the renewed comments. The San Diego Water Board incorporates its written responses to comments and oral responses to comments raised during the workshops and hearing on Order No. R9-2013-0001 into these responses. To the extent commenters incorporate issues and objections raised in petitions for review of Order No. R9-2013-0001 filed with the State Board in SWRCB/OCC File A-2254(a)-(p), the San Diego Water Board notes that it has not yet had an opportunity to submit written responses to those petitions for review and is not specifically addressing those petitions for review in these responses to comments. The San Diego Water Board will submit written responses to the petitions for review at the appropriate time in the State Board's petition proceeding. No changes to the Tentative Order or its Attachments were made based on the renewed comments.	

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PR-2	PREVIOUSLY SUBMITTED COMMENT LETTERS	
	<u>COMMENT:</u> <i>The Construction Industry Coalition on Water Quality resubmits its comment letters on hydromodification management cited in letters dated September 14, 2012 and January 11, 2013, which were submitted as part of the May 2013 adoption process of Order No. R9-2013-0001.</i>	Construction Industry Coalition on Water Quality • San Diego Building Industry Association • Building Industry Association of Southern CA • Associated General Contractors • Associated Builders and Contractors • San Diego Regional Chamber of Commerce • Business Leadership Alliance • San Diego Association of Realtors • San Diego Apartment Association • National Association of Industrial & Office Properties • Building Office & Management Association • San Diego Chapter of American Society of Landscape Architects
	<u>RESPONSE:</u> The San Diego Water Board understands the concerns expressed by the commenter. The San Diego Water Board reviewed Tentative Order No. R9-2015-0001 and its Attachments and has determined that the March 27, 2013 responses to comments document prepared during the 2013 adoption process of Order No. R9-2013-0001 and the oral responses to comments during the workshop and hearings during that process address the renewed comments. The San Diego Water Board incorporates its written responses to comments and oral responses to comments raised during the workshops and hearing on Order No. R9-2013-0001 into these responses. To the extent commenters incorporate issues and objections raised in petitions for review of Order No. R9-2013-0001 filed with the State Board in SWRCB/OCC File A-2254(a)-(p), the San Diego Water Board notes that it has not yet had an opportunity to submit written responses to those petitions for review and is not specifically addressing those petitions for review in these responses to comments. The San Diego Water Board will submit written responses to the petitions for review at the appropriate time in the State Board's petition proceeding. No changes to the Tentative Order or its Attachments were made based on the renewed comments.	

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

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Gnl-1	GENERAL COMMENTS	
	<u>COMMENT:</u> <i>Remove City of Lake Forest from Table 1b and the associated footnote.</i> The City of Lake Forest requests changes to the Tentative Order to clarify regulation of the City of Lake Forest by a single water board as described in the agreement between the Santa Ana Water Board and the San Diego Water Board.	City of Lake Forest
	<u>RESPONSE:</u> The San Diego Water Board generally agrees with the City's comment. The City of Lake Forest was removed from the list of Copermittees in Table 1b and a footnote to the Table was added to identify the requirements of the Order that apply to the City of Lake Forest.	

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 21, 2015

Gnl-2	GENERAL COMMENTS	
	<u>COMMENT:</u> <i>The Tentative Order toxicity requirements do not take into account information presented in the Orange County Copermittees ROWD.</i> The County of Orange and Concurring Cities, and Orange County Flood Control District comment that toxicity occurs sporadically in streams and creeks in south Orange County and toxicity is encountered in open (undeveloped) areas at levels equivalent to those in urban areas. They also comment that there is a greater prevalence of toxicity in wet weather and pesticides are implicated as the principal source of this toxicity. This pattern suggests that dry weather toxicity is not caused by urban sources of pollutants. Moreover pesticide use, presents a moving target for MS4 management efforts due to the continuous introduction of new products. Regulation of pesticide use is exclusively within the jurisdiction of state and federal agencies and not the role of MS4s.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with the comment. The San Diego Water Board reviewed and considered the information pertaining to toxicity within the Copermittees' ROWD. Generally speaking, numerous sources of potential pollutants in storm water runoff exist, including contributions from urban activities such as industry, transportation, and residential development or from agricultural activities. Runoff from pervious and impervious areas (i.e., streets, parking lots, lawns, golf courses and agricultural land) carries accumulated contaminants (i.e., atmospheric dust, trace metals, street dirt, hydrocarbons, fertilizers and pesticides) into receiving waters. This problem is exacerbated in Southern California, where urbanization dominates most watersheds. In southern California, the runoff from urbanized watersheds contributes substantial loadings of a variety of constituents to receiving water environments. For example, the Southern California Coastal Water Research Project (SCCWRP) has estimated the cumulative loads of lead and zinc from all of the urbanized watersheds in the Southern California Bight to the coastal oceans represent over half of the combined mass emissions from all sources, which include traditional point sources such as publicly owned treatment works, industrial facilities, and power generating stations. Because of the additive and antagonistic interactions of the many chemical constituents found in storm water runoff, there is a strong potential for receiving water quality impacts related to toxicity. Moreover, the varied structural BMPs in use to reduce pollutant levels in urban runoff are not capable of reducing the most toxic fraction of runoff, the dissolved phase. Metals typically associated with fine particles in storm water runoff also have the potential to accumulate in the sediments of downstream receiving waters where they may contribute to the risk of toxicity. Therefore, even when BMPs have been shown to reduce the larger particulates found in runoff, it cannot be assumed that treatment processes are also reducing toxicity. Consequently, direct	

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Gnl-2	GENERAL COMMENTS
	measurement of toxicity in storm water runoff and receiving water sediments is needed. The requirements for toxicity sampling were updated during the adoption of Order No. R9-2013-0001 in response to comments provided by USEPA to make the toxicity requirements more consistent with recently adopted MS4 permits (i.e. Caltrans and Los Angeles County MS4 Permits). The recently adopted Caltrans and Los Angeles County MS4 Permits include updated toxicity data collection procedures and data analysis methods that are consistent with the Draft State Water Resources Control Board Policy for Toxicity Assessment and Control, June 2012 (Draft State Board Toxicity Policy). See also response to comment D-1. Sediment monitoring requirements were also updated in Water Quality Control Plan for Enclosed Bays and Estuaries, Part 1 Sediment Quality (State Plan). Based on these considerations, no revisions to the Tentative Order are needed.

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Gnl-3	GENERAL COMMENTS	
	<u>COMMENT:</u> <i>Numbering in Tentative Order should explicitly identify the major sections to help the reader.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board agrees that the Tentative Order should explicitly identify the major permit sections to increase readability. Footers throughout the Tentative Order indicate the subsections, e.g. A.1, A.2, to orient the reader. Additionally, the electronic PDF version of the Tentative Order has bookmarks for the major provisions to assist in navigating the requirements. Therefore, the San Diego Water Board did not make the requested revisions because existing footers and navigation capabilities address the comment.	

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 21, 2015

Gnl-4 GENERAL COMMENTS		
	<u>COMMENT:</u> <i>The Tentative Order provides an overly broad interpretation of the storm water regulations by requiring MS4s to “enhance” and “restore” beneficial uses as the CWA only requires that Copermittees protect beneficial uses and prevent nuisance.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the Tentative Order provides an overly broad interpretation of the storm water regulations. The San Diego Water Board reviewed and considered this comment during the adoption process of Order No. R9-2013-0001 (Regional MS4 Permit), making changes that replaced language which referred to “restoring water quality standards in receiving water” to language that required protection of water quality standards in receiving water from MS4 discharges. The Fact Sheet, pages 114-115 to Tentative Order No. R9-2015-0001 clearly states that Provisions E.5.e.(1)-(2) do not require the implementation of channel, streams, and/or habitat rehabilitation projects, but do require the Copermittees to develop a program with strategies to facilitate the implementation of these types of projects in areas of existing development. The strategies are expected to include allowing and encouraging Priority Development Projects to implement retrofitting types of projects as a means of compliance with the structural BMP performance criteria requirements of Provisions E.3.c.(1) and E.3.c.(2). Therefore, no revisions were made to Tentative Order No. R9-2015-0001 or its Attachments.	

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 21, 2015

Gnl-5	GENERAL COMMENTS	
	<u>COMMENT:</u> <i>The Tentative Order includes language that provides an overly broad use of the term “prohibit.”</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the Tentative Order provides an overly board use of the term prohibit. The Clean Water Act requires MS4 permits to include a requirement that non-storm water discharges are to be “effectively prohibited” to the MS4. The Code of Federal Regulations requires each Copermittee to have the legal authority to “prohibit” non-storm water discharges to the MS4. The Phase I Final Rule clarifies what “effectively prohibit” means (55 FR 47995): “Section 402(p)(3)(B) requires that permits for discharges from municipal separate storm sewers require the municipality to “effectively prohibit” non-storm water discharges from the municipal separate storm sewer...Ultimately, such non-storm water discharges through a municipal separate storm sewer must either be removed from the system or become subject to an NPDES permit (other than the permit for the discharge from the municipal separate storm sewer.)” During the 2013 adoption process for Order No. R9-2013-0001, where appropriate, the language in Order No. R9-2013-0001 was revised to be consistent with the language of the Clean Water Act to include the term “effectively prohibit” instead of “prohibit” or “reduce and eliminate.” In other cases, the language was maintained to be consistent with the requirements of the Code of Federal Regulations requiring the Copermittees to establish the legal authority to “prohibit” non-storm water discharges to their MS4s and enforce that legal authority. The establishment and enforcement of the legal authority to “prohibit” non-storm water discharges to their MS4s is how the Copermittees will “effectively prohibit” non-storm water discharges to their MS4s. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

Gnl-6: Tentative Order's WQBELs were improperly formulated.

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Gnl-6	GENERAL COMMENTS
	<u>COMMENT:</u> <i>The Tentative Order's WQBELs were improperly formulated.</i> • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> There are TMDLs in the Basin Plan that established wasteload allocations for MS4 discharges causing or contributing to exceedances of water quality standards in specified impaired water bodies. The San Diego Water Board has included WQBELs that are consistent with the requirements and assumptions and requirements of the TMDLs wasteload allocations (WLAs) in accordance with applicable federal regulations at 40 CFR 122.44(d)(1) (vii)(B) and 40 CFR 122.44(k)(2)-(4). TMDLs included in Attachment 1 to the Tentative Order have been approved by USEPA during the TMDL development process and again reviewed by USEPA as part of the Regional MS4 2013 Permit adoption process. NPDES permits must limit and control all pollutants that are or may be discharged at a level that "will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard including narrative criteria." (See 40 CFR 122.44(d)(1)(i)). The analysis that is performed to determine what pollutants require WQBELs is commonly referred to as the "reasonable potential analysis." NPDES permits must include WQBELs for all pollutants with "reasonable potential." (see 40 CFR 122.44(d)(1)(i)) Where a WLA has been assigned to a discharge in a TMDL, it is concluded that there is reasonable potential for the discharger to cause or contribute to an excursion of water quality standards. Because there are TMDLs in the Basin Plan that have identified the established WLAs for MS4s as discharges causing or contributing to exceedances of water quality standards, demonstration of reasonable potential is presumed for the purposes of establishing a WQBEL based on an applicable WLA. (see 40 CFR 122.44(d)(1)(ii))

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Gnl-7	GENERAL COMMENTS	
	<u>COMMENT:</u> <i>WQBELs should only be defined as effluent limitations.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board has included WQBELs that are consistent with the assumptions and requirements of TMDL wasteload allocations in accordance with applicable federal regulations at 40 CFR 122.44(d)(1)(vii)(B). WQBELs can be expressed as (1) conditions in receiving waters that are to be attained to restore or protect water quality standards in receiving waters, (2) conditions in discharges that will not cause or contribute to exceedances of water quality standards in receiving waters, (3) BMPs that will ensure discharges will not cause or contribute to exceedances of water quality standards in receiving waters, or (4) a combination of one or more of (1)-(3). This is consistent with 40 CFR 122.44(d)(1)(vii)(B) and 122.44(k)(2)-(4). The San Diego Water Board has incorporated options (1)-(3) under the WQBEL requirements for each of the TMDLs in Attachment E. In most cases, if the WQBEL expressed as a receiving water limitation is achieved, the discharges from the MS4s are assumed to be in compliance with the TMDL requirements. If not, then the Copermittees must demonstrate that discharges from the MS4s are not causing or contributing to the exceedances in the receiving waters by achieving the WQBELs expressed as effluent limitations. In every case, the Copermittees are required to implement BMPs to ensure that discharges from their MS4s do not cause or contribute to exceedances of water quality standards in receiving waters.	

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Lgl-1	LEGAL COMMENTS	
	COMMENT: <i>Land Development requirements expose Copermittees to significant litigation risk and will be largely unenforceable. Therefore, predevelopment runoff reference conditions and stream, channel and habitat restoration requirements should be eliminated in their entirety.</i> Commenters generally expressed concerns with the Copermittees' legal authority to imposed requirements on development projects where a nexus between impact on the receiving water and the project cannot be established. The Copermittees assert that they would be subject to liability under takings clauses of the US and California Constitutions and the Mitigation Fee Act for requiring hydromodification management BMP requirements on new development or redevelopment projects that discharge to hardened channels where a hydromodification impact would be questionable and difficult to establish.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board recognizes the concerns of the Copermittees' legal authority to impose hydromodification management requirements on development that causes no hydromodification impacts and responded to nearly identical comments during the adoption process for Order No. R9-2013-0001. As stated in response to comment Gnl-1, the San Diego Water Board incorporates those responses into this response to comments document. As stated in the 2013 responses to comments document: Federal law mandates that permits issued to MS4s require management practices that will result in reducing pollutants to the maximum extent practicable. The state is required, by law, to select the BMPs. (See NRDC v. USEPA (9th Cir. 1992) 966 F.2d 1292; Environmental Defense Center v. USEPA (9th Cir. 2002) 344 F.3d 832, 855; Rancho Cucamonga v. Regional Water Quality Control Bd., Santa Ana Region (2006) 135 Cal.App.4th 1377, 1389.) The Tentative Order's requirements for Low Impact Development and hydromodification management controls are authorized by federal law. Federal NPDES regulation 40 CFR 122.26(d)(2)(iv)(A)(2) provides that Copermittees develop and implement a management program which is to include "A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plans shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed." The Tentative Order does not impose land use regulations, nor does it restrict or control local land-use decision-making authority. Rather, the Tentative Order requires the permittees to fulfill Clean Water Act requirements and protect water quality in their land use decisions. The requirements in the Tentative Order	

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Lgl-1	LEGAL COMMENTS
	allow for flexibility in compliance options to the extent allowable under the Clean Water Act. The substantive regulatory requirements of the Clean Water Act are a valid exercise of the federal government's enumerated powers and authority over navigable waters. (NRDC v. USEPA (9th Cir. 1998) 863 F.2d 1420, 1436.) Environmental regulation is not land use regulation, and therefore does not infringe upon local authority over land use decisions. (California Coastal Commission v. Granite Rock (1987) 480 U.S. 572. In addition, local land use planning must be consistent with general statewide laws. (County of Los Angeles v. California State Water Resources Control Board (2006) 143 Cal.App.4th 985, 1003.) Article 11, section 7, of the California Constitution states that a county or city may not enact laws that conflict with general laws. The Porter-Cologne Water Quality Control Act contains the California Legislature's finding that water quality is a matter of state-wide concern, requiring a statewide program administered at a regional level. (See, e.g., Wat. Code, § 13000; see also generally Southern California Edison v. State Water Resources Control Board (1981) 116 Cal.App.3d 751, 758.) Section 101 of the CWA has a companion policy statement, where Congress found that water quality is a matter of federal concern. The Tentative Order also does not dictate specific methods of compliance or dictate the manner in which the Copermittees use their land. Where the Tentative Order includes detailed requirements, it is to comply with the Clean Water Act and its regulations. USEPA's regulations mandate that certain requirements be included in MS4 permits in order to achieve the requirements of the Clean Water Act. Thus, federal law mandates that permits issued for MS4s require certain actions that will result in the elimination or reduction of pollutants to receiving waters and the state is required, by federal law, to select the controls necessary to meet this standard. (See NRDC v. USEPA (9th Cir. 1992) 966 F.2d 1292, 1308; City of Rancho Cucamonga v. Regional Water Quality Control Bd., Santa Ana Region (2006) 135 Cal.App.4th 1377, 1389-90.) The requirement that the Copermittees require Priority Development Projects to control post-project runoff flow rates and durations so that they do not exceed pre-development runoff flow rates and durations by more than ten percent is appropriate and necessary to reduce erosion and the discharge of pollutants into receiving waters. It does not require mitigation beyond redevelopment project impacts because the requirement lessens (although does not eliminate) the perpetuating impacts that originated upon initial land alteration (i.e., the project would continue to cause accelerated erosion) absent improved controls of post-project runoff flow rates and durations. The San Diego Water Board maintains that the Copermittees have authority to implement this requirement, and that if implemented it would not rise to the level of a taking of private property. The pre-development condition provision is also consistent with the requirements in both the current Orange County and Riverside County MS4 permits.

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Lgl-1	LEGAL COMMENTS
	To remove the question of the nexus between a project's impacts on an already hardened channel, the Tentative Order includes a hydromodification management exemption for projects that discharge to conveyance channels whose bed and bank are concrete lined all the way from the point of discharge to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean.

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Lgl-2	LEGAL COMMENTS	
	<u>COMMENT:</u> <i>Tentative Order numeric WQBELs violate the requirements of law because they are infeasible.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that including numeric WQBELs for the TMDLs in the Tentative Order violate the requirements of law. The federal regulations under 40 CFR 122.44(d)(1)(vii)(B) require that NPDES permit requirements incorporate WQBELs that must be consistent with the requirements and assumptions of any available wasteload allocations (WLAs) developed under TMDLs. The federal regulations under 40 CFR 122.44(k) do not require WQBELs to be BMP-based if numeric effluent limitations are infeasible, but only that WQBELs that implement WLAs <u>may</u> be expressed in the form of BMPs. BMP-based WQBELs may be allowed if BMPs alone adequately implement WLAs, and additional controls are not necessary. This is consistent with a 2002 USEPA memorandum for “<i>Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs.</i>” WQBELs are required for point source discharges that have the reasonable potential to cause or contribute to an excursion of water quality standards and technology based effluent limitations or standards are not sufficient to achieve water quality standards. Where a WLA has been assigned to a discharge in a TMDL, it is concluded that there is reasonable potential for the discharger to cause or contribute to an excursion of water quality standards. The memorandum “<i>Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs)’ issued by USEPA on November 26, 2014 states, “Where the NPDES authority determine that MS4 discharges have a reasonable potential to cause or contribute to a water quality standard excursion, EPA recommends that, where feasible, the NPDES permitting authority exercise its discretion to include numeric effluent limitations necessary to meet water quality standards.”</i> The “where feasible” in the memorandum applies to the NPDES permitting authority’s discretion to include numeric effluent limitations necessary to meet water quality standards, not to the feasibility of achieving the numeric effluent limitations. The State Water Board, in Order WQ 2006-0012 (Boeing), has made clear that “infeasibility” in the context of numeric effluent limitations refers to “the ability or propriety of establishing” numeric limits, as	

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Lgl-2	LEGAL COMMENTS
	opposed to the feasibility of compliance. The Caltrans MS4 permit is issued by the State Water Board. Even though the Caltrans MS4 permit may allow for BMP-based WQBELs, this does not require the San Diego Water Board to include BMP-based WQBELs in the Tentative Order regardless of any potential or apparent conflict. The San Diego Water Board will issue additional requirements to Caltrans with numeric WQBELs when and where warranted. The San Diego Water Board considered the feasibility of incorporating numeric WQBELs to implement the requirements of each of the TMDLs and has determined that they are feasible, and necessary, to include to meet water quality standards, consistent with the 2014 USEPA memorandum. Numeric WQBELs are also “additional controls” necessary to implement the WLAs, consistent with the 2002 USEPA memorandum. Each of the TMDLs in the Tentative Order, however, includes BMP-based WQBELs which must be implemented to achieve the numeric WQBELs. The Tentative Order requires the Copermittees to implement the BMP-based WQBELs to achieve the numeric WQBELs. This is consistent with the 40 CFR 122.44(d)(1)(vii)(B) and 40 CFR 122.44(k), and the recommendations of the 2014 USEPA memorandum. The Tentative Order has also been revised to include interim and final TMDL compliance determination options that allow the Copermittees to demonstrate that the BMP-based WQBELs will achieve the numeric WQBELs. The numeric WQBELs are necessary for the Copermittees to quantitatively demonstrate that the BMPs implemented are achieving the WLAs of the TMDLs. Thus, the Tentative Order appropriately includes numeric WQBELs and does not violate any requirements of law.

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Lgl-3	LEGAL COMMENTS	
	<u>COMMENT:</u> <i>San Diego Water Board does not have the legal authority to issue a regional MS4 permit.</i> The County of Orange and Concurring Cities and Orange County Flood Control District request that they be issued an individual permit. The Commenters claim the San Diego Water Board does not have the legal authority to include Orange County in a Regional Permit because there is no system-wide, jurisdiction-wide, or common watershed basis to do so.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board incorporates its responses to comments for the adoption of Order No. R9-2013-0001 and other documents in the record including the September 7, 2012, legal memorandum prepared by San Diego Water Board counsel. The San Diego Water Board disagrees with the commenters that the federal regulations do not authorize the issuance of a region-wide MS4 permit coextensive with the jurisdictional boundaries of the San Diego Region. The San Diego Water Board reviewed and considered this comment during the adoption process of Order No. R9-2013-0001 (Regional MS4 Permit) and reaffirms its position that despite the geographic separation, the San Diego Water Board has legal authority to issue a regional MS4 permit through its authority in the Clean Water Act. (September 7, 2012 Letter from San Diego Water Board Counsel on Legal Authority Supporting Issuance of a Regional MS4 Permit) Section 402, subpart (p)(3)(B) of the Clean Water Act states that "Permits for discharges from municipal storm sewers – (i) may be issued on a system- or jurisdiction-wide basis" The federal storm water regulations in 40 CFR at Part 122.26, subdivision (a)(1)(v) also state that the Director (the San Diego Water Board) may designate dischargers from municipal separate storm sewers on a system-wide or jurisdiction-wide basis, taking into consideration the following factors: (A) location of the discharge with respect to waters of the United States; (B) the size of the discharge; (C) the quantity and nature of the pollutants discharged to waters of the United States and (D) other relevant factors. Consideration of these factors provides wide discretion to the San Diego Water Board in issuing MS4 permits. More specifically, the regulations permit issuance of system-wide permits covering all MS4s in "adjacent . . . large or medium separate storm sewer systems." (See 40 CFR sec. 122.26(a)(3)(iv). The regulations also support issuance of MS4 permits on watershed or "other basis" contemplating that such permits may "specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas" (40 CFR Part 122.26(a)(3)(v).) The USEPA responses to comments for the above regulations also make clear that the permitting authority, in	

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Lgl-3	LEGAL COMMENTS
	this case, the San Diego Water Board, has flexibility to establish system- or region-wide permits. In the Final Rule published in the Federal Register and containing USEPA's responses to comments, USEPA notes that paragraph (iv) of section 122.26(a)(3) would allow an entire system in a geographical region under the purview of a state agency to be designated under a permit. (National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges, 55 Fed. Reg. 47990, 48030-48042 (Nov. 16, 1990).) It is important to note that a regional MS4 permit does not expand the requirements for each municipality beyond its borders as the federal regulations make clear that MS4 permittees need only comply with permit conditions relating to discharges from the MS4s for which they are operators. (40 CFR Part 122.26(a)(3)(vi).) See also September 7, 2012, memorandum from Jessica Jahr and Catherine Hagan, State Water Board's Office of Chief Counsel, to Ryan Baron and David Huff, counsels for Orange and Riverside Counties, respectively.

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Lgl-4	LEGAL COMMENTS
	<u>COMMENT:</u> <i>The Requirements in the Tentative Order are more stringent than federal law, requiring an economic analysis.</i> The County of Orange and Concurring Cities and Orange County Flood Control District assert that several requirements of Tentative Order go beyond the requirements of Federal law, thus an analysis pursuant to California Water code section 13241 is required. The commenters also make several assertions about deficiencies in the economic considerations discussed in the Fact Sheet, and assert that a cost-benefit analysis needs to be included in the Fact Sheet discussion. • County of Orange - Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that “several requirements of Tentative Order go beyond the requirements of Federal law.” The San Diego Water Board is charged with construction of and administration of the Clean Water Act in the San Diego Region. In issuing MS4 permits, “[t]he permitting agency has discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharge of pollutants.” (City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region (2006) 135 Cal.App.4th 1377,1389.) However, the “Regional Board must comply with federal law requiring detailed conditions for NPDES permits.” (Ibid.) Further, USEPA expects the permitting authority to develop the specific practices that comply with the Clean Water Act on a permit-by-permit basis. (NRDC v. USEPA (9th Cir. 1992) 966 F.2d 1292, 1308.) To the extent the Board is exercising discretion in including certain permit requirements, the Board is exercising discretion required and/or authorized by federal law, not state law. (See City of Rancho Cucamonga, supra, 135 Cal.App.4th at 1389; Building Industry Association of San Diego County v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 866, 882-883.) Further, the MEP standard is a flexible standard that balances a number of considerations, including technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness. (Id. at pp. 873, 874, 889.) Such considerations change over time with advances in technology and with experience gained in storm water management. (55 Fed. Reg. 47990, 48052 (Nov. 16, 1990).) Accordingly, a determination of whether the conditions contained in Tentative Order exceed the requirements of federal law cannot be based on a point by point comparison of the permit conditions with federal law. The appropriate focus is whether the permit conditions as a whole exceed the MEP standard. The commenters assert that provisions of the Tentative Order are more stringent than the requirements of the Clean Water Act and therefore require an analysis of the factors, including economic considerations, in Water Code section

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Lgl-4	LEGAL COMMENTS
	13241 before the San Diego Water Board can approve such provisions. As indicated above, the San Diego Water Board disagrees that provisions of the Tentative Order are more stringent than requirements of the Clean Water Act. Because the Tentative Order is not more stringent than federal law, its adoption does not require the San Diego Water Board to consider Water Code section 13241 factors. The California Supreme Court in <i>City of Burbank v. State Water Resources Control Board, et al.</i>, ((2005) 35 Cal.4th 613) (<i>Burbank</i>), held: [Water Code] section 13377 specifies that wastewater discharge permits must meet the federal standards set by federal law. In effect, section 13377 forbids a regional board's consideration of any economic hardship on the part of the permit holder if doing so would result in the dilution of the requirements set by Congress in the Clean Water Act. That act prohibits the discharge of pollutants into the navigable waters of the United States unless there is compliance with federal law (33 U.S.C. § 1322(a)), and publicly operated wastewater treatment plants such as those before us here must comply with the act's clean water standards, regardless of cost [citations]. Because [Water Code] section 13263 cannot authorize what federal law forbids, it cannot authorize a regional board, when issuing a wastewater discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards." (<i>Burbank</i>, 35 Cal.4th at 625.) While the <i>Burbank</i> decision does require an analysis of Water Code section 13241 factors when the state adopts permit conditions that are more stringent than federal law (<i>id.</i> at 618) Tentative Order No. R9-2015-0001 reflects that all of the challenged provisions are necessary to implement federal law. Thus, the San Diego Water Board is not required to consider economic information to justify a "dilution of the requirements" established in federal law. Even when applicable, consideration of economic information pursuant to section 13241 does not require a cost-benefit analysis, as some commenters suggest. And section 13241 neither specifies how regional water boards must consider its enumerated factors nor does it require that regional water boards may specific findings documenting consideration of the factors. (See <i>California Ass'n of Sanitation Agencies, et al. v. State Water Resources Control Board, et al.</i>, (208 Cal.App.4th 1438, 1464 (2012).) Nonetheless, the Fact Sheet and Response to Comments reflect economic information that has either been developed or gathered by the San Diego Water Board or has been submitted by Copermitees. To the extent that economic information in connection with compliance and other costs associated with challenged permit provisions, the San Diego Water Board has fully considered this information. Under these circumstances, <i>Burbank</i> does not require more. See also comment response Fnd-8.

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Lgl-5	LEGAL COMMENTS	
	<u>COMMENT:</u> <i>The San Diego Water Board cannot determine whether a particular mandate is unfunded.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District assert that the San Diego Water Board does not have the legal authority to determine whether any provisions in the Tentative Order constitute a state mandate, and only the Commission on State Mandates can make the determination.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> In proposing Tentative Order No. R9-2015-0001, the San Diego Water Board proposes amendments to Order No. R9-2013-0001 which includes Finding 31 and corresponding discussion in the Fact Sheet setting forth the San Diego Water Board's conclusion and supporting reasoning that Order No. R9-2013-0001 does not constitute an unfunded state mandate requiring subvention. The San Diego Water Board incorporates its responses to comments on the adoption of Order No. R9-2013-0001 into this response. The San Diego Water Board does not dispute that the Commission on State Mandate ultimately has jurisdiction to determine whether the State has imposed a mandate requiring state subvention. However, it remains entirely appropriate for the San Diego Water Board to set forth its legal basis to support its conclusion Order No. R9-2013-0001, as amended by Tentative Order No. R9-2015-0001, contains provisions the Board finds to be necessary and appropriate to meet the federal Clean Water Act standards. While the Commission may be expert in state mandates, it has no expertise in the field of water law. As indicated in response to comment Lgl-5, above, the San Diego Water Board does not agree that Order No. R9-2013-0001 as amended by Tentative Order No. R9-2015-0001 exceed federal requirements of the Clean Water Act. The San Diego Water Board is charged by law with administering and constructing the Clean Water Act's requirements and is entitled to considerable deference in its interpretation of the Act. (See Building Industry Association of San Diego, supra, 124 Cal.App.5th at pp. 873, 879 fn.9; County of Los Angeles v. California State Water Resources Control Bd. (2006) 143 Cal.App.4th 985, 997.) In issuing MS4 permits, "[t]he permitting agency has discretion to decide what practices, techniques, methods and other provisions are appropriate and necessary to control the discharge of pollutants." (City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region (2006) 135 Cal.App.4th 1377,1389.) However, the "Regional Board must comply with federal law requiring detailed conditions for NPDES permits." (Ibid.) Further, USEPA expects the permitting authority to develop the specific practices that comply with the Clean Water Act on a permit-by-permit basis. (NRDC v. USEPA (9th Cir. 1992) 966 F.2d 1292, 1308.) To the extent the Board is exercising discretion in including certain permit requirements, the Board is exercising discretion required and/or authorized by federal law, not state law. (See City of Rancho Cucamonga, supra, 135 Cal.App.4th at 1389;	

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Lgl-5	LEGAL COMMENTS
	Building Industry Association of San Diego County v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 866, 882-883.) Further, the MEP standard is a flexible standard that balances a number of considerations, including technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness. (Id. at pp. 873, 874, 889.) Such considerations change over time with advances in technology and with experience gained in storm water management. (55 Fed. Reg. 47990, 48052 (Nov. 16, 1990).) The San Diego Water Board's findings are the expert conclusions of the principal state agency charged with implementing the NPDES program in California. (Cal. Wat. Code §§ 13001, 13370.) The San Diego Water Board is not precluded from including provisions in Tentative Order No. R9-2015-0001 which commenters may contend are state mandates and it is well within the San Diego Water Board's authority to conclude, based on its expertise in administering the Clean Water Act, Tentative Order No. R9-2015-0001 does not exceed federal law and is therefore not a state mandate subject to subvention.

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Fnd-1	FINDINGS
	COMMENT: <i>Modify findings and/or Fact Sheet to include additional key findings from the Report of Waste Discharge (including the State of the Environment) and use this information as the basis for the Draft Order's requirements.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District are concerned that the San Diego Water Board did not review and consider the "State of the Environment" discussion in their ROWD based on the Findings and Fact Sheet amendments presented in the Tentative Order and its Attachments.
	RESPONSE: The San Diego Water Board disagrees with the comment. The San Diego Water Board reviewed and considered all information in the Copermittees ROWD, as is documented in the Findings of Tentative Order No. R9-2015-0001 (i.e. Findings 1 through 4). Based on the ROWD review newly proposed requirements specific to southern Orange County Copermittees (i.e. interim hydromodification exemptions for large rivers and engineered channels) are presented in Attachment No. 1 to the Tentative Order (i.e. Order No. R9-2013-0001 as Amended by Order No. R9-2015-0001). San Diego Water Board reviewed the ROWD, including the "State of the Environment" discussion and the San Diego Water Board concluded that many of the ROWD recommendations could be accommodated by the requirements in Order No. R9-2013-0001 with only a limited number of changes required. The new flexible regulatory approach (described in the Fact Sheet for Order No. 2013-0001) and proposed requirements, puts more control in the hands of the Copermittees to develop a watershed-based planning approach. As described in Finding 2 of the Tentative Order, development of a watershed-based planning approach is portrayed in the ROWD as the most important next step to take in the development of the storm water programs in Orange County. The Tentative Order also provides the Copermittees with the flexibility to continue taking advantage of opportunities to reduce dry weather flows (a repeated recommendation throughout the ROWD).

- County of Orange
Concurring Cities:
Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo
- Orange County Flood Control District

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Fnd-2	FINDINGS
	COMMENT: <i>Modify Finding 7 - In-Stream Treatment Control Systems to allow for the implementation of stream restoration or stream rehabilitation projects and constructed wetlands, or maintenance or reconstruction of existing stream restoration or rehabilitation projects, constructed wetlands, and regional BMPs.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District suggest modify the language in Finding 7 to allow for full flexibility to identify creative solutions that meet the Tentative Order's alternative compliance goals through implementation of stream restoration or rehabilitation. • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board disagrees that the language in Finding 7 of Order No. R9-2013-0001 stifles Copermittee ability to meet the Tentative Order's alternative compliance goals through creative solutions such as implementation of stream restoration or stream rehabilitation projects and constructed wetlands, or prevents maintenance or reconstruction of existing stream restoration or rehabilitation projects, constructed wetlands, and regional BMPs. Finding 7 states that pursuant to federal regulations (40CFR 131.10(a)) states cannot adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of a runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Finding 7 concludes that treatment control best management practices (BMPs) must not be constructed in waters of the U.S. The language of Finding 7 does not impinge upon a Copermittee's ability to take full advantage of the flexibility provided in the Tentative Order's alternative compliance option. Permit Provision II.E.3.c.(3) of Order No. R9-2013-0001 enables each Copermittee, at its own discretion, to allow Priority Development Projects (POPs) to participate in an alternative compliance program in lieu of implementing the onsite structural BMP performance requirements of Provisions II.E.3.c.(1) and II.E.3.c.(2). Alternative compliance is only allowed if the Copermittee determines that implementation of an alternative compliance project will result in a greater overall water quality benefit for the Watershed Management Area than fully complying with the onsite performance requirements. This alternative compliance option establishes a mechanism for Copermittees to provide alternative candidate projects for those land development projects that are unable to fully implement controls onsite. Copermittees can develop and make available a variety of candidate alternative compliance projects, including stream restoration and rehabilitation projects within a water body, as long as such projects do not entail placement of a treatment facility or treatment control BMPs within the water body. A vast variety of candidate projects could

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Fnd-2	FINDINGS
	be proposed under Permit Provision II.E.3.c.(3) and it is expected that candidate projects will not include projects that entail construction, operation, and maintenance of a pollution treatment control facilities or BMPs in a water body. The placement of structures of this type in a water body is contrary to the intent of 40CFR 131.10(a) and; therefore the Tentative Order does not propose any modifications to Finding 7. Many candidate project options exist that could a) achieve the greater overall water quality benefit envisioned by the alternative noncompliance permit provision, and b) support the physical, chemical, and biological integrity, as well as the beneficial uses of a particular water body, and c) not entail constructing treatment facilities or BMPs within a water body. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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Fnd-3	FINDINGS
	COMMENT: <i>Modify Finding 8, 16, and 17 to remove presumption that discharges from MS4s always contain waste.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District object to Finding 8 of Order No. R9-2013-0001 stating that discharges from the MS4s contain waste, and that Finding 8 does not acknowledge that there may not be pollutants in the discharges from the MS4s. The commenters requested revisions to Findings 8, 16 and 17 to reflect this position. • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board disagrees with the commenters that Findings 8, 16, or 17 need revision. The Tentative Order implements the requirements of the California Water Code as well as the requirements of the Clean Water Act. Under California Water Code section 13376, any person discharging waste, or proposing to discharge wastes to waters of the State is not authorized to discharge waste unless issued waste discharge requirements. The requirements of the Clean Water Act, specific to discharges of pollutants to waters of the U.S. are also included in the California Water Code, Chapter 5.5 of Division 7. Thus, under the California Water Code, any person discharging pollutants, or proposing to discharge pollutants to waters of the U.S. is not authorized to discharge pollutants unless issued waste discharge requirements that include NPDES requirements. Waste discharge requirements that include NPDES requirements is also an NPDES permit under the Clean Water Act. The Clean Water Act and the California Water Code requires municipalities to obtain and comply with NPDES permits for authorized discharges of pollutants to waters of the U.S. from their MS4s. Municipalities proposing to discharge pollutants from an MS4 must obtain an NPDES permit before they can lawfully discharge. Comments received assert that the definition of “waste” in California Water Code section 13050 does not include storm water or any discharge that is not created by human activity. Comments received also assert that waste discharge requirements and NPDES permits cannot regulate the discharge of “pure storm water” and that not all discharges from the MS4 contain pollutants. Discharges from the MS4 are not “pure storm water.” Storm water that flows over the surface of any developed area, which includes the MS4 itself, do not enter or discharge from the MS4 without coming into contact with pollutants or constituents that alter the storm water such that it is no longer “pure storm water.” Thus, storm water discharges from the MS4 contains pollutants and contain waste. It is well-known and documented that urban runoff and storm water contains pollutants. (See, e.g., State Water Board Order WQ

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Fnd-3	FINDINGS
	2001-015 ("As we stated in Board Order WQ 95-2, the requirement to adopt permits for urban runoff is undisputed, and Regional Water Boards are not required to obtain any information on the impacts of runoff prior to issuing a permit (citation). It is also undisputed that urban runoff contains 'waste' within the meaning of Water Code section 13050(d), and that the federal regulations define 'discharge of a pollutant' to include 'additions of pollutants into waters of the United States from surface runoff which is collected or channeled by man.' (40 C.F.R. § 122.2.) But it is the waste or pollutants in the runoff that meet these definitions of 'waste' and 'pollutant.' And not the runoff itself. [fn]. (p. 5.)) Tentative Order No. R9-2015-0001 (like the current adopted version of Order No. R9-2013-0001) does not regulate "pure storm water." The Tentative Order regulates the discharge of storm water that is being discharged as a waste and contains pollutants. Finding 8 of Order No. R9-2013-0001 accurately states that discharges from the MS4s contain waste, as defined in the California Water Code. Finding 8 also accurately states that discharges from MS4s contain pollutants that adversely affect the quality of waters of the state. Findings 16 and 17 also accurately conclude that BMPs and implementation of BMPs are necessary to remove waste and pollutants in storm water discharges from MS4s. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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Fnd-4	FINDINGS
	<u>COMMENT:</u> <i>Delete Finding 11. Natural waters cannot legally be classified as part of the MS4, and a part of both MS4 and receiving water.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District assert that Finding 11 is inaccurate and the San Diego Water Board cannot classify natural waters as part of the MS4. • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with this comment. An MS4 is defined in the federal regulations as a conveyance or system of conveyances owned or operated by a Copermittee, and designed or used for collecting or conveying runoff. Therefore, the San Diego Water Board considers natural drainages that are used by the Copermittees as conveyances of runoff, as both part of the MS4 and as receiving waters. The State Water Board supports this approach. In reviewing a Petition on Order No. R9-2001-0001, the State Water Board stated "<i>We also agree with the Regional Water Board's concern, as stated in its response, that there may be instances where MS4s use 'waters of the United States as part of their sewer system [...]</i>" State Water Resources Control Board Order WQ 2001-15. Furthermore, the U.S. Supreme Court's 2006 <i>Rapanos</i> decision supports the conclusion that natural streams in developed areas can be both receiving waters and MS4s by confirming that ephemeral and intermittent streams can be waters of the U.S. subject to regulation under Clean Water Act section 404 and also be considered point sources of pollution discharges regulated under Clean Water Act section 402. (See <i>Rapanos, et al. v. United States and Carabell et al. v. United States Army Corps of Engineers, et al. (2006) 547 U.S. 715, 743-744.</i>) Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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Fnd-5	FINDINGS
	<u>COMMENT:</u> <i>Modify Finding 12 to more accurately describe that Copermittees do not accept free and open access to MS4s, and are not responsible for all discharges not prohibited.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District object to Finding 12 stating that the Copermittees provide free and open access to MS4s. The Copermittees assert that they are not responsible for discharges from their MS4s that are from third parties that are subject to the jurisdiction of the San Diego Water Board • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that Finding 12 is inaccurate. The Copermittees have the option to request the authority to discharge from their MS4s under an NPDES permit or comply with the complete prohibition against the discharge of pollutants pursuant to Clean Water Act section 301(a) (33 U.S.C. § 1311(a)). These choices are provided by the federal Clean Water Act, not state laws. The Copermittees have opted to discharge from their MS4s under an NPDES permit. In doing so, they are responsible for discharges from the MS4s. Thus, Finding 12 correctly establishes that the Copermittees provide free and open access for third party discharges to their MS4s and that in doing so the Copermittees are responsible for discharges into the MS4 that they do not prohibit or otherwise control. Finding 12 also correctly concludes that the Copermittees cannot passively receive and discharge pollutants from third parties. The Copermittees have the responsibility of identifying the sources of discharges and pollutants from their MS4s. If the Copermittees are not actively identifying sources and cannot identify sources of discharges and pollutants to and from their MS4s, then the Copermittees are the source of the MS4s discharges and pollutants to receiving waters, even if they believe third parties are responsible for the discharges and pollutants. If, however, the Copermittees identify the sources of discharges and pollutants to or from the MS4s as outside of their legal authority to prohibit or otherwise control, then they are not passively receiving and discharging pollutants, even if they are providing free and open access to the MS4s. The data and information that the Copermittees collect to identify the third party sources can provide the evidence that the Copermittees are not responsible for the discharges and pollutants from the MS4s that can be attributed to third parties. Until the data and information are provided to identify those third parties, and demonstrate those parties are not subject to the Copermittees' legal authority, then the Copermittees are responsible for all of the discharges to and from their MS4s unless such discharges are authorized by a separate NPDES permit.

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Fnd-5 FINDINGS		
	Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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Fnd-6	FINDINGS
	<u>COMMENT:</u> <i>Modify Finding 15 to recognize that the discharge of all pollutants from the MS4 is subject to the MEP standard.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District assert Finding 15 is inaccurate. The Copermittees assert that the Tentative Order is inconsistent with the Clean Water Act and the MEP standard applies to both non-storm and water storm water, not just storm water. • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with the comment and incorporates its responses to comments on this topic from the San Diego Water Board's adoption proceedings on Order No. R9-2013-0001. The San Diego Water Board disagrees that the MEP standard applies to both non-storm water and storm water. The San Diego Water Board also disagrees that Finding 15 of Order No. R9-2013-0001 should be revised. Finding 15 accurately states the requirements of the Clean Water Act. The San Diego Water Board maintains that MEP standard only applies to pollutants in storm water. See also, Memorandum from San Diego Water Board Counsel to San Diego Water Board dated 5 November 2009, incorporated by reference herein. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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Fnd-7	FINDINGS
	<u>COMMENT:</u> <i>Modify Finding 29 to clarify single water board regulations of Cities of Lake Forest, Laguna Woods, Laguna Hills.</i> The City of Lake Forest provided suggested language changes to Finding 29 of the Tentative Order to clarify single water board regulation of the Cities of Lake Forest, Laguna Woods, and Laguna Hills. Suggested language changes were for the most part accepted by the San Diego Water Board.
	<u>RESPONSE:</u> The San Diego Water Board agrees with most of the suggested language changes proposed by the City of Lake Forest. The City of Lake Forest provided suggested language changes to Finding 29 of the Tentative Order to clarify single water board regulation of the Cities of Lake Forest, Laguna Woods, and Laguna Hills. The Tentative Order was modified to reflect, for the most part, the City's recommended changes. The word "wholly" was not added as requested by City of Lake Forest because it is unnecessary to clarify the terms of the Water Code section 13228 agreement. The permit language and the Water Code section 13228 designation agreement specify in detail how the Santa Ana Water Board and the San Diego Water Board will, respectively, regulate the City of Lake Forest as well as the Cities of Laguna Hills and Laguna Woods under each Region's respective MS4 permits. The San Diego Water Board notes that the current Riverside County MS4 permit (Order No. R9-2010-0016) includes the term "wholly" but the San Diego Water Board will consider removing that term when it considers the County of Riverside and Riverside Copermittees' Report of Waste Discharge for the reason set forth above.

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Fnd-8	FINDINGS
	<u>COMMENT:</u> <i>Modify Finding 31 to state the Tentative Order is more stringent than Federal Law, requiring an analysis of the factors pursuant to Water Code Section 13241.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District assert that several requirements of the Tentative Order go beyond the requirements of Federal law, thus an analysis pursuant to California Water code section 13241 is required. The commenters also make several assertions about the deficiencies they perceive with the economic considerations discussed in the Fact Sheet, and assert that a cost-benefit analysis needs to be included in the Fact Sheet discussion. • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with this comment and incorporates its responses to comments on this topic from the San Diego Water Board's adoption proceedings on Order No. R9-2013-0001. The provisions of the Tentative Order do not go beyond the requirements of the Clean Water Act or Code of Federal Regulations. The San Diego Water Board again considered economic information in developing the Tentative Order No. R9-2015-0001 using the best available information, but did not do so in accordance with an analysis pursuant to California Water code section 13241. The provisions of the Tentative Order No. R9-2015-0001 are based on and fully supported by federal requirements, as demonstrated by the legal authority provided by the Clean Water Act and Code of Federal Regulations sections cited in the Fact Sheet. Thus, the San Diego Water Board maintains that an analysis pursuant to California Water Code section 13241 is not required. Federal NPDES regulations do not require that the San Diego Water Board conduct a cost-benefit analysis. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted. Please also see response to comment Lgl-4 and Lgl-5.

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Fnd-9	FINDINGS
	<u>COMMENT:</u> <i>Delete Finding 32. The San Diego Water Board has no legal ability to determine whether a particular mandate is unfunded.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District assert that the San Diego Water Board does not have the legal authority to determine whether any provisions in the Tentative Order constitute a state mandate, and only the Commission on State Mandates can make the determination. • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> See response to comment Lgl-5.

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

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A-1	PROVISION A: PROHIBITIONS AND LIMITATIONS	
	<u>COMMENT:</u> <i>Tentative Order needs to include language that shows a clear pathway to compliance with the discharge prohibitions, receiving water limitations, and effluent limitations in Provision A.1.</i> Orange County and Concurring Cities, the Orange County Flood Control District, Riverside County Copermittees and the City of San Diego each submitted comments requesting that the requirements of Provision A be modified to provide a clear linkage between the prohibitions and limitations of Provisions A.1 to A.3 with the iterative process required under Provision A.4 to be demonstrated through the implementation of the Water Quality Improvement Plans. The commenters are concerned that the language of Provision A, if not modified, will be interpreted as requiring strict and immediate compliance with the prohibitions and limitations, and the implementation of the iterative process would not be enough to demonstrate compliance with the prohibitions and limitations. Among the many recommended modifications to the requirements of Provision A, the commenters are generally requesting that the discharge prohibitions and receiving water limitations of Provisions A.1.a, A.1.c and A.2.a specifically state that implementation of Provision A.4 constitutes compliance. Furthermore, the Copermittees have requested that Provision A.4 explicitly state that the implementation of the iterative process constitutes compliance with any of the prohibitions and limitations under Provision A.1 to A.3, including compliance with the effective prohibitions of non-storm water discharges to the MS4s, and the TMDL requirements. During adoption of Order No. R9-2013-0001, commenters from environmental organizations were strongly in support of maintaining the existing language and asserted that modifications to Provision A would “weaken” the requirements, or provide “safe harbor” and would violate federal anti-backsliding requirements.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District • Riverside County Copermittees • City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board understands the concerns that the Copermittees have expressed regarding the requirements of Provision A and the apparent lack of a linkage between the iterative process under Provision A.4 and the strict compliance with the discharge prohibitions and receiving water limitations of Provisions A.1.a, A.1.c and A.2.a. This language, however, is consistent with the precedential language that was issued under State Water Board Order WQ-1999-05 and has been implemented in all MS4 permits issued by the San Diego Water Board since 2001. The State Water Board has not yet issued an order or taken other action to supersede this precedential language. Recently, the State Water Board issued a Draft Order on November 21, 2014 in response to petitions challenging the 2012 Los Angeles MS4 Permit in which compliance with receiving water limitations is a major focus. Although the State Water Board's Draft Order generally upholds the Los Angeles Water Board Order, no final decision has been made. The State Water Board held a December 16, 2014 public workshop to receive comments and discuss the Draft Order with	

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A-1	PROVISION A: PROHIBITIONS AND LIMITATIONS
	Copermittees and interested persons. No decision was made at the workshop. The State Water Board did not indicate when a final Order might be issued. Under the Porter-Cologne Water Quality Control Act, waste discharge requirements must implement applicable water quality control plans, including water quality objectives. The discharge prohibitions and receiving water limitations of Provision A.1.a, A.1.c and A.2.a are consistent with this requirement, and are included in all NPDES permits and Waste Discharge Requirements issued by the San Diego Water Board. These are the fundamental requirements that protect water quality by ensuring that discharges comply with applicable water quality standards to ensure protection of receiving water beneficial uses. The San Diego Water Board does recognize an increasing body of monitoring data indicates that water quality standards are in fact not being met by many of the Copermittees' MS4 discharges. The San Diego Water Board has as a matter of practice not sought to enforce the discharge prohibitions and receiving water limitations of Provision A.1.a, A.1.c or A.2.a where the Copermittees are actively engaged in implementing the other requirements of the MS4 permit. The focus of the previous MS4 permits and the San Diego Water Board has been on compliance with implementation of the actions required by the permit, rather than the water quality outcomes that are expected to be achieved. As noted by the Copermittees, however, the approach of the Tentative Order is a significant departure from the approach of previous MS4 permits. Previous MS4 permits did not provide the Copermittees enough flexibility to truly implement an iterative process to adaptively manage their programs to identify innovative new ways to improve the quality of discharges from their MS4s or in the receiving waters, because the actions required by the permit were relatively fixed and prescriptive. In contrast, the Tentative Order is structured to allow the Copermittees to take advantage of the iterative process and adaptively manage their programs to focus on achieving outcomes. Since the State Water Board has yet to issue a final decision response to the petitions challenging the 2012 Los Angeles Water Board MS4 Permit, the San Diego Water Board did not revise Provisions A.1.a, A.1.c, A.2.a and A.4, and the language of Provision A remains consistent with the language in precedential State Water Board Order No. WQ 1999-05. However, the San Diego Water Board supports the concept of an alternative compliance option and considered it during the adoption of the Regional MS4 Permit in 2013. The San Diego Water Board will consider incorporation of the Riverside County Copermittees into the Regional MS4 Permit in late 2015 or early 2016. As part of this process, the San Diego Water Board will also consider the incorporation of a well-defined, transparent, and finite alternative compliance option similar to the option

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A-1	PROVISION A: PROHIBITIONS AND LIMITATIONS
	proposed in 2013, but also consistent with any decisions/guidance from the State Water Board. A rigorous alternative compliance option would allow the Copermittees that are willing to pursue significant receiving water quality improvements beyond the iterative process to be deemed in compliance with the receiving water limitations. Inclusion of the alternative compliance option during the extensive public process for the Riverside County Copermittees will provide the stakeholders the necessary opportunity to discuss, comment, and suggest changes to any proposed language. An administrative finding documenting the San Diego Water Board's intent to consider incorporation of an alternative compliance option during the MS4 NPDES permit reissuance proceedings for the Riverside County Copermittees has been added to the Tentative Order.

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B-1	PROVISION B: WATER QUALITY IMPROVEMENT PLANS	
	<u>COMMENT:</u> <i>Water Quality Improvement Plans should be the foundation for a BMP-based compliance approach.</i> Orange County and Concurring Cities, the Orange County Flood Control District, Riverside County Copermittees and the City of San Diego request that Copermittees be allowed to utilize the development and implementation of the Water Quality Improvement Plans as a compliance mechanism for the prohibitions and limitations of Provisions A.1 to A.3.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District • Riverside County Copermittees • City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board understands the concerns raised by the comments from the Copermittees. The Tentative Order includes the State Water Board precedential language. At this time the San Diego Water Board has chosen to keep the State Water Board precedential language in Attachment 1 to the Tentative Order until the State Water Board takes action with regards to this issue. Should the State Water Board decide to issue revised precedential language regarding mechanisms for compliance with Provision A.1 to A.3, the San Diego Water Board will then update the Regional MS4 Permit as necessary. Additionally, the discussion in the Fact Sheet under Provision B6 describes the San Diego Water Boards intentions to use the Water Quality Improvement Plans as functionally equivalent documents to TMDL Load Reduction Plans. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted. See also response to comment A-1.	

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B-2 PROVISION B: WATER QUALITY IMPROVEMENT PLANS		
	<u>COMMENT:</u> <i>Water Quality Improvement Plans need to be based on regionally appropriate water quality standards that reflect sustainable conditions for beneficial uses.</i>	Riverside County Copermittees
	<u>RESPONSE:</u> The San Diego Water Board understands the concerns raised by the Riverside County Copermittees, however the proceedings on the Tentative Order are not the proper forum for addressing proposals to modify Basin Plan water quality standards. Water quality standards and beneficial uses are established in the San Diego Water Board's Basin Plan and not the Tentative Order /. The San Diego Water Board suggests the Riverside County Copermittees bring the comment forth during the San Diego Water Boards process for conducting the Triennial Review of Basin Plan water quality standards which is currently underway. . It is within the Triennial Review process that the San Diego Water Board reviews the Basin Plan water quality standards and beneficial uses. Information on the Triennial Review process can be accessed on the San Diego Water Board website at: http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/tri_review.shtml Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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B1-1 PROVISION B.1: Watershed Management Areas		
	<u>COMMENT:</u> <i>Revise footnote 2 to Table B-1 to clarify single water regulation of City of Lake Forest.</i> The City of Lake forest suggests revision to footnote 2 to Table B-1 to clarify single board regulation.	City of Lake Forest
	<u>RESPONSE:</u> The San Diego Water Board understands the City's comment and has modified the footnote language to be consistent with the language in Finding 29. Please see response to Comment Fnd-7.	

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B1-2	PROVISION B.1: Watershed Management Areas
	<u>COMMENT:</u> <i>Revise language in Tentative Order to clarify NPDES permit is applicable to discharges from Copermittees MS4s.</i> The City of San Diego requests that the requirements of the Tentative Order “clarify” the responsibilities of the Copermittees to develop a Water Quality Improvement Plan “for their MS4 discharges within” each of the Watershed Management Areas.
	<u>RESPONSE:</u> The San Diego Water Board disagrees with the comment that clarification is necessary. The San Diego Water Board did not revise the language with the qualifying phrases requested by the Copermittees. The Copermittees are required to establish the legal authority to implement the requirements of the Tentative Order. The Tentative Order does not require the Copermittees to implement requirements outside of their jurisdictions or outside of their legal authority. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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B3-1	PROVISION B.3: Water Quality Improvement Goals, Strategies and Schedules	
	<u>COMMENT:</u> <i>Provision B.3.a should explicitly state that the action levels, interim goals and final goals are not enforceable limitations.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with the comment. After further clarification with the commenters on their references to footnotes in Provision B and C, Footnote 8 to Provision C.1 for Non-Storm Water Action Levels (NALs) and Footnote 10 to Provision C.2 Storm Water Action Levels (SALs) clearly state NALs and SALs incorporated in the Water Quality Improvement Plans are not considered by the San Diego Water Board to be enforceable effluent limitations, unless the NAL or SAL is based on a WQBEL expressed as an interim or final effluent limitation for a TMDL in Attachment E and the interim or final compliance date has passed. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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C-1	PROVISION C: ACTION LEVELS
	COMMENT: <i>The Tentative Order should enable the Copermittees to apply NALs/SALs based on the priorities of the Water Quality Improvement Plan and/or the IDDE program.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District are concerned that the Tentative Order contradicts itself by stating Copermittees must develop and incorporate numeric NALs and SALs into the Water Quality Improvement Plan and/or IDDE program, then mandates Copermittees include all of the numeric action levels identified in tables C-1 to C-5. The Copermittees expressed concern that requiring the prescribed NALs and SALs under Provision C would result in unnecessary analyses for constituents that are not a priority identified in the Water Quality Improvement Plan. • County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board disagrees with the request to modify the requirements as suggested. The NALs and SALs under Provision C have been included to support the development and prioritization of the water quality strategies that will be implemented based on the highest priority water quality conditions identified by the Copermittees in the Water Quality Improvement Plans. The NALs and SALs have been included as a tool that the Copermittees and the San Diego Water Board can utilize to determine if the Copermittees are implementing the requirements of the Clean Water Act for MS4 permits to <i>effectively prohibit non-storm water discharges to the MS4 and reduce pollutants in storm water discharges from the MS4 to the MEP</i>. The NALs and SALs are not new, and are included in both of the current MS4 permits issued to Orange County (Order No. R9-2009-0002) and Riverside County (Order No. R9-2010-0016). The Copermittees are required to effectively prohibit non-storm water discharges to their MS4s, which in turn should result in little to no discharges from their MS4s to receiving waters. If there are non-storm water discharges from the Copermittees' MS4s to receiving waters, those discharges should only be NPDES permitted discharges. Even if those discharges are NPDES permitted discharges, the Copermittees are responsible for demonstrating that those discharges are not illicit discharges by identifying the sources as NPDES permitted discharges. The prescribed NALs in Table C-1 through C-4 are associated with most if not all the pollutants that are known

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C-1	PROVISION C: ACTION LEVELS
	or suspected to be causing or contributing to impairments in water bodies on the 303(d) List for the San Diego Region. The NALs are appropriately based on water quality objectives because non-storm water discharges that do not contain pollutants at levels in exceedance of the NALs are not expected to cause or contribute to exceedances of water quality standards in receiving waters. Thus, the prescribed NALs have been included to allow the Copermittees to prioritize their efforts in effectively prohibiting unpermitted non-storm water discharges to their MS4s, demonstrate that they have effectively prohibited non-storm water discharges to their MS4s that could cause or contribute to exceedances of water quality standards, or identify NPDES permitted sources that are resulting in discharges from their MS4s that are causing or contributing to exceedances of water quality standards in receiving waters. In any case, the prescribed NALs are necessary to allow the San Diego Water Board to determine if the Copermittees are effectively prohibiting non-storm water discharges to the MS4. The Tentative Order also allows Copermittees the flexibility to develop and include NALs, for which values are not already included provision C-1, for those pollutants that are causing or contributing, or threatening to cause or contribute to a condition of pollution or nuisance in receiving waters associated with the highest priority water quality conditions related to non-storm water discharges from the MS4s into the Water Quality Improvement Plans and IDDE Program. The Tentative Order does not prohibit the Copermittees from using any “previously established NALs” in addition to those listed in C-1 to C-4. In contrast, the prescribed SALs are not based on water quality objectives, but set at higher levels because the San Diego Water Board recognizes that reducing pollutants in wet weather discharges from the MS4s to water quality objectives is challenging. The prescribed SALs, however, will allow the Copermittees to prioritize their efforts in reducing pollutants in storm water discharges from their MS4s, and allow the San Diego Water Board to determine if the Copermittees are reducing pollutants in storm water discharges from their MS4s to the MEP. The San Diego Water Board disagrees with the concerns about monitoring for constituents that are not associated with the highest priority water quality conditions. Periodically analyzing non-storm water and storm water discharges from the Copermittees’ MS4 for pollutants other than those associated with the highest priority water quality conditions is necessary if the Copermittees would like to re-prioritize or identify new priority water quality conditions that will be addressed. The San Diego Water Board does recognize that there is a cost associated with analyzing for additional constituents. Thus, the San Diego Water Board has modified the MS4 outfall monitoring requirements to reduce the number of dry weather MS4 outfall monitoring stations that must be analyzed (see Provision D.2.b.(2)(b) of Order No. R9-2013-0001) and provided the Copermittees some flexibility to modify the analytes for the wet weather MS4 outfall monitoring stations (see Provision

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C-1	PROVISION C: ACTION LEVELS
	D.2.c.(5)(f)). As for the concerns about the chemically-based NALs and the biologically- or physically-based numeric goals for receiving waters, the San Diego Water Board disagrees that they cannot be linked or may be incompatible. Biologically- or physically-based numeric goals will likely be measured in the receiving waters. The chemically-based NALs apply to the MS4 outfalls. The quality of the MS4 discharges and the improvement of biological or physical measurements can be linked. Both are likely necessary to demonstrate that MS4 discharges are either not causing or contributing to a biological or physical impairment of the receiving water, or an improvement in MS4 discharges is resulting in improvements in the biological or physical conditions of the receiving water. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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D-1	PROVISION D: MONITORING AND ASSESSMENT PROGRAM REQUIREMENTS	
	<u>COMMENT:</u> <i>Copermittees need to have the flexibility to adjust analytical monitoring in the water quality improvement plans based on assessments of current sources that may contribute to the section 303(d) water body impairments.</i> The County of Orange and Concurring Cities and Orange County Flood Control District requested relief of analytical monitoring requirements if supporting information can be provided to document the current pollutant concentrations or may provide historic information to support the absence of usage of these constituents in the MS4 drainage area.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with the suggested revisions to the Tentative Order. Monitoring required in Provision D of Attachment No. 1 to the Tentative Order describes the minimum monitoring required to inform the Copermittees, San Diego Water Board, and the public on the progress the Copermittees make within their Phase 1 storm water programs to: 1) effectively prohibit non-storm water discharges to the MS4 and reduce pollutants in storm water from the MS4 to the maximum extent practicable; and 2) implement strategies to control the discharge of pollutants in MS4 discharges and improve receiving water quality. These minimum monitoring requirements do not prohibit the Copermittees from conducting monitoring for which it considers necessary to identify constituents contributing to the highest priority water quality conditions identified in the Water Quality Improvement Plan. Each Copermittee is required to achieve compliance with the Basin Plan prohibitions and receiving water limitations (Provision A.1.a, A.1.c, and A.2.a, in Attachment 1 to the Tentative Order) through implementation of control measures and other actions as specified in the Tentative Order. The monitoring and assessment information collected and reported is expected to be key to the iterative approach and adaptive management process required by the Tentative Order (Provision A.4 of Attachment 1). Under the adaptive management provision, Copermittees are expected to change their monitoring programs to collect the necessary data for them to be able to demonstrate that their jurisdictional storm water management programs are making measurable progress towards achieving compliance with Basin Plan prohibitions and receiving water limitations. Changes to the monitoring programs would be presented during the development of or subsequent updates to the Water Quality Improvement Plan. All Copermittees are required to conduct the minimum monitoring described in Provision D, however through the adaptive management approach in Provision A of Attachment 1 to the Tentative Order, Copermittees are allocated sufficient flexibility to make changes to their monitoring program to collect the data most necessary to that their control strategies and other actions are	

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D-1	PROVISION D: MONITORING AND ASSESSMENT PROGRAM REQUIREMENTS
	making measurable progress towards effectively eliminating non-storm water discharges, and reducing pollutants in storm water to the maximum extent practicable to ultimately achieve compliance with the Basin Plan prohibitions and receiving water limitations (Provision A in Attachment 1 to the Tentative Order). Based on this consideration no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted. See also response to comment Gnl-2.

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D-2	PROVISION D: MONITORING AND ASSESSMENT PROGRAM REQUIREMENTS	
	<u>COMMENT:</u> <i>Modify Tentative Order requirements to be consistent with language in the South Orange County Wastewater Authority permit language.</i> The San Diego Water Board Monitoring and Assessment staff requests the Tentative Order be modified to update the Unified Beach Water Quality Monitoring language.	San Diego Water Board Staff of the Monitoring and Assessment Group
	<u>RESPONSE:</u> The San Diego Water Board agrees with the comment and has made the suggested language changes to the Tentative Order The Tentative Order language was revised to be consistent with the December 5, 2014 Executive Officer's letter directive, issued pursuant to California Water Code section 13383, requiring Copermittee participation in and shared responsibility for implementation of the Unified Beach Water Quality Program. Effective April 1, 2015, the requirements established through issuance of this Water Code section 13383 letter directive will become an enforceable component of the monitoring and reporting requirements in the Tentative Order.	

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E-1	PROVISION E: JURISDICTIONAL RUNOFF MANAGEMENT PROGRAMS	
	<u>COMMENT:</u> <i>Water Quality Improvement Plans and related Jurisdictional Runoff Management Programs should be streamlined and focus on the watershed's highest priorities.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District commented that the Tentative Order, Attachment 1 at Provision E deviates from the strategic and adaptive approach of the Water Quality Improvement Plan concept, and is instead a "one-size-fits-all" approach. The commenters recommend modifying the Tentative Order so that the Water Quality Improvement Plans and jurisdictional runoff management programs can be streamlined and focus on the highest priorities within the watersheds.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board agrees that the Water Quality Improvement Plan framework allows for the identification and development of a storm water management program built around the highest priority water quality conditions within a specific watershed. The Tentative Order is structured so that the Water Quality Improvement Plan identifies the highest priority conditions of concern for a particular watershed, and also strategies, numeric goals, and schedules for making improvements for those conditions of concern. The jurisdictional runoff management programs are meant to be the implementing mechanism for the Water Quality Improvement Plans, i.e. they must incorporate the strategies identified in the Water Quality Improvement Plans. The San Diego Water Board disagrees that the requirements of Provision E deviate from the strategic and adaptive approach of the Water Quality Improvement Plan concept and that modifications are needed. The commenters should note that the requirements of the Provision E of the Tentative Order are substantially less prescriptive than those of the previous Fourth Term MS4 permits. Whereas the requirements of the Fourth Term MS4 permits were very specific, detailed, and prescriptive, the requirements of the Tentative Order include only basic program elements that meet the minimum requirements of 40 CFR 122.26(d)(2)(iv), but include much more flexibility in how the Copermittees implement their programs. The Copermittees can emphasize or de-emphasize different aspects of their programs to accomplish the overarching goals of the Water Quality Improvement Plans. For example, a Copermittee may choose to emphasize a certain program element by increasing the frequency of BMP inspections for discharges that are likely to contribute to the priority conditions of concern, while maintaining other program elements at the minimum required levels. Unlike the Fourth Term MS4 permits, the Tentative Order allows each Copermittee to specify, for example, the minimum inspection frequency for each specific program element. In this way, Copermittees are allowed to run their programs at minimum baseline levels, but also direct their resources where needed to achieve improvements in water quality and to address the highest priority conditions of concern.	

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E-1	PROVISION E: JURISDICTIONAL RUNOFF MANAGEMENT PROGRAMS
	Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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E1-1	PROVISION E.1: Legal Authority Establishment and Enforcement	
	COMMENT: <i>The Copermittees are only responsible for administering and enforcing the codes and ordinances applicable to their jurisdictions.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request that the requirements of Provision E.1 be modified to specify that the legal authority established by the Copermittees applies only to discharges within their jurisdictions, and that it is unnecessary to include language pertaining to discharges regulated by the Statewide Industrial and Construction General Permits.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board disagrees that it is necessary to specify that the legal authority established by the Copermittees is only applicable to their jurisdictions. The requirements of Provision E.1 are consistent with the requirements under 40 CFR 122.26(d)(2)(i)(A)-(F) and do not go beyond those requirements. The legal authority that each Copermittee is required to establish for its jurisdiction is logically only expected to apply to its jurisdiction. Provision E.1.a.(2) is consistent with 40 CFR 122.26(d)(2)(i)(A), which requires the Copermittee to “<i>Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity.</i>” 40 CFR 122.26(d)(2)(i)(A) does not make a distinction between industrial activity (which includes construction activity according to 40 CFR 122.26(b)(14)(x) that is regulated by an NPDES permit, such as the Statewide Industrial and Construction General Permits, and those that are not. Even if there are industrial and construction sites regulated by the Statewide Industrial or Construction General Permits, those sites are still subject to the Copermittees ordinances and the Copermittee must have the legal authority to control discharges from those sites. Provision E.1.a.(10) is consistent with 40 CFR 122.26(d)(2)(i)(F), which requires the Copermittee to “<i>Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.</i>” Therefore no modifications are warranted, and the San Diego Water Board did not make revisions to the requirements of Provision E.1 requested by the Commenters.	

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E1-2	PROVISION E.1: Legal Authority Establishment and Enforcement	
	<u>COMMENT:</u> <i>The requirement for third party BMP effectiveness documentation is duplicative.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District state that Provision E.1.a.(8) of the Tentative Order requires the Copermittees to obtain legal authority to require documentation of the effectiveness of BMPs, and that this requirement sets up a process for the establishment of multiple third party monitoring programs and expenditure of public funds to monitor the effectiveness of BMPs. The commenters state that this requirement ignores the fact that Copermittees have already established legal authority for their development standards, and is therefore redundant.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that Provision E.1.a.(8) sets up a process for the establishment of multiple third party monitoring programs and expenditure of significant public funds to monitor the effectiveness of BMPs. The Provision simply states that each Copermittee must establish legal authority that authorizes the Copermittee to require documentation on the effectiveness of BMPs from any of its dischargers. The Copermittee is not required to exercise this legal authority, but the legal authority must be established and available to the Copermittees in the event that the Copermittee could benefit from obtaining this type of information. The requirement is not duplicative because the legal authority to impose development standards is separate from the legal authority to require documentation on BMP effectiveness. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E2-1	PROVISION E.2: Illicit Discharge Detection and Elimination	
	<u>COMMENT:</u> <i>Modify the Illicit Discharge Detection and Elimination Program provisions so as not to negate the very intent and purpose of the watershed approach and the focus on the highest priorities within each watershed management area.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request modification to the introductory paragraph of the Illicit Discharge Detection and Elimination Provisions to better reflect the watershed approach and program focus on highest priority conditions of concern.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that modifications to the Illicit Discharge Detection and Elimination Program Provisions are needed for the reasons stated in the Response to Comment E1-1. Copermittees are afforded flexibility in meeting the requirements of Provision E.2. They are required to meet a minimum baseline program (with limited prescriptiveness compared to previous Fourth Term MS4 permits) as stated in the Tentative Order, and within that framework may focus on the highest priority conditions of concern as described in the Water Quality Improvement Plans. All illicit discharges are to be actively detected and eliminated in a prioritized manner. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E2a-1	PROVISION E.2.a: Non-Storm Water Discharges	
	COMMENT: <i>Copermittees should be given flexibility to prioritize their IDDE program to focus on non-storm water discharges likely to be a source of pollutants.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request that the requirements under Provision E.2.a be revised to allow the Copermittees to focus on eliminating non-storm water discharges that are a source of pollutants and not require the elimination of all non-storm water discharges.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board disagrees with the commenter's request. Provision E.2 does provide the Copermittees with a mechanism to address illicit discharges regardless of whether or not constituents of concern are present within the flows. The Copermittees are required to prioritize the non-storm water discharges that they will address, and eliminate the highest priority non-storm water discharges first. The Clean Water Act requires NPDES permit for MS4s to effectively prohibit non-storm water discharges to the MS4. As explained in the Fact Sheet, the Phase I Final Rule clarifies that non-storm water discharges through an MS4 are not authorized under the CWA (55 FR 47995): <i>"Today's rule defines the term "illicit discharge" to describe any discharge through a municipal separate storm sewer system that is not composed entirely of storm water and that is not covered by an NPDES permit. Such illicit discharges are not authorized under the Clean Water Act. Section 402(p)(3)(B) requires that permits for discharges from municipal separate storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal separate storm sewer...Ultimately, such non-storm water discharges through a municipal separate storm sewer must either be removed from the system or become subject to an NPDES permit."</i> Thus, all non-storm water discharges that do not have authorization under an NPDES permit or are a category of non-storm water discharges that have been identified as a source of pollutants must ultimately be removed (i.e. prevented or eliminated) from the MS4 or become subject to an NPDES permit. The requirements under Provisions E.2.a.(1) and E.2.a.(3) are consistent with the Clean Water Act, the Code of Federal Regulations and the clarification in the Phase I Final Rule for non-storm water discharges. The non-storm water categories listed under Provision E.2.a.(3) generally are expected to be discharged from natural, uncontrollable, or unanticipated sources. Non-storm water discharges from foundation drains and footing drains designed to be above the groundwater table are not generally expected to occur. If they do occur, the Copermittee is expected to implement its illicit discharge detection and elimination program to	

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E2a-1	PROVISION E.2.a: Non-Storm Water Discharges
	determine if the discharge is transient or persistent, a source of pollutants or not, and whether the discharge must be eliminated in accordance with its priorities. In general, the requirements under Provision E.2 are focused on the ultimate removal of unauthorized non-storm water discharges to the MS4 to “effectively prohibit” non-storm water discharges to the MS4, as required by the Clean Water Act. The San Diego Water Board is not requiring the Copermittee to enforce any NPDES permits issued by the San Diego Water Board or State Water Board. The Copermittees are only required to use their legal authority to prohibit illicit discharges to their MS4s established pursuant to Provision E.1.a.(1). The San Diego Water Board did not revise Provision E.2 as recommended by the commenters.

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E2a-2 PROVISION E.2.a: Non-Storm Water Discharges		
	<u>COMMENT:</u> <i>Modify Provision E.2.a.(5) to reflect the language previously adopted by the Regional Board in Order No. R9-2009-0002 regarding emergency firefighting discharges.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request that the Tentative Order be modified to clarify that there should not be a circumstance in which the Copermittees or the San Diego Water Board would identify emergency firefighting discharges as illicit discharges or a significant source of pollutants, and therefore in no instance would require BMP implementation.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the language in Provision E.2.a.(5) requires revision. This Provision does not require the implementation of BMPs for emergency firefighting discharges, nor does it prohibit emergency firefighting discharges to the MS4. Provision E.2.a.(5)(b) only requires the Copermittees to “encourage” the implementation of BMPs in emergency situations. Provision E.2.a.(5)(b) is a recommendation for the Copermittees to implement, not a requirement for compliance.	

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E2a-3	PROVISION E.2.a: Non-Storm Water Discharges	
	<u>COMMENT:</u> <i>The Tentative Order should not require the elimination of non-storm water discharges as a part of the IDDE Program.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District state that Provision E.2.a.(7) misapplies the federal regulations that require the Copermittees to identify non-storm water discharges as illicit discharges prior to having an obligation to effectively prohibit it, and therefore the Provision should be removed.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that it is appropriate to remove Provision E.2.a.(7) because it is consistent with Clean Water Act, the Code of Federal Regulations and the clarification in the Phase I Final Rule for non-storm water discharges. Please see the response to comment E2a-1 for further discussion.	

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E3-1 PROVISION E.3: Development Planning		
	<u>COMMENT:</u> <i>The Development Planning Provisions must be modified so as not to negate the very intent and purpose of the watershed approach and the focus on the highest priorities within each Watershed Management Area.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request modification to the introductory paragraph of the Development Planning Provisions to better reflect the watershed approach and program focus on highest priority conditions of concern.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that modifications to the Development Planning Program Provisions are needed for the reasons stated in the Response to Comment E1-1. Copermittees are afforded flexibility in meeting the requirements of Provision E.3. They are required to meet a minimum baseline program (with limited prescriptiveness compared to Fourth Term MS4 permits) as stated in the Tentative Order, and within that framework may focus on the highest priority conditions of concern as described in the Water Quality Improvement Plans. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E3b-1	PROVISION E.3.b: Priority Development Projects	
	<u>COMMENT:</u> <i>Portions of redevelopment projects that already have water quality treatment BMPS should not be subject to the new PDP requirements.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request that language be added to the Tentative Order that would specify structural BMP requirements are not applicable to Priority Development Projects (or portions thereof) if the project already has implemented structural BMPs pursuant to requirements of prior MS4 permits.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees in concept with the Copermittees' request. Although some projects may already have structural BMPs onsite, the performance requirements of those BMPs do not necessarily meet the MEP requirements of the Tentative Order. Priority Development Projects subject to the requirements of older MS4 permits may not have BMPs that meet the numerical storm water pollutant control retention performance standard, or the flow control hydromodification performance standard. Therefore, when redevelopment sites, that were subject to older MS4 permit requirements, want to create and/or replace 5,000 square feet or more of impervious surface on the project site (collectively over the entire project site on an existing site with 10,000 square feet or more of impervious surfaces), the redevelopment site must update the BMPs during the design phase. Furthermore, the commenter should note that the pollutant control and hydromodification management BMP requirements of the Tentative Order are the same as the previous South Orange County MS4 permit, Order No. R9-2009-0002. Therefore Priority Development Projects that were subject to these requirements developed in 2009 should already be in compliance with the requirements of the Tentative Order. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E3b-2	PROVISION E.3.b: Priority Development Projects	
	<u>COMMENT:</u> <i>Tentative Order should include a priority development project exemption for flood control and stream restoration projects.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request that the Tentative Order should include exemptions for flood control and stream restoration projects from the requirement to implement structural BMPs since they are not a source of pollutants.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board believes that it may be suitable to relax the structural BMP standards for, or exempt flood control projects, but not before projects are evaluated on a case-by-case basis. In many instances, water quality protective measures may be appropriate for implementation in flood control projects, but such options would not be evaluated if the Tentative Order provided a blanket exemption. Furthermore, 40 CFR 122.26(d)(2)(iv)(A)(4) requires Copermitees to include in their applications mechanisms “to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.” Such evaluations would not occur if flood control projects were provided blanket exemption from Priority Development Project status, therefore a blanket exemption is not appropriate. Stream restoration projects do not fit any of the Priority Development Project categories, therefore no exemptions are needed. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E3b-3	PROVISION E.3.b: Priority Development Projects	
	<u>COMMENT:</u> <i>Tentative Order should include a priority development project exemption for emergency public safety projects.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request the Tentative Order include exemptions for emergency public safety projects from the requirement to implement structural BMPs because <i>a delay due to the development and approval of a Standard Stormwater Mitigation Plan (SSMP) would compromise public safety, public health and/or the environment.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that modifications to the Tentative Order to exempt emergency public safety projects from the requirement to implement structural BMPs is necessary. The Commenters state that emergency projects will be implemented immediately where public safety, public health, and/or the environment is threatened, and that there will be no time for the development, processing, and plan check for these projects. The San Diego Water Board agrees. Provision E.3 describes requirements that pertain to development <i>planning</i>. Emergency situations, by definition, are not planned projects and therefore do not involve the design, approval, and construction of a building or structure. Therefore an explicit exemption is not needed. Regardless of the conditions (i.e. emergency conditions) under which a public safety project requires installation, if a public safety project meets the Priority Development Project criteria of Provision E.3.b, then the public safety project needs to include the structural BMP controls of Provision E.3.c. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E3c-1	PROVISION E.3.c: Priority Development Project Structural BMP Performance Requirements	
	COMMENT: <i>Modify the Tentative Order to allow flexibility in the structural BMP performance standards if watershed-specific performance standards are developed in the water quality improvement plans.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District submitted comments stating that the Copermittees should be given the opportunity to develop alternative BMP performance standards consistent with the goals of the Water Quality Improvement Plans.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board agrees that greater improvements to water quality in the watersheds may be realized if Priority Development Projects were allowed to implement some requirements offsite, as opposed to strictly onsite. For this reason, the Attachment No. 1 of the Tentative Order allows for “alternative compliance” in instances where the Copermittee determines that offsite measures will have a greater overall water quality benefit for the Watershed Management Area than if the Priority Development Project were to implement structural BMPs onsite. Consequently, watershed-specific structural BMP requirements are present in Attachment No. 1 to the Tentative Order that provide for allowable compliance offsite. Therefore no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted. The alternative compliance program, which is described in Provision E.3.c.(3), is an option for Priority Development Projects where the Copermittee has participated in the development of a Watershed Management Area Analysis as part of the Water Quality Improvement Plan (described in Provision B.3.b.(4)). Such an approach is consistent with the latest findings in hydromodification management by the scientific community. In the Southern California Coastal Water Research Project (SCCWRP) Technical Report No. 667, the authors state: <i>“An effective [hydromodification] management program will likely include combinations of on-site measures (e.g., low-impact development techniques, flow-control basins), in-stream measures (e.g., stream habitat restoration), floodplain and riparian zone actions, and off-site measures. Off-site measures may include compensatory mitigation measures at upstream locations that are designed to help restore and manage flow and sediment yield in the watershed.”</i> Consistent with the ideas brought forth by the SCCWRP report, in the optional Watershed Management Area Analysis of Provision B.3.b.(4), the Copermittees must develop watershed maps that include as much detail about factors that affect the hydrology of the watersheds as is available. Such factors included identification of areas suitable for infiltration, coarse sediment supply areas, and locating stream channel structures and constrictions. Once these factors are mapped and studied, the Copermittees can identify areas in the	

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E3c-1	PROVISION E.3.c: Priority Development Project Structural BMP Performance Requirements
	watersheds where “candidate projects” may be implemented that are expected to improve water quality in the watershed by providing more opportunity for infiltration, slowing down storm water flows, or attenuation of pollutants naturally via healthy stream habitat. These projects may be in the form of retrofitting existing development, rehabilitating degraded stream segments, identifying regional BMPs, purchasing land to preserve valuable floodplain functions, and any other projects that the Copermittees identify. Under the alternative compliance program, Priority Development Project applicants may be allowed to fund, partially fund, or implement a candidate project, in lieu of implementing structural BMPs onsite, if they enter into a voluntary agreement with the Copermittee permitting this arrangement. If compliance involves funding or implementing a project that is outside the jurisdiction of the Copermittee, then that Copermittee may enter into an inter-agency agreement with the appropriate jurisdiction(s). Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 21, 2015

E3c1-1 PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements		
	<u>COMMENT:</u> <i>Terminology is inconsistent with the use of "Low Impact Development" BMPs.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request modification to the Provision E.3 to provide consistency with the use of "Low Impact Development" terminology.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board has reviewed the suggested edits to Provision E.3 and did not find any suggestions pertaining to Low Impact Development terminology. Based on this consideration no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 20, 2015

E3c1-2	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements	
	<u>COMMENT:</u> <i>The San Diego Water Board is requiring increasingly stringent onsite storm water retention requirements.</i> The Construction Industry Coalition on Water Quality (CICWQ) submitted comments stating that the San Diego Water Board is requiring increasingly stringent onsite storm water retention requirements without evidence that existing requirements under Order No. R9-2009-0002 are not working to protect water quality and beneficial uses. The commenter asserts that the San Diego Water Board is proposing to enact the most stringent onsite requirements for storm water runoff anywhere in California, and that the requirements are less flexible than earlier MS4 permits.	Construction Industry Coalition on Water Quality • San Diego Building Industry Association • Building Industry Association of Southern CA • Associated General Contractors • Associated Builders and Contractors • San Diego Regional Chamber of Commerce • Business Leadership Alliance • San Diego Association of Realtors • San Diego Apartment Association • National Association of Industrial & Office Properties • Building Office & Management Association • San Diego Chapter of American Society of Landscape Architects
	<u>RESPONSE:</u> The commenter incorrectly asserts that Attachment No. 1 to Tentative Order requires increasingly stringent onsite storm water retention requirements over and above the requirements of Order No. R9-2009-0002, the Fourth Term MS4 permit for Orange County Copermittees. The purpose of the onsite retention requirement in both the Tentative Order and Order No. R9-2009-0002 is to retain onsite the pollutants contained in the volume of storm water runoff produced from a 24-hour 85th percentile storm event. This requirement has not changed from Order No. R9-2009-0002, and therefore the commenter is incorrect in stating that the San Diego Water Board is requiring additional prescriptive performance measures for retaining storm water runoff. This is the MEP standard recognized by the San Diego Water Board and is consistent with the Fourth Term Permits for Orange County and Riverside County (Order Nos. R9-2009-0002 and R9-2010-0016, respectively), as well as Santa Ana Water Board Order Nos. R8-2009-0030 and R8-2010-0033 (Orange County and Riverside County MS4 Permits, respectively), Los Angeles Water Board Order No. R4-2010-0108 (Ventura County MS4 Permit), and Los Angeles Water Board Order No. R4-2012-0175 (Los Angeles County MS4 Permit). Additionally, the San Diego Water Board disagrees with the commenter's assertion that the retention standard	

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E3c1-2	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements
	is less flexible in the Tentative Order than in Order No. R9-2009-0002. In fact, the pollutant control and hydromodification management BMP requirements are more flexible in the Tentative Order than in the Fourth Term MS4 permits because the Tentative Order allows Priority Development Projects to comply by mitigating offsite, if doing so would provide greater water quality benefit for the watershed. Please see the response to Comment No. E3c1-2 for a discussion of the Watershed Management Analysis and the ability to perform offsite mitigation.

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 21, 2015

E3c1-3	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements	
	<u>COMMENT:</u> <i>The Tentative Order and Fact Sheet ignore the findings of the Copermittee's Report of Waste Discharge.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District submitted comments stating that there is little justification for the requirements of the Tentative Order based on the successes of the Copermittee's storm water programs, as reported in the Report of Waste Discharge (ROWD). The Copermittees report successes in reducing bacterial contamination in coastal waters during dry weather, and also assert that exceedances of total dissolved solids (TDS) and nutrients are unlikely due to urban sources. The commenters also state that the Tentative Order should recognize this uncertainty and not mandate on-site retention of runoff in the first instance where it may exacerbate the exfiltration of shallow groundwater with elevated TDS and nutrients. Finally, the commenters state that toxicity occurs sporadically in receiving waters in Orange County, indicating that the causes are not urban in nature, and that pesticide regulation is not within the Copermittees' jurisdictions.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board recognizes that the Copermittees have made great strides in improvements in water quality and attainment of beneficial uses through rigorous implementation of their storm water management programs, but disagrees that the requirements of Attachment No. 1 to the Tentative Order should be removed. The Copermittees note that bacterial contamination is low during dry weather, but concede that achieving reductions in bacteria concentrations in wet weather is challenging. The San Diego Water Board is charged with protecting the beneficial uses of receiving waters at all times, regardless of season or weather conditions. The fact that there are still impairments with bacterial contamination in the receiving waters during the rainy season is exactly why the requirements in the Tentative Order are necessary. The San Diego Water Board agrees that it is worthwhile to understand the environmental significance TDS and nutrients and their relationship, or lack thereof, to urban sources. The San Diego Water Board disagrees, however, that the Tentative Order does not recognize the need to protect shallow groundwater from exfiltration of TDS and nutrients. Although the Tentative Order at Provision E.3.c.(1)(a) requires onsite retention of the design capture volume, this can be accomplished via several physical mechanisms such as interception, storage, evaporation, and evapotranspiration, in addition to infiltration. Therefore the Tentative Order does not automatically mandate on-site retention of runoff in the form of infiltration in every instance, as the commenter	

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E3c1-3	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements
	asserts. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted. See also response to comment Gnl-2.

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 21, 2015

E3c1-4	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements	
	<u>COMMENT:</u> <i>If priority development projects use alternative compliance, onsite conventional BMPs should not also be required.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District state that there is not adequate technical justification for requiring onsite conventional BMPs when a Priority Development Project is allowed alternative compliance offsite. The commenters state that requiring both is double mitigation that goes well beyond the MEP standard.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with this comment. Onsite pollutant treatment using conventional BMPs is a minimum general requirement to remove pollutants from runoff prior to its discharge to any receiving water. The storm water pollutant control BMP requirement for Priority Development Projects is to retain, onsite, the pollutants contained in the volume of storm water runoff produced from a 24-hour 85th percentile storm event (design capture volume). If it is not technically feasible to retain pollutants within the design capture volume, onsite, then the Tentative Order provides for an alternative means of compliance. If the Priority Development Project proponent is allowed to implement BMPs offsite, then the portion of the design capture volume that is not reliably retained onsite must be treated prior to discharging pollutants into the receiving water. 40 CFR 131.10(a) prohibits use of the receiving water as a treatment system and therefore, requires treatment of runoff to occur prior to the discharge of runoff to receiving waters (See Finding 7 in Attachment 1 of the Tentative Order). If Priority Development Projects are allowed to forgo onsite conventional treatment of runoff, then the Priority Development Projects would discharge untreated runoff from their site into receiving waters which is prohibited under 40 CFR. Retention of the 85th percentile storm is clearly the MEP standard for storm water pollutant control, as represented by the Tentative Order and its Attachments, recently adopted MS4 permits in the state (R8-2009-0030 and R8-2010-0033; North Orange and Riverside County MS4 permits, R4-2010-0108 and R4-2012-0175; Ventura County and Los Angeles County MS4 permits, and San Diego Water Board Order Nos. R9-2009-0030 and R9-2010-0016; South Orange County and Riverside County MS4 permits), and elsewhere in the United States. Retention of anything less than the design storm volume must be mitigated because the MEP standard has not been met. Therefore, Attachment 1 to the Tentative Order includes a requirement that mitigation is necessary for the portion of the design storm volume that is not retained onsite because, although this remaining volume of storm water would be treated to some level, the MEP standard as represented by the structural BMP performance requirements would not have been met.	

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E3c1-4	PROVISION E.3.c.(1): Storm Water Pollutant Control BMP Requirements
	Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

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E3c-5	PROVISION E.3.c: Priority Development Project Structural BMP Performance Requirements	
	<u>COMMENT:</u> <i>Biofiltration BMPs should be sized for the design capture volume.</i> The County of Orange and Concurring Cities and Orange County Flood Control District assert that the requirement to oversize biofiltration BMPs to treat 1.5 times the design capture volume, if used to meet the pollutant control BMP requirements, is an increase over the prior Orange County MS4 permit. The commenters state that the Fact Sheet provides no technical justification for the sizing factor, and that biofiltration should be considered equivalent to onsite retention. The commenters also assert that Priority Development Projects that use biofiltration BMPs must also implement conventional BMPs, effectively requiring double mitigation when it is not needed.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The commenter incorrectly states that the requirement to size biofiltration BMPs to treat 1.5 times the design capture volume not reliably retained onsite is an increase from the prior Orange County MS4 permit (Order No. R9-2009-0002). This methodology of sizing the BMP was included in the Tentative Order <i>in addition to</i>, and not <i>in replacement of</i>, the methodology of sizing the BMP in Order No. R9-2009-0002. As a result, Priority Development Projects have two options for sizing biofiltration BMPs: 1.5 times the design capture volume not reliably retained onsite, OR a flow-thru design that has a total volume, including pore spaces and pre-filter detention volume, sized to hold at least 0.75 times the portion of the design capture volume not reliably retained onsite. The 1.5 sizing factor was included in the Tentative Order to offer more than one method of complying with the requirement. As described in the Fact Sheet, the 1.5 multiplier is based on the finding in the Ventura County Technical Guidance Manual that biofiltration of 1.5 times the design capture volume not retained onsite will provide approximately the same pollutant removal as retention of the design capture volume on an annual basis. This standard is consistent with the Los Angeles Water Board's Los Angeles County and Ventura County municipal storm water permits (Order Nos. R4-2012-0175 and R4-2010-0108, respectively). The commenter argues that biofiltration should be considered equivalent to other retention BMPs and therefore the 1.5 sizing factor is not needed. However, biofiltration is a flow-thru system, and therefore is not capable of retaining pollutants onsite (and preventing discharges of pollutants to receiving waters) in the equivalent manner as retention BMPs. The commenter compares the performance of harvest and use BMPs to biofiltration BMPs for the removal of total suspended solids, but fails to evaluate the performance of a range of retention BMPs, such as infiltration or evapotranspiration, which are widely accepted as effective pollutant control strategies.	

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E3c-5	PROVISION E.3.c: Priority Development Project Structural BMP Performance Requirements
	The commenter incorrectly asserts that Priority Development Projects that use biofiltration as an alternative compliance option must also implement conventional BMPs, and in effect requires double mitigation. Provision E.3.c.(1)(a)(i) of the Tentative Order allows for the use of biofiltration BMPs where retention of the full design capture volume is not technically feasible, but does not also require the use of conventional treat-and-release BMPs. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

RESPONSE TO COMMENTS ON TENTATIVE ORDER NO. R9-2015-0001

January 20, 2015

E3c2-1	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements	
	<u>COMMENT:</u> <i>Hydromodification requirements are based on faulty foundational assumptions.</i> Tory Walker, PE, submitted comments stating that the hydromodification requirements of the Tentative Order are based on faulty foundational assumptions. The commenter states that 1) the requirements cannot be based on a category of stream being either stable or highly dynamic, 2) flow rate reductions caused by dams reduces channel degradation, and runoff from Priority Development Projects may compensate for this and promote a more natural condition, and 3) as a result, the Tentative Order needs to accommodate more site-specific flexibility.	Tory Walker Engineering
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the hydromodification management requirements in the Tentative Order are based on faulty assumptions that preclude the accommodation of site-specific conditions. In fact, the Tentative Order incorporates the ability to accommodate site-specific conditions much more so than previous Fourth Term MS4 permits. The requirements in the Tentative Order provide that post-project runoff conditions must not exceed pre-development runoff conditions by more than 10 percent (for the range of flows that result in increased potential for erosion or degraded instream habitat downstream of the Priority Development Project). Note that the requirement is not to control <i>all</i> flows, but only those flows that are expected to cause erosion downstream. Because the downstream receiving water may or may not be susceptible to erosion, then the BMPs needed upstream, on the Priority Development Project will necessarily vary. In essence, when configuring BMPs for a particular Priority Development Project, the project proponent must evaluate both site-specific conditions and runoff conditions expected from the project, as well as the receiving water's susceptibility to erosion. The requirements in the Tentative Order do not specify that channels are to be treated as either stable or highly dynamic. The commenter states that hydromodification impacts caused by dams could actually be offset by runoff from Priority Development Projects. The San Diego Water Board recognizes this possibility, therefore the Tentative Order allows for offsite compliance in lieu of implementing hydromodification management BMPs onsite, where the Copermittee finds offsite compliance to provide a greater water quality benefit to the watershed. In this example, if the Copermittees in the watershed complete the optional Watershed Management Area Analysis described in Provision B.3.b(4) and find that flows generated from Priority Development Projects would actually help offset the runoff impounded by upstream dams, then the Copermittees could allow the Priority Development Projects located downstream of the dams the ability to comply offsite. For these reasons, the	

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E3c2-1	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements
	San Diego Water Board disagrees that the hydromodification management requirements of the Tentative Order should be modified. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted

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E3c2-2	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements	
	<u>COMMENT:</u> <i>Hydromodification management requirements should be based on a watershed management approach, be consistent with the WQIPs, and consider the current Copermittee HMPs.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District state that hydromodification management should be based on the conditions of receiving waters and on the impacts and potential impacts from development projects, and the basis for management should be an understanding of the watershed and specific receiving waters. The commenters state that hydromodification management objectives should be watershed specific and developed through a stakeholder process. The commenters assert that the hydromodification management requirements in the Tentative Order are a one-size-fits-all approach that does not allow consideration of watershed analysis or receiving water information. The commenters state that requirement to use the pre-development runoff conditions as the performance standard goes beyond federal law by taking the Clean Water Act's purpose to restore waters out of context of section 402(p). The requirement does not reflect the developed urban environment and negates the engineering efforts to date to protect life and property from floods. The commenters also state that identifying "naturally occurring" conditions for redevelopment sites is difficult; raising the technical question as to how far back a Copermittee goes historically in determining the proper predevelopment timeframe. The commenters conclude by suggesting an approach to hydromodification management that is consistent with the intent of the Water Quality Improvement Plan approach, and considers the Copermittee's current Hydromodification Management Plans.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the hydromodification management requirements in the Tentative Order are a one-size-fits all approach and that the requirements do not allow consideration of watershed analysis or receiving water information. The requirements of the Tentative Order provide that post-project runoff conditions must not exceed pre-development runoff conditions by more than 10 percent (for the range of flows that result in increased potential for erosion, or degraded instream habitat downstream of Priority Development Projects). Note that the requirement is not to control <i>all</i> post-project flows, but only those that are expected to <i>cause erosion or degraded habitat</i> downstream of the Priority Development Project. The performance standards of the Tentative Order are the same as those of the Commenters existing Order No. R9-2009-0002.	

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E3c2-2	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements
	Since each Priority Development Project is expected to result in a specific post-project runoff condition, and the susceptibility of the receiving water to erosion could vary substantially based on location within a watershed, then the range of flows to control, and hence the specific BMPs required, will necessarily vary and is not a one-size-fits all requirement. In this way, the requirements in the Tentative Order specifically address both watershed and receiving water information. The Tentative Order allows for hydromodification management BMP implementation, and also exemptions, specific to the San Juan Watershed Management Area based on Copermittee's analysis of the watershed. See the response to Comment No. E3c1-1 regarding the Watershed Management Area Analysis as part of Water Quality Improvement Plan development, and how the Copermittees can use the results of the analysis to allow watershed-specific offsite mitigation in lieu of structural BMP implementation onsite, and also allow exemptions from the requirements. The Commenters incorrectly assert that the requirements in the Tentative Order attempt to restore waters to pre-Columbian conditions because of the requirement to use pre-development runoff conditions rather than pre-project runoff conditions in evaluating the need for hydromodification management BMPs. The Tentative Order requires the use of pre-development runoff conditions as a means of restoring a more natural hydrology to allow for stream rehabilitation, but there is no requirement to return the landscape to pre-Columbian conditions, nor is there a need to speculate how far back a Copermittee must go in in determining the appropriate timeframe. Because pre-development runoff conditions cannot be precisely known for a redevelopment project, the Tentative Order allows the use of any readily available information to estimate pre-development runoff conditions. Pre-development runoff conditions for redevelopment projects are defined in Attachment C to the Tentative Order as "runoff conditions from the project footprint assuming infiltration characteristic of the underlying soil, and existing grade." A Priority Development Project must use available information to estimate these parameters, and there is no need to perform extensive historical assessments, as the commenter asserts. The requirement to use pre-development runoff conditions as the performance standard is needed because using a hydrology baseline that approximates that of an undeveloped, natural watershed is the only way to facilitate the return of more natural hydrological conditions to already built-out watersheds. Using the pre-project hydrology as a baseline for redevelopment projects results in propagating the unnatural hydrology of urbanized areas, which is largely made up of impervious surfaces. Flows from impervious surfaces are highly erosive and consequently have detrimental effects on receiving waters in the San Diego Region. Furthermore, propagating the urbanized flow regime does not support conditions for restoring degraded or channelized

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E3c2-2	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements
	stream segments, and would forever sentence such streams to the degraded state. Identification of areas suitable for rehabilitating degraded stream segments is a critical component of the Tentative Order and is expected to be incorporated into Copermittee's strategies for improving water quality in the watersheds. Finally, the Copermittees will be allowed to use the Hydromodification Management Plan developed under Order No. R9-2009-0002. The performance standards of the Tentative Order are the same as those of Order No. R9-2009-0002, therefore there is no need for the Copermittees to develop new requirements or methodologies, or otherwise update their Hydromodification Management Plan. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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E3c2-3	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements	
	<u>COMMENT:</u> <i>The San Diego Water Board is eliminating exemptions for hydromodification control when storm water runoff is conveyed to significantly hardened or engineered channels.</i> The Construction Industry Coalition on Water Quality (CICWQ) assert that regulations are tending to require hydromodification controls for Priority Development Projects, regardless of receiving water susceptibility. CICWQ states that this direction is driven by environmental advocacy for removal of all concrete lined channels regardless of existing land uses and feasibility, and that such efforts ignore the vital role that flood control facilities play in urban infrastructure and the protection of life and property. The alignment, grade, and cross section of many urban streams have been irrevocably altered, and a regulatory requirement to return flows to pre-development conditions will not allow stream restoration to occur. CICWQ and the Riverside County Copermittees both submitted comments stating that the interim exemptions from hydromodification controls allowed for engineered channels should be granted outright without further study from the Copermittees.	Construction Industry Coalition on Water Quality • San Diego Building Industry Association • Building Industry Association of Southern CA • Associated General Contractors • Associated Builders and Contractors • San Diego Regional Chamber of Commerce • Business Leadership Alliance • San Diego Association of Realtors • San Diego Apartment Association • National Association of Industrial & Office Properties • Building Office & Management Association • San Diego Chapter of American Society of Landscape Architects Riverside County Copermittees
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the hydromodification management requirements in the Tentative Order mandate controls on Priority Development Projects, regardless of receiving water susceptibility. The requirements of the Tentative Order provide that post-project runoff conditions must not exceed pre-development runoff conditions by more than 10 percent (for the range of flows that result in increased potential for erosion, or degraded instream habitat downstream of Priority Development Projects). Note that the requirement is not to control <i>all</i> post-project flows, but only those that are expected to <i>cause erosion or degraded habitat</i> downstream of the Priority Development Project. Since each Priority Development Project is expected to result in a specific post-project runoff condition, and the susceptibility of the receiving water to erosion could vary substantially based on location within a watershed, then the range of flows to control, and hence the specific BMPs required, will necessarily vary and is not a one-size-fits all requirement. In this way, the requirements in the Tentative Order specifically address the susceptibility of the receiving water.	

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E3c2-3	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements
	The commenter correctly asserts that the driver behind the requirement to use the pre-development performance standard is the sustainability of geomorphically stable channels and the ability to return urbanized streams to a more natural state. As explained in the response to Comment No. E.3.c2-2, the requirement to use pre-development runoff conditions as the performance standard is needed because using a hydrology baseline that approximates that of an undeveloped, natural watershed is the only way to facilitate the return of more natural hydrological conditions to already built-out watersheds, which in turn supports conditions for rehabilitating degraded or channelized stream segments. Contrary to what the commenter asserts, the Tentative Order does not require Copermittees to remove concrete from channels that are engineered to relieve flooding and protect life and property. The Tentative Order provides exemptions for Priority Development Projects that discharge to receiving waters where there is little threat of erosion, and subsequently implementing BMPs onsite would do little to protect the beneficial uses of such receiving waters. The commenter correctly states that the exemption for engineered channels is temporary. However, the commenter should note that there is a high likelihood that exemptions for engineered channels will become permanent. The Tentative Order allows for the Copermittees to recommend permanent exemptions based on completion of an optional Watershed Management Area Analysis pursuant to Provision B.3.b.(4). As part of this effort, the Copermittees would identify, for example, areas in the watershed suitable for urban retrofitting, and areas suitable for stream rehabilitation. The Copermittees would also identify areas suitable for exemptions for hydromodification management, such as engineered channels that are needed for the protection of life and property. The interim exemption for engineered channels is not granted outright as permanent exemptions because the areas have not yet been analyzed in the context of stream rehabilitation opportunities. The San Diego Water Board does not anticipate the Watershed Management Area Analysis to be burdensome on the Copermittees because they have already completed a Watershed Management Planning Tool, with similar goals as the Watershed Management Area Analysis, as part of their storm water management programs. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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E3c2-4	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements	
	<u>COMMENT:</u> <i>Hydromodification control requirements to avoid critical sediment yield areas are unnecessarily restrictive.</i> The Construction Industry Coalition on Water Quality (CICWQ) assert that the hydromodification management requirements of the Tentative Order to “avoid critical sediment yield areas” are unnecessarily restrictive. The commenters state that several Priority Development Projects have been significantly delayed or stopped because of the inability to comply with this requirement.	Construction Industry Coalition on Water Quality • San Diego Building Industry Association • Building Industry Association of Southern CA • Associated General Contractors • Associated Builders and Contractors • San Diego Regional Chamber of Commerce • Business Leadership Alliance • San Diego Association of Realtors • San Diego Apartment Association • National Association of Industrial & Office Properties • Building Office & Management Association • San Diego Chapter of American Society of Landscape Architects
	<u>RESPONSE:</u> The San Diego Water Board disagrees that the requirements to avoid critical sediment yield areas are unnecessarily restrictive. The requirements are necessary to protect receiving waters from erosive flows caused by land development. As explained in the Fact Sheet to the Tentative Order, hydromodification, which is caused by both altered storm water flow and altered sediment flow regimes, is largely responsible for degradation of creeks, streams, and associated habitats in the San Diego Region. In an ongoing study by the Stormwater Monitoring Coalition to assess the health of streams throughout Southern California, researchers found that three of the four highest risk stressors to creeks (percent sands and fines present, channel alteration, and riparian disturbance) were related to physical habitat (Assessing the Health of Southern California Streams, Stormwater Monitoring Coalition, Fact Sheet). Researchers studying flood frequencies in Riverside County have found that increases in watershed imperviousness of only 9-22 percent can result in increases in peak flow rates for the two-year storm event of up to 100 percent (Schueler and Holland, 2000. Storm Water Strategies for Arid and Semi-Arid Watersheds, (Article 66). The Practice of Watershed Protection). Such changes in runoff have significant impacts on channel morphology. Placement of impervious surfaces as a result of urbanization is largely responsible for erosional impacts to	

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E3c2-4	PROVISION E.3.c.(2): Hydromodification Management BMP Requirements
	streams because placement of impervious surfaces encapsulates “good” sediment (such as sand, gravel, rocks and cobbles) that would normally replenish creek beds and banks to help stabilize them. For this reason, the Tentative Order requires Priority Development Projects to avoid critical sediment yield areas, as defined by the Copermittees, or implement measures to allow coarse sediment to be discharged to receiving waters. Such measures are designed to protect receiving waters and avoid impacts experienced by past land development practices. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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E3c2-5 PROVISION E.3.c.(2): Hydromodification Management BMP Requirements		
	<u>COMMENT:</u> <i>Modify Tentative Order to clarify that the interim hydromodification exemptions are in place until the San Diego Water Board approves the BMP Design Manual.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District recommend that the interim timeframe exemptions for engineered channels and large rivers from hydromodification management remain in place until the BMP Design Manual is approved by the San Diego Water Board, as opposed to when the BMP Design Manual has been updated. The commenters have made this request so that there is no timing gap in coverage for the exemptions.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that any changes are needed to the language in Provision E.3.c.(2)e. The Tentative Order requires the Copermittees to update their BMP Design Manuals in accordance with Provision F.2.b. The Copermittees are required to update their BMP Design Manual, but there is no requirement to seek San Diego Water Board approval before the BMP Design Manual goes into effect 180 days after completing the update. If there is a discrepancy in approving the Water Quality Improvement Plan with recommended exemptions before the BMP Design Manual goes into effect, then the San Diego Water Board could direct the Copermittees to delay implementation of the BMP Design Manual. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E3c3-1 PROVISION E.3.c.(3): Alternative Compliance to Onsite Structural BMP Implementation		
	<u>COMMENT:</u> <i>Requests for the Water Quality Equivalency calculations be included as an optional Copermittee deliverable.</i> The County of San Diego requests that the Water Quality Equivalency calculations and methodologies currently under development by the Copermittees in support of the Alternative Compliance Program be included in the Tentative Order as an optional deliverable for review and acceptance by the San Diego Water Board's Executive Officer.	County of San Diego
	<u>RESPONSE:</u> The San Diego Water Board agrees with this comment and has modified the Tentative Order at Provision E.3.c.(3) to incorporate the recommendation.	

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E3c3-2 PROVISION E.3.c.(3): Alternative Compliance to Onsite Structural BMP Implementation		
	COMMENT: <i>Copermittees should be allowed flexibility to develop a trading and water quality credit system.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District requests that language pertaining to the water quality credit system be revised to remove the no-net impact limitations because certain projects may offer significant environmental benefits that are not necessarily related to water quality, and that any water quality trading system should be implemented in accordance with EPA's 2003 Final Water Quality Trading Policy.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board disagrees with the commenters that the no-net impact language should be removed from the Tentative Order. The optional credit system described in Provision E.3.c.(3)(d) is based on meeting the structural BMP performance standards as they pertain to protecting and improving water quality. A credit system that would allow other environmental benefits cannot necessarily ensure that water quality would be protected to the MEP standard, for which the performance standards are structured to achieve. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E3e-1	PROVISION E.3.e: Priority Development Project BMP Implementation and Oversight	
	<u>COMMENT:</u> <i>Include the date the BMP manual will be implemented to provide clarity.</i> The City of San Diego requests that the date that the BMP Manual will go into effect for the San Diego County Copermittees (December 24, 2015) be explicitly expressed in the Tentative Order.	City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board disagrees that including the date when the BMP Manual will go into effect is appropriate, because this date will be different for the various Copermittees covered under the Tentative Order (i.e. San Diego County Copermittees, South Orange County Copermittees, and eventually Riverside County Copermittees). Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E3e-2	PROVISION E.3.e: Priority Development Project BMP Implementation and Oversight	
	<u>COMMENT:</u> <i>Revise the Tentative Order to define when a priority development project has prior lawful approval.</i> The City of San Diego requests a definition of prior lawful approval be added to the Tentative Order to clarify when it is appropriate to allow Priority Development Projects to comply with BMP standards of previous MS4 permits. The City of San Diego recommends including a definition that can 1) provide a clear, bright line; 2) provide a backstop to ensure that older projects with approvals comply with new requirements unless those approvals confer vested rights; 3) protect vested rights; and 4) preserve Copermittee's land use authority. Similarly, the Coalition provided comments requesting that the Tentative Order be modified to include a definition of prior lawful approval, stating that clarifying the intent of the San Diego Water Board will assist all interested parties in understanding the factors that the Copermittees need to balance in applying their discretion with Provision E.3.e.(1)(a) of the Tentative Order. In contrast, the Coastal Environmental Rights Foundation and San Diego Coastkeeper submitted comments that it is not necessary to take any action to define prior lawful approval, stating that doing so could allow for vested rights that run counter to widely accepted law.	Construction Industry Coalition on Water Quality • San Diego Building Industry Association • Building Industry Association of Southern CA • Associated General Contractors • Associated Builders and Contractors • San Diego Regional Chamber of Commerce • Business Leadership Alliance • San Diego Association of Realtors • San Diego Apartment Association • National Association of Industrial & Office Properties • Building Office & Management Association • San Diego Chapter of American Society of Landscape Architects San Diego Coastkeeper Coastal Environmental Rights Foundation City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board has carefully considered the comments received regarding prior lawful approval, and whether or not it is appropriate to define this term in the Tentative Order. The San Diego Water Board understands the concerns regarding the difficulty the Copermittees face in applying their discretion to the concept of prior lawful approval in a consistent manner that complies with the intent of Provision E.3.e.(1)(a). Therefore, for the reasons presented by the commenters, the San Diego Water Board agrees that clarification regarding the intent of the Provision and the San Diego Water Board's expectation in how the Copermittees use their discretion, would be helpful to all parties. The Tentative Order has been modified to include a definition for prior lawful approval for both private and public Priority Development Projects that is intended to provide guidance and clarification to Copermittees in	

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E3e-2	PROVISION E.3.e: Priority Development Project BMP Implementation and Oversight
	exercising their discretion in this matter. For private development projects, prior lawful approval is a development approval or construction permit that complies with the Priority Development Project requirements of the Fourth Term MS4 permits (Order Nos. R9-2007-0001 for San Diego County, R9-2009-0002 for south Orange County, or R9-2010-0016 for Riverside County) and includes the design of the storm water drainage system for the project in its entirety as accepted by the Copermittee. Alternatively, prior lawful approval is a development approval or construction permit that confers a vested right to Priority Development Projects to proceed under storm water structural BMP requirements of prior MS4 permits. If a Copermittee grants prior lawful approval to a Priority Development Project based on one of the two aforementioned conditions, then the Copermittee must ensure that 1) any subsequent project approvals must be issued within 5 years of the effective date of the BMP Design Manual, and 2) BMP installation under subsequent approvals must remain in substantial conformity with the design of the storm water drainage system included in the initial approval. For public projects, prior approval allowing implementation of Fourth Term MS4 Permit structural BMP requirements in lieu of the requirements of the Tentative Order is acceptable if the storm water drainage system for the project, in its entirety, has been stamped by the City or County Engineer by the time the BMP Design Manual goes into effect. The San Diego Water Board recognizes that the Copermittees will need to determine whether or not a project has prior lawful approval under the Order based on the circumstances of each project. Nevertheless, the San Diego Water Board expects each Copermittee to require the implementation of Provision E.3 of the Tentative Order wherever it can lawfully do so. Some projects will have received prior lawful approval by the effective date of the BMP Design Manual and hence the requirements of the Fourth Term MS4 permits will govern. The San Diego Water Board expects that very few Priority Development Projects, if any, will be allowed to implement BMP requirements from prior MS4 permits. In cases where BMP requirements from the Fourth Term (or earlier) MS4 permits govern the structural BMP design requirements of a Priority Development Project, the San Diego Water Board expects the Copermittees to be able to demonstrate, in a programmatic audit or other means, that the project has prior lawful approval within the meaning of Provision E.3 of this Order. The San Diego Water Board has conducted and will continue to conduct programmatic audits of the Copermittee's land development programs to evaluate MS4 permit compliance. In all cases the San Diego Water Board expects the Copermittees to only approve projects with adequate post construction BMPs that are protective of water quality. In summary, Attachment 1 of the Tentative Order has been modified at Provision E.3.e.(1) to include a definition of the term "prior lawful approval." This language is intended to provide clarity on how the term

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E3e-2	PROVISION E.3.e: Priority Development Project BMP Implementation and Oversight
	should be interpreted in determining structural BMP requirements for Priority Development Projects, and will also assist the San Diego Water Board in assessing Copermittee compliance with implementing the structural BMP requirements for Priority Development Projects to the maximum extent practicable (MEP) standard.

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E4-1	PROVISION E.4: Construction Management	
	<u>COMMENT:</u> <i>Modify Construction Management Program provisions so as not to negate the very intent and purpose of the watershed approach and the focus on the highest priorities within each watershed management area.</i> The County of Orange and Concurring Cities and Orange County Flood Control District requests the introductory paragraph of the Construction Management Provisions be modified to better reflect the watershed approach and program focus on highest priority conditions of concern.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that modifications to the Construction Management Program Provisions are needed for the reasons stated in the Response to Comment E1-1. Copermittees are afforded flexibility in meeting the requirements of Provision E.4. They are required to meet a minimum baseline program (with limited prescriptiveness compared to Fourth Term MS4 permits) as stated in the Tentative Order, and within that framework focus on the highest priority conditions of concern as described in the Water Quality Improvement Plans. Based on this consideration no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E5-1	PROVISION E.5: Existing Development Management	
	<u>COMMENT:</u> <i>Modify Existing Development Program provisions so as not to negate the very intent and purpose of the watershed approach and the focus on the highest priorities within each watershed management area.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request modification to the introductory paragraph of the Existing Development Provisions to better reflect the watershed approach and program focus on highest priority conditions of concern.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that modifications to the Existing Development Management Program Provisions are needed for the reasons stated in the Response to Comment E1-1. Copermittees are afforded flexibility in meeting the requirements of Provision E.5. They are required to meet a minimum baseline program (with limited prescriptiveness compared to Fourth Term MS4 permits) as stated in the Tentative Order, and within that framework focus on the highest priority conditions of concern as described in the Water Quality Improvement Plans. Based on this consideration no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E5-2	PROVISION E.5: Existing Development Management	
	<u>COMMENT:</u> <i>Delete the requirement to evaluate retrofit of stream channels.</i> The County of Orange and Concurring Cities and Orange County Flood Control District requested removal of the requirement to evaluate retrofit of stream channels from the Tentative Order because it is not the Copermittee's responsibility to restore receiving waters.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board agrees that it is not the responsibility of the Copermittees to restore receiving waters. None of the provisions in the Tentative Order requires the Copermittees to perform stream restorations. The Tentative Order at Provision E.5.e.(2) requires the Copermittees to describe a program to rehabilitate streams, channels, and habitats in existing developed areas by first identifying viable candidates, then developing a strategy to facilitate the implementation of the rehabilitations. Rehabilitation of streams, channels, and habitats may also serve as candidates for alternative compliance (to implementation of structural BMPs; see Tentative Order at Provision E.3.c.(3)), and is an important element of the Tentative Order in achieving improvements in water quality and watershed functions. Based on this consideration no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E6-1	PROVISION E.6: Enforcement Response Plans	
	<u>COMMENT:</u> <i>Copermittees should be allowed to utilize existing guidelines and procedures for enforcement.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request Provision E.6 be modified to specify that a Copermittee may utilize and implement established, equivalent guidelines and procedures for enforcement.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that any changes to the Tentative Order are needed. A Copermittee will be able to continue using and implementing existing enforcement guidelines and procedures if the Copermittee demonstrates the procedures and guidelines comply with the requirements of Provision E.6. Provision E.6 requires each Copermittee to document enforcement processes and procedures in an Enforcement Response Plan, as part of its jurisdictional runoff management program document and specifically describes what must be included in the Plan. The Enforcement Response Plan will promote transparency and accountability by ensuring that Copermittee enforcement programs and procedures are clear and accessible to the San Diego Water Board and the public, and can be used to evaluate the adequacy of Copermittee enforcement programs and progress towards meeting enforcement goals. Because the Copermittees already have procedures in place for enforcement, there will likely only be minor modifications needed to the programs to meet the requirements of Provision E.6. The Enforcement Response Plan is expected to be a tool the Copermittee can refer to when issuing enforcement actions to compel compliance with its statutes, ordinances, permits, contracts, order, or similar means, and the requirements of the Tentative Order. The Enforcement Response Plan is also expected to result in more consistent enforcement and enforcement actions by the Copermittee within its jurisdiction. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E6-2	PROVISION E.6: Enforcement Response Plans	
	<u>COMMENT:</u> <i>The definition for “Escalated Enforcement” should be redefined.</i> The County of Orange and Concurring Cities, and the Orange County Flood Control District request Provision E.6.d be modified to be “Progressive Enforcement” instead of “Escalated Enforcement” because the process should reflect a standard progressive approach.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees with the recommendation to modify the language in Provision E.6.d from “escalated enforcement” to “progressive enforcement”. The Copermittees are expected to implement “progressive enforcement” in all cases of enforcement. For enforcement issues that are associated with the highest priority water quality conditions identified by the Copermittees in the Watershed Management Area, the Copermittees are expected to implement enforcement swiftly. “Escalated enforcement” refers to the Copermittee escalating its enforcement measures and resources to a) ensure compliance with local statutes, ordinances, permits, contracts, order, or similar means, and the requirements of the Tentative Order, b) compel prompt correction of violations and the conditions that led to the violations, and c) deter future violations. The term “escalated enforcement” correctly reflects this added level of urgency and focus to compel compliance. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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E7-1 PROVISION E.7: Public Education and Participation		
	COMMENT: <i>The Public Education Program provisions must be modified so as not to negate the very intent and purpose of the watershed approach and the focus on the highest priorities within each watershed management area.</i> The County of Orange and Concurring Cities and the Orange County Flood Control District request modification to the introductory paragraph of the Public Education Program Provisions to better reflect the watershed approach and program focus on highest priority conditions of concern.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board disagrees that modifications to the Public Education Program Provisions are needed for the reasons stated in the Response to Comment E1-1. Copermittees are afforded flexibility in meeting the requirements of Provision E.7. The Copermittees are required to meet a minimum baseline program (with limited prescriptiveness compared to Fourth Term MS4 permits) as stated in the Tentative Order, and within that framework focus on the highest priority conditions of concern as described in the Water Quality Improvement Plans. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted	

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F-1	PROVISION F: REPORTING	
	COMMENT: <i>Modify Tentative Order to better align reporting requirements with the process for development and updates of the various plans to allow for the time necessary to complete the work and to submit the ROWD.</i> The County of Orange and Concurring Cities and Orange County Flood Control District suggest the due dates for development of each component of the Water Quality Improvement Plan be linked to the development step that precedes it and not to the commencement of coverage under the Order. The commenters also suggest the timeframe for development of the Water Quality Improvement Plan incorporate adequate time for the Copermittees to review and respond to comments received on the current action before moving on to the next step of development. The Copermittees are also concerned that the schedule proposed in the Tentative Order would impart an overly burdensome schedule on members of the public participating in the Consultation Panels and reviewing documents during the public review periods and do not allow for adequate time to conduct CEQA.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The Tentative Order accommodates the commenters concerns with the amount of time needed to develop the Water Quality Improvement Plan and submit the deliverables by providing a flexible range within which the Copermittees may submit each component of the Water Quality Improvement Plan. Copermittees may submit the requirements of Provision B.2 (i.e. priority water quality conditions, source of conditions, and potential water quality improvement strategies) as early as 6 months and no later than 12 months after commencement of coverage and Provision B.3 (i.e. goals, strategies, and schedules) as early as 9 months, and no later than 18 months after commencement of coverage. By including this range within which the deliverable can be submitted, the San Diego Water Board is allowing adequate time and adequate flexibility for the Copermittees to a) create the deliverable, b) accept and review comments received on the deliverable during development of the Water Quality Improvement Plan, and c) complete any CEQA compliance as the Copermittee determines to be necessary. The San Diego Water Board expects each partial deliverable to be well thought out and complete but also realizes that additional time exists in the process to further incorporate comments and input received during the public comment period and San Diego Water Board staff review. As such the Tentative Order requires the final version of the Water Quality Improvement Plan to be submitted within 24 months after commencement of coverage under the Tentative Order as it amends Order No. R9-2013-0001. By requiring submittal of individual components of the Water Quality Improvement Plan, members of the Consultation Panel, the public, and the San Diego Water Board will be able to provide input early on in the Plan	

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F-1	PROVISION F: REPORTING
	development. The San Diego Water Board expects that any deficiencies in the Water Quality Improvement Plan will be identified early on either during the public review and comment period or during the review by the San Diego Water Board. The Orange County Copermittees may wish to consult with San Diego County Copermittees to benefit from their experience in developing the Water Quality Improvement Plans. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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H-1	PROVISION H: MODIFICATION OF PROGRAMS	
	<u>COMMENT:</u> <i>Modify Tentative Order to include an explicit re-opener provision.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that additional revisions to the explicit re-opener provisions in the Tentative Order are necessary. Provision H.4.c of the Tentative Order already explicitly states that the San Diego Water Board will re-open the Order if any of the TMDLs in Attachment E are amended in the Basin Plan by the San Diego Water Board, and the amendment is approved by the State Water Board, Office of Administrative Law, and the USEPA. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttA-1	ATTACHMENT A: Discharge Prohibitions and Special Protections	
	<u>COMMENT:</u> <i>The City supports the proposed changes to the Areas of Special Biological Significance.</i>	City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board acknowledges the City's support of this change.	

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AttC-1	ATTACHMENT C: Acronyms, Abbreviations, and Definitions	
	<u>COMMENT:</u> <i>Request for additional or modified definitions.</i> Several comments were submitted requesting modifications to existing definitions and/or the addition of new definitions to Attachment C to the Tentative Order.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board reviewed and considered the requested modifications to existing definitions and additional definitions. All of the requested additions or modifications were submitted during the 2013 adoption process for Order No. R9-2013-0001. The San Diego Water Board reconsidered the requested additions or modifications and determined, in all cases, that the requested modifications or additions were still not appropriate, not necessary, or both. Therefore, no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttE-1	ATTACHMENT E: Specific Provisions for Total Maximum Daily Loads	
	COMMENT: <i>Compliance determination for final WQBELs should be based on implementation of BMPs and not numeric effluent limitations.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: The San Diego Water Board has already included a compliance determination option for final WQBELs based on implementation of BMPs in the Tentative Order. WQBELs can be expressed as (1) conditions in receiving waters that are to be attained to restore or protect water quality standards in receiving waters, (2) conditions in discharges that will not cause or contribute to exceedances of water quality standards in receiving waters, (3) BMPs that will ensure discharges will not cause or contribute to exceedances of water quality standards in receiving waters, or (4) a combination of one or more of (1)-(3). This is consistent with 40 CFR 122.44(d)(1)(vii)(B) and 122.44(k)(2)-(4). The San Diego Water Board has incorporated options (1)-(3) under the WQBEL requirements for each of the TMDLs in Attachment E. In most cases, if the WQBEL expressed as a receiving water limitation is achieved, the discharges from the MS4s are assumed to be in compliance with the TMDL requirements. If not, then the Copermittees must demonstrate that discharges from the MS4s are not causing or contributing to the exceedances in the receiving waters by achieving the WQBELs expressed as effluent limitations. In every case, the Copermittees are required to implement BMPs to ensure that discharges from their MS4s do not cause or contribute to exceedances of water quality standards in receiving waters. For the interim TMDL compliance determination requirements, the Copermittees are allowed to demonstrate compliance by implementing a Water Quality Improvement Plan that has been accepted by the San Diego Water Board, with a “reasonable assurance” that the implementation of the BMPs will achieve the interim TMDL WQBELs within the interim compliance dates. The Copermittees will be provided considerable flexibility for demonstrating compliance with achieving the interim WQBELs. For the final TMDL compliance determination requirements, the Copermittees are allowed to demonstrate compliance with the final WQBELs by implementing a Water Quality Improvement Plan that includes an	

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AttE-1	ATTACHMENT E: Specific Provisions for Total Maximum Daily Loads
	analysis to demonstrate that the implementation of the BMPs required by the TMDL achieves compliance with one or more of the final numeric WQBELs. The Water Quality Improvement Plan must include monitoring and assessments to confirm that the Water Quality Improvement Plan is achieving the final TMDL requirement. The San Diego Water Board must accept and continue to accept the Water Quality Improvement Plan and analysis, and the Copermittees must continue to implement the BMPs and demonstrate through the analysis that the final numeric WQBELs are being achieved. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.

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AttE-2 ATTACHMENT E: Specific Provisions for Total Maximum Daily Loads		
	<u>COMMENT:</u> <i>Modify Tentative Order to include a compliance mechanism prior to approval of the Water Quality Improvement Plans.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that it is necessary to include a compliance mechanism prior to approval of the Water Quality Improvement Plan. If a TMDL in Attachment E includes interim or final compliance dates that have passed, the Copermittees are expected to have data to demonstrate that one or more of the compliance determination options have already been met. If interim or final TMDL compliance dates have not passed, compliance with the interim or final TMDL compliance requirements do not have to be demonstrated yet, thus a compliance determination mechanism is not yet required. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttE5-1	ATTACHMENT E 5: Baby Beach and Shelter Island Shoreline Park Bacteria TMDL	
	<u>COMMENT:</u> <i>Correct discrepancies between adopted TMDLs in the Basin Plan and provisions in the Tentative Order.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that there are discrepancies between the TMDLs in the Basin Plan and the provisions in the Tentative Order. The TMDLs as developed are all intended to restore the water quality standards in receiving waters impaired by specific pollutants. The WLAs and LAs as developed are all intended to ensure that discharges from point and nonpoint sources to receiving waters will not cause or contribute to exceedances of water quality standards in receiving waters. The TMDL requirements in Attachment E are consistent with the intent of the TMDLs, and the WLAs for MS4s. In other words, the TMDL requirements in Attachment E are intended to ensure that discharges from the Responsible Copermittees' MS4s will not cause or contribute, and will continue to not cause or contribute to exceedances of water quality standards in receiving waters. According to each TMDL, when all point sources and nonpoint sources achieve their WLAs and LAs, including the WLAs for MS4s, the water quality standards in receiving waters will be restored. The San Diego Water Board included TMDL requirements in Attachment E that are entirely consistent with the requirements of the TMDLs as adopted and incorporated into the Basin Plan. The implementation plans of the TMDLs in the Basin Plan are essentially "instructions" for the San Diego Water Board to incorporate the requirements into the regulatory mechanisms that will implement the requirements of the TMDL to attain the water quality standards that are being impaired by a pollutant in a water body. In each case, the "instructions" provide the permit writer considerable flexibility in how to express the WLAs as WQBELs in the permit, but not as much flexibility in the compliance schedules for achieving the WLAs. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttE5-2	ATTACHMENT E 5: Baby Beach and Shelter Island Shoreline Park Bacteria TMDL	
	<u>COMMENT:</u> <i>WQBELs for Baby Beach TMDL inappropriately include TMDL numeric targets.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board has included WQBELs that are consistent with the requirements and assumptions of the TMDLs. The federal regulations under 40 CFR 122.44(d)(1)(vii)(B) require that NPDES permit requirements incorporate WQBELs that must be consistent with the requirements and assumptions of any available WLAs developed under TMDLs. WQBELs can be expressed as (1) conditions in receiving waters that are to be attained to restore or protect water quality standards in receiving waters, (2) conditions in discharges that will not cause or contribute to exceedances of water quality standards in receiving waters, (3) BMPs that will ensure discharges will not cause or contribute to exceedances of water quality standards in receiving waters, or (4) a combination of one or more of (1)-(3). This is consistent with 40 CFR 122.44(d)(1)(vii)(B) and 122.44(k)(2)-(4). The San Diego Water Board has incorporated options (1)-(3) under the WQBEL requirements for each of the TMDLs in Attachment E. In most cases, if the WQBEL expressed as a receiving water limitation is achieved, the discharges from the MS4s are assumed to be in compliance with the TMDL requirements. If not, then the Copermittees must demonstrate that discharges from the MS4s are not causing or contributing to the exceedances in the receiving waters by achieving the WQBELs expressed as effluent limitations. In every case, the Copermittees are required to implement BMPs to ensure that discharges from their MS4s do not cause or contribute to exceedances of water quality standards in receiving waters. The WQBELs are also consistent with the assumptions and requirements of the WLAs. In each case, the WLAs are calculated based on numeric targets that are assumed to be able to restore or protect water quality standards in receiving waters and/or ensure discharges from the Responsible Copermittees' MS4s will not cause or contribute to exceedances of water quality standards in receiving waters. The numeric targets are required to be based on water quality objectives in the Basin Plan. Discharges from the MS4s are required to	

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AttE5-2 ATTACHMENT E 5: Baby Beach and Shelter Island Shoreline Park Bacteria TMDL		
	achieve the numeric targets for their discharges to protect water quality standards in receiving waters to meet the WLAs. The WQBELs for the TMDLs in Attachment E are consistent with the numeric targets, and thus consistent with the underlying assumptions and requirements of the numeric targets that are the basis of the WLAs. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttE6-1	ATTACHMENT E 6: Beaches and Creeks Bacteria TMDL	
	<u>COMMENT:</u> <i>Correct discrepancies between adopted TMDL Basin Plan and provision in Tentative Order.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that there are discrepancies between the TMDLs in the Basin Plan and the provisions in the Tentative Order. The TMDLs as developed are all intended to restore the water quality standards in receiving waters impaired by specific pollutants. The WLAs and LAs as developed are all intended to ensure that discharges from point and nonpoint sources to receiving waters will not cause or contribute to exceedances of water quality standards in receiving waters. The TMDL requirements in Attachment E are consistent with the intent of the TMDLs, and the WLAs for MS4s. In other words, the TMDL requirements in Attachment E are intended to ensure that discharges from the Responsible Copermittees' MS4s will not cause or contribute, and will continue to not cause or contribute to exceedances of water quality standards in receiving waters. According to each TMDL, when all point sources and nonpoint sources achieve their WLAs and LAs, including the WLAs for MS4s, the water quality standards in receiving waters will be restored. The San Diego Water Board included TMDL requirements in Attachment E that are entirely consistent with the requirements of the TMDLs as adopted and incorporated into the Basin Plan. The implementation plans of the TMDLs in the Basin Plan are essentially "instructions" for the San Diego Water Board to incorporate the requirements into the regulatory mechanisms that will implement the requirements of the TMDL to attain the water quality standards that are being impaired by a pollutant in a water body. In each case, the "instructions" provide the permit writer considerable flexibility in how to express the WLAs as WQBELs in the permit, but not as much flexibility in the compliance schedules for achieving the WLAs. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttE6-2	ATTACHMENT E 6: Beaches and Creeks Bacteria TMDL	
	<u>COMMENT:</u> <i>Modify Attachment E.5, WQBELs for Beaches and Creeks TMDL inappropriately include TMDL numeric targets.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board has included WQBELs that are consistent with the requirements and assumptions of the TMDLs. The federal regulations under 40 CFR 122.44(d)(1)(vii)(B) require that NPDES permit requirements incorporate WQBELs that must be consistent with the requirements and assumptions of any available WLAs developed under TMDLs. WQBELs can be expressed as (1) conditions in receiving waters that are to be attained to restore or protect water quality standards in receiving waters, (2) conditions in discharges that will not cause or contribute to exceedances of water quality standards in receiving waters, (3) BMPs that will ensure discharges will not cause or contribute to exceedances of water quality standards in receiving waters, or (4) a combination of one or more of (1)-(3). This is consistent with 40 CFR 122.44(d)(1)(vii)(B) and 122.44(k)(2)-(4). The San Diego Water Board has incorporated options (1)-(3) under the WQBEL requirements for each of the TMDLs in Attachment E. In most cases, if the WQBEL expressed as a receiving water limitation is achieved, the discharges from the MS4s are assumed to be in compliance with the TMDL requirements. If not, then the Copermittees must demonstrate that discharges from the MS4s are not causing or contributing to the exceedances in the receiving waters by achieving the WQBELs expressed as effluent limitations. In every case, the Copermittees are required to implement BMPs to ensure that discharges from their MS4s do not cause or contribute to exceedances of water quality standards in receiving waters. The WQBELs are also consistent with the assumptions and requirements of the WLAs. In each case, the WLAs are calculated based on numeric targets that are assumed to be able to restore or protect water quality standards in receiving waters and/or ensure discharges from the Responsible Copermittees' MS4s will not cause or contribute to exceedances of water quality standards in receiving waters. The numeric targets are required to be based on water quality objectives in the Basin Plan. Discharges from the MS4s are required to	

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AttE6-2 ATTACHMENT E 6: Beaches and Creeks Bacteria TMDL		
	achieve the numeric targets for their discharges to protect water quality standards in receiving waters to meet the WLAs. The WQBELs for the TMDLs in Attachment E are consistent with the numeric targets, and thus consistent with the underlying assumptions and requirements of the numeric targets that are the basis of the WLAs. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttE7-1 ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL		
	<u>COMMENT:</u> <i>Modify the Tentative Order to allow individual jurisdictional compliance with TMDLs.</i> The City of San Diego requests the Tentative Order be modified so that Final TMDL Compliance Determination using the Water Quality Improvement Plan pathway is based on individual jurisdictional compliance instead of all Copermittees collectively.	City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board disagrees that modifications are needed to the language pertaining to TMDL compliance determination. The commenter correctly asserts that the intent of the language, and in fact, the intent of the Water Quality Improvement Plan concept, is that the Copermittees develop the Water Quality Improvement Plans collectively and evaluate water quality improvement strategies on a watershed basis. The San Diego Water Board recognizes that the Copermittees have no authority over other Copermittees to compel TMDL compliance; therefore, the Tentative Order has multiple compliance pathways available to each Copermittee to achieve compliance. These pathways are presented in each of the 7 Specific (TMDL) Provisions at X.b.(3). These alternative compliance pathways do not rely on actions or inactions of other Copermittees.	

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AttE7-2 ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL		
	<u>COMMENT:</u> <i>Clarify that waste load allocations include discharges from other responsible parties in addition to Responsible Copermittees.</i> The City of San Diego, City of Del Mar, and Industrial Environmental Association submitted comments requesting the final effluent limitations expressed in Table 7.1, which were derived from waste load allocations, recognize the contribution of sediment loading to the Los Penasquitos Watershed from dischargers other than the Copermittees. Without this recognition, the other dischargers would have a zero sediment loading allocation, contrary to the intent of the TMDL.	Industrial Environmental Association City of San Diego City of Del Mar
	<u>RESPONSE:</u> Although the Tentative Order is an NPDES permit specifically issued to the Phase I MS4 Copermittees, the San Diego Water Board has nonetheless modified Table 7.1 to state that the effluent limitation of 2,580 tons/year is shared amongst all dischargers identified in Resolution No. R9-2012-0033. Provision 7.b.(2)(c)(ii) has likewise been modified to clarify that the Responsible Copermittees must implement BMPs to achieve only their portion of the effluent limitations, as opposed to other discharger's contributions. The City of San Diego suggested dividing up the collective load in proportion to land area occupied by each discharger, but the San Diego Water Board cannot impose a TMDL distribution methodology through the permitting process that has not been peer reviewed and vetted through the TMDL development stakeholder process. Assigning a waste load allocation and subsequent effluent limitation applicable to all dischargers within a watershed collectively, is consistent with the San Diego Water Board's approach to TMDL expression for other waterbodies and constituents.	

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AttE7-3	ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL	
	<u>COMMENT:</u> <i>Revise the Final TMDL compliance determination to be consistent with the Basin Plan Amendment and other TMDLs.</i> The City of Del Mar and the City of San Diego submitted comments requesting the language pertaining to final TMDL compliance determination be modified to be consistent with the Basin Plan Amendment adopted by the San Diego Water Board under Resolution No. R9-2012-0033, and offer multiple compliance pathways similar to other TMDLs.	City of Del Mar City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board agrees to modify the language of Provision 7.b.(3)(a) to match the language of the Basin Plan Amendment (page A-16). However, the San Diego Water Board disagrees that the suggested revisions to add additional language to incorporate a compliance pathway related to “implementation actions” is necessary. Specifically, both the City of San Diego and City of Del Mar requested the following language to be added: “Demonstrate that implementation actions are active on and/or affecting 346 acres with continued monitoring to ensure 80 percent target achievement” This language is not needed because Provision 7.b.(3)(b) regarding the development of the Water Quality Improvement Plan as a compliance pathway serves the same purpose as the suggested language. The phrase “implementation actions” has been added to Provision 7.b.(3)(b)(ii) to incorporate all ideas from the Basin Plan Amendment language into the Water Quality Improvement Plan concept. The San Diego Water Board considered the request to add two additional compliance pathways similar to those included in other TMDLs. As this sediment TMDL is different than other adopted TMDLs because the primary focus is lagoon saltmarsh restoration, as opposed to the quality of the MS4 discharges, the San Diego Water Board did not incorporate the suggested modifications. The intent of the TMDL efforts was to facilitate successful restoration of 346 acres of saltmarsh vegetation, and the Tentative Order appropriately uses this metric as the primary compliance pathway. The schedule to achieve compliance is 20 years, as established by the TMDL. In contrast, the NPDES permit as represented by the Tentative Order is on a 5-year cycle. Revisions to the compliance pathways available to the Responsible Parties can be revisited upon reissuance of the NPDES permit at a later date. The San Diego Water Board believes it is more appropriate to offer multiple compliance pathways after data have been collected showing the effects of sediment reduction efforts on lagoon restoration. If a positive linkage can be	

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AttE7-3	ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL
	established between the reduction in sediment discharges and the successful restoration of the lagoon, then the Responsible Parties can make this request at subsequent permit reissuance proceedings.

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AttE7-4 ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL		
	<u>COMMENT:</u> <i>Correct references in the Los Penasquitos final TMDL compliance determination.</i>	City of San Diego
	The City of San Diego requested modifications to Specific Provision 7.b(3)(b) to correct errors.	
	<u>RESPONSE:</u> The San Diego Water Board has reviewed the recommendation to change the text to reference 7.b.(2)(a) and has not made changes because the references to Specific Provision 7.b.(3)(a) are correct. The incorrect reference to Specific Provision 2 has been changed to Specific Provision 7	

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AttE7-5 ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL		
	<u>COMMENT:</u> <i>Revise the interim TMDL compliance determination to be consistent with the Basin Plan Amendment and other TMDLs.</i> The City of Del Mar and the City of San Diego submitted comments requesting that the language pertaining to interim TMDL compliance determination be modified to be consistent with the Basin Plan Amendment adopted by the San Diego Water Board under Resolution No. R9-2012-0033, and offer multiple compliance pathways similar to other TMDLs.	City of Del Mar City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board agrees with the recommendation and has added multiple compliance options for interim TMDL compliance at Specific Provision 7.c.(2), as suggested by the commenters. Interim TMDL compliance, on or after the interim compliance dates shown in Table 7.2, may be demonstrated via one of the following methods: (a) There is no direct or indirect discharge from the Responsible Copermittee's MS4s to the receiving water; OR (b) The final receiving water limitation under Specific Provision 7.b.(2)(a) is met; OR (c) There are no exceedances of the Copermittee's portion of interim effluent limitations under Table 7.2 at the Responsible Copermittee's MS4 outfalls; OR (d) The Responsible Copermittees have submitted and is fully implementing a Water Quality Improvement Plan, accepted by the San Diego Water Board, which provides reasonable assurance that the Copermittee's portion of the interim TMDL compliance requirements will be achieved by the interim compliance date.	

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AttE7-6 ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL		
	<u>COMMENT:</u> <i>Revise Tables 7.1 and 7.2 in Specific Provision 7 to Reflect the Basin Plan Amendment.</i> The City of San Diego and the City of Del Mar submitted comments requesting modifications to Tables 7.1 and 7.2 to 1) change the heading from interim effluent limitations in tons/year to tons/wet season, and 2) add a footnote acknowledging that the effluent limitation is shared by all Responsible Parties identified in Resolution R9-2012-0033.	City of Del Mar City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board reviewed the wasteload allocations in the Basin Plan Amendment and notes that they are reported in tons/year on both page A-6 and the Table on page A-17. Nevertheless, Table 7.2 has been modified to report the effluent limitations in tons per wet season, as the commenters requested. A footnote was also added to acknowledge the other Responsible Parties identified in Resolution R9-2012-0033. The San Diego Water Board agrees that the third column of Table 7.2 is misleading and not useful, therefore it was deleted.	

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AttE7-1 ATTACHMENT E 7: Los Peñasquitos Lagoon Sediment TMDL		
	<u>COMMENT:</u> <i>Revise monitoring start date to be the first full wet season after the Water Quality Improvement Plan is accepted.</i> The City of San Diego and the City of Del Mar submitted comments requesting that the Assessment and Reporting Requirements in Specific Provision 7.d.(3) be revised so that the first data collection occurs after the San Diego Water Board acceptance of the Water Quality Improvement Plan.	City of Del Mar City of San Diego
	<u>RESPONSE:</u> The San Diego Water Board agrees that the start date for the monitoring requirements should be delayed, but disagrees that acceptance of the Water Quality Improvement Plan is needed first. The language has been changed so that the start date occurs in the 2015-2016 wet season. The monitoring requirements were developed as part of the TMDL Basin Plan Amendment that was adopted by the San Diego Water Board in 2012. The TMDL became effective, and the compliance timeline started, when it was approved by the Office of Administrative Law in July, 2014. The Responsible Parties need not wait for acceptance of the Water Quality Improvement Plan to begin implementing their required monitoring program under the TMDL.	

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AttF-1	ATTACHMENT F: Fact Sheet / Technical Report	
	COMMENT: Based on the successes of the Orange County Storm Water Program, there is little justification for much of the Tentative Order.	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	RESPONSE: Attachment F to the Tentative Order includes the Fact Sheet. The Fact Sheet sets forth a brief summary of the basis for the draft permit conditions, the principal facts and the significant factual, legal, methodological, and policy questions the San Diego Water Board considered in preparing the Tentative Order. The Fact Sheet. In accordance with the Code of Federal Regulations (CFR) Title 40 Parts 124.8 and 124.56 (40 CFR 124.8 and 40 CFR 124.56), this Fact Sheet includes, but is not limited to, the following information: 1. Contact information 2. Public process and notification procedures 3. Background of municipal storm water permits 4. Regional MS4 Permit approach 5. Economic considerations 6. Applicable statutes, regulations, plans and policies 7. Discussion of the provisions in the Order The Fact Sheet also references the Permit Reissuance Process specific to Orange County Copermittees, and references the San Diego Water Board receipt and consideration of the Report of Waste Discharge during development of the Tentative Order. Based on San Diego Water Board review of the Report of Waste Discharge and consideration of the State of Environment discussion, very few changes to Order No. R9-2013-0001 (Regional MS4 Permit) were necessary in the Tentative Order to accommodate the recommendations made in the Report of Waste Discharge. The Fact Sheet was modified to include a brief summary of the basis for any change made in the Tentative Order either related to the State of the Environment discussion in the Report of Waste Discharge or the comments included herein. The Tentative Order requirements reflect the progress made by the Orange County Copermittees' programs and provides them with considerably more flexibility to further improve water quality. See also comment E3c-1 and Gnl-2.	

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AttF-1 ATTACHMENT F: Fact Sheet / Technical Report		
	Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttF-2 ATTACHMENT F: Fact Sheet / Technical Report		
	<u>COMMENT:</u> <i>Modify Fact Sheet to include language explaining the iterative approach and TMDLs.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that additional language is necessary to explain the iterative approach and TMDLs. The iterative approach is for NPDES storm water discharges that are not subject to requirements set forth in TMDLs and are causing or contributing to exceedances of water quality standards in receiving waters. Attachment E to the Tentative Order includes requirements that must be met to be in compliance with the TMDLs. For most of the TMDLs in Attachment E, the requirements also include provisions that provide additional flexibility for determining and achieving compliance with the interim TMDL requirements. The Fact Sheet accurately describes the difference between the iterative approach of the MS4 Permit and compliance with TMDL requirements. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	

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AttF-3 ATTACHMENT F: Fact Sheet / Technical Report		
	<u>COMMENT:</u> <i>Modify Fact Sheet to include language explaining the incorporation of new TMDLs into the Water Quality Improvement Plans.</i>	• County of Orange Concurring Cities: Cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, and Mission Viejo • Orange County Flood Control District
	<u>RESPONSE:</u> The San Diego Water Board disagrees that additional language is necessary to explain the incorporation of new TMDLs into the Water Quality Improvement Plans. Going forward, the San Diego Water Board is assuming that the Copermittees will be involved as a stakeholder in the development of any new TMDLs that may include the MS4 as a source of pollutants contributing to impairment. As a stakeholder, the Copermittees are expected to work with the San Diego Water Board TMDL development staff to identify appropriate WLAs and implementation measures to address MS4 discharges. Because of this knowledge, the Copermittees will have the background and information that will be useful during the re-opening of the MS4 Permit to include the new TMDL requirements. Provision F.2.c.(2) requires the Copermittees to "initiate" an update to the Water Quality Improvement Plans after Office of Administrative Law (OAL) and USEPA approval. The Copermittees may "initiate" the update by working with San Diego Water Board MS4 permitting staff to re-open the Regional MS4 Permit and concurrently begin the process of incorporating any new water quality improvement strategies that may be necessary to include into the Water Quality Improvement Plan. In addition, the expectation is that the Water Quality Improvement Plans will reduce the need for new TMDLs in the future. Based on these considerations no changes to the Tentative Order as it amends Order No. R9-2013-0001 are needed or warranted.	